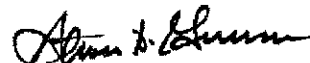


2014-37350

1 **ORDER**

2 STEVEN T. JAFFE, ESQ.  
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4 Nevada Bar No. 007035  
JACOB S. SMITH, ESQ.  
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9 *Attorneys for Defendant*  
10 *Raymond R. Khoury*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 MARGARET G. SEASTRAND,

14 Plaintiff,

15 vs.

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

17 Defendants.

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

**ORDER ON PLAINTIFF'S OMNIBUS  
MOTION IN LIMINE and DEFENDANT'S  
MOTIONS IN LIMINE NOS. 1 THROUGH 8**

18  
19 THIS MATTER, having come before the Honorable Jerry Wiese on June 6, 2013, and BENJAMIN  
20 CLOWARD, ESQ. and ALISON BRASIER, ESQ. of the RICHARD HARRIS LAW FIRM, being present  
21 for Plaintiff MARGARET G. SEASTRAND, and STEVEN T. JAFFE, ESQ. and JACOB S. SMITH, ESQ.  
22 of HALL JAFFE & CLAYTON, LLP, being present for Defendant RAYMOND RIAD KHOURY, and the  
23 Court, having reviewed the pleadings on file, having heard the arguments, and being fully advised in the  
24 premises, makes the following findings and Orders:

25 IT IS HEREBY ORDERED that Plaintiff's Motion No. 1 to Preclude Hypothetical Medical  
26 Questions Designed to Confuse the Jury is GRANTED in part and DENIED in part. Hypothetical questions  
27 will be allowed to be asked; however, hypothetical questions which confuse the jury will not be permitted.

28 IT IS FURTHER ORDERED that Defendant's Motion No. 2 to exclude suggesting to the jury that  
there might exist related medical records prior to the subject accident when there are none is GRANTED

1 in part and DENIED in part. The parties cannot suggest that there are records out there which nobody know  
2 about. The parties will not make up arguments about records that don't exists, but the parties and their  
3 experts can discuss the records which do exist.

4 IT IS FURTHER ORDERED that Plaintiff's Motion No. 3 to Preclude Defendant from Referencing  
5 the case as Attorney-Driven or Medical-build-up is GRANTED. The Defendants and their experts will not  
6 reference the case as attorney-driven or medical build-up or offer opinions regarding the same. Defendant  
7 is not precluded from addressing any notations that Plaintiff was referred by Harris Law Firm.

8 IT IS FURTHER ORDERED that Plaintiff's Motion No. 4 to Preclude Reference to When and Why  
9 Plaintiff Retained Counsel is GRANTED.

10 IT IS FURTHER ORDERED that Plaintiff's Motion No. 5 to Preclude Reference to Plaintiff's  
11 Counsel Working with Margie's Treating Physicians on Other Unrelated Cases is DENIED.

12 IT IS FURTHER ORDERED that Plaintiff's Motion No. 6 to limit closing arguments to evidence  
13 presented at trial is GRANTED. All argument in closing must be based upon evidence presented at trial.  
14 This applies equally to both sides

15 IT IS FURTHER ORDERED that Plaintiff's Motion No. 7 to exclude anything suggesting abuse of  
16 narcotic pain medication is GRANTED.

17 IT IS FURTHER ORDERED that Plaintiff's Motion No. 8 to allow voir dire questions regarding tort  
18 reform is GRANTED. The questions must be asked in a way that doesn't politicize the trial.

19 IT IS FURTHER ORDERED that Plaintiff's Motion No. 9 to Allow Voir Dire Questioning  
20 Regarding Verdict Amounts is GRANTED. The parties have an obligation on behalf of the client to uncover  
21 jurors who have preconceived biases and prejudices regarding verdict amounts. Questions regarding verdict  
22 amounts allow the parties to intelligently use their challenges for cause and peremptory challenges. EDCR  
23 7.70 specifically limits questions based upon hypothetical facts. Questions that do not use specific  
24 hypothetical facts or specific verdict amounts do not violate EDCR 7.70.

25 IT IS FURTHER ORDERED that Plaintiff's Motion No. 10 to permit treating physicians to testify  
26 as to causation, diagnosis, prognosis, future treatment, and extent of disability without a formal expert report  
27 is GRANTED in part and DENIED in part. Plaintiff's treating doctors can testify about causation, diagnosis,

28 ///

1 prognosis future treatment and extent of disability provided those opinions were disclosed in their charts,  
2 reports, testified to in deposition, or formed during the care and treatment of the patient.

3 IT IS FURTHER ORDERED that Plaintiff's Motion No. 11 to Preclude Negative Inference for  
4 Failing to Call Cumulative Witness is GRANTED. However, the parties are permitted to comment if the  
5 opposing party states in opening statements that he or she will call a witness, but does not call that witness.

6 IT IS FURTHER ORDERED that Plaintiff's Motion No. 12 to Preclude References to Collateral  
7 Sources is GRANTED, including all reference to health insurance and medical liens. The parties are not  
8 permitted to ask Plaintiff's treating physicians if they treated Plaintiff on a lien because if they did not treat  
9 under a lien, they treated under health insurance and questions regarding health insurance are not permitted.  
10 The Court finds it is not fair to preclude doctors from testifying about the fact that they are paid by health  
11 insurance, but allow them to testify about the fact that they have not been paid because they treated on a lien.  
12 The Court finds that liens are collateral source information, which is strictly prohibited under Proctor v.  
13 Castelletti.

14 IT IS FURTHER ORDERED that Plaintiff's Motion No. 13 to preclude Defendant from referencing  
15 injuries or non-injuries to other individuals involved in the crash is DENIED. Defendant will not make the  
16 argument that, because Defendant was not injured in the accident, Plaintiff could not have been injured in  
17 the accident.

18 IT IS FURTHER ORDERED that Plaintiff's Motion No. 14 to preclude evidence of prior, unrelated  
19 injuries, conditions, or medical treatment is GRANTED. Evidence of unrelated injuries is not relevant.  
20 Evidence of injuries to the same or similar body part which was injured in this accident is related and  
21 admissible, and evidence of prior injuries as it relates to life expectancy may be relevant depending on how  
22 it is presented and who is offering the testimony.

23 IT IS FURTHER ORDERED that Plaintiff's Motion No. 15 to preclude reference to prior incidents  
24 is RESERVED FOR TRIAL.

25 IT IS FURTHER ORDERED that Plaintiff's Motion No. 16 to preclude the responding officer from  
26 providing biomechanical opinions is GRANTED. The officer's observations at the scene of the accident  
27 are admissible, however his conclusions or opinions pertaining to Plaintiff's injuries and based upon those  
28 observations are not admissible.

1 IT IS FURTHER ORDERED that Plaintiff's Motion No. 17 Preclusion of Plaintiff's Prior Lawsuit  
2 is GRANTED IN PART and DENIED IN PART. Questions relating to Jerry Busby previously being  
3 retained as Plaintiff's attorney shall be permitted; however, the specific nature of that prior retention shall  
4 not be permitted.

5 IT IS FURTHER ORDERED that Plaintiff's Motion No. 18 to Preclude Defendant's Medical  
6 Experts from Referring to the Crash as "Minor" or Making Reference to the Property Damage Sustained by  
7 the Vehicles is DENIED.

8 IT IS FURTHER ORDERED that Plaintiff's Motion No. 19 to Preclude Dr. Schifini from Offering  
9 Testimony Regarding Allegedly Secondary Gain by Plaintiff is RESERVED UNTIL TRIAL. Voir dire of  
10 Dr. Schifini regarding this issue will be conducted outside the presence of the jury.

11 IT IS FURTHER ORDERED that Plaintiff's Motion No. 20 to Preclude Dr. Schifini and Dr. Siegler  
12 from Offering Testimony Regarding Plaintiff's Spine Surgeries is GRANTED. Dr. Schifini and Dr. Siegler  
13 may not testify regarding whether Plaintiff's surgeries were reasonable, necessary, or warranted.

14 With respect to Defendant's Motions in Limine, IT IS HEREBY ORDERED that Defendants'  
15 Motion in Limine No. 1 to Limit Physicians to Opinions State in Their Clinical Records, Depositions, and/or  
16 Reports, If Any is GRANTED in part and DENIED in part. Plaintiff's physicians are permitted to offer  
17 testimony regarding opinions formed during their care and treatment of the Plaintiff, even if those opinions  
18 are not included in their chart. If a physician is going to testify at trial to something that has not been  
19 brought up in an earlier report, chart, or deposition, Plaintiff needs to inform Defendant beforehand to allow  
20 Defendant to address the new opinions and lodge any objections to the testimony outside of the presence  
21 of the jury. If any testimony comes up at trial that either side feels is not a reasonable inference from earlier  
22 reports or depositions, the other party may object and the parties are to approach the bench to discuss the  
23 objection.

24 IT IS FURTHER ORDERED that Defendant's Motion in Limine Number 2 to Preclude Any  
25 Treating Physician Who Did Not Provide An Expert Report From Improperly Rebutting Defense Experts  
26 is DENIED. Treating physicians who did not provide an expert report may rebut defense experts in order  
27 to defend their own opinions. If a treating physician does provide such rebuttal, Defense may raise the fact  
28 that the physician has never directly contradicted those opinions directly, whether in writing or in an earlier



1 deposition.

2 IT IS HEREBY ORDERED that Defendant's Motion in Limine Number 3 to Admit Evidence of  
3 Medical Liens is DENIED. The Court made a record regarding its reasoning for this ruling in response to  
4 Plaintiff's MIL No. 12 Precluding References to Collateral Sources. The Court found that the parties are  
5 not permitted to ask Plaintiff's treating physicians if they treated Plaintiff on a lien because if they did not  
6 treat under a lien, they treated under health insurance and questions regarding health insurance are not  
7 permitted. The Court finds it is not fair to preclude doctors from testifying about the fact that they have not  
8 been paid because they treated on a lien. The Court finds that liens are collateral source information, which  
9 is strictly prohibited under Proctor v. Castelletti. The Court weighed and balanced the Proctor v. Castelletti  
10 (precluding evidence of collateral sources) decision against Lobato decision (allowing evidence of bias) to  
11 determine whether the value of testimony regarding the bias outweighs the Proctor preclusion of all  
12 collateral sources. Under that analysis, the Court comes down on the side of Proctor and finds that evidence  
13 of collateral sources is inadmissible for any reason.

14 IT IS HEREBY ORDERED that Defendant's Motion in Limine Number 4 to Limit Plaintiff's  
15 Presentation of Past Medical Special Damages at Trial to Amounts Actually Paid By or On Behalf of  
16 Plaintiff is DENIED. This denial is based on the collateral source rule which states that other sources of  
17 payment are not relevant for any purpose because a negligent defendant is not entitled to get a benefit from  
18 the fact that the plaintiff had insurance or was able to get his or her bills reduced or written off. The  
19 Defendant may introduce evidence that the amount of the bills is not reasonable and necessary through  
20 witness testimony.

21 IT IS HEREBY ORDERED that Defendant's Motion in Limine Number 5 to Preclude Plaintiff's  
22 Experts From Commenting On, Referring To, Or Rebutting Any Defense Expert Prior to Defense Expert's  
23 Testimony is DENIED.

24 IT IS HEREBY ORDERED that Defendant's Motion in Limine Number 6 to Preclude Video And/Or  
25 Animated Depictions of Plaintiff's Surgical Procedures is temporarily DENIED. Plaintiff will not be using  
26 any footage of actual surgical procedures, and will provide a copy of any animated video demonstrative to  
27 Defendant to view prior to trial. If after viewing, Defendant feels that it should not be admitted, he may re-  
28 address the issue prior to trial. The court is inclined to allow any demonstratives which are not gory, bloody,

1 or nasty to help explain facts to the jury. Video demonstratives will not be admitted as evidence for the jury  
2 to consider during deliberation.

3 IT IS HEREBY ORDERED that Defendant's Motion in Limine Number 7 to Admit All Evidence  
4 of Purchased Liens and Evidence of the Amounts For Which Liens Were Purchased is DENIED. Evidence  
5 of purchased liens is a collateral source and will not be admissible.

6 IT IS HEREBY ORDERED that Defendant's Motion in Limine Number 8 to Preclude Plaintiff's  
7 Expert Terrance Dinneen From Testifying is DENIED.

8 IT IS SO ORDERED this 3 day of April, 2014.

9  
10   
11 DISTRICT COURT JUDGE

12 Respectfully Submitted By:

13 HALL JAFFE & CLAYTON, LLP

14  
15 By 

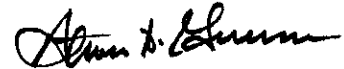
16 STEVEN T. JAFFE, ESQ.  
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18 JACOB S. SMITH, ESQ.  
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20 7425 Peak Drive  
21 Las Vegas, Nevada 89128  
22 Attorneys for Defendant  
23 Raymond R. Khoury

Approved as to Form and Content:

RICHARD HARRIS LAW FIRM

16 By 

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18 Nevada Bar No. 000505  
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23 Attorneys for Plaintiff  
24 Margaret G. Seastrand



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11 *Raymond R. Khoury*

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 MARGARET G. SEASTRAND,  
15 Plaintiff,

16 vs.

17 RAYMOND RIAD KHOURY; DOES 1  
through 10; and ROE ENTITIES 11 through  
18 20, inclusive,

19 Defendants.

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

**NOTICE OF APPEAL**

20 Please take notice that Defendant, RAYMOND RIAD KHOURY, by and through his attorneys of  
21 record, STEVEN T. JAFFE, ESQ., JAMES E. HARPER, ESQ. and JACOB S. SMITH, ESQ., of the law  
22 firm of HALL JAFFE & CLAYTON, LLP, hereby appeals to the Supreme Court of Nevada from:

- 23 1. Order Denying Motion for New Trial entered on February 27, 2014; and

24 ///

25 ///

26 ///

27 ///

28

1 2. All rulings and orders made appealable by the foregoing.

2 DATED this 3<sup>rd</sup> day of March, 2014.

3 HALL JAFFE & CLAYTON, LLP

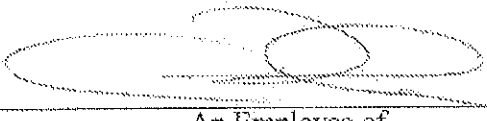
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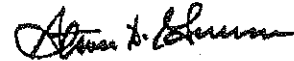
6 STEVEN T. JAFFE, ESQ.  
7 Nevada Bar No. 007035  
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14 Attorneys for Defendant  
15 Raymond R. Khoury  
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1 CERTIFICATE OF SERVICE

2 Pursuant to N.R.C.P. 5(b), I hereby certify that service of the foregoing **NOTICE OF APPEAL** was  
3 made on the 4<sup>th</sup> day of March, 2014, by depositing a true and correct copy of the same by U.S. Mail in Las  
4 Vegas, Nevada, addressed, stamped, and mailed to the following:

5 Richard A. Harris, Esq.  
6 Alison Brasier, Esq.  
7 Benjamin Cloward, Esq.  
8 RICHARD HARRIS LAW FIRM  
9 801 S. Fourth Street  
10 Las Vegas, Nevada 89101  
11 *Attorneys for Plaintiff*

12   
13 An Employee of  
14 HALL JAFFE & CLAYTON, LLP  
15  
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CLERK OF THE COURT

1 **ORDER**  
2 RICHARD A. HARRIS, ESQ.  
3 Nevada Bar No. 505  
4 JOSHUA R. HARRIS, ESQ.  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

13 MARGARET G. SEASTRAND,  
14 Plaintiff,

15 vs.

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

18 Defendants.

CASE NO.: A-11-636515-C

DEPT. NO.: XXX

ORDER

19  
20 This matter having come before the Honorable Judge Jerry Wiese on January 23, 2014  
21 at 9:00 a.m., pursuant to Defendant's Motion for New Trial, the Court having considered the  
22 papers filed by all parties, and allowing oral argument,  
23

24 IT IS HEREBY ORDERED THAT Defendant's Motion for New Trial is DENIED.

25 The Court found that Plaintiff's counsel's use of verdict amounts, which were not based  
26 on specific facts or hypotheticals, during voir dire was proper. Counsel has a duty to ask jurors  
27 these types of questions to allow counsel to intelligently use cause and peremptory challenges.  
28 The questions that counsel used during voir dire were not indoctrinating the jury to a verdict

1 amount. The Court properly granted Plaintiff's cause challenges for those jurors who clearly  
2 held a bias against verdict amounts, pain and suffering awards, and awards in personal injury  
3 cases in general.

5 The Court found that the testimony of Dr. Gross and Dr. Muir was properly allowed.  
6  
7 The Court addressed issues regarding their testimony during pre-trial motions and during trial.  
8 The Court's rulings regarding their testimony were based upon the evidence presented during  
9 trial.

10 The Court found that evidence regarding liens was properly excluded, as they are not  
11 permitted under Proctor v. Castelletti. Liens are an alternate form of payment and, therefore,  
12 are excluded as a collateral source of payment. Allowing liens to be admitted results in a

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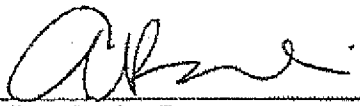
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1 fundamental unfairness by creating two classes of plaintiffs — those who have health insurance  
2 and those who do not.


3 DATED this 6 day of <sup>Feb</sup> January 2014.

4  
5  
6  
7 DISTRICT COURT

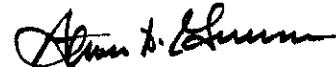
8 Submitted by:

9  
10  
11   
12 Alison Brasier, Esq.  
13 RICHARD HARRIS LAW FIRM  
14 801 South Fourth Street  
15 Las Vegas, Nevada 89101  
16 Attorneys for Plaintiff

17 Approved as to Form and Content by:

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21 Jacob S. Smith, Esq.  
22 HALL, JAFFE & CLAYTON, LLP.  
23 7425 Peak Drive  
24 Las Vegas, Nevada 89128  
25 Attorneys for Defendant  
26  
27  
28





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10 *Attorneys for Defendant*  
*Raymond R. Khoury*  
11

12 DISTRICT COURT  
CLARK COUNTY, NEVADA  
13

14 MARGARET G. SEASTRAND,  
15 Plaintiff,

16 vs.

17 RAYMOND RIAD KHOURY; DOES 1  
through 10; and ROE ENTITIES 11 through  
18 20, inclusive,

19 Defendants.

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

NOTICE OF APPEAL

20 Please take notice that Defendant, RAYMOND RIAD KHOURY, by and through his attorneys of  
21 record, STEVEN T. JAFFE, ESQ. and JACOB S. SMITH, ESQ., of the law firm of HALL JAFFE &  
22 CLAYTON, LLP, hereby appeals to the Supreme Court of Nevada from:

- 23 1. Order dated January 7, 2014, awarding costs in the amount of \$75,015.61.

24 ///

25 ///

26 ///

27 ///

28 ///

1 ///

2 ///

3 2. All rulings and orders made appealable by the foregoing.

4 DATED this 10<sup>th</sup> day of February, 2014.

5 HALL JAFFE & CLAYTON, LLP

6  
7 By:

8 STEVEN T. JAFFE, ESQ.

9 Nevada Bar No. 007035

10 JAMES E. HARPER, ESQ.

11 Nevada Bar No. 009822

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16 Attorneys for Defendant

17 Raymond R. Khoury

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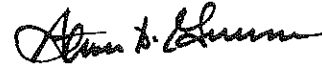
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CASE NO. A-11-636515-C

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DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

MARGARET G. SEASTRAND, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RAYMOND RIAD KHOURY, DOES 1 )  
through 10; and ROE ENTITIES )  
11 through 20, inclusive, )  
 )  
Defendants. )  
 )

REPORTER'S TRANSCRIPT  
OF  
PROCEEDINGS  
BEFORE THE HONORABLE JERRY A. WIESE, II  
DEPARTMENT XXX  
DATED THURSDAY, JANUARY 23, 2014

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

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14 \* \* \* \* \*

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 23, 2014;

2 9:43 A.M.

3  
4 P R O C E E D I N G S

5 \* \* \* \* \*

6  
7 THE COURT: All right. Let's do Seastrand.

8 MR. CLOWARD: How you doing today, Judge?

9 THE COURT: I'm great.

10 MR. SMITH: Good morning, Judge.

11 MR. CLOWARD: Ben Cloward and Alison Brasier  
12 for Ms. Seastrand.

13 MR. SMITH: Jacob Smith for Defendant Raymond  
14 Khoury.

15 THE COURT: Does anybody want it reported?

16 MR. SMITH: I think it's probably best to  
17 have it reported, Your Honor.

18 THE COURT: All right. Case No. A636515,  
19 Seastrand versus Khoury. It's on today for Defendant's  
20 Motion for New Trial --

21 MR. SMITH: That's correct, Your Honor.

22 THE COURT: -- based on a whole bunch of  
23 different things, collateral source issues, voir dire  
24 issues. I don't remember what else.

25 MR. SMITH: Expert opinions.

1           THE COURT: Expert opinions. There's a whole  
2 list of things that you've talked about in the motion.

3           MR. SMITH: There is, Your Honor. And I  
4 guess what I -- what I'll ask of you is: Do you want  
5 me to walk through all of those, having laid them out  
6 in the brief? What would you prefer?

7           THE COURT: I've read it, so just tell me if  
8 there's something you want to add.

9           MR. SMITH: Really, I don't think there is  
10 anything to add. I mean, I feel confident that we've  
11 fully briefed those in our -- our motion and in our  
12 reply. If there's any questions that you want  
13 answered -- but you're right, there is a litany of  
14 issues that we -- that we think provide a basis for a  
15 new trial, among those, the -- the exclusion of liens  
16 on the basis of a collateral source. And I know your  
17 position, you know, was set forth fairly clearly on  
18 those in the -- at the hearing on motions in limine.

19           But in addition to that, the previously  
20 undisclosed opinions of some of her expert and treating  
21 physicians. With particular importance were the  
22 cardiologic opinions that Dr. Gross was offered -- or  
23 allowed to offer.

24           Now, I know plaintiff wants to claim that in  
25 one of his reports he noted that, you know, Dr. Siegler

1 said that these were related, and he thinks that  
2 they're related to -- to the heart. He did not offer  
3 an opinion, and he didn't cite any records that said,  
4 Based on my review, it is my opinion that these are  
5 more reasonably -- or more likely than not related to  
6 the heart and not the spine. That's the testimony he  
7 gave at trial. That's a different opinion. And it's  
8 an opinion that not only was new, but goes outside his  
9 expertise as a neurosurgeon. So that's the issue that  
10 we have on that.

11           And Dr. Muir was allowed to offer testimony  
12 with respect to the appropriateness of the treatment  
13 provided by Dr. Belsky which was not an opinion that he  
14 had previously offered. It's something he could have  
15 issued a report on. And I know there's that whole  
16 dispute as to whether a treating physician, he has to  
17 offer a report. It's our position that he does.

18           In addition, I'd like to say there are those  
19 voir dire issues. It's our position that plaintiff was  
20 allowed to indoctrinate the jury by repeatedly pounding  
21 into them this verdict number of \$2 million and  
22 repeatedly reinforcing to them that this is a  
23 \$2 million verdict over our oppositions and our motions  
24 in limine, our opposition to their motion in limine  
25 stating that, you know, they shouldn't be allowed to



1 reference the specific verdict amount.

2 I think Mr. Fitzgerald, I believe it was,  
3 went on a bit of a diatribe that exposed that technique  
4 when he basically stood up and told the Court, you  
5 know, this is being pounded into us. This is mundane.  
6 This is -- you know, we're being treated like children.  
7 We're being told the answers to the quiz that's going  
8 to be on Friday. And -- and, you know, let's -- let's  
9 not put the -- the horse -- or cart before the horse, I  
10 believe was the term that he used. We agree.

11 Plaintiff was allowed to stand up and  
12 repeatedly tell the jurors that this was a \$2 million  
13 case. Any hesitancy that any juror showed at the  
14 \$2 million figure, then plaintiff was allowed to pounce  
15 on them and not just ask follow-up questions, but  
16 phrase leading questions to convince the jurors, You  
17 have a problem with that; isn't that correct? You're  
18 putting this defendant ahead of the plaintiff, correct?  
19 Basically getting the juror to say something that they  
20 may or may not necessarily agree with, but then rely on  
21 that later to strike them for cause. That's the basis  
22 of our -- or one of the bases of our improper voir dire  
23 reasons for seeking a new trial.

24 Court's indulgence.

25 A number of the jurors repeatedly expressed

1 that they didn't have any facts about the case. They  
2 didn't know about the case, so they didn't know if this  
3 was a \$2 million verdict or not. I think that goes  
4 exactly to the point of why a verdict -- specific  
5 verdict amount shouldn't be used. Because here's a  
6 bunch of prospective jurors, they're sitting here, and  
7 they're looking at a plaintiff who they don't know  
8 what's wrong with her. All they see is a, you know,  
9 reasonably healthy looking person sitting in the -- in  
10 the box -- or -- or at the table I should say. For  
11 them to look at that and then hear these \$2 million  
12 numbers, it sends off some alarms. Okay?

13           If -- they -- they -- a number of them  
14 expressed that concern. You know, she's not  
15 dismembered or she's not dead, then maybe \$2 million is  
16 too much. They don't know anything about the case.  
17 And they -- a number of the jurors repeatedly  
18 expressed, I don't know anything about the case, so  
19 yeah, that gives me some pause for concern.

20           Later they were -- when Mr. Jaffe had the  
21 opportunity to question them, they stated, you know  
22 what, I will consider the facts. I will consider the  
23 evidence. And if the evidence shows that she's  
24 entitled to \$2 million, if the evidence shows that  
25 she's entitled to a pain and suffering award, I will

1 give that award.

2 Now, unfortunately, the defendant only has  
3 the opportunity to do that second. So we can't control  
4 what the plaintiffs or -- have already asked them, you  
5 know, other than to object. And I don't -- I don't  
6 believe that these jurors that expressed an  
7 unwillingness to consider the law a basis for being  
8 stricken.

9 They were indoctrinated by the questions that  
10 Mr. Cloward asked, by the way he asked those questions,  
11 by the way he elicited just one little sliver of doubt,  
12 even though they all expressed they didn't know  
13 anything about the case, and then later he was allowed  
14 to go back and say, Your Honor, she expressed hesitance  
15 at \$2 million, we need to strike her for cause. That's  
16 the basis of our jury indoctrination, and we feel like  
17 that provides us a basis for getting a new jury,  
18 keeping those specific verdict numbers out from the  
19 jury, and then trying the case.

20 If you have any questions for me, Your Honor,  
21 I'd be happy to answer them.

22 THE COURT: I don't think so.

23 Do you want to say anything?

24 MR. CLOWARD: Do I need to?

25 THE COURT: He's making a record.

1 MR. CLOWARD: Okay. Basically --

2 THE COURT: I read your brief too, though.

3 MR. CLOWARD: The interesting part about this  
4 is that defendant really wants to be able to stack the  
5 deck, and they're upset and they're complaining because  
6 they weren't able to stack the deck. They don't want a  
7 fair trial. They absolutely don't want a fair trial.

8 I can't remember the gentleman that the Court  
9 voir dired him outside the presence of the rest of the  
10 panel because he was so hostile. His complaint wasn't  
11 that I kept pounding \$2 million. It was the fact that  
12 I was even talking about money. You know, he's -- he's  
13 saying, You're talking about money before you even  
14 have -- before you've even put on the case or told us  
15 about the facts. Well, you know what, yeah, because  
16 I'm following EDCR which says I can't talk about the  
17 facts, which counsel agreed that I followed,  
18 interestingly, in their brief. That was part of the  
19 complaint of the jurors was that I wasn't talking about  
20 the facts.

21 And that's why voir dire is so important.  
22 And that's why I should be able to talk about numbers  
23 and -- and things, because if my client has had  
24 numerous surgeries, but she's recovered and she looks  
25 just fine sitting at counsel table, that's all the more

1 reason why it's that much more important to be able to  
2 talk about that if you're going to ask for an  
3 astronomical amount, which is what Juror Ong said, the  
4 2 million was, you know.

5           That's another thing is that counsel suggests  
6 that I put words in the mouths of the jurors. That's  
7 simply untrue. After the jurors expressed a bias, I  
8 then did follow up and ask very direct questions about  
9 that bias and whether they've had that bias for a long  
10 time, whether they think that they could, you know --

11           THE COURT: Anything that you said or  
12 anything that I said was going to change their mind.

13           MR. CLOWARD: Exactly. And -- and let me  
14 just give you an example of Ms. Ong. Okay? Juror okay  
15 says in regard to the -- the \$2 million, she says, I  
16 think it's a bit too excessive, too, because it's an  
17 accident. Nobody intends to harm anybody. So that,  
18 for me, is just too much. And then she goes on and  
19 basically says that she thinks that -- I believe it was  
20 her that said it was astronomical. It might have been  
21 another juror. But the fact that Ms. Ong expressed  
22 that in her mind it needed to be an intentional act in  
23 order to have that type of money at issue.

24           Keeping in mind, my client had, you know,  
25 around 500,000 in medical specials, past medical

1 specials alone, now we're talking futures, and -- and  
2 loss of earning capacity, loss of, you know,  
3 household -- I mean, the boardable meds were well over  
4 a million dollars. And so these numbers weren't  
5 outrageous. It's not like I was asking for a billion  
6 dollars. The amounts were reasonable.

7           Further, any argument whatsoever that -- that  
8 this 2 million -- you know, discussion of the 2 million  
9 was indoctrinating the jury is really -- you know, the  
10 proof is in the pudding, Judge. The verdict came back  
11 one-third of -- of 2 million. I mean, the verdict came  
12 back at 700-something thousand dollars. If the verdict  
13 had come back at 2 million, then, you know, that might  
14 be an argument, and -- and that might show, demonstrate  
15 that there was indoctrination.

16           But the fact of the matter is, had -- had the  
17 defendant actually done research, jury research and  
18 read articles, you can't indoctrinate a jury, period,  
19 end of story. You can't. People come in with  
20 preconceived biases, feelings, and beliefs. Okay?

21           If -- perfect example. I hate the Yankees.  
22 Absolutely hate them. Okay. I'm a Red Sox fan. If  
23 counsel asks me questions about baseball and, well, you  
24 know, can you put aside your beliefs and can you put  
25 aside this and that and can you follow the law? Well,

1 you know what, the core of it, no, I'm -- I'm not. I'm  
2 never going to like the Yankees, and that's the exact  
3 same thing. People come in with opinions and beliefs  
4 and nothing that he says, nothing that anybody else is  
5 going to change that.

6 And that's why I think -- you know, I  
7 think -- I'm glad that they're going to file an appeal  
8 on this case because I want the supreme court to rule  
9 that you can't rehabilitate.

10 I mean, to show what the defendants want or  
11 what the defendant wanted in this case was when they  
12 tried to rehabilitate the gentleman who was voir dired  
13 outside the presence who clearly was emotionally and  
14 mentally unstable. Yet Mr. Jaffe wanted to spend time  
15 and rehabilitate him when anybody, any reasonable  
16 person would agree that that individual had issues.  
17 Yet Mr. Jaffe wanted to rehabilitate him because, you  
18 know what, Judge, I think he could be fair. Yeah, he  
19 could be fair to stack the deck and give Mr. Jaffe an  
20 unfair biased jury which is not what this system is set  
21 up to do.

22 Your Honor did the correct thing in granting  
23 the cause challenges and, ultimately, this is the --  
24 the new law that Mr. Jaffe and the defense wants to  
25 create is, hey, you know what, we want our judges to

1 not strike people with potential biases because, you  
2 know what, we want people on our jurors that might have  
3 potential biases. It's -- it makes no sense,  
4 absolutely no sense.

5           Regarding the -- the collateral source issue,  
6 I think that your ruling for the motions in limine were  
7 not only that it was collateral source, but that  
8 allowing liens, there was a fundamental unfairness in  
9 doing so. The example -- I remember arguing the  
10 motion. The examples that we gave were, if you have  
11 Plaintiff A and Plaintiff B, driver and passenger who  
12 are rear ended, one has health insurance, the other  
13 doesn't and treats on liens, they have the exact same  
14 treatment, how is it even possibly fair to allow this  
15 entire discussion about liens for the one plaintiff  
16 who, because of economic reasons, doesn't have the --  
17 the good fortune of having health insurance?

18           And so it's fundamentally unfair to allow  
19 that argument, and any perceived bias is simply not  
20 there. The bias is actually, in my view and any  
21 reasonable approach, the bias would be for the person  
22 who had health insurance.

23           Defendants commonly argue, well, you know  
24 what, if somebody has a lien, then their doctor is  
25 motivated to overtreat. Oh, really? So a doctor who



1 is treating on the speculation that a personal injury  
2 case might be able to pay them back is going to  
3 overtreat somebody versus a doctor who's getting paid  
4 from health insurance and is guaranteed payment, who's  
5 going to have the incentive to overtreat? It makes  
6 absolutely no sense. The argument is flipped on its  
7 head.

8           And the other thing, and the final thing,  
9 which I'll address is that -- I can't remember. So it  
10 must not have been important.

11           The expert opinions. For defense to claim  
12 that -- that Dr. Gross could not rule out complaints,  
13 that he could not examine the 2008 cardiological -- or  
14 the chest pain and the -- and the arm for which there  
15 was a positive stress test, you know, cardiology stress  
16 test, there was a positive result, you basically --  
17 you're asking the -- the question that was asked is,  
18 hey, is it more probable that it's neck pain, or is it  
19 more probable that it's chest pain, you know, related  
20 to some cardiac event? Those -- that was the option.  
21 It wasn't, hey, you know, what do you think  
22 cardologically was wrong, give us some in-depth  
23 opinion as to what you think was wrong with her. Just  
24 based on the positive stress test and the complaints  
25 that she made, is it neck pain or chest pain or some

1 cardiological event?

2           He says, you know what, it's more probable  
3 the cardiological event due to the positive stress test  
4 and all these other factors. He's basically ruling out  
5 that it's a neck issue. He's a neuro spine surgeon. I  
6 think a neuro spine surgeon is qualified to rule out  
7 whether some complaints are neck pain or not.

8           I know there was one other issue on the -- if  
9 I remember it, can I bring it up again when I sit down?

10           THE COURT: You can sit down.

11           MR. CLOWARD: There was -- it was an  
12 important one on -- on the collateral source on the --  
13 on the lien -- on the lien issue that I wanted to just  
14 make sure that the record was complete, but I can't  
15 remember it at this time.

16           THE COURT: I think it's good enough.

17           MR. CLOWARD: Okay.

18           MR. SMITH: Just to briefly respond, Your  
19 Honor, plaintiff says the proof's in the pudding. We  
20 didn't indoctrinate this jury because we asked for  
21 2 million and they gave us 700 or so thousand. That  
22 assumes a ton of factors that we can't possibly know  
23 without sitting each juror here and discussing that  
24 with them.

25           Who's to say that the same juror who agreed

1 to 700,000 would not have agreed to that amount if he  
2 hadn't already been told repeatedly time and time again  
3 that this case was worth at least 2 million and that he  
4 wasn't offering some sort of a concession at \$700,000?  
5 I'm not saying that necessarily happened. I'm saying  
6 they can't say whether that happened or not. So to  
7 look at the verdict amount and say there was clearly  
8 not any indoctrination is a faulty argument.

9           Secondly, I'd like the record to reflect that  
10 I'm a Dodgers fan, and I think American League Baseball  
11 is weak because they use the designated hitter, so I  
12 just wanted to get that on the record.

13           MR. CLOWARD: Appreciate it.

14           MR. SMITH: Red Sox, Yankees, it doesn't  
15 matter.

16           With respect to the lien issue, you know,  
17 Mr. Cloward says it defies logic that somebody who is  
18 potentially going to get paid is going to overtreat as  
19 opposed to somebody who is for sure going to get paid.  
20 Well, first of all, whoever's treating on insurance is  
21 not for sure going to get paid. If they don't bill it  
22 correctly, if they can't provide adequate basis for the  
23 treatment, the bill's going to get rejected. The  
24 insurance isn't going to pay it.

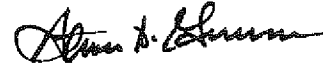
25           Secondly, if the insurance does pay it,

1 CASE NO. A-11-636515-C

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BEFORE THE HONORABLE JERRY A. WIESE, II

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

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9 THE COURT: I'm great.

10 MR. SMITH: Good morning, Judge.

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6 in the brief? What would you prefer?

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15 issued a report on. And I know there's that whole  
16 dispute as to whether a treating physician, he has to  
17 offer a report. It's our position that he does.

18           In addition, I'd like to say there are those  
19 voir dire issues. It's our position that plaintiff was  
20 allowed to indoctrinate the jury by repeatedly pounding  
21 into them this verdict number of \$2 million and  
22 repeatedly reinforcing to them that this is a  
23 \$2 million verdict over our oppositions and our motions  
24 in limine, our opposition to their motion in limine  
25 stating that, you know, they shouldn't be allowed to



1 reference the specific verdict amount.

2 I think Mr. Fitzgerald, I believe it was,  
3 went on a bit of a diatribe that exposed that technique  
4 when he basically stood up and told the Court, you  
5 know, this is being pounded into us. This is mundane.  
6 This is -- you know, we're being treated like children.  
7 We're being told the answers to the quiz that's going  
8 to be on Friday. And -- and, you know, let's -- let's  
9 not put the -- the horse -- or cart before the horse, I  
10 believe was the term that he used. We agree.

11 Plaintiff was allowed to stand up and  
12 repeatedly tell the jurors that this was a \$2 million  
13 case. Any hesitancy that any juror showed at the  
14 \$2 million figure, then plaintiff was allowed to pounce  
15 on them and not just ask follow-up questions, but  
16 phrase leading questions to convince the jurors, You  
17 have a problem with that; isn't that correct? You're  
18 putting this defendant ahead of the plaintiff, correct?  
19 Basically getting the juror to say something that they  
20 may or may not necessarily agree with, but then rely on  
21 that later to strike them for cause. That's the basis  
22 of our -- or one of the bases of our improper voir dire  
23 reasons for seeking a new trial.

24 Court's indulgence.

25 A number of the jurors repeatedly expressed

1 that they didn't have any facts about the case. They  
2 didn't know about the case, so they didn't know if this  
3 was a \$2 million verdict or not. I think that goes  
4 exactly to the point of why a verdict -- specific  
5 verdict amount shouldn't be used. Because here's a  
6 bunch of prospective jurors, they're sitting here, and  
7 they're looking at a plaintiff who they don't know  
8 what's wrong with her. All they see is a, you know,  
9 reasonably healthy looking person sitting in the -- in  
10 the box -- or -- or at the table I should say. For  
11 them to look at that and then hear these \$2 million  
12 numbers, it sends off some alarms. Okay?

13           If -- they -- they -- a number of them  
14 expressed that concern. You know, she's not  
15 dismembered or she's not dead, then maybe \$2 million is  
16 too much. They don't know anything about the case.  
17 And they -- a number of the jurors repeatedly  
18 expressed, I don't know anything about the case, so  
19 yeah, that gives me some pause for concern.

20           Later they were -- when Mr. Jaffe had the  
21 opportunity to question them, they stated, you know  
22 what, I will consider the facts. I will consider the  
23 evidence. And if the evidence shows that she's  
24 entitled to \$2 million, if the evidence shows that  
25 she's entitled to a pain and suffering award, I will

1 give that award.

2 Now, unfortunately, the defendant only has  
3 the opportunity to do that second. So we can't control  
4 what the plaintiffs or -- have already asked them, you  
5 know, other than to object. And I don't -- I don't  
6 believe that these jurors that expressed an  
7 unwillingness to consider the law a basis for being  
8 stricken.

9 They were indoctrinated by the questions that  
10 Mr. Cloward asked, by the way he asked those questions,  
11 by the way he elicited just one little sliver of doubt,  
12 even though they all expressed they didn't know  
13 anything about the case, and then later he was allowed  
14 to go back and say, Your Honor, she expressed hesitance  
15 at \$2 million, we need to strike her for cause. That's  
16 the basis of our jury indoctrination, and we feel like  
17 that provides us a basis for getting a new jury,  
18 keeping those specific verdict numbers out from the  
19 jury, and then trying the case.

20 If you have any questions for me, Your Honor,  
21 I'd be happy to answer them.

22 THE COURT: I don't think so.

23 Do you want to say anything?

24 MR. CLOWARD: Do I need to?

25 THE COURT: He's making a record.

1 MR. CLOWARD: Okay. Basically --

2 THE COURT: I read your brief too, though.

3 MR. CLOWARD: The interesting part about this  
4 is that defendant really wants to be able to stack the  
5 deck, and they're upset and they're complaining because  
6 they weren't able to stack the deck. They don't want a  
7 fair trial. They absolutely don't want a fair trial.

8 I can't remember the gentleman that the Court  
9 voir dired him outside the presence of the rest of the  
10 panel because he was so hostile. His complaint wasn't  
11 that I kept pounding \$2 million. It was the fact that  
12 I was even talking about money. You know, he's -- he's  
13 saying, You're talking about money before you even  
14 have -- before you've even put on the case or told us  
15 about the facts. Well, you know what, yeah, because  
16 I'm following EDCR which says I can't talk about the  
17 facts, which counsel agreed that I followed,  
18 interestingly, in their brief. That was part of the  
19 complaint of the jurors was that I wasn't talking about  
20 the facts.

21 And that's why voir dire is so important.  
22 And that's why I should be able to talk about numbers  
23 and -- and things, because if my client has had  
24 numerous surgeries, but she's recovered and she looks  
25 just fine sitting at counsel table, that's all the more

1 reason why it's that much more important to be able to  
2 talk about that if you're going to ask for an  
3 astronomical amount, which is what Juror Ong said, the  
4 2 million was, you know.

5           That's another thing is that counsel suggests  
6 that I put words in the mouths of the jurors. That's  
7 simply untrue. After the jurors expressed a bias, I  
8 then did follow up and ask very direct questions about  
9 that bias and whether they've had that bias for a long  
10 time, whether they think that they could, you know --

11           THE COURT: Anything that you said or  
12 anything that I said was going to change their mind.

13           MR. CLOWARD: Exactly. And -- and let me  
14 just give you an example of Ms. Ong. Okay? Juror okay  
15 says in regard to the -- the \$2 million, she says, I  
16 think it's a bit too excessive, too, because it's an  
17 accident. Nobody intends to harm anybody. So that,  
18 for me, is just too much. And then she goes on and  
19 basically says that she thinks that -- I believe it was  
20 her that said it was astronomical. It might have been  
21 another juror. But the fact that Ms. Ong expressed  
22 that in her mind it needed to be an intentional act in  
23 order to have that type of money at issue.

24           Keeping in mind, my client had, you know,  
25 around 500,000 in medical specials, past medical

1 specials alone, now we're talking futures, and -- and  
2 loss of earning capacity, loss of, you know,  
3 household -- I mean, the boardable meds were well over  
4 a million dollars. And so these numbers weren't  
5 outrageous. It's not like I was asking for a billion  
6 dollars. The amounts were reasonable.

7           Further, any argument whatsoever that -- that  
8 this 2 million -- you know, discussion of the 2 million  
9 was indoctrinating the jury is really -- you know, the  
10 proof is in the pudding, Judge. The verdict came back  
11 one-third of -- of 2 million. I mean, the verdict came  
12 back at 700-something thousand dollars. If the verdict  
13 had come back at 2 million, then, you know, that might  
14 be an argument, and -- and that might show, demonstrate  
15 that there was indoctrination.

16           But the fact of the matter is, had -- had the  
17 defendant actually done research, jury research and  
18 read articles, you can't indoctrinate a jury, period,  
19 end of story. You can't. People come in with  
20 preconceived biases, feelings, and beliefs. Okay?

21           If -- perfect example. I hate the Yankees.  
22 Absolutely hate them. Okay. I'm a Red Sox fan. If  
23 counsel asks me questions about baseball and, well, you  
24 know, can you put aside your beliefs and can you put  
25 aside this and that and can you follow the law? Well,

1 you know what, the core of it, no, I'm -- I'm not. I'm  
2 never going to like the Yankees, and that's the exact  
3 same thing. People come in with opinions and beliefs  
4 and nothing that he says, nothing that anybody else is  
5 going to change that.

6 And that's why I think -- you know, I  
7 think -- I'm glad that they're going to file an appeal  
8 on this case because I want the supreme court to rule  
9 that you can't rehabilitate.

10 I mean, to show what the defendants want or  
11 what the defendant wanted in this case was when they  
12 tried to rehabilitate the gentleman who was voir dired  
13 outside the presence who clearly was emotionally and  
14 mentally unstable. Yet Mr. Jaffe wanted to spend time  
15 and rehabilitate him when anybody, any reasonable  
16 person would agree that that individual had issues.  
17 Yet Mr. Jaffe wanted to rehabilitate him because, you  
18 know what, Judge, I think he could be fair. Yeah, he  
19 could be fair to stack the deck and give Mr. Jaffe an  
20 unfair biased jury which is not what this system is set  
21 up to do.

22 Your Honor did the correct thing in granting  
23 the cause challenges and, ultimately, this is the --  
24 the new law that Mr. Jaffe and the defense wants to  
25 create is, hey, you know what, we want our judges to

1 not strike people with potential biases because, you  
2 know what, we want people on our jurors that might have  
3 potential biases. It's -- it makes no sense,  
4 absolutely no sense.

5           Regarding the -- the collateral source issue,  
6 I think that your ruling for the motions in limine were  
7 not only that it was collateral source, but that  
8 allowing liens, there was a fundamental unfairness in  
9 doing so. The example -- I remember arguing the  
10 motion. The examples that we gave were, if you have  
11 Plaintiff A and Plaintiff B, driver and passenger who  
12 are rear ended, one has health insurance, the other  
13 doesn't and treats on liens, they have the exact same  
14 treatment, how is it even possibly fair to allow this  
15 entire discussion about liens for the one plaintiff  
16 who, because of economic reasons, doesn't have the --  
17 the good fortune of having health insurance?

18           And so it's fundamentally unfair to allow  
19 that argument, and any perceived bias is simply not  
20 there. The bias is actually, in my view and any  
21 reasonable approach, the bias would be for the person  
22 who had health insurance.

23           Defendants commonly argue, well, you know  
24 what, if somebody has a lien, then their doctor is  
25 motivated to overtreat. Oh, really? So a doctor who



1 is treating on the speculation that a personal injury  
2 case might be able to pay them back is going to  
3 overtreat somebody versus a doctor who's getting paid  
4 from health insurance and is guaranteed payment, who's  
5 going to have the incentive to overtreat? It makes  
6 absolutely no sense. The argument is flipped on its  
7 head.

8           And the other thing, and the final thing,  
9 which I'll address is that -- I can't remember. So it  
10 must not have been important.

11           The expert opinions. For defense to claim  
12 that -- that Dr. Gross could not rule out complaints,  
13 that he could not examine the 2008 cardiological -- or  
14 the chest pain and the -- and the arm for which there  
15 was a positive stress test, you know, cardiology stress  
16 test, there was a positive result, you basically --  
17 you're asking the -- the question that was asked is,  
18 hey, is it more probable that it's neck pain, or is it  
19 more probable that it's chest pain, you know, related  
20 to some cardiac event? Those -- that was the option.  
21 It wasn't, hey, you know, what do you think  
22 cardologically was wrong, give us some in-depth  
23 opinion as to what you think was wrong with her. Just  
24 based on the positive stress test and the complaints  
25 that she made, is it neck pain or chest pain or some

1 cardiological event?

2 He says, you know what, it's more probable  
3 the cardiological event due to the positive stress test  
4 and all these other factors. He's basically ruling out  
5 that it's a neck issue. He's a neuro spine surgeon. I  
6 think a neuro spine surgeon is qualified to rule out  
7 whether some complaints are neck pain or not.

8 I know there was one other issue on the -- if  
9 I remember it, can I bring it up again when I sit down?

10 THE COURT: You can sit down.

11 MR. CLOWARD: There was -- it was an  
12 important one on -- on the collateral source on the --  
13 on the lien -- on the lien issue that I wanted to just  
14 make sure that the record was complete, but I can't  
15 remember it at this time.

16 THE COURT: I think it's good enough.

17 MR. CLOWARD: Okay.

18 MR. SMITH: Just to briefly respond, Your  
19 Honor, plaintiff says the proof's in the pudding. We  
20 didn't indoctrinate this jury because we asked for  
21 2 million and they gave us 700 or so thousand. That  
22 assumes a ton of factors that we can't possibly know  
23 without sitting each juror here and discussing that  
24 with them.

25 Who's to say that the same juror who agreed

1 to 700,000 would not have agreed to that amount if he  
2 hadn't already been told repeatedly time and time again  
3 that this case was worth at least 2 million and that he  
4 wasn't offering some sort of a concession at \$700,000?  
5 I'm not saying that necessarily happened. I'm saying  
6 they can't say whether that happened or not. So to  
7 look at the verdict amount and say there was clearly  
8 not any indoctrination is a faulty argument.

9           Secondly, I'd like the record to reflect that  
10 I'm a Dodgers fan, and I think American League Baseball  
11 is weak because they use the designated hitter, so I  
12 just wanted to get that on the record.

13           MR. CLOWARD: Appreciate it.

14           MR. SMITH: Red Sox, Yankees, it doesn't  
15 matter.

16           With respect to the lien issue, you know,  
17 Mr. Cloward says it defies logic that somebody who is  
18 potentially going to get paid is going to overtreat as  
19 opposed to somebody who is for sure going to get paid.  
20 Well, first of all, whoever's treating on insurance is  
21 not for sure going to get paid. If they don't bill it  
22 correctly, if they can't provide adequate basis for the  
23 treatment, the bill's going to get rejected. The  
24 insurance isn't going to pay it.

25           Secondly, if the insurance does pay it,

1 they're going to pay a reduced rate. So it's not that  
2 he's guaranteed going to get everything that he thinks  
3 he's entitled to. This doctor is going to get what the  
4 insurance company says that they'll pay.

5           And then as far as overtreating, that may or  
6 may not be the issue. Overbilling is probably more  
7 likely the issue, which is if this doctor who knows  
8 that he may or may -- he may not get paid on this  
9 because it's on a lien, he jacks up his bill. He makes  
10 the value of his treatment two or three times whatever  
11 it actually is so that, you know -- and in turn that  
12 then benefits the plaintiff in that she's able to get  
13 awarded a larger number. This is where the liens come  
14 into play is that we should be able -- it's our  
15 position that we should be able to show, hey, when  
16 you're treating somebody on a lien, your bill is  
17 higher, right? The amount that you actually accept for  
18 this treatment is actually much lower.

19           Not only that, but you stand to benefit from  
20 this -- you stand to benefit from this outcome; isn't  
21 that correct? If she gets a lot of money, you get more  
22 money. That's a bias that we think is material and  
23 needs to be able to be exposed, and it doesn't go to  
24 the collateral source.

25           The collateral source, liens -- and this is

1 set forth, you know -- and I know Your Honor disagrees  
2 because your ruling in the motions in limine says as  
3 much, but I fall back to our briefing in the motions in  
4 limine and our argument, that the lien is not the same  
5 as medical insurance when it comes to a collateral  
6 source. A lien is to be paid. A collateral source has  
7 already been paid, for lack of a better explanation.

8           To address plaintiff's points about jury  
9 indoctrination, he cites Mr. Fitzgerald and Ms. Ong.  
10 Mr. Fitzgerald, I believe, is the one who went on his  
11 diatribe and was clearly visibly upset about the  
12 process, and -- and very notably about in the questions  
13 Mr. Cloward had been asking. And I can't blame  
14 Mr. Cloward for wanting him off the jury because, you  
15 know, he expressed some anger.

16           But he said that there was no -- that the  
17 jurors couldn't be indoctrinated, that the \$2 million  
18 figure doesn't have any impact. If you remember, there  
19 were a couple of ladies who expressed some hesitations  
20 at the \$2 million figure and later clarified the basis  
21 for that. Mrs. Vera I believe is the one who said --  
22 and this is from page 18 of our motion. I just --  
23 Mr. Cloward said, I just want to verify that's it, you  
24 know.

25           She said, I just want to do my duty.

1           She later said, The way you asked the  
2 question was based on feeling. The way the other  
3 attorney asked was based on fact and evidence and  
4 proof. And if it sounds like I gave two different  
5 answers, I apologize for that. But I answered your  
6 question the way you asked the question, and I answered  
7 the other attorney's question the way he asked it.

8           And then he later says -- she later  
9 says -- well, she says she felt frustrated by  
10 Mr. Cloward repeatedly coming back to her and telling  
11 her she changed her mind. And if you remember, she  
12 actually broke down into tears.

13           Now, the reason I address what Ms. Vera said  
14 is, one, I think she expressed hesitation initially at  
15 the \$2 million figure and then later understood that,  
16 you know what, if the evidence shows that the  
17 \$2 million verdict could be awarded, yes, I could award  
18 that verdict based on the evidence. I don't have that  
19 evidence now.

20           Mr. Daryanani who actually ended up being a  
21 juror was called after some of the jurors were -- were  
22 dismissed, and here's what he said, Mr. Daryanani: So  
23 I agree with her -- I believe referring to Ms. Vera --  
24 as well that \$2 million is making us biased. Okay?

25           Mr. Daryanani even admitted he had been

1 sitting here through this entire thing, and that  
2 \$2 million figure was clouding their ability to decide,  
3 Am I going to be able to consider the facts and  
4 consider the evidence? The \$2 million is making us  
5 biased, but we don't know what the facts are because it  
6 could be completely different if we find out the facts.

7           Ultimately, Mr. Cloward would not be able to  
8 stand before the jury and say, Could you award  
9 \$2 million in a automobile accident where a plaintiff  
10 is not dismembered and is not dead? That would be a  
11 verdict number based on hypothetical facts. That's the  
12 exact same thing he's able to ask them with her sitting  
13 in the juror box and asking them if they could award  
14 \$2 million.

15           There's no difference in the information that  
16 the jury has. The jury has that information, and that  
17 \$2 million figure then clouds them. They're looking at  
18 her. It's the exact same as if they had posed a  
19 hypothetical on those -- on those facts. That is why,  
20 Your Honor, we believe that the \$2 million figure is  
21 confusing and that the specific verdict amount should  
22 not be used.

23           I -- I -- I take umbrage with Mr. Cloward's  
24 objections that we didn't want a fair fight. I know  
25 he's advocating for a client, and that's fine. We did

1 want a fair fight, and we feel like with the way voir  
2 dire was allowed to take place, that we didn't get one,  
3 and that's why we feel like we need a new trial.

4 MR. CLOWARD: Judge, I remembered the point.  
5 I promise I'll be brief.

6 THE COURT: You don't get to go again.

7 MR. CLOWARD: Thirty seconds.

8 THE COURT: You know the rules.

9 MR. CLOWARD: Thirty seconds.

10 THE COURT: You know the rules.

11 MR. CLOWARD: No, you told me that I could.

12 THE COURT: No, I said you did enough.

13 As far as the collateral source issue is  
14 concerned or the lien issue, I look at collateral  
15 source issues as dealing with any alternate form of  
16 payment, whether it's a lien or health insurance or  
17 whatever it is. Whatever it is, if it's an alternate  
18 form of payment, I don't think it's allowed under the  
19 Proctor versus Castelletti case.

20 I think that you made a fairly good record on  
21 that at the time of trial, and I continue to exclude  
22 liens in trials because of the same thing. I think  
23 it's collateral source, and -- and I agree with  
24 Mr. Cloward as well that I think it's -- it results in  
25 fundamental unfairness if you allow that. So I don't



1 think -- I don't think we made a mistake on that one.

2           As far as the expert opinions are concerned  
3 with Dr. Gross and Dr. Muir, I think that those issues  
4 were addressed pretrial and during trial. So this is  
5 like the third bite at the apple on that one, you know,  
6 and those are -- that's a very fact-specific issue  
7 that -- I mean, this trial was months and months ago.  
8 But I vaguely remember during the course of trial being  
9 a little bit concerned with that issue. But I think we  
10 addressed it during the trial, and I think that the  
11 rulings were made based upon the evidence as it -- as  
12 it existed, and -- and I'm not going to overturn it at  
13 this point.

14           As far as the voir dire issues are concerned,  
15 indoctrinating the jury with the \$2 million number, I  
16 think potentially a jury can be indoctrinated, but in  
17 this case, I don't know that that occurred. I think  
18 that it's -- it's appropriate for an attorney to be  
19 able to ask a jury is there a certain number that you  
20 wouldn't go above or a certain number that you wouldn't  
21 go below without knowing all the facts of the case.  
22 Because clearly in this case, we -- we had people that  
23 had those -- those problems.

24           And I think that I was -- if I recall  
25 correctly, there were lots of objections during the

1 voir dire process about what could or couldn't be asked  
2 as it related to EDCR, I think it's 7.70 and what is  
3 objectionable during voir dire. And I think I was  
4 pretty consistent indicating that hypothetical facts  
5 could not be used. But I did allow the numbers to be  
6 used because I think based upon the case law.

7           And I think there's a -- I don't know if it's  
8 a rule of professional responsibility or a supreme  
9 court rule, but there's one of the rules that talks  
10 about an attorney's duties and obligations. And -- and  
11 an attorney has an obligation and a duty to ask jurors  
12 questions in a way not only that they can intelligently  
13 exercise challenges for cause but also peremptory  
14 challenges.

15           So the fact that you ask somebody about a  
16 number that they can or can't go above or a number they  
17 can't go below might form a basis for a challenge for  
18 cause, but it also may form a basis for a peremptory  
19 challenge which I think I have to allow that as long as  
20 it's not indoctrinating, and I don't think it was in  
21 this case. I think everybody got a fair shot.

22           I don't think that there's anything we did  
23 that requires a new trial, so motion's going to be  
24 denied.

25           MR. SMITH: Thanks, Your Honor. There is one

1 other thing to address, and it's not pertaining to --

2 THE COURT: Let me also just make note of the  
3 fact that my understanding is that there's already been  
4 an appeal filed in this case.

5 MR. SMITH: That's correct.

6 THE COURT: So I think under the case law, I  
7 can deny the motion. If I was going to grant it, it  
8 would it -- would be a Honeycutt order because I  
9 wouldn't be able to allow the new trial while it's on  
10 appeal. Since I'm denying it, I think the Court has  
11 jurisdiction to deny a motion, just not to grant one.

12 MR. CLOWARD: Correct.

13 MR. SMITH: Based on that, Your Honor, we  
14 submitted to the Court yesterday -- and let me just  
15 back up.

16 I want to say we had the hearing on motions  
17 in limine in mid-June and then the trial was mid-July.  
18 Ms. Brasier and I were working towards finding orders  
19 or crafting orders that we both agreed upon  
20 representing the -- your rulings in the motions in  
21 limine. I know we hadn't quite got that done as trial  
22 commenced, and then it got pushed to the wayside  
23 because then we were in the heat of trial.

24 Now, going forward as we're going to appeal,  
25 I think it's important that we have those orders on

1 file even though your rulings have been made and the  
2 transcript of your rulings are there. I submitted to  
3 you yesterday a letter with our proposed orders. I've  
4 run those past counsel, and I think she's going to  
5 submit her proposed orders to you. There were, I want  
6 to say, four or five -- as we worked on this, there  
7 were four or five of the motions that we did not  
8 exactly agree as to how the order should be crafted.  
9 So I -- I expect that her proposed orders will differ  
10 on those four or five topics.

11 THE COURT: I haven't looked at any of them  
12 yet. When I get them, I'll look at them.

13 MR. SMITH: Okay.

14 MR. CLOWARD: One thing I kind of wanted to  
15 point out, we agree with counsel on that issue. We're  
16 working on that. We pulled the transcripts, and we  
17 wanted to really have a good solid order based on the  
18 transcript and the motions because we do believe this  
19 is a case that defendants are going to try and take up  
20 and create new law and -- which we think is a good  
21 idea. We think that the court needs to address it,  
22 so --

23 THE COURT: That's what lawyers are supposed  
24 to do.

25 MR. CLOWARD: Yeah. And we -- you know, we

1 think it's a good thing. And so is there a way that --  
2 I mean, would you prefer that we kind of try and get  
3 together and pound out a mutually acceptable order, or  
4 submit, you know, dueling? What we wanted to do is  
5 just pull the transcript, which we've got, base the  
6 order on the transcript, and then attach a copy of the  
7 transcript for Your Honor, and then that way --

8 MR. SMITH: And I'll represent that the  
9 orders that I submitted to you yesterday, I -- I was  
10 drawing straight from the transcript, and I attached a  
11 copy of the transcript. So, you know, I'm not exactly  
12 sure what they'll disagree with in those.

13 THE COURT: You guys can do the same thing.  
14 You can -- if you don't agree to the language, you can  
15 submit competing orders, attach whatever portions of  
16 the transcript you think are relevant. I'll look at  
17 it.

18 MR. SMITH: All right.

19 MR. CLOWARD: And I guess what we would just  
20 ask is if the Court would be so kind as to -- if the  
21 Court wants to add any additional language, you know, I  
22 think the more complete your order is the better review  
23 the supreme court will have to hopefully once and for  
24 all rule on the issue.

25 THE COURT: If I want to add something, I'll

1 probably have my law clerk ask you for a digital copy  
2 of your order so that I can just modify them.

3 MR. CLOWARD: Yeah. No problem. We'll  
4 just -- I'll just e-mail a copy of it.

5 THE COURT: Okay.

6 MR. CLOWARD: Thank you, Judge.

7 MR. SMITH: Thanks, Your Honor.

8 THE COURT: Thanks, guys. Have a good day.

9 (Thereupon, the proceedings  
10 concluded at 10:13 a.m.)  
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CERTIFICATE OF REPORTER

STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

I, Kristy L. Clark, a duly commissioned  
Notary Public, Clark County, State of Nevada, do hereby  
certify: That I reported the proceedings commencing on  
Thursday, January 23, 2014, at 9:43 o'clock a.m.

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

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

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
7th day of May, 2014.

  
KRISTY L. CLARK, CCR #708

  
CLERK OF THE COURT

1 **RPLY**  
STEVEN T. JAFFE  
2 [sjaffe@lawhjc.com](mailto:sjaffe@lawhjc.com)  
Nevada Bar No. 007035  
3 JACOB S. SMITH  
[jsmith@lawhjc.com](mailto:jsmith@lawhjc.com)  
4 Nevada Bar No. 010231

5 **HALL JAFFE & CLAYTON, LLP**  
7425 PEAK DRIVE  
6 LAS VEGAS, NEVADA 89128  
(702) 316-4111  
7 FAX (702) 316-4114

8 *Attorneys for Defendant*  
9 *Raymond R. Khoury*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 MARGARET G. SEASTRAND,  
13 Plaintiff,

14 vs.

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

17 Defendants.

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

**DEFENDANT'S REPLY IN SUPPORT OF  
MOTION FOR NEW TRIAL**

**Date of Hearing: January 23, 2014**  
**Time of Hearing: 9:00 a.m.**

18  
19 Defendant, Raymond Khoury, by and through his attorneys of record, Hall Jaffe & Clayton, LLP,  
20 hereby submits his Reply in Support of Motion for New Trial.

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1 This Reply is in support of a Motion brought under NRCP 59(a) and NRCP 59(e), and is made and  
2 based upon the pleadings and papers on file herein, the court record of the trial in this matter, the  
3 Memorandum of Points and Authorities submitted herewith, and any oral argument that the Court may  
4 entertain in this matter.

5 DATED this 17<sup>th</sup> day of January, 2014.

6 HALL JAFFE & CLAYTON, LLP

7  
8 By

9 STEVEN T. JAFFE  
10 Nevada Bar No. 007035  
11 JACOB S. SMITH  
12 Nevada Bar No. 010231  
13 7425 Peak Drive  
14 Las Vegas, Nevada 89128  
15 Attorneys for Defendant  
16 Raymond R. Khoury  
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1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2            This trial went awry largely because of fundamental misconceptions of the collateral source rule, the  
3 rules limiting treating physician testimony, and the rules governing the scope of voir dire<sup>1</sup>. Defendant was  
4 ambushed at trial by new, previously undisclosed opinions from Dr. Muir and Dr. Grover, whose opinions  
5 should have been disclosed in expert reports. Similarly, Dr. Gross was permitted to issue causation opinions  
6 well outside his area of expertise. Moreover, Plaintiff's counsel was permitted to use specific verdict  
7 amounts to indoctrinate the jury, which ultimately resulted in the high verdict amount. Also, through a series  
8 of leading questions—many of which were not questions as much as telling the jurors how they felt—which  
9 resulted in a number of jurors wrongly being stricken for cause. Finally, the court's erroneously refused to  
10 admit any evidence of Plaintiff's medical liens and the difference between the amounts actually paid versus  
11 the billed amounts presented to the jury.

12            As these factors prejudiced Defendant's ability to adequately prepare for trial and also resulted in  
13 an improperly empaneled jury, a new trial is now necessary.

14 **I.        LEGAL ARGUMENT**

15            **A.        Evidence of Plaintiff's Medical Liens and the Actual Cost of Treatment Was Necessary**  
16                    **to Inform the Jury of Plaintiff's Actual Damages.**

17            Notably, Plaintiff's opposition does not address the issues presented in the Motion for new trial  
18 regarding the admissibility of evidence of Plaintiff's liens. As discussed in the Motion, the Court ruled that  
19 all evidence of medical liens was excluded under the collateral source rule. *See* Exhibit J to Motion at 49-  
20 51; 97-101. In excluding this evidence, the Court prevented Defendant from exposing the bias of Plaintiff's  
21 treating physicians and exposing the actual value of her medical treatment. Instead, Plaintiff was permitted  
22 to present her medical expenses without any evidence to contradict the value of those expenses.

23            The collateral source rule, as set forth in *Proctor v. Castelletti*, 112 Nev. 88, 90 n. 1, 911 P.2d 853,  
24 854 n. 1 (1996), establishes that all references to medical insurance (and Medicare) should be excluded. *Id.*

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26  
27            <sup>1</sup> In this reply, Defendant does not revisit every issue raised in its Motion for New Trial. By focusing on  
28 some issues and not others in this Reply, Defendant does not, however, waive any asserted positions on these  
issues.

1 Nowhere in *Proctor v. Castelletti* are liens included under the collateral source rule. The mere fact that a  
2 party treats on a medical lien is not a reference to medical insurance.

3 Similarly, Defendant was unfairly prejudiced when he was not able to present the jury with  
4 information regarding the actual amount paid for Plaintiff's medical treatment. The Restatement (Second)  
5 of Torts makes it clear that a Plaintiff should not be able to recover for damages which were not actually  
6 incurred: although the measure of recovery for services rendered is usually their reasonable value, "[i]f the  
7 person paid less than the exchange rate, he can recover no more than the amount paid, except when the low  
8 rate was intended as a gift to him." Restatement (Second) of Torts, § 911, comment h, pp. 476-477. This  
9 same sentiment is echoed in Nevada's Jury Instructions, which state that a plaintiff may recover only "[t]he  
10 reasonable medical expenses [she] has *necessarily incurred* as a result of the accident." Nev. J.I. 5PID.1(1)  
11 (emphasis added). Indeed, if the expenses were not actually incurred, under Nevada's own instruction, they  
12 are not expenses which should be considered by a jury.

13 Here, where Defendant was prevented from discussing liens and the amounts Plaintiff's medical  
14 providers received in payment for their services, Defendants were prevented from showing the jury the  
15 difference between the medical damages which were claimed by Plaintiff and the amounts which were  
16 actually paid on her behalf. Instead, Plaintiff was able to board, uncontested, the full amount of her claimed  
17 medical specials, including liens, and present those to the jury as her medical specials.

18 **B. Dr. Gross's Previously Undisclosed Causation Opinions Regarding Alleged Heart**  
19 **Problems Were Unfairly Prejudicial.**

20 In her Opposition, Plaintiff essentially states that the cardiologic opinions offered by Dr. Gross were  
21 not prejudicial because (1) Dr. Gross had previously disclosed summary of Plaintiff's medical records which  
22 noted "atypical chest pain, numbness and anxiety" and later paraphrased those records to state that the  
23 tingling was related to chest pain; and (2) Defendant was able to have Dr. Schifini offer rebuttal opinions  
24 to Dr. Gross's cardiologic opinions. However, this oversimplification by Plaintiff ignores the factors and  
25 distinctions which, when considered, reveal that Dr. Gross's testimony was unfairly prejudicial.

26 First, the mere fact that Dr. Gross had previously reviewed records indicating atypical chest pain,  
27 numbness, and anxiety is hardly a basis for him to offer cardiologic-based causation opinions. Under this  
28 same rationale, if Dr. Gross were to review psychiatric records as part of his file review, he would then be



1 qualified to offer psychiatric opinions and conclusions. This is nonsense. Dr. Gross's prior review of medical  
2 records does not qualify him to offer opinions beyond the scope of his expertise. If Plaintiff wanted to  
3 establish that her prior arm numbness and tingling was heart-related, she could have elicited testimony from  
4 a doctor at the Heart Center of Nevada, where she treated for her symptoms. Plaintiff did not do this;  
5 however, because nowhere in her records with Heart Center of Nevada is any conclusion drawn that her left  
6 arm numbness and tingling was directly related to chest pain and stress. In spite of this, Dr. Gross was  
7 permitted to testify, without notice to Defendant, that Plaintiff's arm symptoms were "more likely related  
8 to the heart or anxiety." See **Exhibit H** to Motion at 41:8-42:8.

9 Second, the fact that Defendant's expert was permitted by the Court to rebut Dr. Gross's cardiologic  
10 opinions does not undo the prejudice Defendant suffered from Dr. Gross's undisclosed opinions. In essence,  
11 once Dr. Gross had offered those opinions, the bell had been rung. No amount of rebuttal testimony from  
12 Defendant's experts could unring that bell. Moreover, if Defendant had known Dr. Gross would be offering  
13 cardiologic causation opinions, Defendant would have retained an actual cardiologist to rebut those opinions.  
14 Instead, Defendant was left with no choice but to seek opinions from Dr. Schifini. By that point, however,  
15 the damage had been done.

16 **C. Plaintiff's Jury Voir Dire Tactics Indoctrinated the Jury Regarding the Value of the**  
17 **Case.**

18 Plaintiff claims that the verdict amount—less than half of what she asked—is evidence that the jury  
19 was not indoctrinated. See Opps. at 2:8-14. This argument fails, because it assumes information which is  
20 simply not available to the parties. Plaintiff has no way of knowing whether the jury would have awarded  
21 less—possibly significantly less—had they not been conditioned from the opening minutes of jury selection  
22 to believe that this case was a multi-million dollar matter.

23 In her Omnibus Motion in Limine, Plaintiff sought permission to discuss specific verdict amounts  
24 during voir dire. In opposition to that motion, Defendant noted that Plaintiff would try to desensitize or  
25 condition the jury to award some huge amount of money by asking them numerous questions about how  
26 much money they could or would be willing to award. That is precisely what happened. Nearly the entirety  
27 of Plaintiff's voir dire was spent on whether a juror was willing to award 2 million dollars. Not surprisingly,  
28 numerous jurors expressed hesitance at such a large award. When these feelings were explored more fully,

1 it was made clear by these jurors that their hesitation was borne out of their lack of knowledge about the facts  
2 of the case. In fact, many of those same jurors who expressed hesitation at the thought of a 2-million dollar  
3 verdict later expressed that, if the evidence supported such a verdict, they would certainly award that  
4 amount.

5 However, as mandated by EDCR 7.70, no facts about the case were permitted to be given to the  
6 jurors. Instead, the jurors were left to speculate about the facts of the case—all whilst observing Plaintiff  
7 sitting in the courtroom and being repeatedly told the case was worth 2 million dollars. As a result of  
8 Plaintiff's leading and confusing questions, the Court struck several jurors for cause which it initially refused  
9 to strike. Nevertheless, the indoctrination was already complete. Mr. Fitzgerald, a prospective juror, noticed  
10 the indoctrination tactics being used by Plaintiff, and felt compelled to speak out about them:

11 I found that [discussion of 2 million dollars] insulting to these people's intelligence, much  
12 less mine. And to belabor the point over and over again was pedantic. It's like something you  
13 do to a grade school student. You beat it into their mind and say we're going to have a quiz  
14 on Friday so stay alert. Here's the answers to the quiz. I find that insulting as an adult.

15 See **Exhibit L** to Motion at *Id.* 42:1-49:21.

16 Ultimately, Plaintiff should not have been permitted to use specific verdict numbers, as such violates  
17 EDCR 7.70. However, as Plaintiff was permitted to reference a specific verdict amount, the Court, then,  
18 should not have permitted Plaintiff to strike jurors who, despite some reluctance at the thought of a 2 million  
19 dollar verdict—and without knowing anything about the case other than that the Plaintiff was not severely  
20 disabled, dismembered, or dead—remained willing to consider the facts and evidence presented and award  
21 a fair and reasonable verdict.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the court should grant a new trial.

3 DATED this 17<sup>th</sup> day of January, 2014.

4 HALL JAFFE & CLAYTON, LLP

5 By 

6 STEVEN T. JAFFE

7 Nevada Bar No. 007035

8 JACOB S. SMITH

9 Nevada Bar No. 010231

10 7425 Peak Drive

11 Las Vegas, Nevada 89128

12 *Attorneys for Defendant*

13 *Raymond R. Khoury*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I hereby certify that service of the foregoing **DEFENDANT'S REPLY**  
3 **IN SUPPORT OF MOTION FOR NEW TRIAL** was made on the 17<sup>th</sup> day of January, 2014, by  
4 depositing a true and correct copy of the same by U.S. Mail in Las Vegas, Nevada, addressed, stamped, and  
5 mailed to the following:

6  
7 Richard A. Harris, Esq.  
Alison Braiser, Esq.  
8 RICHARD HARRIS LAW FIRM  
801 S. Fourth Street  
9 Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*

10  
11 

12  
13 An Employee of  
HALL JAFFE & CLAYTON, LLP



CLERK OF THE COURT

1 **ORDER**

2 RICHARD A. HARRIS, ESQ.

3 Nevada Bar No. 505

4 JOSHUA R. HARRIS, ESQ.

5 Nevada Bar No. 9580

6 ALISON M. BRASIER, ESQ.

7 Nevada Bar No. 10522

8 RICHARD HARRIS LAW FIRM

9 801 South Fourth Street

10 Las Vegas, Nevada 89101

11 Phone (702) 444-4444

12 Fax (702) 444-4455

13 Attorneys for Plaintiff

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 MARGARET G. SEASTRAND,

17 Plaintiff,

18 vs.

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

21 Defendants.

CASE NO.: A-11-636515-C

DEPT. NO.: XXX

**ORDER**

22 This matter having come before the Honorable Judge Jerry Wiese on December 10,  
23 2013 at 9:00 a.m., pursuant to Plaintiff's Motion for Costs and Reasonable Attorneys' Fees and  
24 Defendant's Countermotion to Re-tax Costs, the Court having considered the papers filed by all  
25 parties, and allowing oral argument,

26 IT IS HEREBY ORDERED THAT Plaintiff's Motion for Costs and Reasonable  
27 Attorneys' Fees is GRANTED IN PART and DENIED IN PART, as follows:

28 Plaintiff's request for attorneys' fees is DENIED.



1 Plaintiff's request for pre-judgment interest in the amount of \$40,163.22, which shall  
2 bear post-judgment interest at the current rate of 5.25% per day until satisfied, is GRANTED.

3 Plaintiff's request for costs is GRANTED IN PART AND DENIED IN PART, with  
5 costs being allowed as followed, pursuant to NRS § 18.005:  
6

7 Clerk's fees:	\$348.10
8 Photocopies, fax, telephone, and postage:	\$366.78
9 Copies of medical records:	\$916.83
10 Deposition transcript fees:	\$9,446.89
11 Official reporter fee:	\$6,959.11
12 Necessary travel expenses:	\$2,193.51
13 Witness fees:	\$7,450.00
14 Expert Witness fees:	\$42,750.00
15 Process server fees:	\$65.00
16 Trial preparation costs:	\$4,101.62
17 Runner fees:	\$417.77
18 Total:	\$75,015.61

19 Defendant's Counter-motion to Re-tax Costs is DENIED.  
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1 The parties have stipulated to stay execution of the Judgment until 5:00 p.m. on  
2 December 24, 2013.

3 DATED this 24<sup>th</sup> day of December 2013.

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DISTRICT COURT

Submitted by:



Arison Brasier, Esq.  
RICHARD HARRIS LAW FIRM  
801 South Fourth Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff

Approved as to Form and Content by:



Steven T. Jaffe, Esq.  
Jacob S. Smith, Esq.  
HALL, JAFFE & CLAYTON, LLP.  
7425 Peak Drive  
Las Vegas, Nevada 89128  
Attorneys for Defendant



CLERK OF THE COURT

1 NOAS  
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Nevada Bar No. 007035  
3 JACOB S. SMITH, ESQ.  
[jsmith@lawhjc.com](mailto:jsmith@lawhjc.com)  
4 Nevada Bar No. 010231

5  
6 HALL JAFFE & CLAYTON, LLP  
7425 PEAK DRIVE  
LAS VEGAS, NEVADA 89128  
7 (702) 316-4111  
8 FAX (702) 316-4114

9 *Attorneys for Defendant*  
*Raymond R. Khoury*

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12 MARGARET G. SEASTRAND,  
13 Plaintiff,

14 vs.

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

17 Defendants.

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

NOTICE OF APPEAL

18  
19 Please take notice that Defendant, RAYMOND RIAD KHOURY, by and through his attorneys of  
20 record, STEVEN T. JAFFE, ESQ. and JACOB S. SMITH, ESQ., of the law firm of HALL JAFFE &  
21 CLAYTON, LLP, hereby appeals to the Supreme Court of Nevada from:

- 22 1. All judgments and orders in this case;  
23 2. Judgment Upon the Jury Verdict, filed November 5, 2013; and

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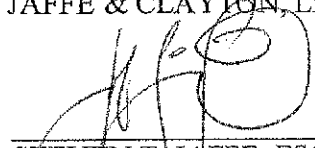
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1 3. All rulings and orders made appealable by any of the foregoing.

2 DATED this 23 day of December, 2013.

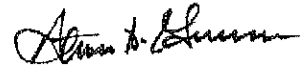
3 HALL JAFFE & CLAYTON, LLP

4  
5 By:

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

# **EXHIBIT “A”**

Electronically Filed  
11/06/2013 10:10:02 AM  
11/06/2013 10:10:02 AM



CLERK OF THE COURT

1 NJUD  
2 BENJAMIN P. CLOWARD, ESQ.  
3 Nevada Bar No. 11087  
4 Utah Bar No. 12336  
5 RICHARD HARRIS LAW FIRM  
6 801 South Fourth Street  
7 Las Vegas, Nevada 89101  
8 *Attorney for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

9  
10 MARGARET SEASTRAND,  
11 Plaintiff,

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

12 vs.

13 RAYMOND RIAD KHOURY; DOES I  
14 through 10; and ROE ENTITIES 11 tough  
15 20 inclusive,


16 Defendants.

17 NOTICE OF ENTRY OF JUDGMENT

18  
19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a Judgment Upon  
20 the Jury Verdict was entered in the above entitled matter on the 5<sup>th</sup> day of November, 2013, a  
21 copy of which is attached hereto as Exhibit "L."

22  
23 DATED this 6<sup>th</sup> day of November, 2013.

24 RICHARD HARRIS LAW FIRM

25   
26 BENJAMIN P. CLOWARD, ESQ.  
27 Nevada Bar No. 11087  
28 ALISON M. BRASIER, ESQ.  
Nevada Bar No. 10522  
801 S. Fourth Street  
Las Vegas, Nevada 89101

RICHARD HARRIS  
LAW FIRM

CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), I hereby certify that I am an employee of RICHARD HARRIS LAW FIRM and that on the 10 day of November 2013, I caused the foregoing NOTICE OF ENTRY OF JUDGMENT to be served as follows:

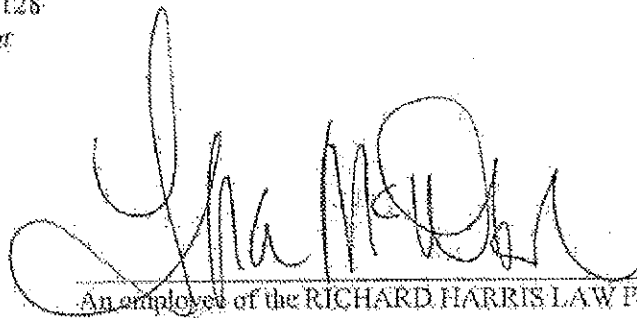
☒ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or

☒ pursuant to EDCR 7.26, by sending it via facsimile; and/or

☐ by hand delivery

to the attorneys listed below:

STEVEN T. JAFFE, ESQ.  
HALL, JAFFE & CLAYTON, LLP  
7425 Peak Drive  
Las Vegas, Nevada 89128  
*Attorneys for Defendant*



An employee of the RICHARD HARRIS LAW FIRM

RICHARD HARRIS  
LAW FIRM

Electronically Filed  
Electronically Filed  
11/05/2013 01:29:19 PM

*Alison M. Brasier*  
CLERK OF THE COURT

JGJV  
BENJAMIN P. CLOWARD, ESQ.  
Nevada Bar No. 11087  
ALISON M. BRASIER, ESQ.  
Nevada Bar No. 10522  
RICHARD HARRIS LAW FIRM  
801 South Fourth Street  
Las Vegas, Nevada 89101  
Phone (702) 444-4444  
Fax (702) 444-4455  
E-Mail: Benjamin@RichardHarrisLaw.com  
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARGARET SEASTRAND,

Plaintiff,

vs.

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

Defendants.

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

JUDGMENT UPON THE JURY VERDICT

This action came on for trial before the court and the jury, the Honorable, District Judge,  
presiding, and the issues having been duly tried and the jury having duly rendered its verdict.<sup>1</sup>

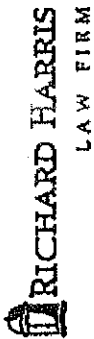
IT IS ORDERED AND ADJUDGED that Plaintiff, MARGARET SEASTRAND, have  
and recover of Defendant, RAYMOND RIAD KHOURY, the following sum:

Past Medical Expenses:	\$ 236,794.00
Future Medical Expenses:	\$113,725.00
Past Loss of Household Services:	\$ 32,996.00

<sup>1</sup> Exhibit 1: Jury Verdict

<input type="checkbox"/> Verdict by Dis	<input type="checkbox"/> Slip Dis	<input type="checkbox"/> Slip Jdgmt
<input type="checkbox"/> Verdict by Jury Dis	<input type="checkbox"/> Slip Jdgmt	<input type="checkbox"/> Non-Jury Trial
<input type="checkbox"/> Jdgmt on App Award	<input type="checkbox"/> Default Jdgmt	<input checked="" type="checkbox"/> Jury Trial
<input type="checkbox"/> Verdict by Dis (by Self)	<input type="checkbox"/> Transferred	





Future Loss of Household Services:	\$183,238.00
Past Physical and Mental Pain, Suffering, Anguish and Disability	\$ 85,013.00
Future Physical and Mental Pain, Suffering, Anguish and Disability	<u>\$ 68,010.00</u>
<b>Total Damages</b>	<b>\$719,776.00</b>

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff's past damages shall bear Pre-Judgment interest in accordance with Lee v. Ball, 116 P.3d 64, (2005) at the rate of 3.25% per annum plus 2%<sup>2</sup> from the date of service of the Summons and Complaint<sup>3</sup>, on June 1, 2011, through July 26, 2013, as follows:

**PRE-JUDGMENT INTEREST ON PAST MEDICAL DAMAGES:**

06/01/2011 through 07/26/13 = \$27,177.04  
[(787 days) at (prime rate (3.25%) plus 2 percent = 5.25%)]  
[Interest is approximately \$4.13 per day]

**PRE-JUDGMENT INTEREST ON PAST LOSS OF HOUSEHOLD SERVICES:**

06/01/2011 through 07/26/13 = \$3,786.98  
[(787 days) at (prime rate (3.25%) plus 2 percent = 5.25%)]  
[Interest is approximately \$4.13 per day]

**PRE-JUDGMENT INTEREST ON PAST PHYSICAL AND MENTAL PAIN, SUFFERING, ANGUISH AND DISABILITY:**

06/01/2011 through 07/26/2013 = \$9,757.01  
[(787 days) at (prime rate (3.25%) plus 2 percent = 5.25%)]  
[Interest is approximately \$4.13 per day]

<sup>2</sup> Exhibit 2: Prime Rate as of January 1, 2013

<sup>3</sup> Exhibit 3: Affidavit of Service

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NOW, THEREFORE, Judgment Upon the Verdict in favor of the Plaintiff is as follows:

MARGARET SEASTRAND is hereby given Seven Hundred Sixty Thousand Four  
Hundred Ninety Seven and 03/100 dollars (\$760,497.03), which shall bear post-interest at the  
current rate of 5.25% per day, until satisfied.

DATED THIS 1<sup>st</sup> day of November, 2013.

  
DISTRICT COURT JUDGE *AB*

*Respectfully submitted:*

~~RICHARD HARRIS~~ LAW FIRM



BENJAMIN P. CLOWARD, ESQ.  
Nevada Bar No. 11087  
ALISON M. BRASIER, ESQ.  
Nevada Bar No. 10522  
801 South Fourth Street  
Las Vegas, NV 89101  
*Attorneys for Plaintiff*


 RICHARD HARRIS  
LAW FIRM

EXHIBIT "1"

DISTRICT COURT  
CLARK COUNTY, NEVADA FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JUL 26 2013

MARGARET G. SEASTRAND,

Plaintiff.

CASE NO. A-11-636515-C

DEPT NO. XXX

ALICE POLCH, DEPUTY

vs.

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

VERDICT

Defendant

We, the jury in the above-entitled action, find for the Plaintiff, Margaret Seastrand, and against the Defendant, Raymond Khoury, and find that the Plaintiff is awarded the following amounts:

Past Medical Expenses: \$ 236,794

Future Medical Expenses: \$ 113,725

Past Loss of Household Services: \$ 32,996

Future Loss of Household Services: \$ 183,238

Past Physical and Mental Pain,

Suffering, Aguish and Disability: \$ 85,013

Future Physical and Mental Pain,

Suffering, Anguish and Disability: \$ 68,010

DATED this 26 day of July, 2013.

FOREMAN

EXHIBIT "2"



## PRIME INTEREST RATE

NRS 99.040(1) requires:

*"When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1, or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due. . . ."*

Following is the prime rate as ascertained by the Commissioner of Financial Institutions:

January 1, 2013	3.25%	July 1, 2012	3.25%
January 1, 2012	3.25%	July 1, 2011	3.25%
January 1, 2011	3.25%	July 1, 2010	3.25%
January 1, 2010	3.25%	July 1, 2009	3.25%
January 1, 2009	3.25%	July 1, 2008	5.00%
January 1, 2008	7.25%	July 1, 2007	8.25%
January 1, 2007	8.25%	July 1, 2006	8.25%
January 1, 2006	7.25%	July 1, 2005	6.25%
January 1, 2005	5.25%	July 1, 2004	4.25%
January 1, 2004	4.00%	July 1, 2003	4.00%
January 1, 2003	4.25%	July 1, 2002	4.75%
January 1, 2002	4.75%	July 1, 2001	6.75%
January 1, 2001	9.50%	July 1, 2000	9.50%
January 1, 2000	8.25%	July 1, 1999	7.75%
January 1, 1999	7.75%	July 1, 1998	8.50%
January 1, 1998	8.50%	July 1, 1997	8.50%
January 1, 1997	8.25%	July 1, 1996	8.25%
January 1, 1996	8.50%	July 1, 1995	9.00%
January 1, 1995	8.50%	July 1, 1994	7.25%
January 1, 1994	6.00%	July 1, 1993	6.00%
January 1, 1993	6.00%	July 1, 1992	6.50%
January 1, 1992	6.50%	July 1, 1991	8.50%
January 1, 1991	10.00%	July 1, 1990	10.00%
January 1, 1990	10.50%	July 1, 1989	11.00%
January 1, 1989	10.50%	July 1, 1988	9.00%
January 1, 1988	8.75%	July 1, 1987	8.25%
January 1, 1987	Not Available		

\* Attorney General Opinion No. 98-20:

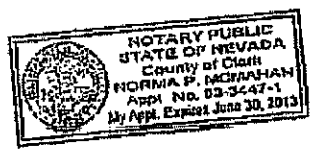
*If clearly authorized by the creditor, a collection agency may collect whatever interest on a debt its creditor would be authorized to impose. A collection agency may not impose interest on any account or debt where the creditor has agreed not to impose interest or has otherwise indicated an intent not to collect interest. Simple interest may be imposed at the rate established in NRS 99.040 from the date the debt becomes due on any debt where there is no written contract fixing a different rate of interest, unless the account is an open or store accounts as discussed herein. In the case of open or store accounts, interest may be imposed or awarded only by a court of competent jurisdiction in an action over the debt.*

EXHIBIT "3"

Legal Process Service, 626 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1 AFFT DIST COURT CLARK COUNTY STATE OF NEVADA  
2 CASE NO.: A-11-636615-C DEPT. XXX  
3 Richard Harris Law Firm  
4 Shoshana Kunin-Leavitt, Esq.  
5 801 S. 4th St.  
6 Las Vegas, NV 89101  
7 State Bar No.: 11625  
8 Attorney(s) for: Plaintiff(s)  
9 Margaret G. Seastrand,  
10  
11 vs  
12 Plaintiff(s)  
13 Raymond Rlad Khoury; et al.  
14 Defendant(s)  
15 AFFIDAVIT OF SERVICE

16 Vicky Peltier, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United  
17 States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a  
18 party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the:  
19 Summons & Complaint  
20 on the 1st day of June, 2011 and served the same on the 1st day of June, 2011 at 7:51PM by:  
21 1. delivering and leaving a copy with the Defendant(s), at \_\_\_\_.  
22 2. serving the Defendant(s), Raymond Rlad Khoury, by personally delivering and leaving a copy with  
23 Lesley Khoury, Wife, a person of suitable age and discretion residing at the Defendant(s)'s usual place of abode  
24 located at 9190 W. Ann Rd., Las Vegas, NV 89149.  
25 3. serving the Defendant(s), by personally delivering and leaving a copy at : \_\_\_\_  
26 a. with \_\_\_\_ as \_\_\_\_ an agent lawfully designated by statute to accept service of process;  
27 b. with \_\_\_\_ pursuant to NRS 14.020 as a person of suitable age and and discretion at the above address, which  
28 address is the address of the registered agent as shown on the current certificate of designation filed with the  
29 Secretary of State.



30  
31  
32  
33 State of Nevada, County of Clark  
34 SUBSCRIBED AND SWORN to before me on this  
35 2nd day of June, 2011  
36 [Signature]  
Notary Public

[Signature]  
Affiant - Vicky Peltier #R-058000  
Legal Process Service License # 604  
WorkOrderNo 1104672



1 THE CLERK: Badge number.

2 THE COURT: Badge 12. Okay. You know what,  
3 let's bring the next bring the next \juror\Juror up so  
4 we don't get confused about the chair numbers. Whose  
5 next?

6 THE CLERK: Jonathan dairy Jan knee badge 53,  
7 please take seat No. 9.

8 THE COURT: All right the next one I'm going  
9 to excuse is Mr. Walker, .

10 PROSPECTIVE JUROR NO. : yes, sir.

11 THE COURT: You're in seat No. 15 what's your  
12 badge number.

13 PROSPECTIVE JUROR NO. : 34.

14 THE COURT: Badge No. 34 we're going to thank  
15 and excuse you appreciate your time, sir. Go back down  
16 to the third floor let them know you've been excused by  
17 Department 30.

18 PROSPECTIVE JUROR NO. : yes, sir.

19 THE CLERK: Michael Saxton, please take seat  
20 No. 15.

21 THE COURT: The next one we're going to  
22 excuse is Mr. Young. Seat No. 6 what's your badge  
23 number.

24 PROSPECTIVE JUROR NO. : No. 9009.

25 THE COURT: No. 9 Mr. Young thank you for

1 your time appreciate your service today.

2 THE CLERK: Vicky Ellen aurone know badge  
3 No. 63, please take seat six.

4 THE COURT: And Mr. Bulason, Mr. Bulason, my  
5 prior client I hate to see him leave. We're going to  
6 thank and excuse you, sir, have a good day we  
7 appreciate your service go back down to the third floor  
8 let them know you've been excused by dent 30.

9 THE CLERK: Mark did you play badge No. 64,  
10 please take seat 12.

11 THE COURT: See I told you folks in the back,  
12 you never safe until it's over. So about ten after  
13 4:00 Mr. Cloward, you want to keep going?

14 MR. CLOWARD: Yes, Your Honor.

15 MR. CLOWARD: Your Honor, who was moved into  
16 seat No. 6 and No. 9.

17 THE COURT: Seat No. 6 is per ran know  
18 Mrs. Her ran no am I saying that right.

19 PROSPECTIVE JUROR NO. : that's correct.

20 THE COURT: Seat No. 9, is Darren Jan knee.

21 PROSPECTIVE JUROR NO. : dairry ananny.

22 THE COURT: You got those?

23 MR. CLOWARD: Yes, Your Honor how long would  
24 you like me to.

25 THE COURT: Let's keep going till about 4:45.

1 MR. JAFFE: Don't we have the Court's  
2 questions for these.

3 THE COURT: Sure. Probably a good idea. So  
4 for these four, let's start with Mrs. Her her. Tell us  
5 your name and badge number, ma'am.

6 PROSPECTIVE JUROR NO. : Vicky Ellen her  
7 her 063.

8 THE COURT: How long have you been in Vegas.

9 PROSPECTIVE JUROR NO. : a year and a  
10 half.

11 THE COURT: That's not very long welcome.

12 PROSPECTIVE JUROR NO. : thank you.

13 THE COURT: What do you do for a living right  
14 I'm retired.

15 THE COURT: What did you do.

16 PROSPECTIVE JUROR NO. : I used to work to  
17 the federal government department of defense as  
18 compensation analyst I'm divorced I have two adult  
19 children my 38-year-old son works for department of  
20 defense and my 35-year-old daughter works for the  
21 department of transportation.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. : \and\{, ?\}and  
24 there was another I have never been on a jury before.  
25 Is that all the questions.

1 THE COURT: That's probably it other ones  
2 about your spouse, but you said.

3 PROSPECTIVE JUROR NO. : well, he was  
4 United States Navy, and then retired he worked as  
5 civilian for the Navy.

6 THE COURT: Okay. Never been on a jury  
7 before.

8 PROSPECTIVE JUROR NO. : nope.

9 THE COURT: Thank you, ma'am. Mr. Dare dare  
10 how long in Vegas.

11 PROSPECTIVE JUROR NO. : eight years.

12 THE COURT: Tallols your name badge number.

13 PROSPECTIVE JUROR NO. : Jonathan dare  
14 dare I have NO.L : Nicholas in Las Vegas for for three  
15 years group reelingser evasion special at the  
16 cosmopolitan I have a girlfriend she works as a  
17 honestiesest azurite I am kitchen I never served on a  
18 jury, and I have no kids.

19 THE COURT: Okay. Thank you. Let's see,  
20 Mr. Is it did you play.

21 PROSPECTIVE JUROR NO. : yeah.

22 THE COURT: Mr. Did you play how long in  
23 Vegas tallols your name and badge number please.

24 PROSPECTIVE JUROR NO. : mark did you play  
25 064 been in Las Vegas for 15 years, director of

1 financial planning at New York, New York, single, no  
2 kissed, .  
3 THE COURT: Served on a jury.  
4 PROSPECTIVE JUROR NO. : \have I\I have  
5 not served on a jury before.  
6 THE COURT: All right. Thank you, sir.  
7 Mr. Saxton.  
8 PROSPECTIVE JUROR NO. : Michael Saxton  
9 056.  
10 THE COURT: Mr. Saxton how long in Vegas.  
11 PROSPECTIVE JUROR NO. : 29 years.  
12 THE COURT: That's a long time.  
13 PROSPECTIVE JUROR NO. : yeah.  
14 THE COURT: What do you do for a living.  
15 PROSPECTIVE JUROR NO. : I'm retired.  
16 THE COURT: What did you do.  
17 PROSPECTIVE JUROR NO. : IT manager for  
18 local architectural firm.  
19 THE COURT: You have a spalls or significant  
20 other.  
21 PROSPECTIVE JUROR NO. : yes I'm married.  
22 THE COURT: What does your outside do.  
23 PROSPECTIVE JUROR NO. : she's retired.  
24 THE COURT: What did she do.  
25 PROSPECTIVE JUROR NO. : homemaker.



1 THE COURT: Okay. Do you have any adult  
2 children.

3 PROSPECTIVE JUROR NO. : no.

4 THE COURT: You ever served on a jury.

5 PROSPECTIVE JUROR NO. : no.

6 THE COURT: You four that just joined the  
7 jury panel, you have heard allot questions previously,  
8 number response to all of those questions that you  
9 heard previously, any of you have any information that  
10 you want to share with us before the attorneys come up  
11 and start asking more specific questions. You know  
12 what the questions are going to be so, anyone feel like  
13 you need to share something that's relevant? No. All  
14 right. Mr. Cloward, it's all yours.

15 MR. CLOWARD: Thank you.

16 MR. CLOWARD: Okay. Let me talk to the new  
17 folks and ask you a couple of questions, and you know,  
18 I just want to want to say one thing, you know, I could  
19 judge a pie Conn test you know, I could do that.  
20 That's what the law said you know or whatever I could  
21 do that. Just like, you know, my mother in law that  
22 was sued and has one view of a personal injury case she  
23 could silt on a jury, she could do that, she could  
24 follow the law, but I know me personally I couldn't be  
25 fair, Judgeing pie bacon test knowing I don't like

1 cherry pie. And so, you know, that's what I want to  
2 talk about is the difference between, you know, yeah  
3 you can do what the law says, but are the Conn test  
4 than the in the pie baking Conn test really going to  
5 get a fair fight or you know are you going to have some  
6 some views that you bring that you bring with you.  
7 Ms. Vera, you know Mr. Jaffe asked you some questions,  
8 and you know earlier in the day you indicated to me  
9 that, you know, you wouldn't feel comfortable with  
10 someone like your with your frame mind sitting on a  
11 jury knowing what you know, and so forth. And I know  
12 me I wouldn't want someone with my frame of mind in a  
13 pie baking Conn test knowing what I know. And there's  
14 difference of following the law what the Judge says you  
15 got to do, versus, you know, what my view might just be  
16 because of my -- my my values might be it might color  
17 it a little bit, and the people might not have a fair  
18 shake. And can you can you just level with me, can  
19 you, you know, be brutally honest on those issues do  
20 you think that you have a little -- a difficult time,  
21 bailed on the way that you feel on pain and suffering  
22 and the amounts that we talked about, and you think my  
23 client would start off just even if it's ever so  
24 slightly in a different position than Mr. Khoury.  
25 MR. JAFFE: Your Honor I have to object.

1 Rule 7.70A, this is about questions asked and answered  
2 we've already had a ruling.

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

4 MR. CLOWARD: I just want I want a fair fight  
5 that's it. You know.

6 PROSPECTIVE JUROR NO. : and and I I want  
7 to do my duty.

8 MR. CLOWARD: Sure.

9 PROSPECTIVE JUROR NO. : the way you asked  
10 the question was based on feeling, the way the other  
11 attorney asked was based on fact.

12 MR. CLOWARD: Sure.

13 PROSPECTIVE JUROR NO. : and evidence, and  
14 proof, and if it sounds like I gave two different  
15 answers, I apologize for that. But I asked I answered  
16 \your\you're question the way you asked the question,  
17 and I answered the other attorney's question the way he  
18 asked it.

19 MR. CLOWARD: Sure, and I.

20 MR. CLOWARD: And I appreciate that. And I  
21 think you done a really nice job telling us, you know,  
22 your views and the way you feel about things and I  
23 appreciate I appreciate that. Do you think that you  
24 know, if if my mother in law who was say, you know she  
25 was sued, do you think that if she was sitting on a



1 jury, do you think that may be the way that she viewed  
2 like the actual let's say, based on her experiences she  
3 puts on a pair of glasses and that's the way she views  
4 certain things. And then my -- my aunt Nancy or, you  
5 know, my mother in law is he see it is one way and my  
6 aunts Nancy who is the store owner, you know, she sees  
7 facts a different eyebeamsed on her experience it's  
8 okay because they both had different experiences they  
9 both, you know, they both have different ways that they  
10 see the same the same fact. And so the question that I  
11 have is do you think that bailed on, you know, your  
12 experiences and you're values and your beliefs that you  
13 know that might might color the facts in a specific way  
14 that my client might not have the same fair fight that  
15 Mr. Khoury and you know it's okay to have beliefs it's  
16 okay, but I just want to know, if you think that your  
17 views, you know, the facts might be colored just a  
18 little bit based on your beliefs and values?

19 PROSPECTIVE JUROR NO. ;

20 MR. JAFFE: Your Honor same objection.

21 PROSPECTIVE JUROR NO. : I don't know.

22 THE COURT: Overruled.

23 MR. CLOWARD: Sure it's hard to know isn't  
24 it? Till you hear the the facts that's the one  
25 frustrating part about this we can't tell you anything

1 about the case Mr. Jaffe and I would move to do that go  
2 ahead.

3 PROSPECTIVE JUROR NO. : well if you can't  
4 tell us anything about the case why was the amount of  
5 money brought up.

6 MR. CLOWARD: Sure.

7 PROSPECTIVE JUROR NO. : why was that even  
8 said and I think that's why I'm having trouble now, .

9 MR. CLOWARD: How come you're why.

10 PROSPECTIVE JUROR NO. : I feel frustrated  
11 right now.

12 MR. CLOWARD: Sure I know this process is  
13 frustrating. I'm sorry about that.

14 PROSPECTIVE JUROR NO. : and I feel like  
15 I've already answered \your\you're questions, I feel  
16 like I'm done.

17 MR. CLOWARD: Okay. I appreciate that.

18 PROSPECTIVE JUROR NO. : that's the way I  
19 feel.

20 MR. CLOWARD: Thank you. And I'm sorry if I  
21 have made you feel feel badly, I feel like you have  
22 told me everything the way that you feel and I  
23 appreciate that. And I'm sorry if you're frustrated  
24 with me. Thank you for telling us how you feel.

25 PROSPECTIVE JUROR NO. : being brutally

1 honest.

2 MR. CLOWARD: I really appreciate that. It's  
3 important. It's important I know it's important for  
4 me, and for Mr. Jaffe.

5 MR. CLOWARD: Mr. Do you have a first name.

6 PROSPECTIVE JUROR NO. : Jonathan.

7 MR. CLOWARD: May I call you John.

8 PROSPECTIVE JUROR NO. : no problem.

9 MR. CLOWARD: Okay. Your last name is kind  
10 of it's not toes read so I will call you John is that  
11 okay.

12 PROSPECTIVE JUROR NO. : no problem.

13 MR. CLOWARD: John tell me your thoughts from  
14 what you have heard, and and all of the things that you  
15 have you have heard the other folks say tell me your  
16 thoughts.

17 PROSPECTIVE JUROR NO. :

18 \well\well{,}\{--}well{,} I mean, I know jurors are all  
19 the selected to be fair. And we all have our own  
20 opinions, you know I'm I'm a dancer, and there's a  
21 bunch of competitions where they have judges and  
22 that's all Stiles, one judge may not like this style,  
23 but that's not fair. Soar a they're going to judge  
24 basis on, you know, what is fair.

25 MR. CLOWARD: Sure.

1           PROSPECTIVE JUROR NO.           : so I agree with  
2 her as well that \$2 million it's making us bias, but we  
3 don't know what the exact facts are, because it could  
4 be completely different when we find out the facts.  
5 But I don't think it's fair for us to be bias just  
6 because of a number that's thrown out before the actual  
7 case is being brought to us.

8           MR. CLOWARD: Okay. So kind of like in -- in  
9 in your line of work, you're there are certain judge  
10 who is already have kind of a different view on certain  
11 things.

12           PROSPECTIVE JUROR NO.           : yeah sort of like  
13 all Stiles there's break dancing there's locking  
14 there's all these types of dances and each judge is  
15 specifically for like they're good at that style, but  
16 they Judge other Stiles. So it's not fair for them  
17 just because on their opinion, their style is better  
18 than everyone else's they can't be a judge that's why  
19 we're here and that's why I think our opinions are our  
20 opinions we can't judge other people because they have  
21 their opinions.

22           MR. CLOWARD: Sure. Let me ask you this  
23 question: And you know there are lots of different  
24 cases, and, and just because you know maybe someone has  
25 a view on on one specific case, doesn't mean that



1 they're not a good fit for a totally different a  
2 different case. Let me ask you this, though: Other  
3 than break dancing what's another popular kinds of  
4 dance?

5 PROSPECTIVE JUROR NO. : I do choreograph,  
6 so I'm in the hip hop crew locally.

7 MR. CLOWARD: So hip hop and break dancing  
8 those would be two different types of dancing.

9 PROSPECTIVE JUROR NO. : yeah choreograph  
10 break dancing locking popping those are all different  
11 types of dancing,

12 MR. CLOWARD: Which ones do you feel like you  
13 like the best your very favorite.

14 PROSPECTIVE JUROR NO. :  
15 \well\well(,)\{--\well(,} with choreograph all these  
16 Stiles are included-r \so\{,}so\{,}so{~}... I mean, I  
17 started out doing popping, but as I went on, to  
18 experience other things, I liked started liking more.

19 MR. CLOWARD: Okay. When you talked about,  
20 you know, some judges that you deal within your career,  
21 and your line of work, maybe they don't like a specific  
22 style, now, tinge would be possible for them to judge,  
23 you know, let's say you had a hip hop dancer and then  
24 you had a break dancer do you agree with me that, you  
25 know, they could judge that, they could do the judging

1 do you agree with that.

2 PROSPECTIVE JUROR NO. : yeah because I'm  
3 not them. With me, I I have my own opinion but I'm not  
4 going to base that off what the facts are so I don't  
5 know about them, but I know what I know. And, and just  
6 because I I have my own opinion, I'm not going to be  
7 like I'm this is wrong I'm right, you're wrong.

8 MR. CLOWARD: Sure.

9 PROSPECTIVE JUROR NO. :s in facts are  
10 brought \{^en\}\{en^} to me then I will be like okay.  
11 Maybe my opinion wasn't right or maybe it was right.  
12 But I don't know.

13 MR. CLOWARD: Sure. Are there folks that  
14 only do like break dancing he that's all they do?

15 PROSPECTIVE JUROR NO. : yeah.

16 MR. CLOWARD: So imagine that you had a, you  
17 know, a judge that all he did was break dancing and  
18 that's all that you know that they did, and then  
19 there's a a Conn test, where break dancing, and then,  
20 ballroom dancing is is, and he's asked to, you know, to  
21 Judge those two Conn tests. Do you think that even  
22 though he could, you know, he could judge them he could  
23 physically do it he could go down there he could do it  
24 it. Do you think that he might have a little bit of a  
25 bias toward, you know, the break dancing.

1 PROSPECTIVE JUROR NO. : depends on that  
2 person.

3 MR. CLOWARD: Do you think it's.

4 PROSPECTIVE JUROR NO. : because like me,  
5 where I'm going to be fair, if they're really good if  
6 the ballroom dancer is really good, I'm going to be  
7 fair. You know, if that breakdancers really good I'm  
8 going to be fair.

9 MR. CLOWARD: Yeah.

10 PROSPECTIVE JUROR NO. : the fact is fact  
11 if they have proven that they are good, then yeah. Of  
12 course. I don't know that other person. I don't know  
13 what they're going to do, but for me fair is fair.

14 MR. CLOWARD: Gotcha. How do you feel about  
15 what's been said regarding the amounts, and the, you  
16 know, the pain and suffering, and things like that how  
17 do you feel about those things?

18 PROSPECTIVE JUROR NO. : when I first  
19 heard the number, yeah, it was a little shocking.

20 MR. CLOWARD: Okay.

21 PROSPECTIVE JUROR NO. : as far as pain  
22 and suffering, I guess, I don't know if it's the same  
23 kinds of thing, but you, you know, when you find  
24 something in your food, there are people that like, you  
25 know, what I'm going to bring it to the attention I'm

1 going to get my bill taken care of.

2 MR. CLOWARD: Make a big deal out of it.

3 PROSPECTIVE JUROR NO. : make a big deal  
4 out of it, but in my opinion, I don't do that.

5 MR. CLOWARD: Okay.

6 PROSPECTIVE JUROR NO. : I mean, I may  
7 bring it like hey there was a hair here, but that's  
8 okay don't worry about it. I'm knotted not trying too  
9 do it just so I can get a free meal.

10 MR. CLOWARD: You're not going to go out and  
11 hire a lawyer and file a lawsuit.

12 PROSPECTIVE JUROR NO. :  
13 \right\{,}right\right\{,}\{,}right\{,}  
14 \right\{,}right\right\{,}\{,}right\{,}, and you got the  
15 2 million was a big deal, but for pain and suffering,  
16 as far as bills, go, in the long run, that I believe,  
17 you know, it wasn't their fault that they should get  
18 the amount that was actually taken out from their life,  
19 and if it was life changing then yeah.

20 MR. CLOWARD: Is that just for bills or is  
21 that for, you know, you know pain and suffering you  
22 can't, you know, you can't push a button on somebody,  
23 and it print a receipt and says hey this is this the  
24 amount Mr. Jaffe alluded to that that's something we  
25 all struggle with we wish there was a computer program



1 that we could plug it in and calculate it, but it's so  
2 \personal\personnel to each person that it's really  
3 tough.

4 PROSPECTIVE JUROR NO. , right.

5 PROSPECTIVE JUROR NO. : that's the hard  
6 thing to judge.

7 MR. CLOWARD: Sure.

8 PROSPECTIVE JUROR NO. : that's why I  
9 guess fact comes into play, I don't know how much fact  
10 we can get to know how much they're going to suffer in  
11 the long run. So yeah, I'm not quite sure.

12 MR. CLOWARD: Okay. And then, you know  
13 Mr. Evans who was sitting there before you, he just  
14 said look, I can't award pain and suffering, because I  
15 don't believe in it, and that's fine. He he's -- he  
16 has different views and that's that's okay. That's  
17 okay. Do you have would you share those same views or.

18 PROSPECTIVE JUROR NO. : I can award pain  
19 and suffering if it's fair.

20 MR. CLOWARD: Okay.

21 PROSPECTIVE JUROR NO. , but I don't know  
22 what right now is fair. In this case.

23 MR. CLOWARD: Sure. Because you don't know  
24 the facts.

25 PROSPECTIVE JUROR NO. , right.

1 MR. CLOWARD: That's right. Okay. Let me  
2 think, how do you feel about personal injury lawsuits  
3 in general?

4 PROSPECTIVE JUROR NO. : in general, I  
5 mean, I don't really have a bias you know, opinion  
6 about it it. If there's if people are trying to do it  
7 just because they want money or people are actually  
8 doing it because they need or they got injured. Yeah I  
9 don't really have a bias opinion about it.

10 MR. CLOWARD: And then the other question  
11 was, if a let me go back. Oh, the do you have any  
12 beliefs that in order for someone to have a significant  
13 injury, you have also got to have a significant crash  
14 like a roll over something like that?

15 PROSPECTIVE JUROR NO. : no. So yeah, I  
16 believe we all we are all different shapes and sizes,  
17 I'm a skinny guy I'm sure can I get I get hurt really  
18 easily, but I can do the same thing as some other  
19 person and I will get more hurt than them just because  
20 they're biggish than me.

21 MR. CLOWARD: I'm bigger than you, but I bet  
22 you could do about 15 times more push-ups than me I  
23 might get one. If someone was helping.

24 PROSPECTIVE JUROR NO. : just depends on  
25 the impact I guess.

1 MR. CLOWARD: Thank you. Appreciate it.

2 Mr. Is it did you play.

3 PROSPECTIVE JUROR NO. : yep.

4 MR. CLOWARD: Did you play how are you today?

5 PROSPECTIVE JUROR NO. : great.

6 MR. CLOWARD: Can I talk to you a little bit.

7 PROSPECTIVE JUROR NO. : sure.

8 MR. CLOWARD: Mr. Did you play, you have been  
9 here we have been having this long discussion I have  
10 been droning on, and I'm trying to get through this.  
11 You can tell me do you have any thoughts or you know  
12 when I first \stood\instituted up here and I said hey I  
13 just want to be brutally hones, I want to be brutally  
14 honest my client suing for millions of dollars, and did  
15 you have any views one way or another did you kind of  
16 like holy smokes this lady I, I am just wow,.

17 PROSPECTIVE JUROR NO. : honestly, you  
18 know, I don't I don't disagree with the principal  
19 behind it. But, you know, by trade, I'm an analyst,  
20 and just the way that I think, I'm an analyst also.

21 MR. CLOWARD: What do you could.

22 PROSPECTIVE JUROR NO. : financial  
23 planning and analysis. But it's difficult for me to  
24 really, you know, say one would I way or another the  
25 big of course picture or what was going on just like at

1 work every situation is unique and every situation is  
2 different so until you have all the information, it's  
3 hard to say what's fair and what's not. I don't I  
4 don't disagree that pain and suffering is is a  
5 possibility, yet in this, been discussed before  
6 \$2 million may be the right number. But until I until  
7 I see all that.

8 MR. CLOWARD: Information.

9 PROSPECTIVE JUROR NO. : impair Cal data  
10 it's hard for me to say one way or another whether it's  
11 fair.

12 MR. CLOWARD: Okay. I appreciate that. So  
13 you you would not be like maybe Mr. Evans, who he just  
14 he just for whatever reason he, you know that's his  
15 experience in life, and that's fair. You know, but he  
16 didn't believe be in pain and suffering. Do you feel  
17 like you're like him at all in that regard?

18 PROSPECTIVE JUROR NO. ; no,

19 MR. CLOWARD: And thank you and the  
20 \$2 million the first you're kind of shocked but as you  
21 think about it, you don't you know you're not like oh,  
22 there's no way there's not a ceiling I think it was  
23 Mr. Waker, he just said hey look there's no way I could  
24 ever get above that no matter what the factings showed  
25 are you like that or not?



1           PROSPECTIVE JUROR NO.           : not at all, but I  
2 will say that, that that's not the number way would  
3 start at. If that makes \sense\essence so it's  
4 definitely it is really big number. So it requires a  
5 lot of it requires a lot to get to that number, but  
6 it's — it's not something that I that I find  
7 impossible.

8           MR. CLOWARD: Okay. Thank you. And then  
9 regarding the automobile crashes and things like that,  
10 are you someone who believes that in order to have a  
11 significant or serious injury, you know you got to also  
12 have a significant, you know, like a rollover or  
13 something like that.

14          PROSPECTIVE JUROR NO.           : not at all I have  
15 actually been in a rollover, and I was fine.

16          MR. CLOWARD: And you're still here.

17          PROSPECTIVE JUROR NO.           : yeah, I was  
18 actually completely fine but the car was done, but I  
19 climbed out a big hole in the roof but when I yeah  
20 nothing happened so, you know,, there's there are a  
21 lot of factors that come into play so certainly  
22 anything anything could happen.

23          MR. CLOWARD: All right thank you.  
24 Appreciate it. Mr. Saxton, how are you today.

25          PROSPECTIVE JUROR NO.           : fine.

1 MR. CLOWARD: Or this afternoon getting kind  
2 of late in the afternoon. We've had a lot of talking  
3 today. About pain and suffering, about, you know, the  
4 amount, \$2 million and so forth. Tell me your thoughts  
5 about that.

6 PROSPECTIVE JUROR NO. : well, I have  
7 no -- no problem with the concept of pain and suffering  
8 . And the dollar amount, doesn't really bother me. If  
9 it's if it's warranted by the facts.

10 MR. CLOWARD: Okay. So you would want to you  
11 would evaluate the facts, and you don't have a position  
12 one way or another like Mr. Evans or Mr. Walker that I  
13 just can't do pain and suffering or I just can't do  
14 anything above 2 million.

15 PROSPECTIVE JUROR NO. : no. I don't have  
16 a position.

17 MR. CLOWARD: Okay. Thank you. You can tell  
18 me what about the, you know, the property damage you  
19 feel that someone in order to have a significant injury  
20 would need to have, you know, correlating significant  
21 property damage.

22 PROSPECTIVE JUROR NO. : I don't think  
23 it's really I don't think that the two are related.

24 MR. CLOWARD: Tell me why.

25 PROSPECTIVE JUROR NO. : well just ,

1 there's a I mean, can you have a very small accident,.

2 MR. CLOWARD: Sure.

3 PROSPECTIVE JUROR NO. : and have a, you  
4 know, a mental trauma, from I mean, it could affect you  
5 greatly.

6 MR. CLOWARD: Sure. Okay. So you you  
7 believe that even in like a small accident or, you  
8 know, small property damage that there could be a  
9 series injury.

10 PROSPECTIVE JUROR NO. : yes.

11 MR. CLOWARD: That's fair too say.

12 PROSPECTIVE JUROR NO. : I believe so.

13 MR. CLOWARD: Okay; is there anybody that  
14 disagrees with Mr. Saxton on that issue on that very  
15 specific issue? Okay.. Thank you. Ms. Her her is it  
16 Mrs. or Mrs.

17 PROSPECTIVE JUROR NO. : I'm divorced so I  
18 gets it's Ms.

19 MR. CLOWARD: What do you prefer to be  
20 called.

21 PROSPECTIVE JUROR NO. : Vicky.

22 MR. CLOWARD: Vic O Vicky tell me a little  
23 bit about how you think.

24 PROSPECTIVE JUROR NO. : well when you  
25 said in excess of two and a half million I just

1 thought, that was the number that was thrown out there,  
2 but it wasn't the final result.

3 MR. CLOWARD: Sure.

4 PROSPECTIVE JUROR NO. : there's  
5 information that has to be provided before the decision  
6 can be made.

7 MR. CLOWARD: Sure.

8 PROSPECTIVE JUROR NO. : about anything  
9 like that. As far as the correlation between injury  
10 and accident, I don't think there's a direct  
11 correlation.

12 MR. CLOWARD: Okay.

13 PROSPECTIVE JUROR NO. : there's too many  
14 factors.

15 MR. CLOWARD: Okay. So you don't have an  
16 opinion one way or another.

17 PROSPECTIVE JUROR NO. : no. I think pain  
18 and suffering is something that's very difficult to put  
19 a price tag on.

20 MR. CLOWARD: It is.

21 PROSPECTIVE JUROR NO. : yeah, so you know  
22 a lot of information is required.

23 MR. CLOWARD: Do you have any -- any views  
24 or, you know, Mr. Jaffe asked some questions about  
25 could you do this or could you follow the law could you



1 do this, and and that's one question, but another  
2 question is is do you feel do you have any views or  
3 opinions like Mr. Evans, or Mr. Waker, you know, they  
4 just said flat-out look I don't believe in that concept  
5 as a concept, and so I couldn't -- I couldn't do that.  
6 Do you have any beliefs like that?

7 PROSPECTIVE JUROR NO. : no when it comes  
8 too frivolous lawsuits, the only ones we hear about,  
9 are the ones the media find interesting.

10 MR. CLOWARD: Yeah.

11 PROSPECTIVE JUROR NO. : and the majority  
12 of those are frivolous so there are valid lawsuits out  
13 there.

14 MR. CLOWARD: Okay.

15 PROSPECTIVE JUROR NO. : it's just a  
16 question of whether the information's supports whatever  
17 the the result, you know.

18 MR. CLOWARD: Yeah.

19 PROSPECTIVE JUROR NO. : yeah.

20 MR. CLOWARD: Okay. I appreciate that.  
21 Thanks.

22 MR. CLOWARD: Okay. You know we have talked  
23 a little bit about frivolous lawsuitses and the impact  
24 those have on society. I think everyone can agree that  
25 our community, you know, lawsuitsings involving thumbs

1 being put in \chilly\Chile and things like that, that's  
2 not good for the community, so my question is this:  
3 Are there when there is a legitimate lawsuit, is there  
4 a danger to the community of having a jury not enter  
5 into the verdict form the full and fair amount for the  
6 harms and losses caused by the defense or the  
7 defendant? So for instance, if if if the defendant  
8 causes something you \Noel\knoll like in the heme  
9 hemophiliac example, if president defendant does  
10 something and and the jury in that case said you know  
11 what I feel bad for him, so I'm not going to I'm not  
12 going to award the full amount of damages. Is there a  
13 danger to our community for not doing that?  
14 Mr. Frasier?

15 PROSPECTIVE JUROR NO. : yeah. Absolutely  
16 there's a danger in it it. I guess, you know and maybe  
17 it's the whole media thing, but it seems to me that  
18 that very rarely seems to come to light if it does  
19 happen.

20 PROSPECTIVE JUROR NO. : to where a jury  
21 doesn't like provide for pain and suffering in a proper  
22 manner.

23 MR. CLOWARD: Why do you think why wouldn't  
24 that come to light?

25 PROSPECTIVE JUROR NO. : that, I have no

1 answer for: I don't know.

2 MR. CLOWARD: Anyone else have thoughts on  
3 that?

4 PROSPECTIVE JUROR NO. , you know, a  
5 minute ago somebody said it doesn't sell up ins, but  
6 not many people bite up in any more any ways. So.

7 MR. CLOWARD: You can see it online.

8 PROSPECTIVE JUROR NO. : so that's not a  
9 solution.

10 MR. CLOWARD: Sure. Who agrees that there is  
11 a danger to the community in a situation of not, you  
12 know, not not restoring the the plaintiff to the  
13 position they were ---

14 MR. JAFFE: Your Honor, I have an objection  
15 that this is may we approach?

16 THE COURT: Sure.

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

19 THE COURT: All right folks we're going to go  
20 ahead and take our evening breaks sorry folks I'm going  
21 to have to have everybody come back tomorrow again. I  
22 know that doesn't make you happy we were hoping we  
23 could get a jury picked today but it's just not going  
24 to happen tomorrow morning I have a morning calendar at  
25 9:00 o'clock, so we have to start a little bit later,

1 but I think it's goodbye to be a quick calendar, so I'm  
2 to have everybody show up at 1030 tomorrow go for an  
3 hour and a half probably till the lunch, and we'll get  
4 the jury picked tomorrow. That's going to happen.

5 During our break tonight you're instructed.

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           That means don't talk with each other about  
22 anything you have heard or seen don't talk to anybody  
23 else about any family members just tell them the jury  
24 hasn't been picked yet you can't talk about it you have  
25 to come back tomorrow you'll know by the end of the day



1 tomorrow whether you're on the jury or not. You folks  
2 in the box make sure you remember where you are so when  
3 you come back tomorrow you can sit in the same seats I  
4 didn't get to the preliminary instructions I usually  
5 talk to people about, but if you want to bring drinks  
6 and stuff in here I'm fine with that I want you to be  
7 comfortable that goes for everybody just don't bring  
8 something that's going to make a mess because we try to  
9 I'm going to try to move this along as quickly as we  
10 can to make sure we get you guys out of here by next  
11 Thursday the problem if you bring something, and you  
12 spill it and you make a big mess we have to it's going  
13 to cause delay while we clean it up so, I mean, if you  
14 want to bring a snack I sit here and munch on M&Ms, and  
15 drink my Gatorade, it doesn't make a mess, so as long  
16 as you can bring something that doesn't make a mess  
17 I'm fine with that if it's going to make a mess don't  
18 bring it. We will give you a usually break in the  
19 morning break in the evening, and a lunch break do you  
20 have a question.

21 PROSPECTIVE JUROR NO. : are we Gregory  
22 come back to the Court or go to the third floor.

23 THE COURT: You come back to the floor  
24 ^KRISTY CHECK that was Fitzgerald.

25 THE COURT: I'm wrong. Since air notaeum

1 paneled yet you have to go to jury services and check  
2 in.

3 PROSPECTIVE JUROR NO. : what time, Your  
4 Honor.

5 THE COURT: Go before February 30 you so can  
6 be up here at 1030.

7 THE BAILIFF: When you come into the building  
8 go to jury services, \check in\check-in with them, and  
9 then come on up. You don't need to wait down there you  
10 just need to check with them, tell them you are coming  
11 up here because we're not finished selecting the jury  
12 and then just come up.

13 THE COURT: You have a question, ma'am.

14 PROSPECTIVE JUROR NO. : we get a work  
15 \excuse\skews today 010.

16 THE COURT: How do you do work excuses Randy?

17 THE BAILIFF: I will discuss it with you  
18 outside.

19 THE COURT: Randy knows the answer to more of  
20 these questions than I do. All right folks, thank you  
21 for your time, yes another question.

22 PROSPECTIVE JUROR NO. : could we wear our  
23 badges in for downstairs and up here ^KRISTY CHECK  
24 Unger.

25 THE COURT: You have to keep wearing those

1 until you get the new ones see you tomorrow.

2 PROSPECTIVE JUROR NO. : young do we need

3 to check out on the third floor.

4 THE COURT: Ask Randy ^KRISTY CHECK Madrigal.

5 THE COURT: Yes, ma'am.

6 UNIDENTIFIED SPEAKER: I haven't spoke up

7 earlier about my child care issues because I'm not sure

8 what I'm supposed to do.

9 THE COURT: What's your badge number, ma'am.

10 PROSPECTIVE JUROR NO. : it was 106. ann

11 boon.

12 THE COURT: I remember I wrote it down.

13 PROSPECTIVE JUROR NO. : I wouldn't I

14 wouldn't say anything it's just that my it's my

15 three 1/2 \year old\{-}year-old and she qualifies for

16 special education,.

17 THE COURT: I understand because,

18 PROSPECTIVE JUROR NO. : because of her

19 social anxiety.

20 THE COURT: R you're excused tell them on the

21 third floor that I excused.

22 PROSPECTIVE JUROR NO. : I'm sorry I

23 apologize.

24 THE COURT: You're fine I'm sorry.

25 THE COURT: Have a good day, ma'am.

1 THE COURT: Badge No. 106 Ann boon.

2 MR. CLOWARD: Briefly one thing on the  
3 record, Your Honor. We would like to hands Mr. Jaffe  
4 plaintiff's bench brief regarding the I believe of jury  
5 selection. Your Honor may I provide with you a copy.

6 THE COURT: Sure come on you up.

7 MR. CLOWARD: And this will be filed tonight  
8 thank you.

9 THE COURT: Okay. We're outside the presence  
10 of the jury. Pursuant to the Jitnan case I have to  
11 make a record on why I either granted or denied the  
12 motions challenges for cause, with regard to the first  
13 challenge which was Mr. Frasier, the challenge for  
14 cause was denied, based upon the fact that he said that  
15 he was willing to follow the law, he was treating both  
16 sides equal, and he previously had said that most cases  
17 were frivolous, but he acknowledged he didn't know this  
18 case was frivolous because I didn't know the facts yet  
19 I got the information from the information overall that  
20 he was going to be fair and impartial and listen to the  
21 facts before he made a decision. With regard to  
22 challenge No. 2, which was Evans, Mr. Evans  
23 specifically said that he would he could not make an  
24 award for pain and suffering under any circumstances  
25 and based upon that, I granted the challenge. No. 3,



1 challenge was Mr. Walker, I granted this challenge  
2 based upon the fact that he said that he was  
3 uncomfortable with 2 million-dollar suggested damages  
4 he thought that amount was ridiculous, he said that he  
5 would give both side on equal shake, but he said that  
6 the amount that an amount that large meant to him that  
7 the case was frivolous. The fact that he said that  
8 just just requesting an amount that large meant to him  
9 that the case was frivolous I got the impression  
10 overall that he was not going to be able to be fair  
11 that he had a bias that you wouldn't be able to  
12 overcome the fourth challenge was Mr. Runs, based on  
13 the let's see. I -- I denied the challenge with regard  
14 to Mr. Runs. Because he said that he would be willing  
15 to award pain and suffering if the if the situation  
16 justified it, that's the only note I had down so that's  
17 why I denied the challenge on him. On Ms. Vera, she  
18 said that I denied the challenge on Ms. Vera she said  
19 that she could award pain and suffering consistent with  
20 the law, in determining what was fair she would have to  
21 listen to the facts and any award she made would  
22 depends object the circumstances, I did not feel she  
23 was biased to the extent that justified a cause  
24 excusal. Sixth challenge was Mrs. One way or another,  
25 she said that she would listen to the facts, and if she

1 believed that a 2 million-dollar award was justified  
2 she would consider that. So even though she said  
3 initially she thought the 2 million-dollar award was  
4 excessive she said she would consider it if the facts  
5 justified it so that's why the challenge was denied on  
6 Mrs. One way or another the seventh challenge wases to  
7 Mr. June, he indicated initially he was uncomfortable  
8 with the 2 million-dollar award he was uncomfortable  
9 with him self on the jury, and Mr. Jaffe's attempt to  
10 rehabilitate him he indicated he would require proof in  
11 order -- to award any type of pain and suffering, and  
12 that he did not believe anybody should be compensated  
13 for pain based upon that I thought there was a bias  
14 that justified a cause challenge so we excused  
15 Mr. Jeung. The eighth challenge was to Mr. Bulason and  
16 the parties stipulatedded to strike Mr. Bulason. Ninth  
17 challenge was Ms. Agnor, she indicated initially \she  
18 was\shelves uncomfortable with the 2 million-dollar  
19 award. She talkedded about intent needed to be  
20 involved, she would not want herself on a jury and she  
21 said, initially that the defendant would start out  
22 ahead, response to Mr. Jaffe's questions she said that  
23 she was willing to follow the law and give a fair award  
24 for pain and suffering, if if the evidence justified  
25 it, she said that the parties were starting at equal

1 places and she would be able to be fair to both sides.  
2 I did not feel there was a bias that effected her  
3 ability to be fair and impartial in the case. Anything  
4 else we need to put on the record now?

5 MR. EGLET: , does the Court have any  
6 objection to me making a record, Your Honor? As  
7 Mr. Cloward's jury consultant in this case? I am a  
8 licensed attorney here in Nevada.

9 THE COURT: I don't have a problem with it?  
10 Mr. Jaffe, you have a problem with it.

11 MR. JAFFE: With Mr. Eglet making arguments  
12 in the case?

13 THE COURT: Making the record as it relates  
14 to the excusal of the jury challenges.

15 MR. JAFFE: Yes, he's not counsel of record  
16 in the case. Added a I get \association\Association  
17 over in about five minutes Your Honor.

18 MR. EGLET: I don't think it's necessary,  
19 Your Honor. I mean, I could, you know, I could we  
20 comate wait.

21 THE COURT: I'm going to allow to do is it go  
22 ahead.

23 MR. EGLET: Okay. Your Honor, I'm sure as I  
24 know, the Court has read the Jitnan decision, which I  
25 handled on appeal I was not the Counsel trial counsel

1 before, as a matter of fact, Mr. jaffe was the trial  
2 counsel below the defense counsel on the case before we  
3 tried to engage in the same rehabilitation tactics he  
4 did here in in case which the Nevada Supreme Court  
5 found in Jitnan were insufficient in Jitnan,  
6 Mr. Polessen Berg actually handled the appeal, and what  
7 the Jitnan court specifically says is that when a jury  
8 member of the jury makes inconsistent statements in  
9 other words, they say one thing in response to the  
10 plaintiffs questioning them and then turn around, and  
11 same the opposite when defense counsel gets up and  
12 trying fries to rehabilitate them using leading  
13 questions that doesn't make them nonbias that doesn't  
14 make them more appropriate and qualified to sit as a  
15 person on the jury it makes them less qualified to sit  
16 as a person on the jury. Because they're making  
17 inconsistent statements based on who's asking them the  
18 questions. Mrs. Agnor, stated, on multiple occasions,  
19 she stated, that she felt that \$2 million, and  
20 remember, something, the question he posed wasn't just  
21 for pain and suffering, it was 2 million his client was  
22 going to ask for an amount in excess of \$2 million.  
23 That wasn't focused just on pain and suffering as  
24 Mr. Jaffe tried to imply and convince these jurors it  
25 was, when he got up and did his so-called



1 rehabilitation. It wasn't. He said, \$2 million  
2 period. That includes all types of damages. And  
3 Ms. Agnor stated -- Mrs. Agnor Agnor, excuse me, she's  
4 in seat I don't know what which seat I think she's in  
5 Seattle four stated that it is extremely excessive that  
6 only maybe in a death case would she think that that  
7 would be appropriate. She stated that and I wrote  
8 these down, that she stated that even if a person was  
9 never able to work again, \$2 million would be too much  
10 would be too excessive so she's talking about their  
11 she's not even talking about pain and suffering she's  
12 talking about even if somebody loss their complete  
13 \100{~}percent\ a hundred percent their capacity to work  
14 the \$2 million would be too excessive in hear mind  
15 she's not even talking about just caps on on pain and  
16 suffering she's talking about caps on special damages  
17 as well. That's what she said, it will be in the  
18 record. Clearly Judge. Ms. Agnor also stated unless  
19 the plaintiff is totally disabled or missing a limb,  
20 this is her words, not coming from Mr. Cloward, these  
21 came from her lips, unless the plaintiff is totally  
22 disabled, or missing a limb, she would -- could never  
23 go anywhere near \$2 million. For any one this is her  
24 words, \$2 million is unfathomable that's the word she  
25 used I wrote it down. Unfathomable it's too much

1 money. That someone that anyone could be hurt in a  
2 motor vehicle accident and deserve that kind of money  
3 is Your Honor that's what she said those weren't  
4 Mr. Cloward's words those words came from her mouth.  
5 She also said, that she felt that she could never award  
6 that kind of money unless somebody hurt the person on  
7 person. She required their to be intent not just mere  
8 negligence. Then when Mr. Cloward asked her the  
9 hypothetical and said I know you probably wouldn't do  
10 this, but if you were injured and were a plaintiff in a  
11 personal injury case, and you knew that your attorneys  
12 were going to be asking for millions of dollars for  
13 you, do you think you would feel comfortable with with  
14 somebody with your state of mind sitting on your jury?  
15 Was there no hesitation, she said no. She said yes, I  
16 would be uncomfortable. I would not want someone with  
17 my state of mind sitting on my jury, Your Honor. She  
18 also says, that she agrees that because of that, she is  
19 not the right fit for this type of case, she agreed  
20 with that she has stated that the plaintiff and the  
21 defendant are not starting at the same start line that  
22 the defendants are starting ahead of the plaintiff on  
23 the issue of damages and that these are long held  
24 beliefs that nothing that anyone said including, Your  
25 Honor, was going to change her mind on this issue.

1 Now, the fact that Mr. Mr. Jaffe got her to get up and  
2 say -- well,, you'll follow the law that judge gives  
3 you won't you, that doesn't qualify her under the law  
4 as a an appropriate \juror\Juror understand Jitnan or  
5 any other cases, that Your Honor has seen in this brief  
6 multiple times, in the past. That is not the law. The  
7 fact somebody says oh, yes if the judge tells me  
8 that -- that pain and suffering damages are  
9 appropriate, then I will, you know, I guess I will  
10 consider her. Consider them. Her inconsistent  
11 statements makes her less qualified as a juror than  
12 they -- than more qualified. And the Supreme Court in  
13 the Jitnan case, like Ms. Both Ms. Vera and Mrs. Ago in  
14 a -- Agnor who stated she had proves with purge that  
15 \juror\Juror stated that he did not believe in punitive  
16 damages as well. Both of these women said that that  
17 they had problems and did not believe and Ms. Vera said  
18 she in fact believed she felt exactly the same way  
19 Mr. Evans did with respect to pain and suffering  
20 damages. That's what she said. I feel exactly the way  
21 Mr. Evans did -- does with respect to pain and  
22 suffering damages. In approximately Jitnan case that  
23 was exactly the issue. That juror was challenged for  
24 cause, Judge Vega allowed Mr. Jaffe to rehabilitate  
25 him, and he changed his mind in in rehabilitation, and

1 then the supreme court came back and says wait a  
2 minute, you know, you can't have these inconsistent  
3 statements he never stated unconditional unqualifiedly  
4 that he would be willing to award appropriate amount of  
5 pain and suffering damages. So Ms. Agnor and  
6 modification both stated that they -- it was clear from  
7 their testimony, when she says well they both said it  
8 was \$2 million we had a problem with. Well, that is an  
9 indication, that they have a preconceived limit before  
10 this case even starts, of be a amount of money they  
11 will not go over regardless of what the evidence is.  
12 Mr. Cloward asked them, verified with them regardless  
13 of what the evidence shows, \$2 million is just not  
14 something you could get to, Ms. Agnor says unfathomable  
15 Ms. Vera says no way. That she can get to those kinds  
16 of damages \judge\Judge{~} so when you have jurors who  
17 are making these kinds of statements, and then on  
18 so-called rehabilitation, they say well I can follow  
19 the law and if the Judge says to me, I can I have to  
20 consider pain and suffering damages that doesn't change  
21 what they said on their testimony under voir dire in  
22 approximate response to the plaintiff's question ings.  
23 Now, specifically, Ms. Vera, says, specifically she  
24 says I agree with Mr. Evans. There should be no  
25 compensation for pain and suffering. Those are her



1 exact quote of what came out of her mouth I wrote it  
2 down. She thinks of her sister who who was in a motor  
3 vehicle accident and she didn't ask for pain and  
4 suffering, and she is still out there working. She  
5 went back to work she didn't ask for any pain and  
6 suffering, she doesn't believe in pain and suffering,  
7 that pain and suffering should be an awarded in a  
8 personal injury case. She then says, later, that she  
9 shares the same values and beliefs as Mr. Evans, that's  
10 what came out of the her mouth. He gives her the  
11 hypothetical about if she was an injured party bringing  
12 a personal injury case sitting in the seat of the  
13 plaintiff, would she feel comfortable with someone with  
14 her state of mind being a juror in her case, she says  
15 no, I would not feel comfortable with that. At all.  
16 She says, that she's held these beliefs and values for  
17 a long time. She didn't just come in here today and  
18 state these things that. No one is going to change her  
19 mind on this. Not Mr. Cloward, Mr. Jaffe or Your  
20 Honor, and that this she agrees that she is not a good  
21 fit for this type of case because of these  
22 preconceptions she has, about damages. And that the  
23 parties are not starting on the same start line, that  
24 the defendants are staterring ahead of the plaintiffs  
25 when it comes to the issue of damages. Your Honor. So

1 we will reserve our arguments on the other ones we made  
2 motions on earlier, but with respect to those two with  
3 all due respect Judge \it's\{'^}'s the not even a close  
4 call when it comes to those women they can't come in  
5 and say later in response to a leading  
6 \question\Question{#G}, yes, I can be fair and  
7 impartial, when all indications are from their  
8 testimony, is in fact, that the cannot be fair and  
9 impartial when it comes to that issue. At least when  
10 it comes to the issue of damages. And remember, the  
11 United States Supreme Court and this isn't just a --  
12 this isn't just a Nevada Supreme Court this is the  
13 United States states Supreme Court has recognized that  
14 the fundamental importance of am panel a fair and  
15 impartial jury stating it is difficult to conceive of a  
16 more effective obstruction to the judicial process than  
17 a juror who has pre \judge\Judge{~}ed the case, these  
18 two jurors with respect to the issue of damages, have  
19 pre \judge\Judge{~}ed the case, and they have clearly  
20 indicated that they're not open to the idea that this  
21 case could have a value in excess of 2 million-dollars.  
22 The Nevada Supreme Court reaffirmed that whether or not  
23 a juror should be removed for cause is based upon  
24 whether the panel members view could substantially  
25 impair her performance of her duties as a juror in

1 accordance with the Court's instructions. These two  
2 women have clearly indicated that they that their views  
3 could substantially impair her performance and let me  
4 point out Judge, no trial judge has ever been reversed  
5 for excusing a jury for cause. Ever. But many trial  
6 judges have been reversed for not excusing a jury for  
7 cause, and allowing that case to go to trial, when  
8 there's a potential that that — these views could  
9 substantially impair their abilities, and therefore the  
10 Court says the Court should err on the side of caution,  
11 and excuse someone who could potentially whose views  
12 could potentially impair their ability to serve as  
13 jurors and excuse them. The Court also has held that  
14 the respective jurors must be excused if their views  
15 can substantially impair their ability to perform their  
16 functions as jurors and is that the impairment need not  
17 be shown with unmistakable clarity. We don't have to  
18 show this beyond a reasonable doubt. By clear and  
19 convincing evidence or even by a preponderance of the  
20 evidence. If there's a chance that it could occur, and  
21 there's clearly much more than a chance, with these  
22 women, the Court should excuse them. So that all  
23 parties, make sure there's actually a completely fair  
24 impartial and unbiased jury before this case begins, on  
25 all issues on all issues including the issues of the

1 amount of damages. As the supreme court stated our  
2 supreme court stated, in in Thompson, it is not enough  
3 for the Court or defense counsel torques point to  
4 detached language as I suggest Your Honor has done on  
5 some of your rulings, specifically with these two  
6 women, to point detached language which alone  
7 considered would seem to meet the statute requirement.  
8 If on construing the whole declaration together there's  
9 an than the juror is not able to express an absolutely  
10 belief that his or her opinions will not influence his  
11 or her verdict. That's the standards judge. Not if  
12 you can pick out some language that Ms. Vera says well  
13 I can follow the law or where Mrs. Agnor says well I  
14 can follow the law. That's not enough young. Or that  
15 I think I can be fair and impartial or I will consider  
16 pain and suffering even if it's up to \$2 million.  
17 That's not the law. You have to consider everything  
18 they said together and everything they said together  
19 considered as a whole this isn't even a close call  
20 Judge. This is reversible error with all due respect  
21 to let these two women continue on this panel.

22 THE COURT: Let me ask you a question  
23 Mr. Eglet because I think Ms. Vera made a good point in  
24 response to one of the attorneys questions she said  
25 that that the distinction was feelings versus facts.



1 And she she made a point that I think it was  
2 Mr. Cloward was asking her about feelings, and  
3 Mr. Jaffe asked what was her response in regard to  
4 facts, and were there facts that would justify her  
5 giving ag awards and she said yes.

6 MR. EGLET: Feelings with views Judges. A  
7 person's viewpoints you can express it as a viewpoints  
8 or how I feel about something, that's the same thing.  
9 And the supreme court is specifically set state a panel  
10 member's views could substantially impair her  
11 performance or abilities as a juror. Now, that's the  
12 same thing. You want to call them feelings you want to  
13 call them point of view it's the same thing what's the  
14 distinction? There is no distinction. And that's why  
15 the that's why the Court doesn't say facts. It says,  
16 views. The viewpoint of that person. That's why we do  
17 this, that's why their viewpoint important that's why  
18 we have people who just can't be fair and impartial  
19 because they have viewpoints. Mr. Evans says he  
20 doesn't believe in pain and suffering. Ms. Vera --  
21 Ms. Vera said the same thing. She said she agrees  
22 exactly with what Mr. Evans said, that's what she said.  
23 Those words came out of her mouth Judge. Nowhere else.  
24 And so when it's -- in this situation, you can't just  
25 you constant, and the supreme court said Jitnan it said

1 this in the Thompson case and the Court cited in this  
2 brief which I have written in I think you're right this  
3 basically this brief was published in the NJA in  
4 sections, over the last several months, it cites to  
5 case law all over the country which says the same  
6 thing, and it talks about the fact in case after case  
7 and study after study, that in fact, Judges intimidate  
8 these jurors when they go to ask those questions and I  
9 know you decedent that, but there's no difference  
10 between opposing counsel gets up and says well you're  
11 going to follow the law, right? I mean, of course  
12 people are going to say they're going to follow the  
13 law. Nobody wanting to sounds like they're not going  
14 to follow the law even Mr. Evans said well yeah I will  
15 follow the law I will follow the law because I don't  
16 want to be held in contempt that's how they all feel  
17 anybody ask them are you going to follow the law are  
18 you going to do what the judge tells you to do or are  
19 you just go going to ignore and do willy-nilly what you  
20 want of course they're going to answer that magic  
21 question that way, and that's all the case law says  
22 around that country that of course they're going to say  
23 that in New York they don't even allow the judges to be  
24 in the room when jury selection goes on did you know  
25 that because of that very issue? Only the attorneys

1 are permitted in jury selection. The judges are not  
2 permitted. Because they intimidate the jurors. So I'm  
3 not suggesting that you did that that in this  
4 indication judge, but what eye point is is if you say  
5 to anybody who's been taken an oath in a courtroom with  
6 a bunch of strangers who they don't know for the first  
7 time, and say well air going to follow the law, like  
8 Mr. Jaffe did here, just like he did in the Jitnan  
9 case, and when our supreme court found that Judge Vega  
10 committed err by not dismissing that juror. Now, since  
11 that case Judge, Supreme Court has set forth a series  
12 of what we have to do so I'm going to tell you  
13 Mr. Cloward, if this doesn't change will not pass this  
14 panel for cause, will refuse to do Judge. That's  
15 what's going to happen because that's what the supreme  
16 court says he has to do in Jitnan to preserve the  
17 record. So he will be , but this isn't even a close  
18 call so, Your Honor, I I am employer you could  
19 reconsider with respect to these two jurors and, you  
20 know, we will I will look at my notes and counsel will  
21 discuss this with Mr. Mr. Cloward tonight and in the  
22 morning about the other people he made motions on, but  
23 with respect to those two, Your Honor, Ms. Vera and  
24 Mrs. Agnor, it's not even a close call. It just isn't.  
25 Thank you.

1           THE COURT: All right. Do you want to say  
2 anything?

3           MR. JAFFE: Couple of things, Your Honor.  
4 First off, I'm not going to sit here and debate counsel  
5 on the record and rulings and rulings have been made  
6 I'm presuming that the Court is not at this point  
7 reversing its rulings the record is what it is. The  
8 problem was that the questions phrased by Mr. Cloward,  
9 were so vague and ambiguous, in approximate terms of  
10 constantly saying this issue that issue, to the point  
11 in it was impossible to pack and forth what was going  
12 on was there even at some points when he was making his  
13 argument on the challenges he kept saying on in issue I  
14 kept saying on what issue the 2 million the this, the  
15 pain and suffering, and it was it was very confusing  
16 even for me. Now, when the jurors were then when I  
17 asked them, a more pointed question, it was effectively  
18 clarifying it question is essentially what these two  
19 jurors were the one lady Ms. Vera did say. And they  
20 have made it very clear, they can follow the law, but  
21 Your Honor, there is no definite standard. But to  
22 leave them with an impression it's 2 million or you  
23 can't follow the law, which is essentially what counsel  
24 was doing, was very disconcerting, it was very  
25 disingenuous, and that was why a lot of these jurors



1 had problems \and\{,?}and mistook what was being asked  
2 of them. And I think that became very clear when the  
3 jurors all said no, or several of them said, no, we can  
4 award pain and suffering, we can award what's fair, we  
5 can award it based upon the law, and the evidence  
6 presented, and we all know there is no definite  
7 standard for what is pain and suffering and damages.  
8 We leave that to the jurors to decide amongst  
9 themselves. So that's effectively what they have all  
10 said they are and can and will do. This was not a  
11 matter of strong arming people as counsel Mr. Eglet  
12 would certainly have the Court believe. And Your  
13 Honor, I believe that we have acted entirely consistent  
14 and properly with the law. Now, with that having been  
15 said we would also object to the fact that the Court  
16 struck Mr. Walker, Mr. Jeung, and Mr. Walker, and  
17 Mr. Jeung, I believe that they both said they could  
18 award pain and suffering, they could award it fairly,  
19 and at least as they believe it to be fair again since  
20 there there isn't a definite standards there can be no  
21 issue as it relates to that there's no mandate you must  
22 award pain and suffering. The jurors don't feel they  
23 want to, they don't have to. That's not mandatory.  
24 But the point is, Your Honor, they have no definite  
25 standards, and that is our law, with Mr. Mr. Evans, I

1 agree, he was he was -- he was definitely.

2 THE COURT: You couldn't do anything with  
3 Mr. Evans.

4 MR. JAFFE: No, he was dancing to his own  
5 tune.

6 MR. CLOWARD:

7 MR. EGLET: Case law in Nevada,  
8 Mr. Mr. Mr. Jaffe does not know the case law when it  
9 comes to pain and suffering. The case law in Nevada is  
10 clear. If a jury finds in favor of the plaintiff find  
11 they were injured find their medicals awards medical  
12 expenses, for their injury any medical expenses, they  
13 cannot put zero in the verdict for pain and suffering.  
14 And if the judge does not add and conduct additur that  
15 is reversible error pain and suffering is required  
16 under Nevada law the dromonds case Judge and you know  
17 that. You practiced personal injury law for many years  
18 know that. That is just a misstatement of the law.  
19 In, correct. And that's what he was trying do with  
20 some of these jurors up here. He was saying well you  
21 know you'll get an instruction on this, but you don't  
22 necessarily have to to award pain and suffering that's  
23 not true. If they find in favor of the plaintiff, and  
24 award any medical expenses, pain and suffering damages  
25 are required under Nevada law. That is the law. And

1 Mr. Jaffe can get up and try to suggest that he was not  
2 strong arming or not, you know, when he says to people,  
3 the first questions you can follow the law, right? And  
4 says that over and over, and whenever somebody starts  
5 to say something that's a little bit insquint with what  
6 he wants to hear and he says you can follow the law,  
7 though, right you can follow the law and if the judge  
8 tells you that, you know, pain and suffering damages  
9 are something you should consider you're going to  
10 follow the law? Well, of course they're going to say  
11 that, that doesn't change the circumstances and that  
12 doesn't change the fact that, Your Honor with all due  
13 respect what you did was you picked out some phrases  
14 with these jurors that they might have said in response  
15 to Mr. Jaffe's questions, that were completely  
16 inconsistent with what they said in response to  
17 Mr. Cloward's questions, Mr. Cloward's questions were  
18 not at all vague, and ambiguous. They were direct,  
19 they were pointed, and these jurors who stated that  
20 they cannot fathom damages of \$2 million or more in a  
21 motor vehicle accident case, then they have a  
22 preconceived limit a of an amount they will go to  
23 before any evidence has been presented in this case and  
24 I have cited you case after case, after case in  
25 jurisdictions all over this country who says, that by

1 itself, that one thing by itself means that juror is  
2 not qualified to sit o as a juror in the case  
3 Judge \so\{,}so\{,}so{~}... again, I imploratory  
4 consider Ms. Vera and Ms. Agnor and we'll make a record  
5 on the other ones tomorrow morning judge.

6 THE COURT: All right. Thanks guys I will  
7 look T at the brief tonights at this point I'm not  
8 going to change anything, but I will read the brief.

9 MR. JAFFE: Thank you, sir.

10 THE COURT: 1030 tomorrow we going to have to  
11 do some stuff outside the presence before we bring the  
12 jury.

13 MR. EGLET: Yes.

14 THE COURT: Why don't you folks come at 1015.

15 MR. CLOWARD: Thanks Judge.

16 THE COURT: Have a good day off the record.

17 (Discussion was held off the record.)

18 (Thereupon, the deposition  
19 concluded at Time )  
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	CERTIFICATE OF DEPONENT			
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14			* * * * *	
15			I, WitName	, deponent herein, do
16			hereby certify and declare the within and foregoing	
17			transcription to be my deposition in said action under	
18			penalty of perjury; that I have read, corrected and do	
19			hereby affix my signature to said deposition.	
20			_____	
21			WitName	, Deponent Date
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1 CERTIFICATE OF REPORTER  
2  
3 STATE OF NEVADA )  
4 ) ss:  
5 COUNTY OF CLARK )  
6 I, Kristy L. Clark, a duly commissioned  
7 Notary Public, Clark County, State of Nevada, do hereby  
8 certify: That I reported the deposition of  
9 WitName , commencing on day  
10 month day , 2013, at time  
11 o'clock am-pm .m.  
12 That prior to being deposed, the witness was  
13 duly sworn by me to testify to the truth. That I  
14 thereafter transcribed my said shorthand notes into  
15 typewriting and that the typewritten transcript is a  
16 complete, true and accurate transcription of my said  
17 shorthand notes, and that a request has  
18 signature waive not been made to review the  
19 transcript.  
20 I further certify that I am not a relative or  
21 employee of counsel of any of the parties, nor a  
22 relative or employee of the parties involved in said  
23 action, nor a person financially interested in the  
24 action.  
25 IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
day day of month , 2013.

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**EXHIBIT 14**

JA 4654



1 CASE NO. A-11-636515-C

2 DEPT. NO. 30

3 DOCKET U

4

5

DISTRICT COURT

6

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.

15

16

17

REPORTER'S TRANSCRIPT

18

OF

19

JURY TRIAL

20

BEFORE THE HONORABLE JERRY A. WIESE, II

21

DEPARTMENT XXX

22

DATED TUESDAY, JULY 16, 2013

23

24

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

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13 \* \* \* \* \*

1 LAS VEGAS, NEVADA, TUESDAY, JULY 16, 2013;

2 10:30 A.M.

3  
4 P R O C E E D I N G S

5 \* \* \* \* \*

6  
7 THE COURT: Let's go back on the record in  
8 Case No. 636515, Seastrand versus Khoury.

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

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

25 And then it says, "Broadly speaking, if a

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

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

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

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

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

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

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

25 THE COURT: I didn't know that.

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

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

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



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

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

8           THE COURT: I did.

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

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

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

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

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

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

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



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

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

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

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

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

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

1 \$2 million, \$2 million. Now, that is what the  
2 plaintiff is asking for, but that does not in and of  
3 itself imply that that's what this case is or it's  
4 worth. It's almost suggesting it's a liquidated  
5 damage.

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

11           What the plaintiff was doing -- and this is  
12 why I think it's a whole problem with being allowed to  
13 even offer a number -- is indoctrination because it's  
14 talking about the plaintiff's case. It's  
15 indoctrinating them in the plaintiff's case to see if  
16 they've got a bias against that one particular issue,  
17 but the jury is not there to render a verdict for  
18 \$2 million for the plaintiff because that's what the  
19 plaintiff asks. It's Ray Khoury's jury too.

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

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

11           Because what these jurors did yesterday is  
12 said that they can be fair. They can deliberate on the  
13 evidence. They can listen to what's presented by both  
14 sides and render a fair verdict based on the law. What  
15 they had a problem with was the one particular aspect  
16 of the plaintiff's case that they're not obligated to  
17 accept that there's a \$2 million pain and suffering  
18 entitlement. And the plaintiff is trying to say  
19 because they cannot accept \$2 million, they're bias.  
20 Well, if that's the case and they can accept  
21 \$2 million, then they're equally biased against Ray  
22 Khoury.

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

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

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

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

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

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

10 And that's what we as lawyers do, as  
11 litigators do, is try to advocate our position as best  
12 as we possibly can to convince the jury why we are  
13 right, why the evidence favors our client, why our  
14 arguments make the most common sense. And that's what  
15 the plaintiff is actually trying to do is take that  
16 away by saying that because they're not going to accept  
17 \$2 million simply because that's what we say it is,  
18 they must be biased.

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



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

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

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

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

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

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

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

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



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

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

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

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

24 The fact that they are reluctant at \$2  
25 million — one juror said she can award \$2 million but

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

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

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

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

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

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

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

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

10 I think what the question was and -- and what  
11 we want is we want a jury that is willing to award  
12 2 million or \$10 million, whatever the number is, if  
13 the facts justify it. We also want a jury who's  
14 willing to award a zero if the facts justify it.

15 And you're going to have your chance to ask  
16 those questions. And just like you have jurors that  
17 say, look, I'm going to have a real hard time awarding  
18 \$2 million even if the facts justify it because I don't  
19 know any facts yet but I have a problem with the  
20 \$2 million number, you may have jurors that, when you  
21 start asking them questions, they say there's no way  
22 I'm going to be able to award a zero if this person has  
23 medical bills.

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

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

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

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

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

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

4 MR. JAFFE: Yes, sir.

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

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

9 MR. EGLET: Change our charts.

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

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

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

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

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

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

23 Who takes Frazier's seat?

24 THE CLERK: Helen Perrine.

25 MR. EGLET: She goes into 18?

**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 XXIV**

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**VOLUME XXIV**

Exhibit 55	Pages 238-292 of Exhibit 13 and Exhibit 14 of Opposition to Defendant's Motion for New Trial	JA 4599-4674
Exhibit 56	December 24, 2013, Notice of Appeal	JA 4674 A-N
Exhibit 57	January 7, 2014, Order Re: Plaintiff's Motion For Costs and Reasonable Attorneys' Fees and Defendant's Countermotion to Re-Tax Costs	JA 4675-4677
Exhibit 58	January 17, 2014, Defendant's Reply In Support Of Motion For New Trial	JA 4678-4685
Exhibit 59	January 23, 2014, Reporter's Transcript of Proceedings Regarding Defendant's Motion For New Trial	JA 4686-4729
Exhibit 60	February 10, 2014, Notice of Appeal	JA 4729 A-C
Exhibit 61	February 18, 2014, Order Denying Defendant's Motion For New Trial	JA 4730-4732
Exhibit 62	March 4, 2014, Notice of Appeal	JA 4732 A-C
Exhibit 63	April 4, 2014, Order On Plaintiff's Omnibus Motion In Limine and Defendant's Motions In Limine Nos. 1 Through 8	JA 4733-4738