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## Respondents.

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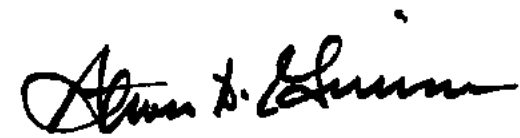
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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

CHRISTIAN CERVANTES-LOPEZ,	)	
	)	
Plaintiff,	)	CASE NO. A-12-667141
	)	DEPT NO. XXIII
vs.	)	
	)	
EVANGELINA ORTEGA,	)	
	)	
Defendant.	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 7**

TUESDAY, MARCH 3, 2015

APPEARANCES:

For the Plaintiff:	DANIEL S. SIMON, ESQ.
	ASHLEY M. FERREL, ESQ.
For the Defendant:	ROBERT KADE BAIRD, ESQ.
	CHARLES A. MICHALEK, ESQ.

RECORDED BY MARIA GARIBAY, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

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## I N D E X

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1           **LAS VEGAS, NEVADA, TUESDAY, MARCH 3, 2015, 10:43 A.M.**

2                           **\* \* \* \* \***

3                   (Outside the presence of the jury.)

4           THE COURT:   Okay.   So it's Christian Cervantes-Lopez  
5 vs. Evangelina Ortega, Case A667141.   Are you ready?

6           MS. FERRELL:   It's not coming up.

7           MR. SIMON:   We're having technical difficulties.

8           THE COURT:   Okay.   As soon as those are fixed, let's  
9 bring the jury in.

10          MS. FERRELL:   There we go.   Now it's working.

11          THE COURT:   Are you ready for the jury?

12          MR. SIMON:   Not quite yet.   Three minutes.

13          THE COURT:   Three minutes.   All right.

14                   (Pause in proceedings.)

15          MR. SIMON:   Ready, Judge.

16          THE COURT:   Ready?   Yep, let's bring them in.

17                   (Jury reconvened at 10:48 a.m.)

18          THE COURT:   All right.   Welcome back, ladies and  
19 gentlemen of the jury.   At this point the plaintiff is going  
20 to present his closing argument.

21           Whenever you're ready.

22          MR. SIMON:   May I proceed, Your Honor?

23          THE COURT:   You may.

24          MR. SIMON:   Thank you.

25                   PLAINTIFF'S CLOSING ARGUMENT

                  KARR REPORTING, INC.

1           MR. SIMON: Good morning. This is the time that I  
2 get to summarize the evidence that you've seen all week and  
3 remind you about a few key points that you already know. This  
4 is the case you're here for. This is the fate of their future  
5 that you are here to decide.

6           Undeniably, this is a life-changing event.  
7 Undeniably. And I use that strong word because it is  
8 undisputed that my clients, Christian Cervantes-Lopez and  
9 Maria Abarca, were in perfectly good health moments before  
10 this accident.

11           It is also undisputed that this was a major accident.  
12 This is not a parking-lot tap, where someone comes into this  
13 courtroom to waste your time to say, Oh, we're injured for  
14 life by a little tap. That is not this case.

15           Cases that take the time of a jury, the cases that  
16 take up a courtroom, are for real cases. And this is a real  
17 accident. No one disputes that the blunt-force trauma of this  
18 accident injured these people. That is also undisputed by the  
19 evidence. This was a t-bone blunt-force head-on collision  
20 with a vehicle.

21           It is also undisputed that my clients are truthful.  
22 Every single doctor that took the stand, including their own  
23 doctor, Dr. Duke, told you that they were truthful. It is  
24 also undisputed that Ms. Ortega is responsible for this  
25 accident 100 percent. And it is also undisputed from the



1 evidence that this is the only trauma, the only accident that  
2 is in relation to the injuries that they sustained. That's  
3 the undisputed evidence. So when you go back into that room,  
4 go down the list of undisputed points, and that's the evidence  
5 in the case.

6           Here is Jury Instruction No. 22. That is -- tells  
7 you instruction from the judge that they are 100 percent  
8 liable for causing the accident. Your role on this jury is  
9 only to determine whether or not the accident caused  
10 plaintiffs' injuries. Your role also is to determine the  
11 amount of losses that were the proximate result of this  
12 accident.

13           And -- and what you are supposed to do when  
14 considering that, as the judge's instruction says, you take  
15 into consideration the nature and extent and duration of the  
16 injuries you believe the evidence shows they sustained. And  
17 you will decide upon a sum of money to reasonably and fairly  
18 compensate them for their damages.

19           Liability is undisputed. Defendant admitted fault at  
20 the scene of the accident, she told you that. Finally,  
21 through her lawyers when they responded to the lawsuit in  
22 which the plaintiff was forced to file, they eventually  
23 admitted fault in their amended answer. She is responsible  
24 for all harms and losses. We've talked about that a little  
25 bit in jury selection and we're going to talk about it today.

1 And you heard the evidence of their harms and losses.

2 Proximate cause of an injury, Instruction No. 21  
3 tells you the proximate cause of an injury is the cause in  
4 which the natural and continuous sequence produces the injury,  
5 damage, loss, or harm, and without which the injury, damage,  
6 loss, or harm would not have occurred. Not a single witness  
7 took this stand, not a single document that has ever been  
8 presented ever said to you that without this accident  
9 happening, they wouldn't have gone to any of the doctors that  
10 they went to. Without this accident happening, they were not  
11 in the pain that they told their doctors they were in, and  
12 without this accident happening, they wouldn't have needed  
13 surgery for Christian, they wouldn't have disc injuries today  
14 for the rest of their life. That's what that instruction  
15 tells you. And there's no evidence otherwise.

16 Here's the evidence instruction. We talked a little  
17 bit in jury selection about this, how easy our standard is.  
18 It's an easy civil standard, which means more likely than not.  
19 Here's the scales of justice. When the trial starts out, the  
20 scales are even and level. When the evidence on one side or  
21 the other gets placed on the scale, that's when the plaintiff  
22 proves their case. Our burden is satisfied as soon as one  
23 little piece of feather hits our side of the scale, we win.  
24 And that's your duty as jurors to find that, because that is  
25 the easy standard that we have.

1           In this case, because liability is undisputed, and  
2   it's been admitted, the only thing that you are to consider  
3   are the injuries in this case. And the law tells us that in  
4   personal injury cases like this, causation of the injuries are  
5   established by medical expert testimony. All the doctors that  
6   took the stand that told you their injuries are related is how  
7   these cases are proved.

8           You heard Dr. Duke talk a little bit about he tried  
9   to say that all of these conditions on the MRI were there at  
10   the time of the accident. But what Dr. Duke admitted is that  
11   he has no evidence that they had any symptoms, there is no  
12   evidence of any symptoms, there's not evidence because they  
13   did not have any symptoms.

14          And what this jury instruction tells us is even if  
15   you want to suggest that anything on their MRI predated this  
16   accident, it was a dormant asymptomatic condition. And this  
17   accident, even if you want to assume their version of Dr.  
18   Duke, which we'll get to later, it was aggravated by this  
19   accident. And the plaintiffs are still entitled to recover  
20   the full compensation from their disability. Even if they had  
21   anything degenerative, which we'll get to later that they did  
22   not, but even if you believe that, she is still responsible  
23   for all of the harms and losses in this case, and that's what  
24   the judge instructed you on.

25          So let's talk about the injuries that were proven

1 through the doctors. Christian and Maria sustained permanent  
2 injuries to their low back and now have to suffer with chronic  
3 permanent pain for the remainder of their life. That is the  
4 evidence that you heard all week long.

5 And there's only one cause for their permanent  
6 injuries. And it's this accident. You heard of no other  
7 causes, no other accidents, no other treatment other than this  
8 accident. And that's the evidence.

9 All treating physicians said that Maria's condition  
10 was related. You heard from Dr. Adair, Dr. Koka, Dr. Coppel,  
11 and Dr. Lanzkowsky. These are all treating physicians that  
12 have an obligation to diagnose them correctly. And if they  
13 don't, they're subject to liability for not treating them  
14 within the standard of care. They have an obligation, a  
15 hippocratic oath that they took to help these people get  
16 better.

17 She had immediate pain in her neck, she had immediate  
18 pain in her stomach from the seat belt, she had chest  
19 contusions. They certainly don't deny that the bruising from  
20 the seat belt and the chest contusions is not related to this  
21 accident. She had right shoulder pain also from the seat  
22 belt. And she had low back pain. These were all reported  
23 either at UMC or within a few days later to Dr. Adair.

24 Her injury to her low back is a disc injury after the  
25 ligaments that we discussed. But the doctors have testified

1 to and what we've discussed in opening statements is that  
2 here's your spine, and around your spine you have muscles and  
3 ligaments. All of it is torn and potentially injured and  
4 disrupted. When the muscles around it heal, which is the  
5 strain or the myofascial strain that Dr. Duke wanted to talk  
6 about, then the discs are left. And that's what produces the  
7 pain.

8 This is proven by the MRI. And keep in mind this MRI  
9 was taken and proved her disc injuries before she was ever  
10 released from her initial treatment. It is still part of the  
11 algorithm to be able to diagnose and treat what's causing her  
12 pain. The MRI taken a few months later proved this.

13 Then in the same course of treatment after the  
14 accident, but for the accident, she goes to Adair. But for  
15 the accident, she gets her MRI. And but for the accident, Dr.  
16 Adair is now referring her to Dr. Coppel. He does injections.  
17 These injections are to help with the pain, but to diagnose  
18 the cause of the pain. These are also proved as to her disc  
19 injury.

20 All of this symptomology and treatment was caused by  
21 the accident, and there's no evidence of any other traumatic  
22 event. So you can't speculate that there might have been  
23 something else that happened or there might have been  
24 something before, because it's just not true, and there's no  
25 evidence of it.

1           What we also learned is this type of disc injury  
2 worsens over time. In opening, I talked a little bit about  
3 these are young people. They look healthy, because they're  
4 young. The disc injury is inside their bodies. Of course,  
5 you're only going to see that on an MRI. But it's the type of  
6 condition that worsens over time. And the effects of that  
7 disc are going to have a major impact later in their life.

8           Dr. Adair, just to refresh your memory a little bit  
9 about her, she's a chiropractor, she's the treating physician  
10 of Maria, obligation to help her get better, 20 years  
11 experience she's been doing this. She's never testified in  
12 court before. And that's somewhat interesting, because Dr.  
13 Duke was here 80 times for the defense over the last four  
14 years. She's never been here. And she told you she diagnosed  
15 this injury within three days of the accident. And her  
16 opinion, to a reasonable degree of medical probability, which  
17 is our standard, related to the accident.

18           She also told you when she was released from her care  
19 that her low back never went away. That she ordered the MRI,  
20 the MRI was positive, and she referred her to Dr. Coppel.

21           Let's look a little bit at evidence, which is her  
22 medical record. When she presented three days later, she had  
23 a headache pain, 6 out of 10; neck pain, 6 out of 10; right  
24 shoulder pain, 7 out of 10; lower back pain, 6 out of 10.

25           She also went on to talk about her activities of

1 daily living. She confirmed that Maria was unable to perform  
2 the normal daily living activities without moderate pain. And  
3 it was difficult for her to sleep most nights. Even more  
4 important, Dr. Adair's diagnosis was a low-back sprain/strain  
5 with segmental disfunction. Already talking about the disc.  
6 And she talked about that all of her symptoms came on as a  
7 result of the accident. And she confirmed that in her  
8 professional opinion to a reasonable degree of medical  
9 probability, it was related to the 11/12/11 motor vehicle  
10 accident.

11 She also confirmed her injuries were permanent when  
12 she was released from her care. And she gave a reason why in  
13 her report. She told us in her report upon release that 15 to  
14 20 percent of the people don't recover because of injury to  
15 the facet joints or the disc. And it's the same type of pain,  
16 lingers on because of that.

17 And interestingly, this is the same exact diagnosis  
18 that Dr. Coppel diagnosed, and Dr. Lanzkowsky ultimately  
19 confirmed.

20 Here's the MRI. The MRIs don't lie. And her MRI  
21 showed an annular tear at L5-S1. And we talked a little bit  
22 about that. Why is it the L5-S1? He's got an L5-S1, she's  
23 got an L5-S1. It's no surprise, they're both in the same  
24 accident with a blunt-force trauma getting thrown forwards and  
25 backwards in a seat belt. That's the first disc to go.

1 That's why they both have similar injuries to the disc, but  
2 they don't have exact same injuries, and the exact same  
3 treatment is not required.

4 Looking at Dr. Duke's report two years later I  
5 thought was very interesting. Although Dr. Duke cannot admit  
6 to you, because it would ruin their defense that anything's  
7 related, but he can't admit to you that anything's related,  
8 but he had to admit that there was a finding on her MRI, and  
9 that she does have a diagnosis of spondylolisthesis, a  
10 condition he admitted on the stand is an operative condition,  
11 even, that he operates on that, and it is a disc condition.  
12 He just uses different fancy words to try and confuse the  
13 issues. But he even diagnosed a disc problem for Maria.

14 Dr. Koka, we all remember Dr. Koka. He's a  
15 board-certified family practice. He -- his office treated  
16 her. A Ms. Rodriguez, his physician assistant. He owned  
17 several urgent cares. He's a medical director of chiropractic  
18 offices. He oversees chiropractic care. And that's what his  
19 office's role was in this case.

20 He concluded, based on his review of all the evidence  
21 and what his office did, is her disc injuries are related to  
22 the accident. And yes, you heard him, to a reasonable degree  
23 of medical probability. That's the proof. So now we have two  
24 doctors confirming the injuries.

25 Let's look at his records a little bit. She comes



1 into Dr. Koka 10 days later. Neck, low back, shoulder,  
2 abdominal, all consistent with what she already reported. The  
3 pain diagram, you remember the pain diagram, where Dr. Koka  
4 was telling the defense, when people circle that pain, that's  
5 the issues that they still have ongoing. And that's what he  
6 instructs his physicians assistants to do.

7 She still has pain complaints. Her shoulder is a  
8 little bit better on December 27th. But she still has neck  
9 and back and a little bit of abdomen. Her abdomen's a little  
10 bit better. December 27th.

11 She still has it January 24th, neck, back, a little  
12 bit of abdomen. The shoulder is better.

13 February 14th, the last time he saw her, ongoing  
14 problems in these areas. Now the abdomen's better. So those  
15 aren't the original diagnosis, like they would want you to  
16 believe. And Dr. Koka told you he wasn't too happy with the  
17 way they were documenting things. And yet they want to use  
18 these records as the smoking gun that doesn't exist. Dr. Koka  
19 told you that's what that means, and she still had ongoing  
20 problems upon release.

21 Dr. Adair referred to Dr. Coppel and that's why Dr.  
22 Koka stepped out of the equation. Because Dr. Coppel was  
23 taking over, the pain management medications, what was  
24 necessary. You only heard from his deposition, but that's  
25 still as if it was given in court here today. He's a

1 board-certified pain management specialist from Johns Hopkins.  
2 He actually treated them, has an obligation to get them  
3 better.

4 He's subject to liability for misdiagnosing them, and  
5 is certainly not going to inject needles into their body if  
6 they don't need it, if it's not protocol or recommended. His  
7 conclusions are it's related to the accident.

8 Let's take a look a little bit of his records. His  
9 diagnosis was a lumbar disc displacement and a lumbar facet  
10 syndrome. The same thing that Dr. Lanzkowsky diagnosed. And  
11 he confirmed the pain is originating from several locations  
12 including the disc or the facet joints. Same exact thing Dr.  
13 Lanzkowsky diagnosed a year and a half later.

14 In his deposition, he was asked whether it could be  
15 degenerative or traumatic. He said, Well, somebody 27 years  
16 old to have that severe desiccation, it's unlikely without a  
17 traumatic event. The trauma is what caused that disc to  
18 become degenerative. And it's no surprise that it looks  
19 degenerative on the MRI, because that was done four -- three  
20 months after this accident. After the trauma happened it  
21 started to degenerate quickly from the trauma. And that's why  
22 it looks like that.

23 After -- here's his injection. So this is the actual  
24 procedure that Maria underwent. And this is a real surgical  
25 procedure. She has to get sedated, they have a sedation

1 nurse, Dr. Coppel. He gave her sedation. And they have a  
2 preoperative diagnosis, a postoperative diagnosis, and the  
3 procedure. He did injections into her body with the risk of  
4 death, paralysis, infection. There's all kinds of  
5 complications and risk that go along with these procedures.

6 Dr. Lanzkowsky, she's released from Dr. Coppel, and  
7 with pain, instructed to follow-up as needed. She sees Dr.  
8 Lanzkowsky approximately 17 months later. His conclusions are  
9 the same. Her disc injuries and pain are related to this  
10 accident.

11 He also confirmed, based on his injections, that she  
12 will need radiofrequency rhizotomies. The rhizotomies are  
13 much different than a surgery or an L5-S1 fusion. For her,  
14 it's the facet joints. And with Dr. Lanzkowsky described to  
15 you, the facet joints are the little nerves in the back of the  
16 spine that get irritated from her disc injury. And so what  
17 they do, they stick the needles, and they go in and they burn  
18 off these nerves to take the pressure out so she's out of pain  
19 from her facet joints. He told you that that procedure would  
20 leave her pain-free for about a year. Every procedure she  
21 gets of those, he said, approximately one a year, she could  
22 have. There's no limit. And that would keep her pain-free  
23 for a year.

24 So that's what's the recommended treatment for her.  
25 Not a fusion; rhizotomies.

1 Dr. Lanzkowsky also confirmed that she will be in  
2 pain for the rest of her life and that these disc injuries do  
3 not get better. He also confirmed as people get older,  
4 including Maria, the pain will increase, it will get worse,  
5 her pain will get worse, everything gets worse.

6 Here's his records. She went to him with low-back  
7 pain. That helped his diagnosis. This was on December 2nd,  
8 and her pain level was a 4 and a 3. His office, Dr. Zacharia  
9 Chambers, you heard about, moved to Alaska, board-certified  
10 pain management, works at his group. And he's the one that  
11 performed the procedure. And he diagnosed a lumbar facet  
12 syndrome. And he did those following injections. Another  
13 surgical procedure for injections. Carries with it the same  
14 risks.

15 His records before she was released, he recommended  
16 that she is a great candidate for the radiofrequency ablation  
17 procedure. She had this diagnosis. That's the evidence.  
18 Nobody came into this courtroom to tell you she did not need  
19 that who was a pain management anesthesiologist who performs  
20 those injections. Not a single person. All treating  
21 physicians agree Maria's injuries, including her disc  
22 injuries, are related to this accident. And there's no  
23 evidence of any other cause.

24 Once again, in these type of cases, you have to rely  
25 on the expert testimony that was stated to a reasonable degree

1 of medical probability. All of her treating physicians  
2 testified about standard.

3 Let's talk about Christian's injuries. All of his  
4 treating physicians testified that his disc injury and  
5 low-back condition is related to this accident. He had a  
6 lumbar strain initially on top of his disc injury. When that  
7 healed, his pain was still there. And this is what he has.  
8 He has disc disruption of a Grade 5 fissure, where this is all  
9 supposed to be intact but got ripped from the accident and is  
10 now leaking fluid. And that fluid has chemical irritations  
11 that cause pain. It also ruins his disc forever. This never  
12 closes back up to be normal again. This just keeps opening  
13 and opening wider and wider, and is a damaged, ruined disc for  
14 life.

15 That's why -- and this is also seen on the MRI. MRIs  
16 don't lie. It's proven by the injections that Dr. Coppel did  
17 in the initial course of treatment after the accident. It's  
18 proven by the discogram that Dr. Lanzkowsky did, that he  
19 explained to you in detail what that was about. And it's  
20 undisputed that these were caused by the violent impact.

21 He went to Dr. Adair. Remember her? Within three  
22 days of the accident, she's diagnosing his low-back problems.  
23 His pain never went away. In a single medical record was he  
24 ever pain-free in his low back? Not a single one. We know  
25 Maria had reports of good pain and no pain on certain visits.

1 Never for Christian.

2           One thing that I think is very important when you go  
3 back in that jury room, these are two separate cases. They  
4 need to be looked at, reviewed, and decided upon on their  
5 merits separately. If you don't like Maria, you can't take  
6 that out on Christian. If you don't like Christian, you can't  
7 take that out on Maria. You can't give one less because you  
8 think you were fair with one. You can't give one more because  
9 you think you were unfair with another. Keep them considered  
10 separately in each case.

11           There's medical evidence for Christian. He reported  
12 three days later with headache pain, 4 out of 10, neck pain, 4  
13 out of 10, and low-back pain, 4 out of 10.

14           She diagnosed lower extremity neuritis radiculitis.  
15 That means he has some disc symptoms already three days after  
16 the accident. She also diagnosed a segmental dysfunction in  
17 his low back. All coming on as a result of the motor vehicle  
18 accident. And she also confirmed she believed his injury was  
19 to a disc while under the care of Dr. Adair.

20           You heard the evidence of the MRI that he had L5-S1  
21 disc protrusion and narrowing. Which means this disc right in  
22 here is protruding outward and it's getting real narrow in  
23 there, because of that leak. That's why it's starting to  
24 narrow, because this disc is no longer full of the jelly donut  
25 juice. No more jelly in his donut.

1 Dr. Duke two years later, although he's not going to  
2 admit it's related, he also had a disc condition. He also  
3 noted a problem in the disc in his low back. He just can't  
4 say it's related. What is confirmed is his pain never went  
5 away. On December 20th, he reported to his doctors he was  
6 having increased low-back pain with driving in excess of an  
7 hour. Christian could drive for an hour before this accident.  
8 Christian could work his heavy job prior to this accident  
9 without pain. He could do all of those things. He's 27 years  
10 old and can do everything without pain before this, and  
11 there's not a single bit of evidence that says otherwise.  
12 Bending forward now causes him pain. He could bend forward  
13 before this without causing pain.

14 They sent him for an MRI because his pain doesn't go  
15 away, and he has a positive disc protrusion. These are Dr.  
16 Adair's entries. And what does she say? I'm going to refer  
17 to pain management consult evaluation. It's time for her to  
18 send him to the specialist.

19 March 20th, seeing Dr. Coppel. He is to follow up  
20 with Dr. Coppel for future treatment and released from her  
21 care. All Christian ever did in this case was follow his  
22 doctor's orders. Follow his doctor's advice for telling him  
23 this is what you need to do, this is what's common, this is  
24 protocol.

25 His pain never went away when he got released. She

1 talked about future treatment already. Saying he was unable  
2 to fully recover from his injuries, it's left him with  
3 continued low-back and weakness. And this weakness could  
4 predispose him to future aggravation, injury, or pain, which  
5 would not have occurred but for this accident.

6 Coming back to the proximate cause jury instruction.  
7 When you have stuff that would not have been there except  
8 because of the accident, it's related to the accident. Again,  
9 she recommended that he continue with Dr. Coppel.

10 He also saw Dr. Koka. He, too, agrees that  
11 Christian's disc injuries are related to the accident. This  
12 was his initial diagnosis on 11/22, shortly after the  
13 accident. And here's what's interesting about the case. That  
14 people were really coming in, try and exaggerate their  
15 symptoms. Doctors told you this pain diagram would have been  
16 all marked up. You'd probably be able to barely see the body,  
17 because they would be saying, Oh, my neck, my head, my mid  
18 back, my low back. That wasn't the case.

19 They would also be trying to tell you their pain  
20 levels were through the roof, an 8, 9, 10. That's not what  
21 these people were doing. They were being honest and truthful  
22 about their injuries and their medical records. And they want  
23 to fault him for that.

24 He was referred to Dr. Coppel. Dr. Coppel, too, has  
25 proven that his disc injuries are related to this event and no



1 other event. On March 2nd, he performs his injections. And  
2 look at his preoperative diagnosis compared to Maria's. It's  
3 a little bit different, because his pain is different. And he  
4 -- his MRI's a little bit different. And this is what he's  
5 come up with. Which is exactly what he ends up happening.

6 He rates his pain a 5, and it can go from the 4 and  
7 6, and it waxes and wanes. You herd that term wax and wane,  
8 comes and goes. When you have a disc injury, pain doesn't go  
9 away. When you have disc injury, it comes and goes. When you  
10 have a disc injury, the MRIs show it. When you have a disc  
11 injury, these injections help these doctors pinpoint whether  
12 it's the disc or the facet joints which you learned about.

13 We have the initial injections, but the pain has  
14 returned. Consistent with a disc injury. And he recommended  
15 a second -- actually, let's come back to that. He recommended  
16 a second or even a third injection at that time. They want to  
17 fault you for treating him, for the client's treating too  
18 much, and it's so much, and it's excessive. His doctor  
19 recommended two or three procedures. So he goes and does a  
20 second one, to give it a good try to get better, on 5/18, two  
21 months later. Same diagnosis. Same disc levels.

22 And again, the whole degenerative argument is a sham,  
23 it's a red herring, it's to distract you from the real issues  
24 in the case. Because it doesn't matter if it's degenerative  
25 or not, it's unlikely that these people that have these

1 conditions in their spine without a traumatic event because of  
2 their age.

3           The evidence of Dr. Lanzkowsky, the difference is he  
4 performed a discogram based on his MRI, a different course of  
5 treatment. He concluded his injuries are related, and he also  
6 confirmed of the disc tear. The other thing about how these  
7 injuries get worse, Dr. Lanzkowsky told us in Christian's line  
8 of work, he's not going to be able to do that work in probably  
9 10 years. Maybe a little sooner, maybe a little later, but  
10 approximately 10 years from now he's not going to be able to  
11 do that. He is now considered damaged goods. And in his line  
12 of work, when you don't have a full education, you heard from  
13 the stand, got a GED in high school, when you don't have a  
14 full education and your skills are you and your body, and  
15 that's how he provides for his family, that is all going to be  
16 altered and turned upside down in 10 years. That's the  
17 testimony.

18           When he went to Dr. Lanzkowsky in November, his pain  
19 was a 5. Dr. Lanzkowsky told you he is a stoic person. He  
20 does not outwardly express pain. He has a high tolerance for  
21 pain. He does what he has to do.

22           Dr. Lanzkowsky performs this painful procedure. Told  
23 you it's painful. Why is it painful? Because they're  
24 injecting pressure into discs that cause pain. They inject  
25 dye. A foreign material into your disc space to show the

1 leak. Those results don't lie. When the dye comes through  
2 and shows the actual tear and leak.

3 Now, you heard Dr. Duke, who doesn't do discograms,  
4 doesn't relate anything possible to an accident, but he wanted  
5 to sit here and actually tell you people that Dr. Lanzkowsky  
6 didn't know what he was doing, and that that test isn't  
7 reliable. Well, I submit to you there's no basis for that.  
8 Because what Dr. Lanzkowsky does, he does the injection in  
9 this level of the spine, in this level, this level, this  
10 level. And Christian never reported pain. He doesn't know  
11 what level he's injecting. He just says, Do you feel pain?  
12 And when he says, No, no, no, that means he's being truthful  
13 and this is being -- this is a reliable study. It's not  
14 surprise when you put it in there that it caused pain.

15 And it caused the same amount of pain that he was  
16 already experiencing. Because if he said, Oh, it's an 8 or a  
17 9 or a 10, then they know it's not a reliable study. But when  
18 it's the same pain reproduced, this is as reliable as it gets.

19 Then what happens is they send it for a radiological  
20 study called a CT lumbar discogram study at a radiologist.  
21 And that shows there's a Grade 5 annular fissure, which is  
22 positive for a disc tear and leak. And that's exactly what  
23 this shows. Dr. Lanzkowsky's opinion and his records back on  
24 December 13, is symptoms in diagnostics point to the L5-1  
25 level tear as the pain generator.

1           The next step into the treatment program for  
2 Christian, a consultation with a neurosurgeon. You hear Dr.  
3 Kaplan take the stand. People don't want to come see me.  
4 They don't want to come to me, because they don't want to hear  
5 what I have to say. They don't want to hear that I might need  
6 surgery. They're scared to see him. He's board-certified,  
7 he's his treating physician and has an obligation to get him  
8 better.

9           And you heard when they started talking about Dr.  
10 Duke's credentials and tried to play him up like he's the  
11 smartest guy on the planet. Well, this guy's pretty smart,  
12 too. And he concluded that his disc injuries and his need for  
13 surgery are related to this event. That's the evidence that  
14 you have to rely on in this case.

15           He testified that he will need his L5-S1 fusion due  
16 to this accident. He also confirmed Christian won't be able  
17 to do his job in this type of heavy-duty capacity in about 10  
18 years. January 15th, this is the medical evidence, the  
19 records in the case. Dr. Kaplan says he's evidence of obvious  
20 pathology. It's obvious to Dr. Kaplan, that's what he does  
21 every day. He reviews MRIs every day, medical records. It's  
22 obvious to him that this is his pain generator. It's also  
23 obvious that he recommended the procedure because he has an  
24 obligation to present all options to his patients.

25           The evidence in this case, which was undisputed even

1 on cross-examination, injuries are related to this accident  
2 and there's no evidence of any other event. Our scale isn't  
3 even anymore. This scale -- this is all the medical evidence  
4 that we presented to you. The injuries match up and are  
5 related to this event. Dr. Duke stands alone, by himself, and  
6 we'll get into Dr. Duke and the credibility of him as a  
7 witness in just a minute.

8 But after Dr. Duke testified in this case, there was  
9 some interesting things that he said. I asked him on the  
10 stand, Can you explain the cause of their ongoing pain? I  
11 don't know if you remember that. But I asked it a couple of  
12 times and I said, I'm going to give you one more opportunity  
13 to tell these people on this jury, what is the cause of their  
14 pain? Because he's a pretty smart guy. Right? He couldn't  
15 tell you. He doesn't know.

16 And remember the reason he doesn't know, because if  
17 he tells you the real reason, he has to agree with everyone  
18 over here. That makes Dr. Duke our witness, because he can't  
19 provide an alternative explanation for you.

20 I talked to you a little bit about in opening what  
21 the defense were going to be. I called them the onion  
22 defense, because it's like an onion. If the first layer of  
23 the defense doesn't work, they go to a new one. And when that  
24 one doesn't work, they go to another new one. And when that  
25 doesn't go to work, they go to another new one.

1           Well, do you remember they first argued she wasn't at  
2 fault? Even though she admitted it at the scene. And their  
3 answer, they couldn't either admit or deny the allegations,  
4 even though she admitted it at the scene. Really? That was  
5 their first attempt to give you an onion defense. The  
6 defenses that have no merit.

7           Let's take a look at some of the other defenses. In  
8 their answer they asserted this defense. That there's other  
9 people and defendants have no control that may be negligent.  
10 Have you heard anybody else come in this courtroom to say,  
11 Hey, somebody else did this. Not us, it wasn't us. It was  
12 somebody else. Well, that was another one they tried to  
13 assert at the beginning.

14           Then they tried to say that all of her injuries were  
15 caused by their own negligence. So they actually attempted to  
16 blame the plaintiffs at the beginning of this case for their  
17 own negligence. That later proved to be false, because she  
18 had to admit 100 percent of it.

19           Then they said that it's barred by the absence of any  
20 breach by the defendants. So they're still asserting that  
21 same defense, they're not responsible, even though she  
22 admitted it at the scene, and the facts of the accident are  
23 undeniable.

24           Then they said, plaintiffs assume the risk of an  
25 injury and can't recover, because they assume the risk of an

1 injury. Did you hear any evidence anybody assumed a risk,  
2 that they were driving their car the speed limit and somehow  
3 assumed the risk themselves? These are the type of defenses  
4 that are asserted to deny paying full compensation for a case.

5 Then they said, all right, we're at fault. We're at  
6 fault. We're good people. We're at fault. But then they say  
7 they're not injured. Dr. Duke has the audacity to say that  
8 Christian wasn't injured except for nausea and vomiting in  
9 this case. This alone, this position advanced by the defense,  
10 you can toss out every single thing that Dr. Duke said to you  
11 about everything, because the credibility and believability of  
12 a witness, you can disregard everything he says if you don't  
13 believe it. And to say that these are the only things that  
14 happened to Christian in this type of accident, that's  
15 offensive. And it should be offensive to you. Because  
16 changing the truth in a case is dangerous. People should not  
17 be allowed to change the truth.

18 Here's the instruction that the judge gave you. The  
19 credibility and believability of a witness should be  
20 determined by his or her manner on the stand. So when Dr.  
21 Duke was on the stand, you remember him, how he reacted,  
22 wouldn't answer any of my questions, had to have an  
23 explanation about everything, couldn't say yes or no.

24 His or her relationship to the parties. You heard  
25 Dr. Duke's been hired by the defense not once, not twice.

1 Actually, if coming into court giving testimony for the  
2 defense 80 times over the last four years, the relationship to  
3 the parties, his or her fears, motives, or interests. Well,  
4 we know what his motives were. You saw me write down his  
5 motives, which was his time and \$1,000-an-hour motives. And  
6 you had an opportunity to observe how he did on the stand and  
7 what the reasonableness of his statements were. Well, he  
8 can't tell you the cause of the pain, when he admits to you  
9 that they were truthful? Throw his testimony out the door.  
10 There's Dr. Duke.

11 He told me his services aren't for sale.

12 MR. BAIRD: Objection, Your Honor.

13 THE COURT: Yes?

14 MR. BAIRD: Improper argument again. This was the  
15 hired gun argument. We objected in opening, as well.

16 MR. SIMON: No, I disagree with that, Judge. He  
17 testified on the stand that his services are for sale and that  
18 when he creates an [indiscernible] report, that's --

19 THE COURT: I didn't allow it in opening, because I  
20 felt it was argument. It's closing now. You can go.

21 MR. SIMON: Thank you, Your Honor.

22 Dr. Duke told you that when the defense hires him,  
23 his services are for sale. He provides services to review  
24 cases on behalf of defendants and give whatever opinions  
25 presumably to assist the defense. His price varies, because



1 it depends on how much time he gets to put in a case. His --  
2 his reports that he produces are known products. The defense  
3 likes to use him and likes to hire him for a reason. Because  
4 he ignores the treating physicians. He ignores all of the  
5 treating physicians who took the stand, he took it completely  
6 the opposite position. It can't be both ways.

7 He ignores the tests, he tries to ignore the MRIs,  
8 the discograms. And he just wants to try and tell you that  
9 everything existed before this accident happened.

10 MR. BAIRD: Same objection, Your Honor.

11 THE COURT: Again, it's argument.

12 MR. SIMON: Dr. Duke does not have a doctor/patient  
13 relationship with these people. And that is important,  
14 because he has no obligation to get them better. He had no  
15 liability for misdiagnosis. He has no culpability for the  
16 opinions that he gives.

17 And you heard all throughout this case, well, Dr.  
18 Duke reviewed everything. Well, there's no surprise why he  
19 reviewed everything, is there? He wants to get every single  
20 piece of information, whether it's relevant to his opinions or  
21 not, because he gets to bill for it. Dr. Duke charges \$1,000  
22 an hour to review records, to sit in a room and not treat  
23 people and help them get better, but to look at records and  
24 formulate a defense.

25 Dr. Duke could take three minutes to look at MRI

1 films, he charged 500 bucks. He gets on the phone for 15  
2 minutes, he's charging 25 -- 250 bucks. Then he comes into  
3 trial, \$5,000. The exam he performs, \$1,000. Here's what he  
4 testified to in this case. So for Christian, \$10,600, and for  
5 Maria, \$9,200.

6 On this case he made almost three times more than  
7 poor Dr. Adair, who treated them for six months. There's no  
8 -- again, he came up with the only accident-related diagnosis  
9 for Christian was nausea and vomiting.

10 That's all you need to ask yourself when you go back  
11 in that jury room. Let's talk about Dr. Duke, who wants to  
12 throw his testimony right out the window? Raise your hand, if  
13 you all agree, don't even talk about Dr. Duke. Go right to the  
14 evidence in this case. Ask yourself, really? Really, Dr.  
15 Duke?

16 Again, in personal injury cases, causation of  
17 injuries has to be supported by medical evidence and proven by  
18 the doctors. Dr. Duke can't tell you what's causing their  
19 pain.

20 All right. So that was their second  
21 layer-of-the-onion defense. Well, if they were injured, it  
22 just wasn't that bad.

23 Well, even Dr. Duke and every treating physician told  
24 you they're being truthful, not exaggerating or trying to  
25 malinger.

1 Another instruction for you to rely on in this case  
2 is yes, you have to rely on the evidence. Only the harms and  
3 losses, you can't look at anything outside of the witnesses or  
4 the documents on this stand. But you can also bring your  
5 common sense. And you all promised me in jury selection you  
6 would use your common sense.

7 So the evidence shows that the plaintiffs are honest  
8 to their physicians. Even Dr. Duke had to admit this. In his  
9 deposition he was asked, "I don't have an independent  
10 recollection of seeing her, but I don't have any documentation  
11 that she exhibits behavior that would indicate that she was  
12 untruthful."

13 Well, what about Mr. Lopez? No. Under oath, Dr.  
14 Duke admitted they were truthful. There's findings on the  
15 MRIs that are consistent with their pain complaints. It all  
16 matches up. There's the injury. All the doctors pointed to  
17 it and told you that's the injury. The discogram doesn't lie.  
18 The CT done after the discogram doesn't lie. The injections  
19 they get. If someone is really trying to exaggerate an injury  
20 that doesn't exist, you're reasonable people. Is it  
21 reasonable that someone's really going to take the needles  
22 that Dr. Lanzkowsky showed you right here and stick them into  
23 their spine on more than one occasion? People aren't going to  
24 do that. It doesn't make sense.

25 Their pain levels, if they're really trying to make a

1 case here that doesn't exist, their pain levels are going to  
2 be 8, 9, 10. They're going to be in more than one body part.  
3 They're not going to improve with treatment, like they did  
4 with Dr. Adair. Like they did with the injections that they  
5 got, they had improvement for a short time.

6 And other body parts healed. Her abdomen healed, her  
7 neck healed, her shoulder healed, her headaches went away.  
8 His neck pain and headaches went away. You don't improve and  
9 heal in certain parts of your body if you're really trying to  
10 make something that's not there.

11 Use your common sense. They're not going to go fool  
12 every doctor, including Dr. Duke, who's sitting there looking  
13 for this stuff. He's poring through all of the records, all  
14 of their depositions. They're not going to fool these  
15 doctors, and Dr. Duke. These people in bringing this case had  
16 to be subjected to criticism in every turn. The defense has  
17 subpoena power to go out and get whatever evidence that  
18 relates to this case against these people. They had to sit  
19 through a deposition and be questioned about everything and  
20 criticized. They had to show up to Dr. Duke's office and be  
21 questioned and subjected to examinations.

22 Are they really going to fool everybody in this case?  
23 Use your common sense. The answer is no.

24 Their version of the accident has been the same in  
25 every medical record. If things were different, they weren't

1 telling the truth, the version of the accident and how it  
2 happened isn't going to always be the same.

3           They also have different injuries, different  
4 treatments, and different periods of treatment. They went to  
5 Dr. Adair, she got released a lot earlier than Christian did.  
6 She got one round of injections with Coppel, he got two. They  
7 go to Dr. Lanzkowsky, he does facet injections for her. For  
8 him, he does a lumbo-discogram [sic], because that, he has a  
9 different condition. That's why he got sent to the  
10 neurosurgeon and she did not. Because Lanzkowsky, the pain  
11 management doctor, can take care of her condition, whereas his  
12 condition requires a surgeon.

13           The evidence has revealed that this defendant is in  
14 denial of the evidence and the truth in this case. Please  
15 don't let this defendant change the truth of the evidence.

16           The next layer, if -- if they are injured as bad as  
17 the medical records and testimony prove, then the treatment  
18 was unreasonable, and the cost. And you heard all of that  
19 evidence, trying to talk to you about CPT codes and that --  
20 oh, well, this is too -- too much for this procedure.

21           Let's look at really what happened. Dr. Koka  
22 testified. Well, Dr. Coppel's bills are actually too low.  
23 About 20 grand too low. Because he did the injections in his  
24 office, not in a surgery center. So to come in here and say  
25 that these bills are too high is not supported by the

1 evidence.

2           Interestingly, in Dr. Duke's deposition, he confirmed  
3 that he was not going to testify to any medical bills at  
4 trial. Under oath, he said, yes, correct. But then he had to  
5 come in and try and save the day for them, because this was  
6 their new defense that they're bringing at trial. And so he  
7 attempted to say, oh, the costs, yeah, they're a little  
8 unreasonable. Or we'll go with the defense numbers.

9           This is a sheet of paper created by the defense,  
10 spoon-fed to Dr. Duke on the stand so that he would just agree  
11 with them and say, yeah, these look reasonable. They weren't  
12 his calculations. And he didn't even know the cost of an  
13 L5-S1 fusion. But I questioned him. Doctor, do you have an  
14 opinion as to the cost? Remember, Mr. Baird asked him and he  
15 looked over at this board, and he looked at it and he goes,  
16 Well, it seems high. That's all he could tell you.

17           And then when I questioned him, I went down the line  
18 item, he couldn't tell me anything. So I erased it all. He  
19 doesn't know, that's not evidence that any of the bills are  
20 excessive.

21           Then the next offense was somehow I heard, Oh, the  
22 plaintiffs are involved, or you talked to your lawyers. Well,  
23 thank God these people retained a lawyer. Thank goodness,  
24 because they've been criticized from Jump Street for being a  
25 victim of a car accident. They don't speak English, it's not

1 their first language, they don't know where to go, what to do.  
2 And now the defense is so desperate, they want to blame  
3 lawyers. Have you heard any piece of evidence that a lawyer  
4 did anything wrong in this case? The answer's no. So there's  
5 the next layer of the onion.

6 Then there was something about a gap in treatment,  
7 that they left Dr. Coppel and there was this big gap between  
8 that time and Dr. Lanzkowsky. 17 months. Dr. Duke was asked  
9 about that. Do you fault the plaintiffs? Do you fault them  
10 for not treating during that period of time? Their injuries  
11 were already confirmed, diagnosed, and established what they  
12 had wrong with them, and they try to return and live with  
13 their pain.

14 All doctors said this is common, this is how it  
15 works. You don't treat forever. That's when they brought up  
16 the calender defense. So I'm a little confused, and you  
17 should be, too. Because on one end they're saying they're not  
18 injured, on the next end --

19 MR. BAIRD: Objection.

20 MR. SIMON: -- they're saying --

21 MR. BAIRD: May we approach?

22 THE COURT: Hold on.

23 MR. BAIRD: He's --

24 THE COURT: Sure.

25 MR. BAIRD: May I approach?

1 THE COURT: Uh-huh.

2 (Bench conference.)

3 MR. BAIRD: You certainly made your numbers  
4 [indiscernible]. Should have been brought up in evidence.  
5 [Indiscernible] speculation of counsel [indiscernible].

6 MR. SIMON: It's just argument, Judge, based on the  
7 evidence of the past [indiscernible]. It's not new evidence.  
8 And he can point that out in -- in --

9 MR. BAIRD: There's no basis [indiscernible] get  
10 injections every month. You can just multiply [indiscernible]  
11 testimony to see what [indiscernible].

12 MR. SIMON: And that's just argument, Judge. Because  
13 they're trying to -- they're trying to say that they didn't  
14 go, they didn't have any [indiscernible].

15 MR. BAIRD: They obviously --

16 MR. SIMON: And they're trying -- excuse me. Trying  
17 to say that the cost would be unreasonable and excessive  
18 already. But I'm just showing them what the cost would have  
19 been had they treated regularly. He can't point it out if  
20 it's not true.

21 MR. BAIRD: In the regular course of care it would  
22 have been -- should be produced.

23 MR. SIMON: I'm just basing it on the exact same care  
24 they already have.

25 THE COURT: So you're going to use -- okay. So hold



1 on. So you're going to say what it would have been --

2 MR. SIMON: If they continued to treat with Adair and  
3 Coppel.

4 THE COURT: And not had the gaps in treatment?

5 MR. SIMON: What's that? And not had the gaps in  
6 treatment.

7 THE COURT: You're not talking about in the future,  
8 right?

9 MR. SIMON: No.

10 THE COURT: Okay. You can do it.

11 MR. SIMON: Thanks.

12 (End of bench conference.)

13 MR. SIMON: All right. So on one end they're saying  
14 you're not injured. You don't get any treatment. And then  
15 out of the same -- out of the other side of the mouth they're  
16 saying, Well, you should have treated the whole time. Which  
17 one is it?

18 If they would have treated for the 17 months after  
19 Dr. Coppel, the additional bills would have been 63,000 for  
20 Christian had he continued to treat with chiropractic bills,  
21 follow up with some pain management injections, and maybe even  
22 had a repeat MRI during this timeframe.

23 Maria, if she would have continued with the same  
24 treatment that she had during the initial phase of treatment  
25 during the 17 months, her additional bills would have been

1 51,744. We know already how they feel about medical costs.  
2 We already know that they don't want to pay for any medical  
3 costs. These people did not incur this amount, because they  
4 tried to return to their daily living activities. They tried  
5 to return to their life. And now they're being faulted by  
6 some new onion defense called the calender defense. At least  
7 that's what I call it.

8 After all of the layers of their onion are gone,  
9 because none of them have any support in the evidence, every  
10 witness will have testified they were permanently injured and  
11 they have a disc injury.

12 We talked a little bit about in jury selection what  
13 harms/losses were, you all promised me that you would only  
14 consider the harms and losses. You would only rely on the  
15 evidence. You wouldn't consider anything outside of the  
16 evidence. And you promised me in jury selection that if  
17 anybody did not follow this standard and only considered the  
18 evidence of what goes into the verdict, then you would make  
19 sure all the other members do follow the rules, because that's  
20 the rules in the case for you. And we'll talk about that a  
21 little bit later.

22 But the harms and losses is what goes into the  
23 verdict. And I'm going to show you a verdict form in a little  
24 bit which you are going to have to fill out, where you all  
25 discuss the case and come up with numbers between all of you,

1 and your foreman will then write in the numbers and then sign  
2 it.

3           We're going to look at the past medical expenses, the  
4 future medical expenses, pain and suffering, and a separate  
5 item of loss of enjoyment of life. And these are two  
6 different things that you will need to discuss. And I hope  
7 you put a lot of effort in discussing them. Because what  
8 these two things do is they consider the impact that these  
9 injuries will have on these plaintiffs, Christian and Maria,  
10 and how it's going to affect their lives for the rest of their  
11 life.

12           And I told you at the beginning of this case, they're  
13 young people. They look healthy. It doesn't mean they're not  
14 in pain. And we know these disc injuries worsen, the pain  
15 becomes more pronounced, and how that affects their life  
16 becomes worse and worse and worse as they get older.

17           This is the instruction where the jury asks you -- or  
18 the judge instructs you that you can only consider the  
19 evidence of the harms and losses, and you can't consider or  
20 discuss facts which are not in evidence. So if any of you  
21 jurors start discussing facts that are not in evidence either  
22 on the stand or by an exhibit, you're violating your duty.  
23 You need to remind the other person that he can't do that.  
24 And if he still won't do it, or she, call the bailiff and tell  
25 him you need to get the judge involved. Because these

1 verdicts have to be based on evidence or it is a disservice to  
2 everybody in this courtroom and our entire judicial process.

3       Plaintiffs are entitled to full compensation.  
4 Whatever's been caused by this accident, they get full  
5 compensation, even though it's been rendered more difficult by  
6 reason of their existing state of health. So even if you  
7 think they had a little problem, they still get full  
8 compensation. If they return to work and still have continued  
9 pain, they still get full compensation. If she tries to be a  
10 housekeeper, she still gets full compensation. That's what  
11 the instruction says.

12       All right. Let's talk a little bit about Maria and  
13 what her harms and losses are for you to come up with a sum of  
14 money to fairly compensate her. She's young, housekeeper,  
15 aspiring mom. Hopefully, she'll be a mom and have a family.  
16 And we know how grueling kids can be. They're not easy. She  
17 enjoys her dogs. She enjoys the simple things in life.

18       And she's had no injuries prior to this accident, no  
19 symptoms, no pain in her back. The things that she could do  
20 is everything. She could clean houses, which she takes pride  
21 in. She takes pride in cleaning her own house. That's what  
22 she's good at. And now having to do that with pain, it  
23 affects her. It diminishes her quality of life. When you  
24 have back pain, everything you do involves your back; sitting,  
25 standing, walking, bending, kneeling, stooping, reaching. And

1 we're not saying that they are disabled. We're not saying  
2 they're totally disabled or that they're in a wheelchair, or  
3 that they -- they can't do things. They candidly told you on  
4 the stand that they can do things. And their pain varies.

5         You all know that pain is a very personal thing.  
6 People show pain in different ways. The out -- outward  
7 expressions that people have with pain are different. Dr.  
8 Lanzkowsky told you Christian is a very stoic guy. He doesn't  
9 show pain. He has a high tolerance for pain. It doesn't mean  
10 he's not in pain. You don't have to cry or wince. But it  
11 doesn't mean you're not in pain.

12         So when they're sitting here throughout a trial,  
13 sure, there's times that they can endure it. Sometimes  
14 they've got to move, sometimes they've got to stand.  
15 Sometimes they can sit longer, sometimes they can go for an  
16 hour, two hours, even three hours. And of course they're  
17 going to sit up here and answer all of the questions, because  
18 they're scared. They've never testified in court before.  
19 They're embarrassed. It doesn't mean they're not in pain.

20         She could perform her work and do whatever she wanted  
21 before this accident, without pain. That's the evidence that  
22 after this accident the pain never went away. So let's talk  
23 about the harms and losses. And here's what her verdict form  
24 looks like that you will have to fill out.

25         Here's her medical bills, \$43,266.47. And here's the

1 medical providers. She went by ambulance, North Las Vegas,  
2 from the scene of the accident. That's what they charge.  
3 Maria didn't get to say to the ambulance driver, Hey, how much  
4 is this going to be? Because I don't know if I want to go,  
5 because it might be too much money and I might get criticized  
6 for it later. So how much is this? She didn't get that  
7 choice. She doesn't set the fees for ambulance services for  
8 the City of North Las Vegas.

9 She's taken to UMC where she has no choice where she  
10 goes. She goes to UMC, a state-run hospital. She has no say  
11 in how much her bill is going to be at UMC. And is UMC really  
12 cheating everybody in Las Vegas, Nevada? Is that really the  
13 argument at this stage of the game? Their bill is too much  
14 money?

15 UMC doesn't care what she says. Their bills are  
16 their bills. They want their money because they're already  
17 operating on a \$50-million-a-year deficit. That's what they  
18 charge.

19 The radiologist, same deal; that's what they charge.  
20 She goes to the neck and back clinic, she's getting hands-on  
21 treatment for over five months. And they want to complain to  
22 you that this treatment is too much, or too much money?

23 She sees Dr. Koka's group. Seen there multiple  
24 times. She gets an MRI. That's what MRIs cost. Sorry, this  
25 is what the providers charge. That's what it is. And Dr.

1 Coppel, those are for injections and actual surgical  
2 procedures, only \$8,500. And you were told they were way too  
3 low.

4 Centennial Surgery Center is for Dr. Lanzkowsky where  
5 she was -- actually had her injections in a surgery center,  
6 which is why they are -- are a little bit higher.

7 All of this is reasonable because that's what they  
8 charge, and all she did was follow her doctor's  
9 recommendations. She never treated outside of her doctor's  
10 recommendations.

11 Also, you heard all of the doctors testify that their  
12 bills were reasonable and necessary. As much as the defense  
13 wanted to point out things, how they didn't know or maybe it  
14 wasn't, their ultimate opinion was yes, it was. And that's  
15 the evidence that you have to rely on in this case. You never  
16 heard a defense witness get up and talk about CPT billing  
17 codes and why it was -- all of this was not reasonable or  
18 necessary. I think you were promised that in -- in opening.  
19 That never happened.

20 So under past medical expenses, this is the number  
21 that you give her. You write it in and it's easy. That line  
22 item is filled out and then you move on.

23 Jury Instruction 25 says there's no definite standard  
24 or method of calculation by law to fix reasonable calculation  
25 for pain and suffering. That's for all of you to decide, what

1 is reasonable for their pain and suffering? There's no  
2 standard. But your oath is to give what's reasonable based on  
3 the evidence. What is reasonable to fairly compensate them  
4 for what they've been through and what they'll have to go  
5 through in the future.

6 Well, let's talk about some of the things the way I  
7 like to think about reasonable compensation for pain and  
8 suffering. It's a guide for you to follow. If you don't like  
9 what I have to say, reject it, use your own method. But these  
10 are the type of things we use in these type of cases that are  
11 considered reasonable by juries and by lawyers.

12 Trauma of the accident. She was on her way to go to  
13 a fight and have a fun night out. That was all halted not at  
14 her request. Instead, she gets severely injured, in  
15 excruciating pain at the scene of the accident, she's scared,  
16 she's crying in her car, as you heard, she was taking  
17 fertility medications, trying to have a baby, and now she has  
18 extreme pain all over her abdomen. She's scared. She doesn't  
19 know what's wrong with her. She's extricated from her car by  
20 the ambulance, put on a backboard, thrown into an ambulance,  
21 and doesn't know where she's going.

22 Then she gets to the hospital, and she's forced to  
23 undergo imaging studies and stay there for the next four  
24 hours. I submit to you, for having to undergo that  
25 experience, \$10,000 for having to do that is reasonable.



1           Then she had an initial course of treatment with Dr.  
2     Adair, Koka, and going to MRIs. As I told you, it's no fun  
3     going to the doctor. You got to go sit and wait, you've got  
4     to travel there, you've got to fill out paperwork, you've got  
5     to wait to be examined, you have to take out major parts of  
6     your day. It's not something fun and enjoyable that they want  
7     to do.

8           But they did what they were told each and every time.  
9     You never heard a single witness say, Oh, they were  
10    noncompliant, they never showed up. There was a no-call,  
11    no-show. They did what they were told in hopes of getting  
12    better. I submit to you for that next five months, \$20,000 is  
13    a reasonable fair number.

14          Dr. Coppel's treatment, his treatment's a little bit  
15    different. Because now she is signing consent forms, assuming  
16    a risk of injury, infection, paralysis, or death in hopes of  
17    getting better and finding out what's wrong with her. She  
18    undergoes his surgical procedure. I submit to you, having to  
19    do that, \$10,000 is fair and reasonable.

20          Then after Dr. Coppel, she tries to return to her  
21    normal activities, I submit to you she's still in pain. It  
22    waxes and wanes, comes and goes. She testified when she was  
23    being released, when she tried to bend over and do her normal  
24    duties, she had pain. So every time they increase their  
25    activities, they're in pain. I would submit to you \$1,000 per

1 month for that time until she went to Dr. Lanzkowsky is  
2 reasonable. And we know this is reasonable, because compare  
3 this in relation to -- if she had been treating that entire  
4 time. We submit to you 17,000 a month for that period is  
5 reasonable.

6 Then she goes to Dr. Lanzkowsky, because her pain has  
7 increased. And he does more injections, more doctor visits,  
8 more evaluations. I submit to you \$10,000 for that surgical  
9 procedure is fair and reasonable.

10 Now, we have to figure out what's fair and reasonable  
11 after Dr. Lanzkowsky. So from January 2014 to the present,  
12 \$1,000 per month, same method that we've been using gives us  
13 only \$14,000. And the total for her past pain and suffering  
14 would be a mere 81,000 for the last three years -- four years.  
15 So that's the number that would go into past pain and  
16 suffering.

17 Loss of enjoyment of life, that is a different thing  
18 for you to consider. Because pain and suffering is one thing,  
19 but how that affects the enjoyment of life that you live is  
20 another. Every day that you have pain, every activity that  
21 you do is affected. The quality of everything that you do,  
22 whether it's going to watch a movie, whether it's walking your  
23 dog, whether it's washing your dog, whether it's cleaning a  
24 house, or something that you take pride in like she does, it's  
25 affected.

1           And even though they don't have the means in which to  
2 maybe travel and go snow-skiing, and if they were prevented  
3 from doing that, that would change their life or be a loss of  
4 enjoyment of life, even though they may not have the means to  
5 do all that, it doesn't mean their loss of enjoyment of life  
6 is any different or less valuable than somebody who could do  
7 those things.

8           The ultimate evaluation of this, we all like to do  
9 things. We all like to do things when we want to do them.  
10 When those things are taken away from us, or they are  
11 diminished, or the quality and experience is less, that's what  
12 this is. It is a very difficult thing. And I think all of  
13 you, with all of your everyday life experiences, are better  
14 equipped to come up with a fair and reasonable number than I  
15 could ever offer you. So I would ask for you to discuss this,  
16 to deliberate this, and come up with a fair number of what  
17 she's been through through today's date. From the time of the  
18 accident through today's date.

19           Because we all have other things we'd rather be  
20 doing. But when you're forced to go to doctors, you're not  
21 allowed to enjoy the things you'd rather be doing, whether  
22 it's watching TV, reading a book, talking on the phone to  
23 someone else.

24           Now, we've talked about their past. Now we want to  
25 look forward to their future. One of their struggles in this

1 case is that they are so young. And you all have to come  
2 together and ultimately plan for their future, their life-care  
3 plan, based on the injuries you know from the evidence.

4 Maria is 30 years of age today. The judge has  
5 instructed you that she has 54.2 additional years to be  
6 accounted for in your verdict. That's a long time. Some of  
7 us can't even fathom that. Some of you are younger, some of  
8 you are older. And you look at life differently, because your  
9 experiences, you have different perspectives on life as we get  
10 older.

11 But these -- Maria's going to have to endure for 54  
12 years, and we know her injury is going to get worse, because  
13 it doesn't get better. That's the medical evidence.

14 So how are we going to plan for her future medical  
15 care? The evidence that you heard from Dr. Lanzkowsky, she is  
16 a great candidate for radiofrequency rhizotomies. One a year,  
17 he said. We want you to give her 54 rhizotomies? I don't  
18 think that's reasonable. But should you give her five?  
19 Should you give her 10? Should you give her 15 for the course  
20 of her life, for 54 years? I submit to you that at a minimum,  
21 five procedures for the rest of her life is fair and  
22 reasonable. And if you want to give her more and you think  
23 that's not reasonable, I think you give her more.

24 Dr. Lanzkowsky testified each procedure is \$16,000.  
25 And that includes everything. And so if you give her five,

1 \$80,000 in procedures is her future medical expense.

2           Why is this extremely reasonable? The answer is  
3 because we know there's other treatments for her out there.  
4 Okay. There's other options to help alleviate some of the  
5 pain. We know that she still -- they try to take  
6 over-the-counter medications when their pain spikes. They try  
7 to stay off the meds.

8           And just why we're on this point, there's been some  
9 criticism that they're not taking pain medications all the  
10 time. Could you imagine if they were on Lortabs, filling  
11 prescriptions every month, how much money that would have  
12 been? And then they would come in and try and tell you  
13 they're just a bunch of drug addicts. Which one is it?

14           These people have been honest and straightforward  
15 saying no, we're not on pain medications. They were trying to  
16 make something out of nothing, they would tell their doctors,  
17 I need pain meds, I need pain meds. They're trying to deal  
18 with their pain with their life as they can today.

19           So instead of chiropractic treatments, instead of  
20 physical therapy, instead of medications, instead of all of  
21 that that is out there to help with their conservative pain,  
22 all we're asking for is the five rhizotomies. And if you  
23 think she deserves more, just multiply that by 16,000, however  
24 many you want to give her.

25           Now let's talk about future pain and suffering. She

1 still has to undergo the rhizotomies. It will keep her  
2 pain-free for an entire year, is what Dr. Lanzkowsky said.  
3 But she still has to undergo the procedure and sign the  
4 consents and have the risks and be scared. She's burning the  
5 nerve, they're actually burning the nerve off inside her disc  
6 during these procedures. I submit to you 10,000 a procedure,  
7 whatever you want to give her, is fair and reasonable for  
8 future pain and suffering.

9           However, those are the years that she gets them. We  
10 still have to deal with the years she does not get the  
11 procedures and she's in pain. And we know that pain is going  
12 to go up over the years. The next 5, 10 years, you know,  
13 she's going to be able to deal with it. She's dealt with it,  
14 she's going to be able to deal with it.

15           But what happens when she has a drastic turn for the  
16 worst at age 40, at age 50, at age 60, at age 70? And between  
17 70 and 80? She's still going to be in pain. So that's  
18 another 45 years we would have to deal with. Actually, 50  
19 years, because we take -- actually 49 years, because we've  
20 taken off five years, because the years she's getting the  
21 procedure.

22           So what I submit to you is fair and reasonable for  
23 the 45 years is if you give her \$5.48 per day in addition to  
24 having to undergo the procedures. And when you think, Hmm,  
25 \$5.48 a day, is that fair and reasonable? Is that a lot of

1 money? Think about the people who go to Starbucks every  
2 single day and spend more than this to get out of their own  
3 internal pain in their head, the pain of I need some more  
4 energy, I need to go to work.

5 MR. BAIRD: Objection, Your Honor. May we approach?

6 THE COURT: Sure.

7 (Bench conference.)

8 MR. BAIRD: I can't remember or recite something, but  
9 I think we did a motion [indiscernible] per diem calculation,  
10 that's not -- that's not a proper means of calculation for  
11 pain and suffering, loss of enjoyment of life.

12 MR. SIMON: I don't know -- I don't know the MIL on  
13 that.

14 THE COURT: I really don't remember this case. I  
15 ordinarily allow the per diem. I don't know whether there was  
16 one on this case. I'm sorry.

17 MR. BAIRD: I -- I don't -- it's a motion  
18 [indiscernible], I don't think that's the law [indiscernible]  
19 doesn't say, you know, say it's X dollars per day, unless  
20 you've got an expert to put that up.

21 MR. SIMON: And I disagree with that. It's allowed  
22 all the time.

23 THE COURT: I -- I've always allowed it in other  
24 cases. I just don't remember in this case if we discussed it  
25 previously.

1 (End of bench conference.)

2 MR. SIMON: Now let's talk about Maria's condition.  
3 It worsens as she gets older. We've talked a little bit about  
4 that. And that's the undisputed evidence. Nobody told you  
5 that her condition's going to get better. It's only going to  
6 get worse. And you have a long time to think about how you  
7 can compensate her for that.

8 So future loss of enjoyment of life is another item  
9 you have to consider. And again, I'm leaving it to you  
10 because I think with all of your experiences about your life,  
11 what's important to you in your everyday life, you're in a  
12 better position together collectively to come up with a fair  
13 number for that one.

14 Okay. And because we didn't do these calculations  
15 for you, this number at 5.48 a day for the rest of her life is  
16 an additional 90,000, in addition to the 50 for having to  
17 undergo the rhizotomy procedures. So the future pain and  
18 suffering would be what we're asking and suggesting to you as  
19 fair and reasonable is 140,000. And you may say no, I don't  
20 think that's enough. I think she deserves more, because  
21 that's a long time, and her condition's going to get worse.  
22 So maybe 5.48 for 10 years is okay, but it should go up for  
23 the next 35 years. That's for you to decide.

24 All right. Let's talk about Christian. And once  
25 again, I know this seems very long. These are two separate



1 cases that you are deciding, and both of them should have  
2 separate merits and separate deliberations and separate  
3 considerations.

4 He's a little bit younger, 27 years of age. He works  
5 full time at Pioneer Gypsum for the last seven years. He's  
6 always worked there. He had no problem doing this job before  
7 this accident. And the evidence has been ever since this  
8 accident it has interfered with his work duties. He's never  
9 said he can't work. In fact, he's worked through the pain.

10 But you know what, he wants to keep his job, because  
11 he knows he might not have this job for a long time, and  
12 bosses like his at a mine, they're not going to put up with  
13 you if you're not doing your job, because you are replaceable.

14 He enjoys playing soccer. The simple pleasures in  
15 life. His back pain never went away after this accident. Not  
16 a single medical record shows that he is pain-free after this  
17 accident.

18 His medical bills are 56,930.45. His bills at UMC  
19 are about half. So certainly that's got to be reasonable to  
20 the defense. His bills are a little bit more for Dr. Adair,  
21 because he treated there for another several -- many visits.  
22 He had multiple injections with Dr. Coppel, not just one. Had  
23 a discogram and a surgical procedure with Dr. Lanzkowsky. And  
24 he saw Dr. Kaplan. Those are his bills, those are his  
25 charges, that's what he owes.

1 All of the doctors that took this stand said that's  
2 what's reasonable and necessary. You heard a little argument  
3 with Dr. Kaplan, Well, I don't know, maybe it could fall into  
4 that, I'll give you the benefit of the doubt. They're arguing  
5 over \$300. And we're talking about peoples' lives, they're  
6 arguing over \$300 and whether a neurosurgeon from Harvard  
7 checked the wrong box on his billing code.

8 His past medical expenses, 56,930. And again,  
9 there's no definite standard or method of calculation. That  
10 is for all of you to decide what's fair and reasonable for  
11 Christian in this case.

12 He had the trauma of the accident. He had to worry  
13 about his wife and what was injured with her. He had to talk  
14 to the police. He had to secure his vehicle. He had to then  
15 go to the hospital. And then at the hospital, he has nausea,  
16 starts vomiting, is seen at the hospital. And then they stick  
17 him in for a CT scan. And the reason for that is because  
18 symptoms of nausea and vomiting are for a head injury and  
19 could be a brain hemorrhage. And that's what the doctors at  
20 the trauma center do. So he had to go through a CT scan.

21 Then he followed up with Dr. Adair, Dr. Koka, and the  
22 MRI. I submit to you the same amount of money is fair and  
23 reasonable for his initial treatment, even though he treated  
24 longer, it's still a fair number for initial course of  
25 treatment. Dr. Coppel, he had two sets of injections, March

1 and May. We ask for 10,000 for each injection procedure.

2 Then from May through November, the same \$1,000 per  
3 month we think is fair and reasonable. It comes out to  
4 17,000.

5 Then he went to Dr. Lanzkowsky. Not only did he have  
6 injections, but he also had the discogram. That's the same  
7 10,000 per procedure. And then from the time he left Dr.  
8 Lanzkowsky and Dr. Kaplan through today, that would be a mere  
9 \$14,000, for a total of \$101,000 for having to go to all of  
10 those doctors, endure the pain and suffering, undergo all of  
11 those dangerous procedures through today.

12 So in the verdict form, there will be past pain and  
13 suffering. All we're asking for is 101,000.

14 Talked a little bit about loss of enjoyment of life.  
15 It's the same for Christian. I believe you guys have a better  
16 perspective, bringing all of your common sense and everyday  
17 life to determine a number that's fair and reasonable. Now,  
18 keep in mind with Christian you heard testimony he loves his  
19 job, he's the breadwinner, he takes pride in his work, he  
20 likes soccer, he tries to do what he can do, but he still has  
21 pain. And how will this affect him? How has it affected him  
22 so far?

23 The judge has instructed you that he's 28 years old  
24 and has 51.8 additional years. Males die younger, I guess.  
25 There's a few theories on that. But I'll leave that to you.

1 All right. Dr. Kaplan, this is what he testified to,  
2 this is what we wrote down, this is the evidence that you saw  
3 from the stand. This is the amount of money for the  
4 procedure, 224,100 for the L5-S1 fusion procedure. And you  
5 probably say to yourself, How do we know this is reasonable?  
6 How do we know we can just write that number? Well, I'll tell  
7 you. It's real easy. Because this number was testified to by  
8 Dr. Kaplan. He even told you he was told his fees are low.  
9 Dr. Duke couldn't tell you otherwise.

10 But what we do know is this number does not include  
11 any updated MRIs, getting ready for the surgeries, it does not  
12 include any complications that might arise from the surgeries,  
13 does not include any loss of income that he can't work because  
14 he's got a back brace on after getting a bunch of metal stuck  
15 in him. This is an extremely reasonable amount of money.

16 It's a scary procedure. All doctors told you that  
17 anybody who's 27 years of age who requires this surgery should  
18 hold off as long as they can. You don't race to get this type  
19 of procedure, because you could get worse. There's no  
20 guarantees that this procedure will make him pain-free. All  
21 they can hope is it will reduce his pain to give him some  
22 quality of life in the coming years.

23 Recovery alone for this type of procedure is 6 to 12  
24 months. He will have to be off of work, and they don't have  
25 any income coming in. There's pain and suffering associated

1 with the rehab, the postop physical therapy. And God forbid  
2 he gets any infection or complication from the surgery.

3 And here's the procedure, just so we have a clear  
4 understanding of what he's going to have to endure and  
5 undergo. They cut in the low back of the spine, they dig  
6 through his tissues and separate out the layers of his tissues  
7 till they find the discs. And the L5-S1 is the fusion that is  
8 going to be removed. They're going to take that disc out and  
9 take a bone graft, and put a bone inside the disc space. And  
10 then they put metal, they take that, they put that back in,  
11 which is part of the hardware, and ultimately they fuse it all  
12 together and they put these rods, screws, cages, to give it  
13 stability until it fuses. This is what he's going to have  
14 inside his body after he gets this done.

15 I submit to you that Christian will likely have this  
16 procedure in the next five years. Because we already know  
17 that it's a bad disc that worsens over time, and when you  
18 return to your normal activities -- and the work that he does,  
19 which is fairly aggressive, hard work, I think he'll be lucky  
20 to have -- to make it to 32 years. You might say it's going  
21 to be 10 years. So maybe 37. I submit to you he should get  
22 1,000 per month until the time you determine he has the  
23 surgery.

24 We've talked about procedures. The pain, suffering,  
25 anxiety, distress, going into a hospital, getting cut open,

1 getting hardware put in your back, having discs taken out of  
2 your spine, and then have to endure the rehab for 6 to 12  
3 months, I submit to you that 75,000 for having to undergo the  
4 procedure itself is fair and reasonable.

5           If we assume or you determine a reasonable amount of  
6 time for him to have the surgery is at 32, then we need to  
7 think about how do we calculate after the surgery? Because  
8 the surgery will reduce his pain. The ultimate goal is that  
9 he'll have less pain and suffering. And if that happens, I  
10 submit to you that \$300 per month, a substantially lower  
11 amount, if it's successful. If it's worse, well, then  
12 obviously that's not fair. But if it's successful, this is  
13 extremely fair. And so if you give it to him for the next  
14 five years until he's 37 years of age, that would be an  
15 additional 18,000.

16           Then calculating out the next 20 years, between 37  
17 and 57, some of you younger people don't even understand that  
18 these are changing years for all of us. In the next 20 years,  
19 500 a month would be reasonable. That's for 20 years.  
20 120,000 for 20 years.

21           And then basically ending out his life, according to  
22 the table of life expectancy, the next 23 years we know that  
23 his mobility will be reduced, we know that his pain will  
24 increase, we know that Dr. Kaplan told you it's likely he  
25 might even need another procedure, because the adjacent

1 segments will break down. And he has the procedure, they will  
2 fix this disc, take it out, put the hardware in it. But the  
3 levels above now become worn faster and break down faster and  
4 may even require additional procedures.

5 We're not asking you for the cost of additional  
6 procedures. We are asking you, though, that the effects of  
7 the surgery will only get worse in his later years. The total  
8 for his future pain and suffering, which we believe is fair  
9 and reasonable, is 549,000 based on this method of  
10 calculation. And you might get in that jury room and say,  
11 this is ridiculous. This is way too low. This is way too  
12 low. Because we know in those later years his mobility -- and  
13 you already heard he's not going to be able to work probably  
14 after 10 years.

15 And think about the pain and suffering not being able  
16 to work. We know his education level. We know what his  
17 skills are. This man's skills is his health, to be able to do  
18 the heavy lifting when needed. Once he loses that...

19 I asked a friend once, who is a healthy guy, great  
20 wife, great kids, great lifestyle. I asked him once, I said,  
21 Hey, what's the most important thing in your life? And he  
22 thought about it for a second and he said, Oh, my kids?

23 I said, Nope. My wife? Nope. My job? Nope. Told  
24 him the answer was his health. Because without your health,  
25 you don't have anything else. And when your health goes,

1 nothing else is important. Nothing.

2 We submit to you that this is a fair and reasonable  
3 number for future pain and suffering.

4 This guy is damaged goods, no two ways about it.  
5 Every doctor told you that, that's the medical evidence. He's  
6 going to be more damaged, even though he might be in less  
7 pain, he's going to be more damaged as soon as he has the  
8 surgery. He only knows how to do one thing, the heavy  
9 lifting. And that's not going to last for long.

10 Once again, I believe you guys are in a better  
11 position to figure out this number than I. There is no doubt  
12 that the undeniable evidence is that this was a life-changing  
13 event. And it's undisputed that they were perfectly healthy  
14 before this accident. It's undisputed that they've been  
15 truthful to all of their doctors. It's undisputable that  
16 there's only one traumatic event that produced these injuries.  
17 And it's undisputed that she is liable for causing this  
18 accident.

19 You heard the old adage, if you break it, you buy it.  
20 All that means is you've got to be responsible for your own  
21 actions. And we're not getting up here saying that this  
22 person is a mean person. But she needlessly endangered  
23 everybody on the roadway that night, she could have killed  
24 somebody, and she severely injured these people. And you  
25 heard from the judge that sympathy -- you can't give her



1 sympathy. And you can't give my people sympathy, because the  
2 time for sympathy is long passed. This is about a just and  
3 fair verdict based on the evidence.

4 I told you you have an incredible power, because you  
5 are going to decide the future of these people. And it's not  
6 every day that people get put in a position to change the  
7 lives of others based on a verdict.

8 Can't make her apologize, even if -- can't put them  
9 back in the place they were before the collision occurred.  
10 Just can't turn back the clock and make it never happen. It  
11 happened. That's why you're here.

12 Law only allows you to award money to compensate.  
13 That's what the law allows. That's what the rule -- the oath  
14 that you've taken is to follow the law. The law is the rules  
15 for all of you to follow.

16 Now, you guys have your rights in that jury room.  
17 You have the right to make sure that everybody uses the  
18 correct standard, the easy standard. And you don't have to be  
19 sure about everything. You don't have to be sure about  
20 whether -- what day he's going to get the surgery. You don't  
21 have to be sure. It's not the standard. Just use your  
22 reasonable minds, because you're all reasonable people.

23 And if people aren't following the standard, I remind  
24 you again, this is crucial to our judicial process. Some  
25 juries, some day juries are the guardians of our community.

1 You have important power and important duty and a service that  
2 you provided here for us today. And you have two options. If  
3 your verdict is too low, then that tells people they can get  
4 away with breaking the rules.

5 MR. BAIRD: Objection, Your Honor. May we approach?

6 THE COURT: Sure.

7 (Bench conference.)

8 MR. BAIRD: He's [indiscernible]. He's telling the  
9 jury that they'll be making a statement with their verdict  
10 [indiscernible].

11 MR. SIMON: I disagree that I'm violating anything.

12 MR. BAIRD: He's absolutely violating --

13 THE COURT: I agree with him. Just modify the  
14 closing.

15 MR. SIMON: Okay.

16 (End of bench conference.)

17 MR. SIMON: Just so we're clear, when you go into  
18 that jury room and reach this verdict, your verdicts are read.  
19 Plaintiff reads it, the defense reads it. Other people are  
20 here in the courtroom read it. Your verdict might even hit  
21 the paper. Verdicts hit the paper. The reason they do that  
22 is because people read verdicts. And verdicts shape how  
23 people follow the rules. I submit to you the evidence in this  
24 case. If you return a verdict that is too low, people don't  
25 follow the rules.

1           I also talked to you about Lady Justice. Here's a  
2 picture of Lady Justice. You can see the blindfold. She  
3 doesn't care whether you're black, white, brown, yellow.  
4 Because people are in pain the same, people deserve justice  
5 the same, people deserve to be compensated the same. And you  
6 all promised me in jury selection you wouldn't give these  
7 people a penny less because they had an interpreter or they  
8 were Hispanic or they didn't speak English. And that you  
9 would only rely on the evidence in reaching your verdict. And  
10 I know you will all do that. But I wanted to show you a  
11 picture of Lady Justice.

12           That's our case. I thank you for your time and your  
13 service. And this is an important case that deserves  
14 important consideration. So I thank you.

15           THE COURT: All right. Thank you, counsel. We're  
16 kind of in a weird point for time. We had thought we'd be  
17 finished by now, and we have a lunch arranged for him to come  
18 at 1:00. How long do you think you'll be for your closing?

19           MR. BAIRD: Probably an hour, hour and a half I think  
20 is what [indiscernible]. We can do it after lunch if you  
21 prefer, or we can take a short break now and I can do it.

22           THE COURT: Well, I don't want you to start and then  
23 have to stop.

24           MR. BAIRD: Right. Right.

25           THE COURT: The jury -- the food's coming at 1:00,

1 maybe we'd better feed them and then just do a very short  
2 lunch and come back, say, 1:30. Because otherwise, we won't  
3 be able to send them off for lunch till after -- well after  
4 close to 3:00, probably, with rebuttal.

5 MR. BAIRD: That's totally fine.

6 THE COURT: So why don't we do this, ladies and  
7 gentlemen, again, lunch is being provided to you today from  
8 the attorneys involved in this case. And you're admonished  
9 not to converse amongst yourselves, I know that you've had  
10 closing, do not do any research, form any opinions on this  
11 case. And we'll see you back as soon as you're finished with  
12 your lunch, probably around 1:30.

13 (Jury recessed at 12:44 p.m.)

14 THE COURT: So counsel, try to be back about 1:30,  
15 please.

16 MR. BAIRD: Okay. Could -- could we make a quick  
17 record on the objections made during closing?

18 THE COURT: Yes, you can.

19 MR. BAIRD: Okay. So we objected to his per diem  
20 calculations. First off, nothing -- none of that was ever --

21 THE COURT: Hold on -- they're still -- hold on.  
22 Hold that thought.

23 MR. BAIRD: Oh, we're not on yet? Okay. There was  
24 three objections, Your Honor. First was the per diem  
25 argument, that was never disclosed. So if it's something that

1 can be calculated, it should have been calculated in advance.  
2 Also, that is not allowable standard for determining pain and  
3 suffering and loss of enjoyment under Nevada law. That  
4 objection was overruled.

5 Again, plaintiff went to the hired gun argument with  
6 respect to Dr. Duke. We objected that -- to that in opening.  
7 And I don't -- when the Nevada Supreme Court states that's not  
8 just argument, it's unacceptable or impermissible argument at  
9 any time.

10 And then finally towards the end, plaintiff's counsel  
11 asked the jury to make a statement with their verdict. He  
12 told the jury that they need to make a verdict that will  
13 affect other people's decisions. This is exactly what -- what  
14 came up in post --

15 THE COURT: And that was sustained.

16 MR. BAIRD: Yes. But right after the sustaining, he  
17 went right back to it.

18 THE COURT: And you did not object again.

19 MR. BAIRD: I didn't want to draw more attention to  
20 the issue. We'd -- we'd already made the objection and he  
21 failed to follow it. I just want to make sure that was on the  
22 record.

23 THE COURT: Okay.

24 MR. BAIRD: Thank you.

25 THE COURT: Mr. Simon, do you want to make a record

1 on any of those?

2 MR. SIMON: Just that I disagree with all of his  
3 arguments. And I didn't ask the jury to send the message  
4 beyond the evidence in this case. Under the Gunderson case  
5 you're allowed to even tell the jury to send a message to this  
6 defendant, and that's ultimately what I was doing.

7 THE COURT: Anything else? All right. Anything else  
8 you need to make a record of before we see you back at 1:30?

9 MR. BAIRD: No, Your Honor.

10 THE COURT: All right. Thanks.

11 MR. BAIRD: Thank you.

12 (Court recessed at 12:46 p.m., until 1:48 p.m.)

13 (In the presence of the jury.)

14 THE COURT: All right. Welcome back, ladies and  
15 gentlemen of the jury. At this time the defense is going to  
16 present their closing.

17 Counsel, whenever you're ready.

18 MR. BAIRD: Thank you, Your Honor.

19 DEFENDANT'S CLOSING ARGUMENT

20 MR. BAIRD: Ladies and gentlemen of the jury, I know  
21 this has probably been a long six, now seven days for you.  
22 But I've seen your studiousness and the attention that you've  
23 given to all the evidence in this case. The questions that  
24 you have asked have shown you're paying attention to the  
25 evidence and will give your full attention and time to this

1 verdict as it may require. It does not go unnoticed and I'm  
2 sure the parties will appreciate it.

3 I'd like to thank you in advance for your willingness  
4 to participate in this trial. Plaintiffs' counsel have two  
5 hours, he took two hours to go over the evidence in this case  
6 where he was to tell you and explain how the evidence in this  
7 case supports his clients' request for hundreds of thousands  
8 of dollars from this accident.

9 Said again and again to pay attention to the  
10 evidence. But he left out some very significant evidence.  
11 Remember during Dr. Duke's testimony, Dr. Duke testified about  
12 an EMG. Plaintiffs' counsel got up and said, Oh, Dr. Duke,  
13 you're mistaken. That's -- that's not my -- that's not my  
14 client. That's someone else entirely.

15 Ladies and gentlemen, that EMG was obtained from Dr.  
16 Lanzkowsky. And we'll show you his testimony that he had  
17 testified there must not have been an EMG. We're going to  
18 talk about that EMG, that negative EMG the plaintiff in his  
19 two hours failed to mention to you, failed to bring up to you  
20 that evidence that was in the possession of his own doctor.

21 Ladies and gentlemen, the goal of this lawsuit was  
22 always to get money. All the times the plaintiffs' counsel  
23 said you can only pay attention to harms and losses, harms and  
24 losses. That's lawyer speak for money. You only have to pay  
25 attention to harms and losses as they relate to injuries that

1 were caused by this accident.

2 Ladies and gentlemen, let's talk about the evidence.  
3 Plaintiffs' counsel showed you what I think highlights the  
4 difference between the evidence and the lawsuit. He showed  
5 you the answer that I filed, that my office filed on behalf of  
6 Miriam. You heard in opening statements a little bit about  
7 how a lawsuit is filed. And then discovery begins and the  
8 parties have to exchange information. That's when the parties  
9 get to learn about each other's cases.

10 When you get back in the jury room and you look at  
11 that complaint and you look at that answer and then the  
12 amended answer that we filed about a month later -- it wasn't  
13 eventually, it was about a month or two later -- you won't see  
14 Miriam Pizarro's signature on that -- on that answer. She  
15 lives in Colorado. There's a period of time when you're still  
16 trying to find out what's going on in the case. When we were  
17 sure of the facts, we were able to amend the answer to accept  
18 responsibility for this accident.

19 Plaintiffs attempt to highlight this to you in  
20 attempt to make you think ill of my client for something that  
21 we did on her behalf. It was misguided. Especially when you  
22 consider what plaintiffs have done throughout this lawsuit to  
23 prevent you from having the full facts and to prevent my  
24 client from having an opportunity to fairly evaluate the  
25 evidence.



1           For example, the interrogatory. Interrogatories, as  
2 you've heard in the -- in the jury instructions, these are  
3 written questions that we send to the plaintiffs. They're  
4 obligated under law to answer them truthfully. You saw, and  
5 we can pull up the verification that the plaintiffs would  
6 sign, the verification that says I'm signing this under oath,  
7 I'm telling the truth with this answer.

8           And when we asked each of these plaintiffs -- yeah,  
9 that's good. Number 23, for example.

10           Tell us how this accident has affected your  
11 abilities?

12           What did they say? I can't sit and stand like I used  
13 to.

14           How different from what they told you in trial over  
15 the last week was that from what they told us?

16           And remember, they signed the document saying that  
17 was the truth.

18           What about the interrogatory to Christian asking  
19 about his injuries. And he says, I hurt my shoulder, I hurt  
20 my neck, I hurt my back. When you go back to the jury room  
21 and look at these records, you will not see a single doctor  
22 talk about Christian's shoulder.

23           And of course the interrogatory regarding the future  
24 care. Christian said, Oh, I've been to Dr. Coppel, I might go  
25 to another doctor. When he signed that verification, he had

1 already been to Lanzkowsky. Why not just tell us what's  
2 really going on? Why say under oath something different than  
3 the full and complete truth?

4 Ladies and gentlemen, plaintiffs also had an  
5 obligation to disclose this information to us. You heard Dr.  
6 Kaplan testified that for the first time ever, he -- they --  
7 they disclosed what they thought it would cost for a future  
8 surgery. Plaintiffs had an obligation to disclose any  
9 computation of all of their damages. They're supposed to give  
10 this at the beginning of trial --

11 MR. SIMON: Your Honor, objection as to pretrial  
12 legal matters that you've already -- have addressed their  
13 concerns.

14 MR. BAIRD: They were allowed to address our  
15 pleadings, I'm just addressing the rules of disclosure.

16 THE COURT: I'll let you do it.

17 MR. BAIRD: NRC 16.1, plaintiffs were obligated to  
18 produce a computation of any category of damages claimed by  
19 the disclosing party. A computation, anything you can  
20 compute. Did plaintiffs compute anything today that you have  
21 never heard during trial? Computed things like loss of  
22 enjoyment of life? Computed things like pain and suffering?  
23 They were obligated to say this before.

24 MR. SIMON: Your Honor, objection. That misstates  
25 the law, and it's inappropriate for him to -- to argue this in

1 front of the jury at this stage. There's no evidence of it,  
2 there's no jury instruction on this part of the law. And it  
3 misstates the law. I don't have to calculate any pain and  
4 suffering or loss of enjoyment of life calculations.

5 THE COURT: Come here.

6 (Bench conference.)

7 THE COURT: Just for a little bit, because Mr.  
8 Simon's brought up the [indiscernible], so I think it's fair  
9 of you to clarify that. But this is going beyond what's --

10 MR. BAIRD: Okay.

11 THE COURT: -- you've given them as the law.

12 MR. BAIRD: Okay.

13 MR. SIMON: Thank you, Your Honor.

14 (End of bench conference.)

15 MR. BAIRD: Let's look at Exhibit 1 of plaintiffs'  
16 exhibits. This was an exhibit that the parties agree should  
17 be into evidence. This is the one medical special for  
18 Christian Cervantes. That's all they disclosed for his  
19 damages. At the beginning of the trial, that's all the  
20 parties knew. I have -- I bet Mr. Cervantes didn't know any  
21 more of his past medical bills.

22 Let's go to --

23 MR. SIMON: Your Honor, and again I have to object,  
24 because this misstates the complaint and my obligations. We  
25 are only required to give him the medical expenses to date at

1 the beginning of the case, which we did.

2 MR. BAIRD: I'm just -- this is an exhibit, Your  
3 Honor. This is what is in evidence as to their answers.

4 THE COURT: All right. Counsel, I'll give you a  
5 little leeway. I'm not sure where you're going with this  
6 argument.

7 MR. BAIRD: Okay. I'm -- I'm just going to talk  
8 about hers and we're done.

9 THE COURT: Okay.

10 MR. BAIRD: So let's look at -- at Maria's. So  
11 Exhibit 2.

12 Is this any different from what Dr. Kaplan testified,  
13 what Dr. Lanzkowsky testified during trial? And that's all  
14 that needs to be said about that.

15 You just need to consider the jury instruction that  
16 you've been given that says consider the biases, the  
17 motivations of a witness. This is a lawsuit where they are  
18 asking my client to pay hundreds of thousands of dollars.  
19 Could that be a reason that they wouldn't give the full  
20 answers in their interrogatories? And why? Why not give all  
21 the evidence? Are they afraid that it couldn't stand up to  
22 the scrutiny of a jury who have all the facts? Are they  
23 concerned it will affect how much they're awarded? Consider  
24 these facts as we go through the evidence today.

25 Let's talk about this EMG video -- the EMG report.

1 We're going to talk about this a couple of times. But let's  
2 go to a video. And this is 227123054, okay.

3 Ladies and gentlemen, I want to be respectful of your  
4 time. I understand that this trial has been a long process.  
5 But I'm going to show you video clips where I can, because I  
6 don't want you to guess. I want you to have the testimony  
7 wherever possible in actual evidence for you to consider. I  
8 don't want you to rely on my words, on my representations of  
9 the facts. So let's look at this.

10 (Video played.)

11 MR. BAIRD: Let's look at that EMG, shall we? I  
12 think it's called Exhibit Q or F. It'll be in the evidence  
13 you take back with you. But I think we'll start -- here's the  
14 first page. Well, the first page will be the custodian of  
15 records affidavit.

16 I don't know if you have 47, is that... All right.  
17 Well, there's -- there'll be a cover page. A certificate -- a  
18 custodian of records affidavit. You will see that these  
19 records --

20 You can go back to [indiscernible]. -- these records  
21 came from Centennial Pain Clinic.

22 That's Dr. Lanzkowsky's office. But let's look at  
23 this EMG that was sent to Dr. Lanzkowsky. Dr. Lanzkowsky's  
24 office produced this to us. And in this record you will see  
25 that Dr. Lee in his -- after his examination, his clinical

1 impressions are very interesting. Remember, we're here  
2 because both of these plaintiffs say they have a traumatic  
3 spine injury, a disc injury and a facet injury. Dr. Lee in  
4 his clinical impression, chronic low-back pain, probably soft  
5 tissue. Probably soft tissue mediated pain. Not a disc  
6 injury, not a ruptured disc, not a Grade 5 Dallas  
7 classification tear.

8 And then he says rule out L-5 radiculopathy. He  
9 wants to make sure there's not any nerve involvement.  
10 Remember, nerve involvement is what the doctors have told you  
11 is how you can tell if the disc is causing any pain.

12 Let's go to the next page, page 48. He performs the  
13 EMG, and these are the results.

14 Sorry, page 49. It's impressions. The nerve  
15 conduction study is normal. The EMG examination is normal.  
16 There is no evidence of lumbar radiculopathy, neuropathy, or  
17 myopathy. This doctor, when he examined Christian Cervantes,  
18 he didn't say, Wait, this is a traumatic disc injury. He  
19 says, Oh, maybe he's got some soft-tissue pain. Nothing else.  
20 How different from what Dr. Lanzkowsky and Dr. Kaplan told you  
21 is that? Could that be why Dr. Lanzkowsky didn't think this  
22 had been performed because it was bad for their case? Is that  
23 why Dr. Kaplan wasn't given this document?

24 What a coincidence then that his opinions, Dr. Lee's  
25 opinions, match Dr. Duke's. No evidence of nerve damage or a

1 nerve issue.

2 And what about Dr. Adair's final report for I think  
3 it was Maria?

4 Let's go to Clip 22541720.

5 (Video played.)

6 MR. BAIRD: Ladies and gentlemen, whether by  
7 sloppiness or intent, have you been given all the facts? As  
8 you sit here today, as you go into that deliberation, you are  
9 still not going to have a complete and final report for one of  
10 the plaintiffs for Dr. Adair. A trial is supposed to be a  
11 search for the truth. Are you going to have access to the  
12 truth?

13 Let's talk about these doctors. None of the doctors  
14 the plaintiff put on the stand have ever testified in a trial  
15 for a defendant. None of them ever. And you've seen what it  
16 means to testify in trial. That you have to meet certain  
17 requirements and qualifications. Dr. Adair, for example, has  
18 never disagreed with a patient who has said some car accident  
19 caused me pain. She's never said, No, I don't think that's  
20 right. In 20 years, never taken issue.

21 Dr. Adair said the patient was resolved of her  
22 symptoms for an MRI. Because one day in the middle of about a  
23 month of so symptoms, she happened to have a moment of pain.  
24 The words on the paper of her report conflicts with the  
25 testimony she offered.

1           In Clip 22524938, we're asking her about Maria and  
2 how she's doing, has her care concluded.

3                           (Video played.)

4           MR. BAIRD: So she says, Oh, everything was fine, she  
5 just had some low-back pain. What do her documents say?

6           Let's look at Exhibit 16, page 42. January 9th,  
7 2012, denies headache or back pain today. Nothing else noted.  
8 Doesn't write down, Oh, it hurts to move. Doesn't write down  
9 it hurts to lift things. No headache, no back pain.

10          Now we go to page 43 of this exhibit. Denies  
11 headache and back pain. Plain and simple.

12          No qualifications. No I think there might be  
13 something else going on, no when she lifts things, it hurts.

14          Let's go to page 44. Almost better. Note slight  
15 discomfort. No headache. No dizziness. Let's go to the big  
16 record. Lumbosacral. That's her low back. Active range of  
17 motion, full, pain-free, non-tender. When the chiropractor  
18 feels her back, no pain.

19          Let's go to page 45. Oh, before we switch, look at  
20 this. Slight discomfort today, it's in her neck. Continued  
21 pain in the neck.

22          Okay. Let's go to the next page, 45. On January  
23 18th of 2012, no pain in the last few days. Dr. Adair's  
24 testimony may have -- may have made it sound like the patient  
25 would present and say at this moment I'm not having any pain



1 with the understanding that she's having pain other times.  
2 But when we look at the records, Maria, in her statements to  
3 her treating doctors, gave a much different picture. No pain  
4 in the last few days. Again, no qualifications, no exceptions  
5 written down here.

6 Let's go to 46. January 24th, doing better. No pain  
7 for a week.

8 Add a few days from the last record, now we're over  
9 10 days of no pain.

10 Let's go to the big record. Touched her back again,  
11 non-tender. That means she tells her there's no pain. When  
12 she examines and feels for pain, no pain at all.

13 Page 47, please. February 1, 2012, continues to  
14 experience decreased pain. No complaints. And this was  
15 perhaps the most important. No difficulty or pain with ADLs,  
16 activities of daily living. She's not just at home, laying in  
17 her bed recuperating. She is engaging in the activities of  
18 her everyday life without pain. And now we're over two weeks  
19 without pain.

20 Then we go to page 48. My neck is better. My low  
21 back has been hurting since I picked up clothes off the floor.  
22 Nothing heavy. Now let's go to the big record. Ms. Abarca  
23 states that she has not been experiencing neck or low-back  
24 pain at this time. Don't be misled. Her bending down to pick  
25 up -- pick up something was not some exacerbating big event.

1 It was an aberration, an outlier. Because even on the date  
2 that the plaintiff says, I did have some pain, when she does  
3 go to the doctor, there's no pain at that time. This is not a  
4 person who's going to her chiropractor just a couple of months  
5 after the accident with ongoing problems. It was a random  
6 event, one day.

7 But what does Dr. Adair do? Dr. Adair, who has been  
8 treating car accident victims for 20 years? Oh, you had pain  
9 that one day? Sends her for an MRI. Let's put you in a tube  
10 and spin magnets around you. We've got to figure this out.

11 We aren't saying that this is the source of any  
12 symptoms that Maria has claimed. But you need to consider all  
13 the evidence. Maria has testified unbearable unrelenting  
14 pain. The term waxes and wanes does not excuse her of the  
15 obligation to tell us the whole truth. And just because her  
16 pain increases and decreases, her testimony has been clear  
17 that it has never ceased. And that is contrary to what she  
18 said when she was treated.

19 So we go to page 49. After this isolated incident,  
20 the next page, we're back to no pain at this time. She's not  
21 sure why her back hurt last week, but it's pain-free now.

22 Let's go to the big box down below. Her lumbar spine  
23 is non-tender today and has full range, no pain in the  
24 extremes. Full range refers to the range-of-motion testing  
25 they did. This patient, this person, does she need more

1 treatment? Based on the way she presented to Dr. Adair, I  
2 suggest she did not.

3 Now, date on this record is February 14th. Let's go  
4 to the next page, which I think is 50. February 20th, 2012,  
5 patient states no pain since the last visit. This is the last  
6 page like this you'll find in the records. The next document  
7 will be the final four.

8 At this point, though, ladies and gentlemen, two days  
9 after this, after essentially one instance of pain in the last  
10 five weeks, Maria Abarca is sent to Dr. Coppel for injections.  
11 By the time she was discharged from Dr. Adair's care, she  
12 would already be done with Dr. Coppel.

13 Let's talk about Christian very briefly. Video is  
14 22540019. Again with Christian, the testimony has been that  
15 his pain never stops. That it gets better, it gets worse.  
16 But pain every day and it never ends.

17 (Video played.)

18 MR. BAIRD: Let's look at that. Let's look at  
19 Exhibit 5, page 20. Remember, plaintiffs have testified and  
20 their doctors have inferred unending pain and continuous  
21 symptoms from the beginning. And they're saying that this is  
22 because there is evidence of a disc injury. And the evidence  
23 of the disc injury from the chiropractor is simply the  
24 numbness, the tingling.

25 Let's look under low-back pain under this heading.

1 The low-back pain does not radiate, he is not experiencing  
2 numbness, tingling, or weakness.

3           Here's the other thing to consider. Look at the --  
4 look at the next sentences. Plaintiff has been saying pain  
5 every day, ever since the accident. He stated that he's  
6 experiencing this pain four to five days a week. That is the  
7 opposite of pain every day. There are two to three days at  
8 least a week where he is not experiencing any pain in his low  
9 back. Supposedly, there is a blown-out disc leaking fluid and  
10 pressing on this nerve. That's what the plaintiff's doctors  
11 have said. But somehow it's not doing it two to three days a  
12 week.

13           Let's talk about Dr. Koka. Remember with Dr. Koka,  
14 he did not treat or examine these patients. He came in to  
15 testify at trial. He came in and tried to offer -- did you  
16 remember that unusual definition of resolved, that you could  
17 be resolved and still have a problem? Or he wants to argue  
18 that in spite of weeks without symptoms in Maria and records  
19 where it's written down in plain English there's no pain,  
20 somehow when Maria was discharged she still had symptoms.

21           Dr. Koka wants to rewrite the plain English and  
22 easy-to-understand records in the manner that he believes will  
23 benefit this lawsuit. He called regular pain neurological  
24 sign. But most of all, he was adamant that he had diagnosed a  
25 lumbar injury.

1           Let's go to Exhibit 11, page 6. Now, we talked about  
2 the super bills before. And I know Dr. Koka has given an  
3 excuse for that. But this isn't a super bill.

4           It must be 5 for us. Sorry. No, it should be 11.  
5 Exhibit 11, page 6. Hmm, that's not it.

6           Okay. So it's Dr. -- we'll find it in a second. The  
7 question came again and again, where's the evidence of a  
8 lumbar injury? And he says there was one. This record will  
9 show you, his excuse was super -- the super bills was he only  
10 has to write down five diagnoses. That's his reason for  
11 giving incomplete billing records. That's -- he's -- he's  
12 willing to get paid for things that are or aren't there. He  
13 doesn't care about the accuracy of his records. But it  
14 doesn't matter what he says about the super bills. Because  
15 this exhibit --

16           Maybe I should just do it on the Elmo. You got it?  
17 Oh, that looks like it. No, that's not it. I don't even know  
18 what that is. Okay. Let me just pull it out of the binder.

19           Okay. So for us it's Exhibit 6, but we have this  
20 wrong. Oh, 6-6. All right. That was my fault. It's Exhibit  
21 6, page 6.

22           Initial history, physical exam of Christian  
23 Cervantes. Now, here we've got his pain supposedly severe and  
24 unremittent 2 out of 10 pain, and look at what we've got. No  
25 tenderness, and it's just down below, mildly affects his

1 ability to move. Isn't that a much different picture than was  
2 painted by Dr. Koka?

3 Now, is this -- there's an 11 -- hang on one second.

4 Now, his chief complaints, look at this, ladies and  
5 gentlemen. He didn't come in saying it feels like a disc in  
6 my back has literally exploded and is pushing on my lower --  
7 on my nerves and my spine. His chief complaint is headache  
8 and nausea with mild 2 out of 10 pain.

9 Now, let's take a look at these bills. Let's look at  
10 page 4 of this same exhibit.

11 Do you see a disc injury diagnosis here under  
12 assessment? It's a lumbar sprain/strain and pain. Lumbar  
13 sprain/strain, well, that sounds an awful like a lot -- like  
14 the myofacial injuries that Dr. Duke had diagnosed.

15 Let's go to page 7. Okay. Oh, and this is the wrong  
16 -- now we need to talk about Maria. So let's go to Exhibit 7  
17 -- well, yeah. And just before we leave this, this -- this is  
18 good to look at. November 22nd, lumbar pain, sprain/strain.  
19 Same thing that Dr. Duke had.

20 Now, let's go talk about Maria. And that I believe  
21 is Exhibit 17. Starting on page 4.

22 This is another one where we said, did you diagnose a  
23 lumbar injury? And you remember the testimony about the waist  
24 pain? Maria talked about waist pain in her deposition.  
25 Primary care consultants, diagnoses. Not procedures,

1 diagnoses. Cervical sprain/strain, cervical pain, shoulder  
2 pain, secondary motor vehicle accident. You heard Dr. Duke  
3 testify, a car accident is not a diagnosis. A car accident is  
4 a car accident. And then lower abdominal pain.

5 Dr. Koka tried to tell you, Well, I only have to fill  
6 out five boxes. That's all I'm obligated to do. If we want  
7 the whole truth, why won't he give us everything that he  
8 actually diagnosed in his patient?

9 So let's look at 7. Page 7 could have given us the  
10 whole story. Same as before. Page 9, same story. Page 11,  
11 same story. But perhaps more importantly, let's go to page  
12 16. February 14th, 2012, so this is six days after it's noted  
13 in Dr. Adair's records that the plaintiff -- that Maria had  
14 picked something up and her back hurt. This is the pain  
15 diagram. The pain diagram Maria filled out, November 18th,  
16 2011 -- sorry, I said February, I was wrong. This is right  
17 after the accident. What do you see or not see on her low  
18 back? You don't see any mention of low-back pain.

19 Okay. So this was page 16. So let's look at 17.  
20 No, that's not the one. All right.

21 Compare what you saw in those records with what you  
22 heard Dr. Koka testify to and ask yourself, why wouldn't he  
23 just tell us? Why wouldn't he just agree with the records as  
24 they were written in English? There really isn't any question  
25 as to -- as to why.

1           And what about the time -- the video about Exhibit  
2 17, page 14. You remember a few times, it was repeated and  
3 repeated that Maria complained of mild back pain while  
4 lifting. Kept saying, Oh, yeah, when I discharged her, she  
5 had mild back pain while lifting. This is the February 14th  
6 record I was referring to before.

7           It wasn't till cross-examination when I said, Let's  
8 read the rest of this record. And it turns out that on  
9 February 14th, 2012, she wasn't complaining of ongoing pain  
10 while lifting. It was under other, patient only complains of  
11 mild back pain while lifting one day last week. And then  
12 what's the rest? Not on meds, no pain anymore. And in case  
13 you weren't sure, pain-free. How many times did Dr. Koka tell  
14 you she wasn't pain-free? There just wasn't anything more I  
15 could do for her. Well, what can you do for a pain-free  
16 patient.

17           Let's look at the jury instruction regarding  
18 credibility of a witness. Do you have that one or do you need  
19 a number?

20           UNIDENTIFIED SPEAKER: A number would be nice.

21           MR. BAIRD: 14. When you think about the way Dr.  
22 Koka testified about this document, also think about this jury  
23 instruction. This jury instruction will tell you that when  
24 you're thinking about a witness, you're allowed to consider  
25 whether they chose not to tell you the truth.



1           I will not tell you how -- who was or was not telling  
2 the truth. That's something that you need to consider.

3           No, this isn't the one. But this is something you  
4 need to consider. After all of these records, was this just a  
5 failure to remember? Or was Dr. Koka doing something else?

6           Ladies and gentlemen, we all want our doctors to be  
7 advocates for us. We want our doctor to work for us to make  
8 us better. We want our doctor to make sure we're getting the  
9 best medications, the best treatments, and any studies or  
10 tests that we may need. We trust our doctors to use science  
11 in their art to help us get better.

12           But when a doctor misrepresents the facts, ladies and  
13 gentlemen, when they tell you to ignore plain English in the  
14 medical records, is that doctor still being a doctor or does  
15 that doctor now become a shill for plaintiffs?

16           Let's talk about Dr. Coppel. Dr. Coppel, as we've  
17 heard Maria confirm, he was prescribed by her attorneys. Now,  
18 this is not about faulting someone for getting medical care.  
19 Plaintiffs' counsel keeps saying that defense want to fault  
20 the plaintiffs for going to doctors. That's not what we're  
21 about.

22           That -- what you're doing here in this case today is  
23 to determine whether this car accident caused injuries. You  
24 will need to decide whether these injuries are related to the  
25 car accident. The question isn't are they related to this

1 lawsuit, because clearly the lawsuit has a lot to do with this  
2 medical care.

3 Maria was symptom-free. Christian had very minor  
4 pain and it wasn't even every day. And then the attorneys  
5 prescribed Dr. Coppel. As you heard Dr. Duke testify, Dr.  
6 Coppel failed to follow the proper protocols to diagnose the  
7 facet syndrome that he claimed was existing in the low spine  
8 of Maria. He didn't do it right. Instead of performing the  
9 injection and then having her note right away how did this  
10 change her pain, he lets a couple of weeks go by so that she  
11 can have it not be fresh in her memory and give a less  
12 accurate recollection weeks later.

13 And remember, if we look at Exhibit 18, page 8, why  
14 treat Maria still? Why give her this treatment when she is  
15 symptom-free when discharged from her previous doctor? She  
16 goes into Dr. Coppel on the 22nd of February and says, My pain  
17 can be ignored. Why take a risky spinal procedure and employ  
18 it on someone whose pain can be ignored? She can do anything  
19 she wants to in her life, the pain will not change it at all.  
20 Why stick a needle into her spine?

21 Let's talk about Dr. Lanzkowsky's office. Because  
22 remember, Dr. Lanzkowsky didn't treat both plaintiffs, just  
23 Christian. But we'll start with Christian.

24 And some testimony at 22695222.

25 (Video played.)

1 MR. BAIRD: Dr. Lanzkowsky said we got to get these  
2 facts right. We've got to diagnose the correct condition.  
3 What he's saying and whether he means it or not is something  
4 you can decide, but we need to get all the facts before we  
5 make a diagnosis. Is that what he did?

6 Let's look at 226102504.

7 (Video played.)

8 MR. BAIRD: So he -- when asked does all the evidence  
9 point to the -- to the disc injury that he diagnosed, the  
10 ruptured disc with the jelly coming out? He says, Oh, yeah,  
11 it all adds up. 226114743. And as we watch this, we need to  
12 think, did Dr. Lanzkowsky really care about the evidence, or  
13 did he have an end in mind and was just going to do what he  
14 needed to get to that point?

15 Oh, 226114743.

16 (Video played.)

17 MR. BAIRD: And while I'm -- let's load up 227114223.

18 So he, if you'll recall, took Christian into his  
19 office and said, We need to do an EMG. We need a new MRI, we  
20 need to do a discogram. Well, he ordered the MRI, didn't look  
21 at it. Didn't care. He testified, Oh, the MRI is for the  
22 surgeon. And then we talked to Dr. Kaplan; did you see the  
23 new MRI? Didn't need one. Why pay -- why should my client  
24 pay for an MRI that nobody cared about, that nobody was ever  
25 going to see? And why order it? Is it because Dr. Lanzkowsky

1 just needs to make it look like he's trying to make the  
2 correct diagnosis?

3 [Indiscernible]. 227114223. And remember, when --  
4 when asking yourself the question, is this medical care  
5 related to the car accident, Dr. Lanzkowsky clearly testified  
6 without a doubt he was referred by plaintiff's counsel. The  
7 plaintiffs came to him because their attorney said, we're done  
8 with Coppel. We don't know why. But now you need to go see  
9 Dr. Lanzkowsky. What does that tell you about whether this  
10 was related to an injury or just related to this lawsuit?

11 Ladies and gentlemen, while we're finding that video,  
12 perhaps the loudest silence in this case is that EMG performed  
13 by Dr. Lee. Why didn't plaintiff want Dr. Lee to testify? He  
14 could have -- they could have asked him to come and explain  
15 himself. Why didn't Dr. Lanzkowsky remember that he had  
16 ordered and received an EMG and CV study? Remember the EMG in  
17 Dr. Lee's clinical findings? They matched Dr. Duke's  
18 opinions.

19 That's the video? All right. Let's do it.

20 (Video played.)

21 MR. BAIRD: Okay. Was that -- was that 114223?  
22 Okay. Let's just go to Exhibit 10, page 10.

23 When talking about the discogram, plaintiffs' counsel  
24 is up here saying how Dr. Lanzkowsky -- he knows what he's  
25 doing. He did it right and you can rely on the discogram.

1 And something stuck out to me when plaintiffs' counsel was  
2 giving his argument. He said when they did this discogram,  
3 you can rely on it, because none of the other discs were  
4 painful. Those were his words.

5 When we look at the discogram results, and I believe  
6 it's Exhibit 10, page 10, Dr. Lanzkowsky injected four levels  
7 of the spine. There were more discs where pain was reported  
8 than just the bottom.

9 Now, the bottom -- the bottom disc is the only disc  
10 that was a concordant pain. But you will see L2-3, that is  
11 indeed no pain. L3-4, 5-out-of-10 pain. It was not the only  
12 disc where there was pain noted. It's important to look at  
13 the details and not just the broad strokes.

14 Let's try one more clip on Christian, 226101527. The  
15 implication throughout this trial is that there was never any  
16 pain for Christian and Maria before this accident, that they  
17 were in pristine health and condition. Even Dr. Lanzkowsky  
18 will tell you that's not entirely true.

19 (Video played.)

20 MR. BAIRD: Reality is everybody's having some pain  
21 every day. The reality needs to be laid on top of all of  
22 these arguments of the plaintiff. And you need to consider is  
23 the evidence that's been presented to you of a new injury, or  
24 is it just the everyday pains that we all have? 2-out-of-10  
25 pain in Christian when he's discharged, does that sound more

1 like the everyday pain that people experience, that Dr.  
2 Lanzkowsky testifies about? Or does that sound like a new  
3 injury?

4 Same with Maria. When she goes to Dr. Coppel with  
5 pain that she can easily ignore, is that just everyday pain  
6 that she's having or is this a new traumatic injury?

7 Let's talk about Maria. Remember -- We're going to  
8 go to Exhibit 19, page 4. -- Dr. Lanzkowsky never treated  
9 Maria. Someone else in his office did. Someone else who  
10 wasn't asked to come and testify here. What did Dr. Chambers  
11 diagnose in Maria? Assessment, disc degeneration. Disc  
12 degeneration is the exact thing that Dr. Duke said you could  
13 see in the MRIs. And here Dr. Chambers from Dr. Lanzkowsky's  
14 office finds it.

15 Now, he also diagnoses lumbar facet syndrome. That  
16 is the syndrome that Dr. Duke said was not properly diagnosed.  
17 That's where they did the injection, didn't ask for the pain  
18 scores, and didn't repeat the injection like they're supposed  
19 to. Their testing protocols make their tests guesses, not  
20 test results.

21 And then Dr. Chambers says, Oh, also has a  
22 degenerative condition in the spine, just like Dr. Duke says.

23 Let's go -- another important thing to consider,  
24 ladies and gentlemen, is the role of the plaintiffs in their  
25 medical care. Plaintiffs' counsel would like you to assume

1 that all this medical care is done specifically with improving  
2 the plaintiffs' lives, right? They're trying to cure them and  
3 heal them from this injury. But the actions of the doctors to  
4 their patients shows something very different.

5 22731467. The doctors testify that one of their  
6 duties is to tell their patients their options, to work with  
7 their patients to let them know what's going on with their  
8 care. In fact, plaintiffs' counsel referred to the  
9 hippocratic oath, which Dr. Duke told you, that's not really  
10 the hippocratic oath. It's become more of an urban legend  
11 that that -- that the hippocratic oath binds doctors. It  
12 doesn't change their duty to treat their patients. But let's  
13 look at -- at how Maria's being treated.

14 (Video played.)

15 MR. BAIRD: Her testimony at that point and other  
16 points in this trial, I hope you picked up on it, she did not  
17 realize that Dr. Lanzkowsky was recommending -- well, Dr.  
18 Lanzkowsky's associates were recommending a treatment  
19 different from the injections she had already received from  
20 Dr. Coppel. Ladies and gentlemen, that's inexcusable. How is  
21 it that these doctors, who are treating patients trying to get  
22 them better, are not taking the time to say here's what we're  
23 trying to do to help you? Are these doctors concerned with  
24 curing the plaintiffs, or are they concerned with making  
25 records for use in a later trial?

1           Let's move onto Dr. Kaplan. Let's go Video 22625052.

2           Again, you are to consider a witness's motivations,  
3 their biases, and what they're really after in a lawsuit.

4                           (Video played.)

5           MR. BAIRD: \$32,000 an hour making surgery. And  
6 that's what he's hoping to charge for Christian if he can  
7 convince you that Christian needs surgery because of this  
8 accident.

9           What about 22625129.

10                           (Video played.)

11           MR. BAIRD: Would this witness be at all motivated to  
12 find car accident victims to need surgeries when that's 50 to  
13 1 where he makes his money?

14           Dr. Kaplan has the same problem as Dr. Lanzkowsky  
15 when it comes to truly treating his patients.

16           Let's look at the video 22721356. Dr. Kaplan told  
17 you that one of his important duties as a doctor is to give  
18 his patients options. And to tell them the many different  
19 things you can do to treat any condition that he diagnoses.  
20 What did Christian tell us were his options as given by Dr.  
21 Kaplan?

22                           (Video played.)

23           MR. BAIRD: The one that was the one he gave you,  
24 surgery was the only option Dr. Kaplan gave him. And the  
25 decision to not have surgery was the option that he took, not



1 even given to him by his doctor, not even given to him by his  
2 surgery who professed to you that he's concerned about people  
3 his age getting surgery. Why not give him any other option or  
4 even the option of not doing anything? Which, fortunately for  
5 Mr. Cervantes, is what he has chosen.

6 Remember Dr. Duke's definition of a surgical patient?  
7 Mr. Simon was asking him, Well, what if you have a surgical  
8 patient who says they don't want to have the surgery? Dr.  
9 Duke said, That's not a surgical patient. A surgical patient  
10 needs the surgery. In this case all the doctors can say is  
11 that if Mr. Cervantes wants surgery, for \$32,000, he'll do it.

12 As I said at the outset of this lawsuit -- of this  
13 case, ladies and gentlemen, this lawsuit will present two  
14 versions of the plaintiffs. There's the lawsuit version that  
15 we've been discussing, and then there's reality. The jury  
16 instruction that you have been read regarding common sense and  
17 judgment, Mr. Simon put that on the screen, as well. You are  
18 obligated to not leave your common sense and good judgment at  
19 the door when you enter into the deliberation room. You will  
20 need that.

21 And as you can tell from the evidence I have  
22 highlighted for you, when you apply common sense and everyday  
23 experience to these medical records, suddenly the picture of  
24 traumatic spine injuries changes because it doesn't add up.  
25 Common sense says wait, something's not right here. This jury

1 instruction allows you to make reasonable inferences.

2 That means you can see one and you can see one, and  
3 know that added together they make two. And in this case the  
4 motives and the biases of the witnesses, of the doctors who  
5 are paid to testify by the plaintiffs, are something you  
6 should consider.

7 Let's look at Exhibit 22, I think it's the last page  
8 in Exhibit 22.

9 Mr. Simon made a -- made much noise about how much  
10 Dr. Duke was being paid.

11 So Exhibit 22, page 7. But you'll recall Dr. Duke  
12 was making \$1,000 an hour for his depositions. Well, here's  
13 doctor --

14 MR. SIMON: Your Honor, object. May we approach?

15 THE COURT: Uh-huh.

16 (Bench conference.)

17 MR. SIMON: He's trying to introduce evidence that's  
18 not in evidence. And we never discussed this, he's never  
19 brought out any testimony of my physicians' fees or not. This  
20 is all brand new stuff. It's hearsay evidence.

21 MR. BAIRD: I just looked at the binder, it's in the  
22 binder.

23 MR. SIMON: It's not in evidence. None of the fee  
24 schedules were.

25 MR. BAIRD: Okay. That's clerical error. Sorry.

1 THE COURT: So they weren't in?

2 MR. BAIRD: They were in the binder, but they weren't  
3 admitted. So.

4 THE COURT: All right.

5 MR. BAIRD: Okay.

6 (End of bench conference.)

7 THE COURT: Ladies and gentlemen of the jury, you'll  
8 disregard the last statements of counsel regarding fees.

9 MR. BAIRD: You'll recall Dr. Kaplan testified to you  
10 that he gets \$1,500 an hour. He testified of that in trial.  
11 Dr. Duke gets 1,000. How can Mr. Simon --

12 MR. SIMON: I just object. That misstates the  
13 testimony.

14 MR. BAIRD: It does not misstate the testimony, Your  
15 Honor. I can pull up a video if you want, but I'm trying to  
16 save time.

17 THE COURT: Yes. Because I -- come here.

18 MR. BAIRD: Pull the video?

19 THE COURT: Well, no, come here first.

20 MR. BAIRD: Okay.

21 (Bench conference.)

22 THE COURT: I don't remember him saying he makes  
23 \$1,500 an hour. I remember him testifying --

24 MR. SIMON: The only thing he asked is how much did I  
25 pay him for your deposition time, for your deposition.

1 MR. BAIRD: And he said 1,500 an hour.

2 MR. SIMON: Okay. But he's saying -- he's trying to  
3 suggest that the attorney get -- to the jury he gets \$1,500 an  
4 hour, which is only for his deposition time.

5 THE COURT: Well, then, clarify that.

6 MR. SIMON: Okay. Then say that.

7 THE COURT: Because I think you're not on his trial  
8 testimony fee. You didn't ask that question.

9 MR. BAIRD: No, I didn't ask that. And I was only  
10 saying that -- I'm just talking about his deposition  
11 testimony.

12 THE COURT: Well.

13 (End of bench conference.)

14 MR. BAIRD: This testimony is undisputed and clear.  
15 He charges more for his services than Dr. Duke. His  
16 deposition fee, \$1,500 an hour. Duke's --

17 MR. SIMON: Same objection. There's no evidence of  
18 that, Your Honor. He can't say that to this jury.

19 MR. BAIRD: I -- we just --

20 MR. SIMON: He does not -- he did not charge more  
21 than Dr. Duke in this case, and for him to say it, there's no  
22 evidence of it.

23 MR. BAIRD: There absolutely is. And if -- if we  
24 want to take a recess, I can find the testimony.

25 THE COURT: I don't want to take a recess.

1 MR. BAIRD: Well, then --

2 THE COURT: But it -- hold on. Is it -- come here  
3 for a second, please.

4 (Bench conference.)

5 THE COURT: He testified regarding how much he  
6 charged for --

7 MR. SIMON: Charged for his deposition. That's it.

8 MR. BAIRD: -- deposition --

9 MR. SIMON: He can't say that he's charged -- he made  
10 more than Dr. Duke in this case, because he didn't.

11 THE COURT: Well, how much did that --

12 MR. BAIRD: Dr. Duke --

13 THE COURT: -- did it come out of his Dr. Duke --

14 MR. BAIRD: -- charges \$1,000 a hour, he charges  
15 \$1,500.

16 THE COURT: Did it come out to how much Dr. Duke  
17 charged for his deposition?

18 MR. BAIRD: Yeah, 1,000 an hour. That's all I'm  
19 talking about is the hourly rate.

20 MR. SIMON: No, but he told this jury that Dr. Duke  
21 -- that Dr. Kaplan made -- charged more for this trial than  
22 Dr. Duke.

23 MR. BAIRD: That's not what I said.

24 THE COURT: No, he said more for his deposition.

25 MR. SIMON: For his -- if -- if he keeps it to that.

1 But he's not.

2 MR. BAIRD: That's all I'm keeping it to.

3 MR. SIMON: That's not what he said.

4 MR. BAIRD: His deposition only. That's all I'm  
5 saying.

6 THE COURT: Okay.

7 MR. BAIRD: Okay.

8 (End of bench conference.)

9 MR. BAIRD: Dr. Kaplan charges \$1,500 for his  
10 deposition. Dr. Duke charges \$1,000 an hour. That's the  
11 evidence you've received.

12 The only purpose for bringing this evidence out is to  
13 consider why -- is that the truth, what Mr. Simon tells you,  
14 that Dr. Duke is just here for money? He has charged, as you  
15 heard him testify, maybe about \$16,000 in this case, and his  
16 involvement in this case ends. He's not going to make  
17 anything more on this case.

18 Dr. Kaplan charged more per hour for his deposition,  
19 and now is hoping to make \$32,000 for one surgery, and you  
20 heard him testify that maybe there'll be more. There's a lot  
21 at stake in the outcome of this case for Dr. Kaplan's future.

22 Indeed, ladies and gentlemen, the jury instructions  
23 will tell you to have -- to not allow sympathy to affect your  
24 judgment. This is about -- and it's hard sometimes for humans  
25 to do this, right? But we need to be cold and clinical in the

1 sense that we just need to look at the evidence. We don't  
2 need to worry about offending someone or making someone feel  
3 bad. But we need to look at the evidence and take it for what  
4 it truly is using our common sense.

5 And think about this. The reality of it is every  
6 doctor that the plaintiffs put up here, and Dr. Duke did, as  
7 well, said when patients have significant symptoms, I expect  
8 them to get treatment. This is not about faulting the  
9 plaintiffs for not getting treatment. If they don't have  
10 significant symptoms, then why get treatment? And that's our  
11 whole point.

12 The doctors have testified that plaintiff put up here  
13 that there was a significant traumatic spinal injury. But the  
14 plaintiffs' actions belie that. The plaintiffs' actions are  
15 those of people who do not have a significant injury and do  
16 not have serious ongoing pain.

17 What about the medication issues? Christian was in  
18 so much pain that he was given a paper prescription before I  
19 took his deposition in November of 2013. He put that in his  
20 pocket and went a week without any pain medicine. I took his  
21 deposition, and then the records say that maybe he got some  
22 pain medicine. You will not find any records for pain --  
23 prescription pain medicine that Dr. Lanzkowsky prescribed,  
24 though.

25 The only -- the only evidence of actual prescription

1 charges will be in Dr. Coppel's records. Dr. Coppel's  
2 prescriptions were in 2012. You will not find evidence of a  
3 purchase of any prescription medication after 2012 in these  
4 records.

5 Remember, Maria had testified that when she concluded  
6 her treatment with Dr. Coppel, she had not taken all of her  
7 medications. About the time I took her deposition, 17 months  
8 later, she still hadn't taken them.

9 The doctors also repeatedly referred to the records  
10 saying the plaintiffs were taking over-the-counter  
11 medications, and that, occasionally. Occasionally.

12 There's a video, 2273618. The plaintiffs had access  
13 to these doctors who were more than willing to give them  
14 whatever treatment they wanted. No doctor testified I wash my  
15 hands of this plaintiff -- patient. I was done. I would  
16 never see them again. The door was always open. Anything  
17 they needed or wanted, had they needed it, they could have  
18 received.

19 Is it 226114243?

20 UNIDENTIFIED SPEAKER: Say that one more time?

21 MR. BAIRD: 226114243. Oh, that's not it. Sorry.  
22 2273618. Sorry, I lost my place. 2273618.

23 (Video played.)

24 MR. BAIRD: Even throughout this trial today, all  
25 they're taking sometimes, Tylenol, Aleve. And remember as



1 you're considering the motivations of these various witnesses,  
2 Dr. Lanzkowsky's office told Christian, You can't go to just  
3 any pharmacy. Got to go to our special pharmacy. Not the  
4 normal one that everyone else gets to go to.

5 What about the activities of the plaintiffs, how does  
6 that show the real condition of these alleged traumatic spinal  
7 injuries? Maria was unemployed when this accident happened.  
8 The records will show now she's employed. Her activities have  
9 increased. And every doctor with respect to Christian has  
10 testified he continues to work. There's repeated reference to  
11 lifting heavy things at work. And you heard the -- and you've  
12 heard them testify that he's engaging -- he's able to engage  
13 even in heavy yard work to this day.

14 No doctor has told him to slow down. Supposedly his  
15 work life is going to end soon, in the next 10 years. But no  
16 doctor has felt it worthy or -- or sufficient that they need  
17 to tell Christian, Hey, you need to change your job, change  
18 what you're doing.

19 Let's talk briefly about Dr. Duke. And remember, pay  
20 attention to the facts and not just the arguments of Mr.  
21 Simon. Mr. Simon told you today that's he's testified 80  
22 times in the last few years for defendants. Do you remember  
23 when that testimony actually came out and Dr. Duke said, Wait,  
24 you're comparing apples and oranges. I testified 80 times in  
25 deposition, not in trial in the last few years. But 80 is

1 such a bigger number than the four to five times a year that  
2 Dr. Duke testifies in trial. And he's testified for both  
3 sides.

4 And Dr. Duke told you, I don't change the way I come  
5 up with my opinions depending on whose side I'm on. He took  
6 an oath to tell the truth and told you he would be subject to  
7 criminal penalties if he lied. It is up to you to determine  
8 if he lied. He is -- Dr. Duke is not hoping to perform a  
9 \$32,000 surgery on the plaintiff if he can get them to a  
10 verdict. He is the only --

11 Let's go to Video 227101755. 227101755. Dr. Duke is  
12 an expert witness. You heard his qualifications.

13 (Video played.)

14 MR. BAIRD: Did you hear any other expert to be  
15 explicitly qualified to talk about MRIs and radiology --  
16 radiological findings?

17 MR. SIMON: Your Honor, objection. That's not the  
18 standard.

19 THE COURT: Sustained.

20 MR. BAIRD: Dr. Duke is qualified and admitted by  
21 this Court to offer testimony about radiology, medical care,  
22 and billing. And his testimony was there was no traumatic  
23 injury, disc injury to either of these plaintiffs.

24 Dr. Duke acknowledged all the issues we've already  
25 discussed with the records and with the actions of the

1 plaintiffs. And using objective evidence. And all of the  
2 experts, all of the treating doctors all agree that an MRI's  
3 objective -- you can't fake the results of an MRI. The MRIs  
4 show degeneration.

5 Let's go to 22535715.

6 (Video played.)

7 MR. BAIRD: 22620440, 22620440.

8 (Video played.)

9 MR. BAIRD: So Dr. Duke on the one hand says these  
10 MRIs show degenerative changes. And if you'll recall, he said  
11 there were degenerative changes throughout the spine. Dr.  
12 Kaplan says all the other discs were stone cold normal.

13 Let's take a look at these MRIs and see who's telling  
14 the truth. As we're pulling these -- as we're pulling these  
15 up, remember, Dr. Duke is not the only doctor who's identified  
16 degenerative changes in these patients. Dr. Lanzkowsky's  
17 office have already -- already shown you the record that says  
18 she has degenerative conditions in her spine.

19 So L5-S1, L5-S1. They look strikingly similar. And  
20 then we look at the other discs. Look at this. So this is  
21 L5-S1, L4-L5, L3-L4, L2-L3. A dark line right in the middle.  
22 How about L1-L2, another dark line. What is that, T12-L1,  
23 that's the top lumbar, bottom thoracic. Little bit of  
24 darkness there. Darkness on the edge of L3-4.

25 How about in Maria's, darkness in the edges, graying

1 in the middle, darkness at the edges.

2 Plaintiff's own doctors have said this was a  
3 degenerative spine. How similar to this spine is it? What  
4 makes more sense? And, ladies and gentlemen, are all these  
5 other discs stone cold white, like Dr. Kaplan told you they  
6 were? They are not. Not in the least.

7 This is objective evidence. You cannot fake it.  
8 This is just a picture of their spines. And Dr. Kaplan would  
9 have you believe that there's only one darkened disc. That is  
10 clearly not the case.

11 Let's talk about traumatic spine injuries. How  
12 likely is it, ladies and gentlemen, that in this accident  
13 force was applied to that L5-S1 disc in such a way that it  
14 crushes it and tears it and leaks fluid onto the actual spinal  
15 cord, onto the foramen, the area around the spinal cord,  
16 pushing the disc out of place. In that moment of the car  
17 accident, does it make sense that that happened? And then  
18 Christian Cervantes gets out of his car with no back pain at  
19 all and later goes to the hospital without any back pain at  
20 all?

21 Now, you heard the testimony read in from Dr.  
22 McCourt. They want to find even injuries that are occult, or  
23 hidden, that aren't obvious even to the patient. Neither  
24 Maria nor Christian had any lumbar complaints until they went  
25 to the chiropractor.

1 Dr. Lanzkowsky, if we look at Exhibit 10, page 18,  
2 Dr. Lanzkowsky was under the impression throughout his care of  
3 the plaintiffs that they both had immediate lumbar pain. That  
4 is a fact on which he had assumed was true as he entered in  
5 his car. And if we look here under when and how did your pain  
6 start, per Christian, he reported immediate onset of leg pain  
7 and low-back pain. Immediate onset of low-back pain and leg  
8 pain. And you heard me ask the doctor, if I want -- if you  
9 tell me to get you a cup of coffee immediately and I come back  
10 three days later, have I done it immediately? The answer is  
11 no. A traumatic spine injury has immediate symptoms, like  
12 dropping a brick on your toe. You know it immediately.

13 And plaintiff spent most of Thursday talking about  
14 the discogram. But they misrepresented its -- its  
15 significance, didn't they?

16 Let's look at 227104219. Dr. Lanzkowsky would have  
17 you believe it was totally valid and reliable. But this is  
18 just another objective test.

19 (Video played.)

20 MR. BAIRD: And 227120223.

21 (Video played.)

22 MR. BAIRD: People without any back pain at all, 86  
23 percent of them have that Grade 5 tear.

24 Dr. Duke cited scientific research. When you have a  
25 Grade 5 tear, a discogram is especially unreliable. Has

1 plaintiff given you any scientific evidence to support their  
2 case other than Dr. Lanzkowsky and Dr. Kaplan?

3 Dr. Duke's wrinkle analogy is excellent and very apt.  
4 The signs that you see in the MRI are evidence of normal  
5 aging, not a reason for surgery.

6 Don't let plaintiff confuse you. He said again and  
7 again Mr. Simon would tell you they haven't told you where the  
8 pain is coming from, they haven't told you where the pain is  
9 coming from. Under the law, my client is not obligated to  
10 prove where the pain's coming from. Plaintiff has the burden.  
11 Plaintiffs have the burden to prove that this injury that  
12 they're claiming, the traumatic disc injury came from this  
13 accident. And for plaintiff to say that we haven't shown  
14 where the pain may be coming from, it's a red herring. That's  
15 not the standard. And don't be confused when he tells you  
16 that. And your jury instructions will not tell you that  
17 that's the standard, either.

18 Finally, again, this isn't about criticizing the  
19 plaintiffs for not treating, but how are they acting? How are  
20 they living? Maria has gotten zero radiofrequency oblations.  
21 Christian has -- received no spinal surgery and has no plans  
22 to do so. Since this accident, by my calculation, Maria has  
23 treated 41 days -- on 41 days, and she has not treated on  
24 1,195 days. Christian -- well, she has huge gaps in care.  
25 May 18th, 2012, was her last treatment with Dr. Coppel. Her

1 first visit with Dr. Lanzkowsky's office, December 2, 2013. A  
2 gap of nearly 19 months. And since Dr. Lanzkowsky's office,  
3 more than a year has passed; nothing has happened.

4 Christian received treatment on 51 days since the  
5 accident, hasn't treated for 1,185 days. He also has big gaps  
6 in his care. His last date with Dr. Coppel, June 4th, 2012.  
7 First treatment with Lanzkowsky, November 5, 2013; 17-month  
8 gap. And again, it's been over a year since he's seen  
9 Lanzkowsky and Kaplan.

10 Christian even testified to you during this trial  
11 that traffic is one of the reasons that sometimes he doesn't  
12 want to go get treatment. Does traffic keep a person with  
13 significant symptoms from getting them treated?

14 Jury Instruction No. 23, this is going to be key. We  
15 do not dispute that of all those bills that plaintiff put up  
16 there, that plaintiffs' counsel put up for the plaintiffs, are  
17 those bills. They're absolutely those bills. But Jury  
18 Instruction 23 tells you how to determine whether my client  
19 would be obligated to pay those bills.

20 And causation is key. Reasonable medical expenses  
21 plaintiffs have necessarily incurred as a result of the  
22 accident, and the medical expenses which you believe are  
23 reasonably certain to be incurred. It has to be related to  
24 the accident. Just because they got it for this lawsuit  
25 doesn't mean it was caused by an injury that the accident

1 caused. That is their job.

2 The reasonable -- and the reasonableness is key.

3 Ladies and gentlemen, fairness is the hallmark of a justice  
4 system. Is it fair for my client to pay for care that is  
5 unreasonably billed? Yes, every one of the plaintiffs'  
6 doctors got up here and said, Yes, these are my bills. This  
7 is what I'm charging for this care. That doesn't mean they're  
8 reasonable. And that is why the testimony that I elicited  
9 from them where they -- many of them admit, I don't know what  
10 anybody else charges for this treatment, this is just what I  
11 charge.

12 Well, what if someone tries to sell you a Ford Focus,  
13 which is a fine car, but if someone were to tell you you have  
14 to pay \$200,000 for that car, would that be reasonable? The  
15 person could say reasonably, Yes, that's what I charge. But  
16 that doesn't mean it's a fair price. And if you find any sort  
17 of injury, my client can only be obligated to pay a fair  
18 price. And you, the jury, will determine that.

19 Dr. Kaplan admitted to overcharging and exaggerating  
20 what he does for his patients in his bills. Granted, we only  
21 went through one instance with Dr. Kaplan. But wasn't his  
22 attitude and reaction telling? The plaintiffs don't want you  
23 to think about the details. And to them it's fine if the  
24 bills are unreasonable or excessive. You know why? Because  
25 they want my client to pay for it. That's fine with them.



1 But Dr. Kaplan said, Oh, I spent 40 to 50 minutes  
2 with the patient. And when we had to confront him on it, and  
3 you saw what he did. He didn't want to admit that he billed a  
4 charge for a procedure that should take 60 to 80 minutes when  
5 he only spent maybe 20 or 30 with the patient.

6 That code that we discussed, by using that code, he  
7 made specific representations to other doctors and to his  
8 patients and to everyone as to what he did. And by doing  
9 that, he overstated it. And that'll be up to you to determine  
10 if that represents dishonesty.

11 But perhaps one of the most important aspects of that  
12 code is the high complexity of the decision-making required.  
13 Because that implies that there were multiple diagnoses and  
14 multiple treatments options available. But you've heard the  
15 testimony of Christian; the only thing he was offered was  
16 surgery and there's only that one diagnosis, the supposed  
17 traumatic disc injury.

18 Dr. Lanzkowsky -- plaintiffs' counsel said Dr. Coppel  
19 charged too little. He didn't charge too little, ladies and  
20 gentlemen. He charged what he charged. But his charges were  
21 much lower than Lanzkowsky's. And why? Because --

22 You can take that down. -- they were less because he  
23 didn't charge extra for the plaintiffs to go to a separate  
24 clinic. Dr. Koka testified very clearly about this.

25 Let's go 226105856.

1 (Video played.)

2 MR. BAIRD: 22544654.

3 (Video played.)

4 MR. BAIRD: Dr. Duke -- Dr. Coppel was able to say,  
5 Well, these are young, strong patients. These injections can  
6 be done in my office. Dr. Lanzkowsky said let's charge them  
7 for the facility fees. A facility that he also owns part of.

8 Now, ladies and gentlemen, Dr. Duke gave you  
9 testimony about what was reasonable. We had initially  
10 expected that we would be producing Tami Rockholt, and that  
11 didn't work out. And so instead we asked Dr. Duke to present  
12 the evidence. Indeed, Dr. Duke testified he had no intention  
13 of testifying about medical billing. We asked him to. And as  
14 you have seen, the landscape changed day to day in this  
15 lawsuit, and the damages changed day to day. And so we had to  
16 go to Dr. Duke. But Dr. Duke has the proper foundation and he  
17 testified of that.

18 227104732. Dr. Duke knew not only the amounts  
19 charged, but what was reasonable in relation to other doctors.

20 (Video played.)

21 MR. BAIRD: 227105934, 227105934.

22 (Video played.)

23 MR. BAIRD: Sounds like plaintiff didn't want to hear  
24 the answer, that he had -- that he knows about the database  
25 and he agrees that those calculations were correct.

1 227105213.

2 (Video played.)

3 MR. BAIRD: So let's put up the slide. For Maria, if  
4 you were to find that all of the treatment was reasonably  
5 related to the accident, the reasonable costs are much less  
6 than what these doctors have billed.

7 Maria's reasonable expenses, less than 25,000.  
8 Christian's, less than 40,000; \$36,214.38. The plaintiffs  
9 must prove all treatment was reasonably related to the car  
10 accident, not just part of this lawsuit.

11 And the future surgery? Is Christian reasonably  
12 certain to have surgery? He's had this recommendation for  
13 quite some time. There's no way to know whether he's actually  
14 going to do that. That sounds to me like the opposite of  
15 reasonably certain. You've heard the doctors all say these  
16 amounts are what is owed. Let the doctors accept a fair and  
17 reasonable amount. Find the truth in your verdict and tell  
18 the doctors. Accept what's fair, not what's too much.

19 Ladies and gentlemen, this will be my last  
20 opportunity to address you. This is the hardest part of the  
21 whole trial for me. When I conclude, plaintiffs' counsel will  
22 be able to get up and offer more statements. I will not be  
23 able to respond. I will not be able to get up and offer any  
24 more evidence to point out any more documentation regarding  
25 this case and what really happened. As such, my client must

1 rely on and trust you to remember these arguments and the  
2 evidence that we have shown in this case when you deliberate.

3 When we eliminate sympathy and consider the biases  
4 and the motivations of the plaintiffs and the doctors that  
5 have been made a part of this litigation, you realize the most  
6 reliable evidence is the objective evidence. The evidence  
7 that can't be faked. And the objective evidence is this, both  
8 of plaintiffs' MRIs show degenerative changes and no evidence  
9 of a traumatic injury.

10 Maria's lack of lumbar pain complaints on discharge  
11 to her doctors is different than what she testified to you in  
12 this trial. And the records show she had no lumbar problems.  
13 And there's no evidence of a disc injury.

14 Christian complained of no spinal pain whatsoever at  
15 the scene or at the hospital, and would have you believe that  
16 somehow his disc virtually exploded within his spine, but  
17 somehow nary a symptom could be found or reported by him or by  
18 examination by a doctor at the hospital.

19 The burden of proof, ladies and gentlemen, 51 percent  
20 in this case is no easy burden. Plaintiffs' counsel would  
21 have you believe that he's done more than prove his case.  
22 Does the evidence tip in favor of a traumatic disc injury, or  
23 does it sound more like a soft tissue injury? A myofacial  
24 sprain/strain, like Dr. Duke has diagnosed.

25 You don't need to consider any harms and losses

1 except for injuries that are proven. Don't be hypnotized by  
2 that mantra. Who in this case has demonstrated that they have  
3 something to hide? And consider that when you are trying to  
4 determine the truth.

5 Jury Instruction No. 32, this is the burden of proof  
6 we talked about in openings, and we've talked about it in  
7 everyone's closings. The preponderance of the evidence. And  
8 it's not just overall. You're going to have -- they have to  
9 prove -- they have to prove with a preponderance of the  
10 evidence that there was an injury, and then each item of  
11 damages must be proved by a preponderance of the evidence.  
12 This is no easy standard, ladies and gentlemen. And when you  
13 add up the evidence, it becomes clear that plaintiffs have not  
14 met their case.

15 Ladies and gentlemen, plaintiffs have come to you and  
16 are telling you to force my client to pay hundreds of  
17 thousands of dollars, over \$254,000 to Maria, over \$900,000 to  
18 Christian, from my client. All they have brought are  
19 questions and issues. Doctors that don't care about the big  
20 picture, doctors that don't treat their patients, but the  
21 lawsuits.

22 In order to get money from my client, plaintiffs  
23 needed a lot more. When you consider all the evidence is  
24 clear, plaintiffs have suffered at most the myofacial strain  
25 that Dr. Duke testified. The value of plaintiffs'

1 conservative necessary portion of their concerted treatment?  
2 \$9,000 of medical specials for Christian, and \$10,000 in  
3 medical specials for Maria. For pain and suffering, a  
4 reasonable amount would be \$5,000 for Maria and \$6,000 for  
5 Christian.

6 Ladies and gentlemen of the jury, if you find the  
7 plaintiffs have suffered a myofacial strain in this accident,  
8 the most you can award them based on the evidence is \$15,000  
9 each, a total of \$30,000 between the two. And when you get  
10 this, when you make your verdict --

11 If I could have the Elmo, please? -- there will be  
12 one for each plaintiff. So -- Now I've already forgotten my  
13 notes. -- for Christian, who comes up -- comes up on the  
14 first one, past pain and suffering, that would be the second  
15 number I gave you, \$6,000. Past medical expenses -- and  
16 again, only the reasonable expenses, \$9,000. And ladies and  
17 gentlemen, they have not proven anything else to you for  
18 Christian Cervantes, who has a degenerative condition in his  
19 spine that is not caused by this accident.

20 You will also be given a verdict form for Maria. For  
21 Maria, past pain and suffering, \$5,000. Past medical expenses  
22 -- only the reasonable ones, ladies and gentlemen -- \$10,000.  
23 And they have not come anywhere near tipping the scale on  
24 their --

25 Pardon? Oh, whoops. They haven't come anywhere near

1 tipping the scales on the remaining. Thank you again for your  
2 time and attention, ladies and gentlemen, throughout this  
3 trial. And I thank you on behalf of my client -- client in  
4 advance for your diligence in your deliberations. Thank you.

5 THE COURT: All right. Are you ready for rebuttal?

6 Or does anyone need to stand up, use the bathroom,  
7 stretch, anything? Five minutes?

8 All right. So why don't we just take a five-minute  
9 break again. Remember, you can't talk about this case, you  
10 can't form or express an opinion on this case, and you can't  
11 do any research.

12 (Court recessed at 3:23 p.m., until 3:36 p.m.)

13 THE COURT: All right. Whenever you're ready.  
14 Counsel, make yourself comfortable.

15 MR. SIMON: Thank you, Your Honor.

16 PLAINTIFF'S REBUTTAL ARGUMENT

17 MR. SIMON: What Mr. Baird has just spent the last  
18 hour talking to you about is not evidence. His interpretation  
19 and argument of the evidence is not evidence. He has to rely  
20 on the evidence only in this case. And that's what they can't  
21 do, because the evidence undeniably favors the plaintiffs and  
22 their injuries and what they've told all of their doctors and  
23 what they've told everybody on that stand. To get up here and  
24 accuse treating physicians who have credentials that are out  
25 of this -- out of this room and suggest that they are

1 misrepresenting the facts? Misrepresenting their diagnosis  
2 and injuries that they have to be held accountable for if they  
3 screw up? There is no evidence that any of the doctors  
4 misrepresented anything.

5 Smoke and mirrors is what's going on here, ladies and  
6 gentlemen. And don't be fooled by it. And let's just start  
7 right out of the gate about this smoking gun EMG. Okay.  
8 That's Mr. Baird's interpretation of what this test means.  
9 And let's talk about it a little bit. Here's an affidavit.

10 The Elmo, is it on? What's that?

11 THE CLERK: It should be on.

12 MR. SIMON: Okay. There we go. This is an affidavit  
13 from Dr. Lanzkowsky's office.

14 It's called Centennial Spine and Pain Center. In  
15 January 31st of 2014, this affidavit says that he's producing  
16 all of the records to Mr. Baird in this case. He produced, as  
17 part of those records, the EMG studies that he's now trying to  
18 wave around and suggest to you that that's evidence of no  
19 injury to the disc.

20 Let's take a look at the record a little closer, the  
21 part that Mr. Baird didn't want you to see. What this says,  
22 "Mr. Cervantes-Lopez is a 26-year-old right-handed gentleman  
23 with chronic back problems for over two years." Chronic back  
24 problems for two years. That means ongoing permanent pain to  
25 his low back for two years. And when you look at the date of



1 this report and the date of the accident, it's two years. He  
2 doesn't talk about any other causes. He doesn't talk about  
3 any other events. He doesn't -- he says chronic pain for two  
4 years.

5 He then says within the last six months the pain in  
6 the left lower back radiating into the buttock and thigh has  
7 worsened. Which is consistent with a disc injury. It comes  
8 and goes. It worsens, it gets better, depends on your  
9 activities. What everybody has said.

10 It also says when he does physical work, such as  
11 shoveling, as part of his job, he gets increased pain. That's  
12 what he's told everybody, every doctor. Nobody is hiding  
13 anything here.

14 He is on Tramadol and ibuprofen for pain management.  
15 Because they like to not take Lortabs and opiates, they are  
16 bad people, apparently, and not in pain. That's not the  
17 evidence. People deal with their pain differently.

18 Past medical history, negative, other than the car  
19 accident.

20 Then let's talk about what this test means. All of  
21 the doctors know that this test is for nerve damage. They  
22 don't have nerve damage. Not a single person got up here and  
23 said they have nerve damage. They have a disc injury.

24 That's what Christian has, he has a disc injury, not  
25 nerve damage. And for them to get up here and try and confuse

1 you to say one means the other, it's simply not evidence, and  
2 it's simply not true.

3 You saw a little bit about Dr. Lanzkowsky and Dr.  
4 Lanzkowsky's deposition, which Mr. Baird was there questioning  
5 him. This was in May of 2014, that's when Dr. Lanzkowsky gave  
6 his deposition. Did they talk about these EMG studies?

7 MR. BAIRD: Objection, Your Honor. Can we approach?

8 THE COURT: Sure.

9 (Bench conference.)

10 MR. BAIRD: His deposition testimony, they don't  
11 [indiscernible] trial.

12 MR. SIMON: Doesn't matter. It's been opened and  
13 published. You can use it for any purpose.

14 THE COURT: Was it -- which one was it?

15 MR. BAIRD: Lanzkowsky.

16 THE COURT: We did open it.

17 MR. BAIRD: Yeah, that doesn't mean you get to read  
18 the hole thing in closing [indiscernible].

19 MR. SIMON: That's not true.

20 MR. BAIRD: [Indiscernible] trial.

21 MR. SIMON: I can use it for any purpose.

22 THE COURT: You admitted the whole -- the entirety of  
23 the deposition.

24 MR. BAIRD: Sure. But that doesn't mean -- although  
25 I would have read a lot of deposition parts, too.

1           THE COURT:  You -- well, you went on the EMG report,  
2   which was never really mentioned in trial, too.  But it's  
3   admitted into evidence.

4           MR. BAIRD:  That was an explicit -- no, that --  
5   there's a difference between being admitted into evidence and  
6   [indiscernible] transcripts.  That's why it's important that  
7   all of the questions that were written about during trial are  
8   reviewed in closing.  Because that wasn't evidence  
9   [indiscernible].

10          THE COURT:  That isn't my understanding of the rule.

11          MR. SIMON:  That's not the rule.  Because once it's  
12   open and published --

13          THE COURT:  You're saying that you --

14          MR. SIMON:  -- it can be for -- used for any purpose.

15          MR. BAIRD:  That's not [indiscernible].  Sorry.

16          THE COURT:  I just went through it.  It's in  
17   evidence.

18          MR. BAIRD:  That's not -- that's only -- the only  
19   parts that are evidence are what was read into -- in evidence.  
20   The jury doesn't take that transcript with them.

21          MR. SIMON:  Of course they don't.  But it can be --  
22   when it's open and published, it can be used for any purpose  
23   during trial.  This is during trial.

24          THE COURT:  Go ahead.  Just let it.

25                       (End of bench conference.)

1 MR. SIMON: Thank you, Your Honor. Let's look at Dr.  
2 Lanzkowsky's opinion relating to EMG studies that asked by Mr.  
3 Baird in his deposition in May of 2014.

4 "Were there any positive findings neurologically?"

5 Answer, "No. So what we're looking for, what you're  
6 asking for, is has he got neurological findings, and positive  
7 EMG findings occur when the nerve is damaged, right? This is  
8 a -- this is pre the nerve getting damaged. So he's got  
9 symptoms, he's got positive straight-leg raise, but he doesn't  
10 have a neurological deficit. That would be a later finding,  
11 which may or may not ever develop."

12 This report, ladies and gentlemen, is nothing more  
13 than smoke and mirrors. And if you have any reason to doubt  
14 me, think about this. Why did Mr. Baird not question a single  
15 doctor on the stand about this report or this finding? He  
16 didn't do it because it's irrelevant. It has no relation to  
17 this case. Why did not a single doctor bring up this report  
18 or finding? Because it has nothing to do with this case.

19 Mr. Baird has an obligation to present evidence in  
20 support of his defense. And Dr. Lee is available for him to  
21 come in and testify and tell this jury, and tell you all what  
22 this really means. He didn't do it. Because he wants to tell  
23 you what it means instead of a doctor. And that's not  
24 evidence. That's a lawyer making an argument, which is not  
25 evidence.

1           That was the first smoke and mirror that you heard  
2 during the defense argument. The next is he started right out  
3 of the gate trying to blame me for not calculating pain and  
4 suffering or loss of enjoyment of life. This Court instructed  
5 you in the rules. There's no definite standard or method of  
6 calculation prescribed by law to fix this compensation. I  
7 have no obligation to calculate for Mr. Baird what you're  
8 going to decide. That's for you to decide. And to blame me  
9 for something you're going to decide...

10           Let's also talk about the Jury Instruction 31.  
11 Plaintiffs are entitled to recover the net present cash value  
12 for future medical expenses. Future pain and suffering are  
13 not reduced to present cash value. And the parties have  
14 stipulated that the net present value for the cost of future  
15 medical treatment are the figures that were told to you by Dr.  
16 Lanzkowsky and Dr. Kaplan. They've stipulated and agree that  
17 the numbers they give are the right numbers. So to get up and  
18 tell you that there's some surprise going on or that they  
19 didn't know, they've stipulated to that.

20           Just to go through some of the medical records,  
21 they've taken bits and pieces of the information, trying to  
22 put a spin on it so you will now reject the true evidence.  
23 They've taken little snippets of the trial to try and  
24 manipulate the truth in this case. I submit to you, you've  
25 heard all the witnesses, they gave explanations. And in

1 regard to Dr. Adair, she testified that they -- Maria had  
2 ongoing pain in her low back at the time she was released.

3 Her final report on February 28th for Maria states,  
4 "Low-back pain. Two to three days per week her pain is 3 out  
5 of 10. Her pain is generally achy, but occasionally sharp."  
6 It doesn't sound like pain-free to me, because that's the  
7 evidence when she leaves Dr. Adair.

8 And as much as they want you to believe that this is  
9 just a soft-tissue injury, meaning only the muscles, where  
10 they run into trouble of the evidence is that Dr. Adair  
11 diagnosed this. And upon her release she still had pain.  
12 Part of Dr. Adair's treatment, she had pain that got referred  
13 to an MRI, a positive MRI that supports the pain. Dr. Adair  
14 referred to Dr. Coppel. The injections given to her by Dr.  
15 Coppel are a part of the initial treatment related to the car  
16 accident.

17 The problem that they have is that Dr. Coppel's  
18 diagnosis of treatment is related to the car accident.  
19 Because you don't take needles and stick them into your spine  
20 for a muscle strain. As soon as he diagnosed her and stuck  
21 that needle in the spine, it is a disc injury that is related  
22 to this case, and that pain has never gone away. And they  
23 have never shown you anything otherwise.

24 What we have learned through the course of this trial  
25 is that these people have been truthful to all of their

1 doctors. And they want to take bits and pieces of a few  
2 records during the chiropractic care and Dr. Koka's care to  
3 say she was pain-free and all healed. But that's not what  
4 they testified to. That's not what they said, and that's not  
5 what the records really say.

6 Her chiropractic care did help her. We told you that  
7 from day one. It did help her improve. It healed certain  
8 body parts. Didn't heal the low back, because the disc  
9 injury.

10 Christian Lopez improved, too. His pain never went  
11 away. His disc injury was identified and it's never gone  
12 away. Of course, he had improvement for a little bit, but  
13 with increased activities, it worsens.

14 Let me just run through a few of the records for you.  
15 This is Maria with Dr. Adair, day one. You saw a lot about a  
16 pain diagram. Well, her low back is marked, her right  
17 shoulder's marked, her abdomen is marked, and her neck is  
18 marked. Three days after the accident her -- all of these  
19 body parts are an injury related to this accident. And since  
20 her pain didn't go away, they don't get to get up here and  
21 tell you mysteriously the pain related to the accident stopped  
22 on X date, but the continuing pain is somehow related to  
23 another condition. That doesn't make sense, does it?

24 Again, she had headache pain, neck pain, shoulder  
25 pain, chest pain from the seat belt, and thigh pain. She also

1 had lower-back pain. She also was taking medications from  
2 UMC. And these are all the injuries diagnosed that have never  
3 gone away.

4 Smoke and mirrors. Do you remember when Dr. Duke got  
5 up there, he tried to use a super bill, whatever that means.  
6 And because they didn't check a certain box about lumbar pain,  
7 he tried to tell you that Maria didn't even have a lumbar  
8 injury when she was seen 10 days later at Dr. Koka.

9 Well, on the same day in the initial evaluation,  
10 which is November 22nd, she marks low-back pain, neck pain,  
11 shoulder pain, abdomen pain. And under the bottom, lumbar  
12 spine with -- range of motion with pain.

13 Dr. Koka diagnosed a low-back injury on the first  
14 time he saw her. And for them to get up here and say, Oh,  
15 well, there's no mention of that in this record, so it must  
16 not have happened, belies the evidence. The evidence that Dr.  
17 Koka went over. He wished his reporting was complete. He  
18 admitted there were some issues with it.

19 December 27th, Maria still have neck and low-back  
20 pain. Her shoulder pain is -- is better on that day.

21 January 24th, she still have neck and low-back pain.

22 And February 14th, when she's getting released from  
23 Koka, complains of mild back pain while lifting, and notes the  
24 neck pain.

25 So to suggest she was ever pain-free and somehow



1 miraculously her injuries have ceased, it's not true, ladies  
2 and gentlemen. That's why Adair ordered the MRI and it came  
3 back positive and she went to Dr. Coppel. That's why Dr.  
4 Coppel diagnosed a lumbar disc displacement and lumbar facet  
5 syndrome, and he recommended injections that she underwent.  
6 To try to suggest that somehow lawyers were making her go  
7 here? You heard the evidence. Her lawyers did not send her  
8 to Dr. Coppel. Dr. Adair referred her to Dr. Coppel. And  
9 that's just more smoke and mirrors for them to try and blame  
10 anything but this accident, anything, on lawyers. Really?

11           And yes, she underwent injections. Is a person  
12 really going to stick needles in them unless they want to  
13 follow their doctor's advice and get better?

14           And I guess I'm a little confused. Is she injured or  
15 is she not? What is their position? When you go back in  
16 there, try to figure it out. Because I'm -- I couldn't follow  
17 it. Is she injured or not? Did she treat enough or didn't  
18 she treat enough? Should she have treated more? What is it?

19           And so if she's reporting pain, she's expected to go  
20 to the doctor, and that's exactly what they do when they  
21 return to Dr. Lanzkowsky. And it's the same consistent areas  
22 and pain complaints.

23           And yes, she undergoes the injections. Yes, her pain  
24 is a 4. Sometimes it increases. And this injection reduced  
25 her pain 50 percent. And they want to blame these doctors for

1 not performing the test correctly. Really? Because Dr. Duke  
2 wants to tell everybody how they didn't do their job right?  
3 Discograms weren't done right, says Lanzkowsky's test is all  
4 screwed up, he didn't do it right. Dr. Coppel, he didn't do  
5 it right, either. Nobody did it right. Dr. Kaplan, he -- he  
6 doesn't do it right, either.

7 He's the Lone Ranger when it comes to this. Nobody.  
8 Nobody. And he said -- I asked him straight up, Did they  
9 commit malpractice? I mean, what -- what's the problem? He  
10 said, No, I don't believe they did that.

11 The bottom line is they recommended additional  
12 treatment. The radiofrequency treatments. And Maria  
13 testified to you, she just thought it was more injections.  
14 She didn't really understand the procedure. And somehow  
15 they're faulting her for that, that she didn't understand the  
16 difference between radiofrequency oblations and more  
17 injections, because you still have to go into the same surgery  
18 room and get needles stuck in you. I mean, lawyers don't  
19 understand this stuff. And they're supposed to understand it?

20 What makes sense, ladies and gentlemen? Just go  
21 through a little bit of the meds for Christian. This  
22 traumatic accident happens, and Christian has headache pain,  
23 low-back pain, and neck pain. He showed no evidence of  
24 inappropriate behavior or magnifying symptom and was generally  
25 pleasant.

1 All doctors, again, say that they are truthful in  
2 their presentation. Their physical exam, their MRI findings,  
3 everything matches up. And this is their clinical impression  
4 shortly after the accident, within days. These are the  
5 diagnosis, and the low-back never went away. Use your common  
6 sense. Did they present any evidence to you that they had any  
7 injuries or conditions before this? No. The accident is a  
8 major accident. It happened. They were injured in a short  
9 period of time. And that injury never went away. To suggest  
10 that somehow it's cut off at a certain point is not based on  
11 the evidence and is asking you to guess.

12 And Dr. Adair did talk about injury to the disc when  
13 he was being released. And she also talked about that he  
14 would be susceptible to future pain relating to this. He had  
15 increased with driving, certain activities increased his pain.  
16 They discussed a disc protrusion at the L5-S1 based on the  
17 MRI. And his pain is moderate with activities. Increase with  
18 work. This is everything that they've said the entire time.  
19 Nothing has changed.

20 There's no -- they want you to believe there's a  
21 lawsuit person and a different person. They haven't showed  
22 you anybody different throughout the course of this case.  
23 That's just argument of counsel. That's all that is. The law  
24 allows for compensation. That's what Your Honor instructed  
25 you on. And just because they want to call fair compensation

1 somehow lawsuit money, that's their interpretation. That's  
2 not the law or your interpretation.

3 Again, because this is two cases, they should be  
4 judged separately. Here's the pain diagram of Dr. Koka. Dr.  
5 Koka notes the low-back pain. Dr. Coppel diagnoses a lumbar  
6 disc displacement and gives injections, and points to the  
7 L5-S1. Those are the injections. And he continues to have  
8 pain with increased activities. It never went away after Dr.  
9 Coppel.

10 In these cases the defense wants to just take  
11 whatever they can and just throw it up against the wall and  
12 hoping something will stick. That's what they're hoping in  
13 this case. That's why you talk about, Well, it might be a  
14 soft-tissue injury, or it might be the degenerative disc, or  
15 it might be the lawyers, or the doctors didn't do their tests  
16 right.

17 Let's talk about a few jury instructions. Even if  
18 you take their argument that this disc is degenerative, which  
19 belies the common sense and evidence of the doctors whose  
20 opinions are it's extremely unlikely to have discs that look  
21 like this at such a young age. But assuming you say, Well,  
22 we're not sure, this jury instruction makes it sure.

23 If you find that there was a preexisting condition,  
24 this alleged degenerative problem, which was a dormant  
25 asymptomatic condition, meaning they didn't have any symptoms,

1 which the evidence is undisputed they did not, and if that  
2 condition was subsequently aggravated to cause symptoms, the  
3 plaintiffs are entitled to recover full compensation for the  
4 resulting injuries.

5 This jury instruction, as you are required to follow,  
6 requires you to return a full and fair verdict, even if you  
7 think there is a degenerative disc. All the doctors that  
8 testified heard their treating physicians, told you that this  
9 is a posttraumatic condition. Because that's what makes  
10 sense. When you do the physical exam, when you do the MRIs,  
11 when you do the injections, the discograms.

12 Let's talk about -- briefly, about -- I'm not sure if  
13 they were blaming the plaintiffs or not blaming the  
14 plaintiffs. I think they're blaming them for trying to work  
15 and go back to their life, or blaming them for not treating.  
16 That they're not supposed to be injured. Which one is it?

17 Again, Dr. Duke, although he may not have to come up  
18 here and tell you a cause, but he's a pretty smart guy and he  
19 knows the cause, he would have to tell you it's this car  
20 accident and nothing else. Because that's all you have in the  
21 evidence.

22 And again, these plaintiffs, who all the doctors said  
23 they were truthful, did everything that they asked of them.  
24 They went to Dr. Duke, they -- they went to their deposition,  
25 they allowed all of their medical records to be discovered and

1 obtained by them. They did everything. These two are not  
2 going to go around fooling all of these educated experienced  
3 doctors, including Dr. Duke.

4 The bottom line is they have real injuries and  
5 deserve real compensation. And all they can come up with is  
6 that Dr. Kaplan didn't check the right CPT code? They still  
7 don't get the case yet. They want to fool you into giving a  
8 low amount because Dr. Kaplan didn't check a CPT code.

9 The reason these damages are reasonable is because  
10 yes, that's what the doctors charge, but also it doesn't  
11 consider a lot of other aspects of their life, like loss of  
12 income, how it's going to affect them in the future and not be  
13 able to do all the things that they want to do. And again,  
14 that is for you to decide on a fair sum of money. And to  
15 suggest that \$15,000 fairly compensates them for what they've  
16 been through? That is not the evidence, ladies and gentlemen.  
17 That is not the evidence.

18 When you go back into the jury room, ask yourself, is  
19 it okay to change the truth? Is it okay? Because Ms. Ortega  
20 has selected her lawyers, fine lawyers. Ms. Ortega retained  
21 Dr. Duke, a fine expert witness that he is retained  
22 specifically to undermine this case. And when people spend  
23 money to protect paying people who are injured and victims,  
24 those are dangerous people. And when there's dangerous  
25 people, only juries like you can change this. Your verdict

1 will be read, your verdict will keep her driving safe next  
2 time and others like her, because if your verdict is too --

3 MR. BAIRD: Objection, Your Honor.

4 THE COURT: Yes.

5 MR. SIMON: -- low --

6 THE COURT: Hold on.

7 MR. BAIRD: Can we approach?

8 THE COURT: Sure.

9 (Bench conference.)

10 MR. BAIRD: Again, he's making a statement  
11 [indiscernible] he's got to stop telling them to make a  
12 statement. This is about [indiscernible].

13 THE COURT: Okay.

14 MR. SIMON: It's not an improper argument under  
15 Gunderson. It's clearly based on the evidence.

16 MR. BAIRD: There's no evidence about danger to the  
17 world.

18 THE COURT: Those arguments always make me nervous  
19 with the Supreme Court, honestly. I'm going to sustain him.

20 MR. SIMON: Okay.

21 (End of bench conference.)

22 MR. BAIRD: Can that be stricken, Your Honor?

23 THE COURT: Yes. Please disregard the last statement  
24 of counsel.

25 MR. SIMON: What'll happen is after you deliberate

1 and you return your verdict, you have two options. If the  
2 verdict's too low, they're going to get up and shake each  
3 other's hand and go, Good job, good job, we did our job. And  
4 your verdict will be forgotten before the lights go down in  
5 this courtroom.

6           However, if --

7           MR. BAIRD: Objection. Your Honor, we're still on  
8 the statement-making with the verdict.

9           THE COURT: He's modified his closing, though.

10          MR. BAIRD: Can we approach?

11          THE COURT: All I heard was and the lights will go  
12 down. Sure. Come on up.

13                               (Bench conference.)

14          MR. BAIRD: What else could it mean, the verdict will  
15 be forgotten? I mean, this is the exact same line. He needs  
16 to [indiscernible].

17          MR. SIMON: Judge, just because he doesn't like my  
18 argument doesn't make it improper. This is a proper argument.  
19 It follows --

20          THE COURT: I agree with you on this one.

21                               (End of bench conference.)

22          MR. SIMON: Okay. Thank you, Your Honor. Like I  
23 said, not too many jurors get to make a difference in people's  
24 lives, get to make decisions that make a difference in the --  
25 in the community in which we live. If your verdict is too



1 low, again, it'll be forgotten before the lights go down. But  
2 if your verdict is right and just and fair, it may be put in  
3 the paper. People may ask you about it later --

4 MR. BAIRD: Objection. Your Honor, may we approach?

5 MR. SIMON: -- it may change --

6 THE COURT: No. Hold on. Sure, what's your  
7 objection, counsel?

8 MR. BAIRD: This is golden rule and this is personal  
9 interest argument.

10 MR. SIMON: It's not [indiscernible].

11 MR. BAIRD: Can we approach?

12 THE COURT: Sure.

13 (Bench conference.)

14 MR. BAIRD: He's telling the jury [indiscernible]  
15 this verdict [indiscernible]. He's telling them that if they  
16 do what's right, the newspapers will [indiscernible].

17 MR. SIMON: Okay. It's -- this is what can happen to  
18 the verdict in this case. It's something that they might have  
19 to be faced with.

20 MR. BAIRD: It's not going to happen.

21 THE COURT: I agree with defense.

22 (End of bench conference.)

23 MR. SIMON: What your verdict will do is if you give  
24 a fair and just verdict, it will make people like her do it  
25 right the next time.

1           Thank you for your time.

2           THE COURT: Thank you.

3           MR. SIMON: Oh, excuse me. Judge, I just have one  
4 more point.

5           THE COURT: Sure.

6           MR. SIMON: Couple more points. Only an hour long --  
7 only an hour more, guys. Here's what I want you to think  
8 about. There's the evidence that the defendant has presented  
9 you. Here's the evidence in the case that supports us.

10           And when you think about a disc injury, I want you to  
11 think about this. This is a very functional can that holds  
12 liquid. Just like a disc. When someone is injured in a car  
13 accident like this, you can still function. You can still  
14 drink out of this. It still functions the way it should.  
15 It's just slightly damaged.

16           But as those years move along, over the next 50  
17 years, with their normal activities, their disc continues to  
18 go like this. And that's what Dr. Kaplan told you is going to  
19 happen to their disc. And eventually in 20, 30 years, or  
20 after the surgery, you can no longer use their disc.

21           I submit to you the evidence is overwhelming, that  
22 their injuries were caused by this accident and no other  
23 accident. And keep it simple. Don't get distracted by the  
24 smoke and mirrors. The simple evidence, they were perfectly  
25 healthy and nobody disputes that they were truthful, perfectly

1 healthy. This was a major accident, that she's at fault.  
2 Nobody disputes it.

3 Thank you for your time.

4 THE COURT: Bless you. And thank you. Jason? Is  
5 Austin going to be sworn in, also?

6 THE MARSHAL: No, Judge.

7 THE COURT: All right.

8 (Bailiff sworn.)

9 (Jury recessed for deliberation at 4:13 p.m.)

10 THE COURT: All right. Counsel, the jury's out of  
11 the room. Is there anything you need to address before we get  
12 your contact information?

13 MR. BAIRD: Just a brief record, Your Honor.

14 THE COURT: Yes.

15 MR. BAIRD: We objected to --

16 THE COURT: Hold on.

17 MR. BAIRD: -- of the -- oh, sorry. Okay. Sorry  
18 about that.

19 We objected to the reading in of deposition testimony  
20 that was not presented in evidence. And that was --

21 THE COURT: That was admitted into evidence.

22 MR. BAIRD: Right. Well, yes. It hadn't been  
23 specifically read in during trial, and so that was the  
24 dispute.

25 THE COURT: The -- yeah, but the entirety of the

1 transcript had been admitted.

2 MR. BAIRD: We objected to encouraging the jury to  
3 make a statement by their verdict. One time it was sustained.  
4 And then when it changed to making a legacy for the jury, that  
5 was also sustained. It still kind of continued. But those  
6 are the only issues that came up.

7 MR. SIMON: Judge, you're right about the deposition,  
8 it was open and published and can be used for any purpose. As  
9 far as the arguments, you ruled correctly at the bench.

10 THE COURT: Thank you. Okay. So it's 4:10. My  
11 guess is they're going to go in there and get settled in,  
12 probably select a foreperson and maybe do a little vote to see  
13 where they're standing.

14 So I need contact information for you guys. They'll  
15 go until 5:00. Then I believe Jason's going to tell them to  
16 be back tomorrow at 8:30 in the morning. As soon as we get a  
17 verdict or we have a question, we will obviously contact  
18 counsel.

19 (Court recessed at 4:14 p.m.)  
20  
21  
22  
23  
24  
25

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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ORIGINAL

DISTRICT COURT

CLARK COUNTY NEVADA

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

1:39 pm

MAR 04 2015

BY: *Katherine Streuber*  
KATHERINE STREUBER, DEPUTY

CASE NO. A667141  
DEPT. NO.: XXIII

CHRISTIAN CERVANTES-LOPEZ and  
MARIA AVARCA

Plaintiffs,

vs.

MIRIAM PIZARRO-ORTEGA,

Defendant.

JURY INSTRUCTIONS

A-12-887141-C  
JI  
Jury Instructions  
4430150



39

01502

INSTRUCTION NO. 1

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.



INSTRUCTION NO. 3

The Masculine for as used in these instructions, if applicable as shown by the text of the instruction and the evidence, applies to a female person.

INSTRUCTION NO. 4

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the Court and any evidence ordered stricken by the Court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 5

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works or materials, including but not limited to internet resources or social media, for additional information regarding any issue, party, witness or attorney involved in this case.

INSTRUCTION NO. 6

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 7

You are not to discuss or even consider whether or not the Plaintiffs were carrying insurance to cover medical bills, loss of earnings, or any other damages they claims to have sustained.

You are not to discuss or even consider whether or not the Defendant was carrying insurance that would reimburse her for whatever sum of money she may be called upon to pay to the Plaintiffs.

Whether or not either party was insured is immaterial, and should make no difference in any verdict you may render in this case.

INSTRUCTION NO. 8

If, during this trial, I have said or done anything which has suggested to you that I am inclined to favor the claims or position of any party, you will not be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference should be drawn from that evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NO. 9

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence that is proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence. It is for you to decide whether a fact has been proved by circumstantial evidence.

INSTRUCTION NO. 10

In determining whether any proposition has been proved, you should consider all of the evidence bearing on the question without regard to which party produced it.



INSTRUCTION NO. 11

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

INSTRUCTION NO. 12

During the course of the trial you have heard reference made to the word "interrogatory."

An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. You are to consider interrogatories and the answers thereto the same as if the questions had been asked and answered here in court.

INSTRUCTION NO. 13

If counsel for the parties have stipulated to any fact, you will regard that fact as being conclusively proved as to the party or parties making the stipulation.

INSTRUCTION NO. 14

The credibility or "believability" of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence.

INSTRUCTION NO. 15

Discrepancies in a witness' testimony or between his testimony and that of others, if there were any discrepancies, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

INSTRUCTION NO. 16

A person who has special knowledge, skill, experience, training or education in a particular science, profession or occupation may give his or her opinion as an expert as to any matter in which he or she is skilled. In determining the weight to be given such opinion, you should consider the qualifications and the credibility of the expert and the reasons given for his or her opinion. You are not bound by such opinion. Give it weight, if any to which you deem it entitled.

INSTRUCTION NO. 17

A question has been asked in which an expert witness was told to assume that certain facts were true and to give an opinion based upon that assumption. This is called a hypothetical question. If any fact assumed in the question has not been established by evidence, you should determine the effect of that omission upon the value of the opinion.

INSTRUCTION NO. 18

Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to prove a certain allegation made by him, the meaning of such an instruction is this: That unless the truth of the allegation is proved by a preponderance of the evidence, you shall find the same to be not true.

The term "preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein.



INSTRUCTION NO. 19

The preponderance, or weight of evidence, is not necessarily with the greater number of witnesses.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of the one witness, you should accept his testimony.

INSTRUCTION NO. 20

The Plaintiffs must prove the following elements by a preponderance of the evidence:

1. That the Defendant's negligence was a proximate cause of damage to the Plaintiffs.

INSTRUCTION NO. 21

A proximate cause of injury, damage, loss, or harm is a cause which in natural and continuous sequence, produces the injury, damage, loss, or harm and without which the injury, damage, loss or harm, would not have occurred.

INSTRUCTION NO. 22

Defendant Miriam Pizarro-Ortega has admitted that she is negligent and, therefore, 100% liable for causing the motor vehicle accident.

Therefore, it is your responsibility only to determine whether or not the motor vehicle accident was a proximate cause of the Plaintiffs' injuries in this case.

In determining the amount of losses, if any, suffered by the Plaintiffs as a proximate result of the accident in question, you will take into consideration the nature, extent and duration of the injuries you believe from the evidence Plaintiffs have sustained, and you will decide upon a sum of money sufficient to reasonably and fairly compensate Plaintiffs for their damages.

INSTRUCTION NO. 23

The reasonable medical expenses Plaintiffs have necessarily incurred as a result of the accident and the medical expenses which you believe the Plaintiffs are reasonably certain to incur in the future as a result of the accident.

INSTRUCTION NO. 24

The physical and mental pain, suffering, anguish, loss of enjoyment of life and disability endured by the Plaintiffs from the date of the accident to the present and the physical and mental pain, suffering, anguish and disability which you believe Plaintiffs are reasonably certain to experience in the future as a result of the accident.

INSTRUCTION NO. 25

No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for pain and suffering. Nor is the opinion of any witness required as to the amount of such reasonable compensation.

Furthermore, the argument of counsel as to the amount of damages is not evidence of reasonable compensation. In making an award for pain and suffering, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in the light of the evidence.

INSTRUCTION NO. 26

In personal injury cases, causation of injury or damages must be established by medical expert testimony to a reasonable degree of medical probability.



INSTRUCTION NO. 27

If you find that the Plaintiffs had a pre-existing condition which was a dormant, asymptomatic condition that was subsequently aggravated by this accident, then the Plaintiffs are entitled to recover full compensation for the resulting disability, even though the resulting disability is greater than if they had not suffered from the pre-existing condition.

INSTRUCTION NO. 28

A person who has a condition or disability at the time of an injury is not entitled to recover damages therefore. However, he is entitled to recover damages for any aggravation of such preexisting condition or disability proximately resulting from the injury.

This is true even if the person's condition or disability made him more susceptible to the possibility of ill effects than a normally healthy person would have been, and even if a normally healthy person probably would not have suffered any substantial injury.

Where a preexisting condition or disability is so aggravated, the damages as to such condition or disability are limited to the additional injury caused by the aggravation.

INSTRUCTION NO. 29

Plaintiffs are entitled to a full compensation for their damages proximately resulting from the Defendant's acts even though some of the injuries may have been rendered more difficult to cure by reason of their existing state of health, or, because of a latent condition, the injuries were rendered more serious to them than they might have been if they had not had that condition.

INSTRUCTION NO. 30

According to a table of mortality, the life expectancy of a male person aged 28 is 51.8 additional years. The life expectancy of a female person aged 30 is 54.2 additional years. These figures are not conclusive. They are an average life expectancy of persons who have reached that age. These figures may be considered by you in connection with other evidence relating to the probable life expectancy of Plaintiffs, including evidence of occupation, health, habits and other activities, bearing in mind that many persons live longer and many die sooner than the average.

INSTRUCTION NO. 31

Plaintiffs are only entitled to recover the net present cash value for future medical expenses.

Future pain and suffering damages are not reduced to present cash value.

The parties have stipulated that the net present value for the cost of the future medical treatment is the figures presented to the jury during the course of this trial.

INSTRUCTION NO. 32

Whether any of these elements of damage have been proven by the evidence is for you to determine. Neither sympathy nor speculation is a proper basis for determining damages. However, absolute certainty as to the damages is not required. It is only required that Plaintiffs prove each item of damage by a preponderance of the evidence.

INSTRUCTION NO. 33

The Plaintiffs have a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages.

The Defendant has the burden of proving by a preponderance of the evidence:

1. That the Plaintiffs have failed to use reasonable efforts to mitigate damages; and
2. The amount by which damages would have been mitigated.

INSTRUCTION NO. 34

The court has given you instructions embodying various rules of law to help guide you to a just and lawful verdict. Whether some of these instructions will apply will depend upon what you find to be facts. The fact that I have instructed you on various subjects in this case including that of damages must not be taken as indicating an opinion of the court as to what you should find to be facts or as to which party is entitled to your verdict.



INSTRUCTION NO. 35

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching and agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but should do so only after consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect and weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors. Whatever the verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given you by the court.

INSTRUCTION NO. 36

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreman. The officer will then return you to court where the information sought will be given to you in the presence of the parties or their attorneys.

Readbacks of testimony are time consuming and are not encouraged unless you deem it a necessity. Should you require a readback, you must carefully describe the testimony to be read back so that the court reporter can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

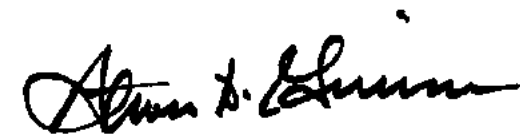
When you retire to consider your verdict, you must select one of your number to act as foreperson, who will preside over your deliberation and will be your spokesperson here in Court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. As soon as six or more of you have agreed upon a verdict, you must have it signed and dated by your foreperson, and then return with it to this room.

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence, as you understand it and remember it to be, and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

Stefano Vily  
March 2, 2015



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

CHRISTIAN CERVANTES-LOPEZ,	)	
	)	
Plaintiff,	)	CASE NO. A-12-667141
	)	DEPT NO. XXIII
vs.	)	
	)	
EVANGELINA ORTEGA,	)	
	)	
Defendant.	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 8**

WEDNESDAY, MARCH 4, 2015

APPEARANCES:

For the Plaintiff:	DANIEL S. SIMON, ESQ.
	ASHLEY M. FERREL, ESQ.
For the Defendant:	ROBERT KADE BAIRD, ESQ.
	CHARLES A. MICHALEK, ESQ.

RECORDED BY MARIA GARIBAY, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

1           **LAS VEGAS, NEVADA, WEDNESDAY, MARCH 4, 2015, 1:36 P.M.**

2                           \* \* \* \* \*

3                   (Outside the presence of the jury.)

4           THE COURT: Good afternoon, everyone. We do have a  
5 verdict. This is Cervantes-Lopez vs. Ortega, it's Case  
6 A667141. The record will reflect the presence of the  
7 plaintiffs' attorneys -- are the plaintiffs -- oh, they're not  
8 here?

9           MR. SIMON: They're not here.

10          THE COURT: Okay. As well as the defense counsel.  
11 Are you guys ready for me to bring the jury in?

12          MR. BAIRD: Yes, Your Honor.

13          THE COURT: All right.

14                   (Jury reconvened at 1:38 p.m.)

15          THE COURT: All right. The record will reflect the  
16 presence of the jury. Counsel, please make yourself  
17 comfortable.

18          Ladies and gentlemen of the jury, did you select a  
19 foreperson?

20          JUROR NO. 2: Yes.

21          THE COURT: Mr. Foreperson, can you please hand the  
22 verdict to the marshal.

23          All right. The clerk is now going to read the  
24 verdict.

25          THE CLERK: District Court, Clark County, Nevada,

                         KARR REPORTING, INC.

1 Case No. A667141, Department 23, Cervantes -- or, excuse me,  
2 Christian Cervantes-Lopez and Maria Abarca, plaintiffs, versus  
3 Miriam Pizarro Ortega, defendant.

4 We, the jury in the above-entitled action, find for  
5 the plaintiff, Christian Cervantes-Lopez, and against the  
6 defendant, Miriam Pizarro Ortega, for her negligent conduct  
7 and assess the total amount of the plaintiff's damages as  
8 follows.

9 Past pain and suffering, \$56,000. Past loss of  
10 enjoyment of life, \$0. Future pain and suffering, \$186,480.  
11 Future loss of enjoyment of life, \$0. Past medical expenses,  
12 \$56,930.45. Future medical expenses, \$200,000. Total for  
13 Christian Cervantes-Lopez, \$499,410.45.

14 We, the jury in the above-entitled action, find for  
15 the plaintiff, Maria Abarca, and against the defendant, Miriam  
16 Pizarro Ortega, for her negligent conduct, and assess the  
17 total amount of the plaintiff's damages as follows.

18 Past pain and suffering, \$34,000. Past loss of  
19 enjoyment of life, \$0. Future pain and suffering, \$60,000.  
20 Future loss of enjoyment of life, \$0. Past medical expenses,  
21 \$43,266.47. Future medical expenses, \$85,000. Total for  
22 Maria Abarca, \$222,266.47.

23 Dated this 4th day of March, 2015, Vorshon Cole,  
24 Foreperson.

25 Ladies and gentlemen of the jury, is this your

1 verdict as read?

2 THE JURY: Yes.

3 THE COURT: Does either side wish to have the jury  
4 polled?

5 MR. MICHALEK: Yes, Your Honor.

6 THE CLERK: Juror No. 1, Korey Johnson, are these  
7 your verdicts as read?

8 JUROR NO. 1: Yes.

9 THE CLERK: Juror No. 2, Vorshon Cole, are these your  
10 verdicts as read?

11 JUROR NO. 2: Yes.

12 THE CLERK: Juror No. 3, Danny Boxley, are these your  
13 verdicts as read?

14 JUROR NO. 3: Yes.

15 THE CLERK: Juror No. 4, Capricia Lanza, are these  
16 your verdicts as read?

17 JUROR NO. 4: Yes.

18 THE CLERK: Juror No. 5, Monisha Patel, are these  
19 your verdicts as read?

20 JUROR NO. 5: Yes.

21 THE CLERK: Juror No. 6, Michelle James, are these  
22 your verdicts as read?

23 JUROR NO. 6: Yes.

24 THE CLERK: Juror No. 7, Hugo Izquierdo, are these  
25 your verdicts as read?



1 JUROR NO. 7: Yes.

2 THE CLERK: Juror No. 8, Teresa Clark, are these your  
3 verdicts as read?

4 JUROR NO. 8: Yes.

5 THE CLERK: Thank you.

6 THE COURT: All right. The clerk is now going to  
7 record the verdict in the minutes.

8 Ladies and gentlemen of the jury, you're going to be  
9 dismissed as jurors at this time. I want to thank you so much  
10 for your service. I know that it takes a lot to, you know,  
11 make arrangements to be down here at the courthouse every day  
12 and it's kind of erratic schedules. But I know that both the  
13 plaintiffs and the defense in this case really appreciate the  
14 time and commitment you made to this case.

15 What's going to happen, I know some of you need  
16 letters for your -- for your employer. My secretary is  
17 getting those together now. Otherwise, Jason will give you  
18 instructions as to how to get paid for jury duty.

19 Thank you so much for your time. One other thing is,  
20 you know, you're free to talk about this case with anyone you  
21 want to. If you see the attorneys and you want to talk to  
22 them, that's -- that's fine. You can tell them whatever you  
23 want. However, you're under no obligation to speak with  
24 anyone regarding this case.

25 Thank you so much.

1 (Jury dismissed at 1:43 p.m.)

2 THE COURT: All right. Counsel, thank you for your  
3 time.

4 MR. SIMON: Thank you, Your Honor.

5 MR. MICHALEK: Thank you. Your Honor, I would ask  
6 for a stay pending the outcome of any posttrial motions that  
7 may be filed. I do anticipate filing one.

8 THE COURT: A stay of?

9 MR. MICHALEK: A stay of execution on the judgment.  
10 I'm assuming that, you know, there'll -- there'll be a  
11 judgment at some point. We're going to file a motion for  
12 stay. And rather than we have to do all that, I figure we can  
13 just agree to maybe having a stay until the resolution of the  
14 posttrial motions.

15 THE COURT: The request would need to be in writing.

16 MR. MICHALEK: Okay. Very well, Your Honor.

17 THE COURT: Unless Mr. Simon wants to stipulate  
18 orally.

19 MR. SIMON: Not stipulating to that, Your Honor.

20 MR. BAIRD: All right.

21 THE COURT: All right. Please put it in writing.

22 MR. BAIRD: We'll do a motion. Thank you.

23 THE COURT: Thank you.

24 MR. SIMON: Thank you.

25 THE CLERK: Does either side wish to have a copy of

1 the verdict?

2 MR. MICHALEK: Please.

3 MR. BAIRD: Please.

4 MR. SIMON: Yes.

5 THE CLERK: Thank you.

6 (Court adjourned at 1:44 p.m.)

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**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.  
Aurora, Colorado**

  
KIMBERLY LAWSON

KARR Reporting, Inc.

ORIGINAL

*Allen S. Simon*

CLERK OF THE COURT

1 **JDGMNT**  
2 DANIEL S. SIMON, ESQ.  
3 Nevada Bar No. 4750  
4 810 South Casino Center Blvd.  
5 Las Vegas, Nevada 89101  
6 (702) 364-1650  
7 Attorney for Plaintiff

8  
9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 CHRISTIAN CERVANTES-LOPEZ,  
12 an individual,  
13 MARIA AVARCA, an individual

14 Plaintiffs,

15 vs.

16 EVANGELINA ORTEGA, an individual;  
17 MIRIAM PIZARRO-ORTEGA, an individual  
18 DOES I through V; inclusive  
19 and ROE CORPORATIONS I through V,  
20 inclusive

21 Defendants.

Case No.: A667141  
Dept. No.: XXIII

22 **JUDGMENT ON JURY VERDICT**

23 **WHEREAS**, the above-entitled matter came on for trial on the 23rd day of February,  
24 2015, before a jury, and on the 4th day of March, 2015 the jury returned a verdict in favor of the  
25 Plaintiff's CHRISTIAN CERVANTES-LOPEZ, individually and against the Defendant MIRIAM  
26 PIZARRO-ORTEGA, individually; in the total sum of \$112,930.45 as and for past damages and  
27 \$386,480.00 for future damages for a total verdict of \$499,410.45. The jury also returned a verdict  
28 in favor of MARIA AVARCA, individually and against the Defendant MIRIAM PIZARRO-  
ORTEGA, individually, in the total sum of \$77,266.47 as and for past damages and \$145,000.00  
for future damages for a total verdict of \$222,266.47.

**IT IS THEREFORE ORDERED THAT** Judgment is hereby entered as of March 11,  
2015 and that Plaintiff CHRISTIAN CERVANTES-LOPEZ, individually shall have and recover  
the sum of \$112,930.45 for past damages, with interest at the legal rate (5.25%) from December  
11, 2012 thru March 11, 2015, in the amount of \$13,339.89 and the sum of \$386,480.00 for

The Law Office of Daniel S. Simon  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

<input type="checkbox"/> Non-Jury	<input type="checkbox"/> Disposed After Trial Sent
<input type="checkbox"/> Judgment Reached	<input type="checkbox"/> Jury
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Disposed After Trial Sent
<input type="checkbox"/> Other	<input type="checkbox"/> Verdict Reached

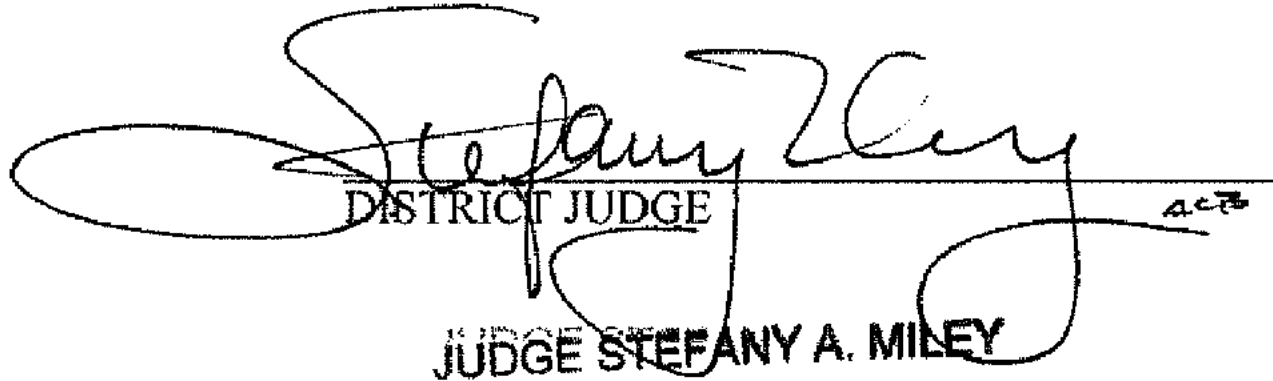
1 future damages for a total judgment in the sum of \$512,750.34.

2 **IT IS THEREFORE FURTHER ORDERED THAT** Judgment is hereby entered as of  
3 March 11, 2015 and that Plaintiff MARIA AVARCA, individually shall have and recover the sum  
4 of \$77,266.47 for past damages, with interest at the legal rate (5.25%) from December 11, 2012  
5 thru March 11, 2015, in the amount of \$9,127.08 and the sum of \$145,000.00 for future damages  
6 for a total judgment in the sum of \$231,393.55.

7 **IT IS FURTHER ORDERED** that interest on all of said judgment for CHRISTIAN  
8 CERVANTES LOPEZ will accrue from the date of March 12, 2015, and continue to accrue at the  
9 legal rate until paid in full at the daily rate of \$16.24.

10 **IT IS FURTHER ORDERED** that interest on all of said judgment for MARIA  
11 AVARCA will accrue from the date of March 12, 2015, and continue to accrue at the legal rate  
12 until paid in full at the daily rate of \$11.11.

13 **DATED AND DONE** this 17th day of March, 2015.

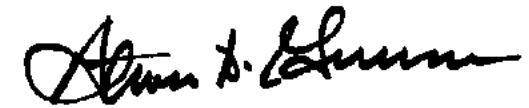
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DISTRICT JUDGE  
JUDGE STEFANY A. MILEY

17 Submitted by:

18 DANIEL S. SIMON, ESQ.  
19 A Professional Corporation

20 By 

DANIEL S. SIMON, ESQ.  
Nevada Bar #004750  
810 South Casino Center Boulevard  
Las Vegas, Nevada 89101  
Attorney for Plaintiff



CLERK OF THE COURT

1 **NEOJ**  
2 **DANIEL S. SIMON, ESQ.**  
3 Nevada Bar #004750  
4 **SIMON LAW**  
5 810 S. Casino Center Blvd.  
6 Las Vegas, Nevada 89101  
7 Telephone (702) 364-1650  
8 Attorney for Plaintiffs

9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 **CHRISTIAN CERVANTES-LOPEZ and**  
13 **MARIA AVARCA,**

14 Plaintiffs,

15 vs.

16 **MIRIAM PIZARRO-ORTEGA,**

17 Defendant.

Case No.: A667141  
Dept. No.: XXIII

18  
19 **NOTICE OF ENTRY OF JUDGMENT**

20 **PLEASE TAKE NOTICE** that a Judgment on Jury Verdict was duly entered in the above-  
21 entitled matter on the 12<sup>th</sup> day of March, 2015, a copy of which order is attached hereto.

22 Dated this 13<sup>th</sup> day of March, 2015.



23 **DANIEL S. SIMON, ESQ.**  
24 Nevada Bar #004750  
25 **SIMON LAW**  
26 810 South Casino Center Boulevard  
27 Las Vegas, Nevada 89101  
28 Attorney for Plaintiff

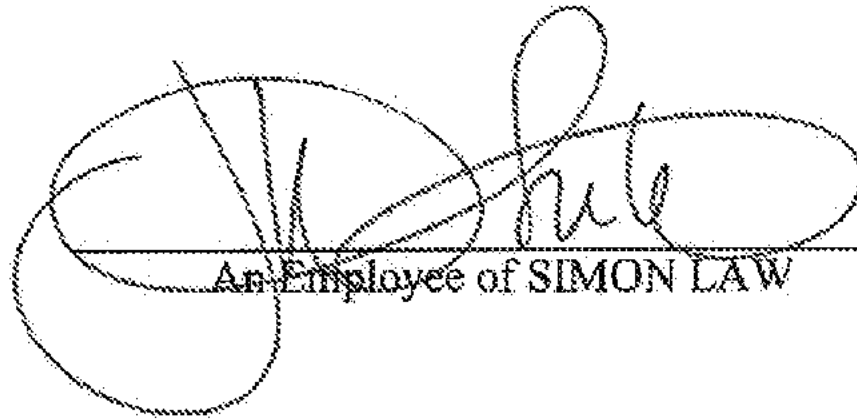
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810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

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Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

**CERTIFICATE OF E-SERVICE**

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 13 day of March, 2015, I served the foregoing **NOTICE OF ENTRY OF JUDGMENT** on the following parties by electronic transmission through the Wiznet system:

Stephen Rogers, Esq.  
Kade Baird, Esq.  
Rogers, Masterangelo, Carvalho & Mitchell  
300 S. Fourth Street, Suite 710  
Las Vegas, NV 89101  
(702) 383-3400  
Fax (702) 384-1460  
Attorneys for Defendants



An Employee of SIMON LAW



ORIGINAL

*Alan D. Simon*

CLERK OF THE COURT

1 **JDGMNT**  
2 DANIEL S. SIMON, ESQ.  
3 Nevada Bar No. 4750  
4 810 South Casino Center Blvd.  
5 Las Vegas, Nevada 89101  
6 (702) 364-1650  
7 Attorney for Plaintiff

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 CHRISTIAN CERVANTES-LOPEZ,  
11 an individual,  
12 MARIA AVARCA, an individual

13 Plaintiffs,

Case No.: A667141  
Dept. No.: XXIII

14 vs.

15 EVANGELINA ORTEGA, an individual;  
16 MIRIAM PIZARRO-ORTEGA, an individual  
17 DOES I through V; inclusive  
18 and ROE CORPORATIONS I through V,  
19 inclusive

20 Defendants.

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for future damages for a total verdict of \$222,266.47.

29 **IT IS THEREFORE ORDERED THAT** Judgment is hereby entered as of March 11,  
30 2015 and that Plaintiff CHRISTIAN CERVANTES-LOPEZ, individually shall have and recover  
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32 11, 2012 thru March 11, 2015, in the amount of \$13,339.89 and the sum of \$386,480.00 for

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<input type="checkbox"/> Non-Jury	<input type="checkbox"/> Disposed After Trial Start
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<input type="checkbox"/> Transferred to Jury Trial	<input type="checkbox"/> Disposed After Trial Start
<input type="checkbox"/> Other	<input type="checkbox"/> Verdict Reached

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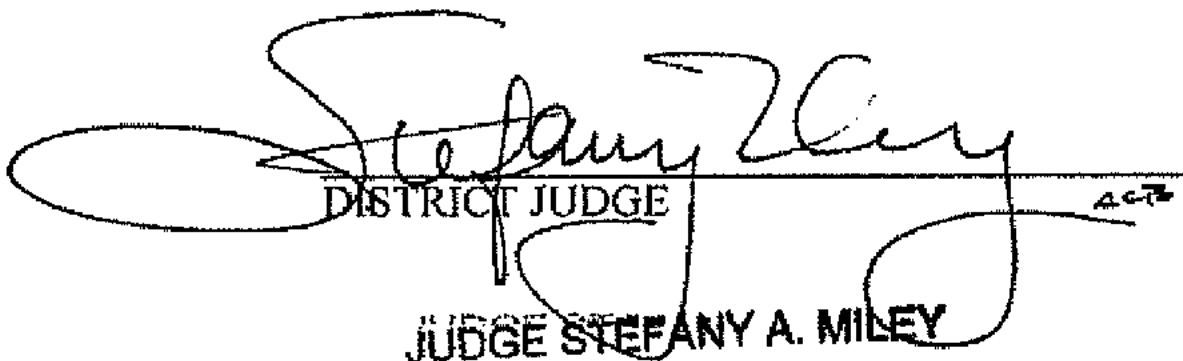
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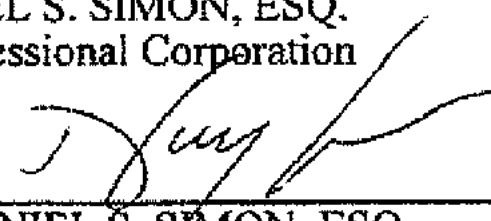
13 **DATED AND DONE** this 11th day of March, 2015.

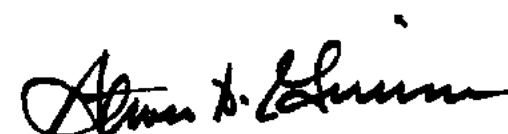
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DISTRICT JUDGE  
JUDGE STEFANY A. MILEY

17 Submitted by:

18 DANIEL S. SIMON, ESQ.  
19 A Professional Corporation

20 By

  
21 DANIEL S. SIMON, ESQ.  
22 Nevada Bar #004750  
23 810 South Casino Center Boulevard  
24 Las Vegas, Nevada 89101  
25 Attorney for Plaintiff  
26  
27  
28



CLERK OF THE COURT

CHARLES A. MICHALEK, ESQ.  
Nevada Bar No. 5721  
R. KADE BAIRD, ESQ.  
Nevada Bar No. 8362  
ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Phone (702) 383-3400  
Fax (702) 384-1460  
Attorneys for Defendant

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

CHRISTIAN CERVANTES-LOPEZ,  
an individual; MARIA AVARCA, an individual,  
Plaintiffs,

vs.

EVANGELINA ORTEGA, an individual;  
MIRIAM PIZARRO-ORTEGA, an individual;  
DOES I through V, inclusive; and  
ROE CORPORATIONS I through V, inclusive,  
Defendants.

CASE NO.: A-12-667141-C

DEPT. NO.: XXIII

**DEFENDANT'S MOTION FOR REMITTUR AND/OR NEW TRIAL**

COMES NOW Defendant EVANGELINA ORTEGA, by and through her attorneys, Rogers, Mastrangelo, Carvalho & Mitchell, and hereby submits this Motion for Remittur and/or a New Trial.

This Motion is based upon the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any argument the Court is willing to entertain at the time of the hearing.

DATED this 27<sup>th</sup> day of March, 2015.

ROGERS, MASTRANGELO, CARVALHO &  
MITCHELL

R. KADE BAIRD, ESQ.  
Nevada Bar No. 8362  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Attorneys for Defendant

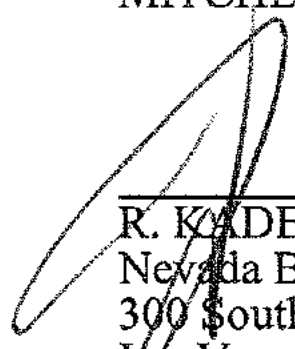
1 **NOTICE OF MOTION**

2 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that the foregoing **DEFENDANT'S MOTION FOR**  
4 **REMITTUR AND/OR A NEW TRIAL** will come on for hearing before the above-entitled court  
5 on the 30 day of April, 2015, at 9:30<sup>a</sup> a.m. in Department XXIII.

6 DATED this 27<sup>th</sup> day of March, 2015.

7 ROGERS, MASTRANGELO, CARVALHO &  
8 MITCHELL

9  
10   
11 R. KADE BAIRD, ESQ.  
12 Nevada Bar No. 8362  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
*Attorneys for Defendant*

13 I.

14 **BRIEF STATEMENT OF FACTS**

15 This case arises out of a 11/12/11 three-car MVA at the intersection of Lake Mead Blvd. and  
16 Statz Rd. Plaintiffs' vehicle (driven by Plaintiff Christian Cervantes-Lopez; front seat passenger:  
17 Plaintiff Maria Avarca) was traveling in the #2 lane on westbound Lake Mead, approaching the Statz  
18 intersection. The Defendant's vehicle (driven by Defendant Miriam Pizarro-Ortega; owner:  
19 Defendant Evangelina Ortega) was stopped in the center turn lane on eastbound Lake Mead, to make  
20 a left turn onto Statz.

21 The impact occurred as the Defendant's vehicle was making the left turn, crossing the  
22 Plaintiffs' lane of travel. The front of Plaintiffs' vehicle collided with the right side of the Defendants  
23 vehicle. Post impact, the Defendant's vehicle rotated clockwise and struck the front of a third vehicle  
24 Plaintiff Cervantes-Lopez estimated he was going 35 mph at the time of impact.

25 Trial in this matter occurred between February 23, 2015 and March 4, 2015. Prior to trial,  
26 Plaintiffs Christian Cervantes-Lopez and Maria Avarca alleged medical expenses of \$55,364.45 and  
27 \$42,496.47 respectively. However, Plaintiffs then presented claims for future medical expenses that  
28 were not disclosed during discovery.

1 In not one of the four supplements produced for each Plaintiff during the discovery did either  
2 Plaintiff produce any calculation of their future damages claims. Further, Defendants explicitly  
3 requested that Plaintiffs produce a description of any future medical care. (See, Plaintiff Cervantes-  
4 Lopez' Responses to Interrogatories 27-28 and Plaintiff Avarca's Responses to Interrogatories 27-  
5 28.) In each case, Plaintiffs failed to give any worthwhile description of their supposed future  
6 damages. Defendants had no idea on the actual amount of the future care and medical specials  
7 Plaintiffs may incur in the future that they would like to relate to the subject accident until that  
8 information was disclosed at trial. Therefore, Defendant files this motion for a new trial.

## 9 II.

### 10 STANDARD FOR A NEW TRIAL

11 A new trial may be granted to all or any of the parties and on all or part of the issues for any  
12 of the following causes or grounds materially affecting the substantial rights of an aggrieved party.

13 See Nev. R. Civ. P. 59:

- 14 (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order  
15 of the court, or master, or abuse of discretion by which either party was prevented  
from having a fair trial;
- 16 (2) Misconduct of the jury or prevailing party;
- 17 (3) Accident or surprise which ordinary prudence could not have guarded against;
- 18 (4) Newly discovered evidence material for the party making the motion which the party  
could not, with reasonable diligence, have discovered and produced at the trial;
- 19 (5) Manifest disregard by the jury of the instructions of the court;
- 20 (6) Excessive damages appearing to have been given under the influence of passion or  
prejudice; or,
- 21 (7) Error in law occurring at the trial and objected to by the party making the motion.

22 On a motion for a new trial in an action tried without a jury, the court may open the judgment  
23 if one has been entered, take additional testimony, amend findings of fact and conclusions of law or  
24 make new findings and conclusions, and direct the entry of a new judgment.

## 23 III.

### 24 ARGUMENT

25 **A. Defendant was unfairly prejudiced by Plaintiff's failure to provide timely computation**  
26 **of damages as required by NRCP 16 (A)(1)C).**

27 NRCP 16.1(a)(1)( c) required Plaintiff to provide a computation of damages:

28 A computation of any category of damages claimed by the disclosing party, making  
available for inspection and copying as under Rule 34 the documents or other

1 evidentiary matter, not privileged or protected from disclosure, on which such  
2 computation is based, including materials bearing on the nature and extent of  
injuries suffered.

3 NRCP 26(e) further requires a party to supplement the disclosures made under NRCP 16.1(a):

4 (e) Supplementation of Disclosures and Responses. A party who has made a disclosure under  
5 Rule 16.1 or 16.2 or responded to a request for discovery with a disclosure or response is under a duty  
6 to supplement or correct the disclosure or response to include information thereafter acquired, if  
7 ordered by the court or in the following circumstances:

8 (1) A party is under a duty to supplement at appropriate intervals its disclosures under  
9 Rule 16.1(a) or 16.2(a) if the party learns that in some material respect the information  
disclosed is incomplete or incorrect and if the additional or corrective information has  
10 not otherwise been made known to the other parties during the discovery process or  
in writing. With respect to testimony of an expert from whom a report is required  
11 under Rule 16.1(a)(2)(B) the duty extends both to information contained in the report  
and to information provided through a deposition of the expert, and any additions or  
12 other changes to this information shall be disclosed by the time the party's disclosures  
under Rule 16.1(a)(3) are due.

13 (2) A party is under a duty seasonably to amend a prior response to an interrogatory,  
14 request for production or request for admission, if the party learns that the response  
is in some material respect incomplete or incorrect and if the additional or corrective  
15 information has not otherwise been made known to the other parties during the  
discovery process or in writing.

16 Plaintiff failed to provide a computation of the requested future damages prior to trial. See  
17 *Jackson v. United Artists Theatre Circuit, Inc.*, 278 F.R.D. 586, 593 94 (D. Nev. 2011):

18 The plaintiff cannot shift to the defendant the burden of attempting to determine the amount  
of the plaintiff's alleged damages. See *Design Strategy, Inc. v. Davis*, 469 F.3d 284, 294–95  
19 (2nd Cir.2006). In *Francois v. Colonial Freight Systems, Inc.*, 2007 WL 4564866, at \*3  
(S.D.Miss.2007), the court rejected the plaintiffs' argument that sanctions \*594 under Rule  
20 37(c) were not warranted because defendant was provided a "medical waiver" and, therefore,  
could have obtained plaintiff's medical records and bills. The court found that this argument  
21 lacked merit because Rule 26(a)(1)(A)(iii) specifically requires the plaintiff to provide a  
computation of each category of damages and make the documents on which each  
22 computation is based available for inspection and copying. Rule 26(a)(1)(A)(iii) would be  
rendered meaningless if a party could avoid its requirements by not obtaining the documents  
23 or information needed to prepare the damages computation.

24 The sanction for failing to disclose evidence according to the rules is exclusion at trial. Rule  
25 37 makes clear that if a party fails to disclose information required under Rule 16.1 or 26(e), the party  
26 "is not permitted to use the evidence at trial," unless the failure is justified or harmless. See *Jackson*  
27 *v. United Artists Theatre Circuit, Inc.*, 278 F.R.D. 586, 594 (D. Nev. 2011):

28 Rule 37(c)(1) states that if a party fails to provide information or identify a witness as required

1 by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply  
2 evidence at trial unless the failure was substantially justified or is harmless. The rule also  
3 states that "in addition to or instead of this sanction," the court may order payment of  
4 reasonable expenses, including attorney's fees caused by the failure, and may impose other  
5 appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)–(v). The  
6 burden is upon the disclosing party to show that the failure to disclose information or  
7 witnesses was justified or harmless. *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d  
8 1101, 1107 (9th Cir.2001).

9 Courts are more likely to exclude damages evidence when a party first discloses its  
10 computation of damages shortly before trial or substantially after discovery has closed. *CQ Inc. v.*  
11 *TXU Mining Company*, 565 F.3d 268 (5th Cir.2009); *24/7 Records v. Sony Music Entertainment*, 566  
12 F.Supp.2d 305, 318 (S.D.N.Y.2008); and *Green Edge Enterprises, LLC v. Rubber Mulch Etc. LLC*,  
13 2009 WL 1383275 (E.D.Mo.2009). In *Hoffman v. Construction Protective Services*, 541 F.3d 1175  
14 (9th Cir.2008), the Ninth Circuit affirmed the district court's order excluding plaintiffs' damages  
15 evidence because they failed to provide any computation of damages prior to the pretrial conference.  
16 The court stated that the late disclosure was not harmless because it would have most likely required  
17 the trial court to create a new briefing schedule and perhaps re-open discovery, rather than simply set  
18 a trial date.

19 Several Nevada District Court cases have likewise excluded claims for future medical  
20 expenses when the required computation of damages was not disclosed during trial. See *Calvert v.*  
21 *Ellis*, 2015 WL 631284, at \*2 (D. Nev. Feb. 12, 2015); *Baltodano v. Wal Mart Stores, Inc.*, 2011  
22 WL 3859724, at \*6 (D. Nev. Aug. 31, 2011); *Olaya v. Wal Mart Stores, Inc.*, 2012 WL 3262875,  
23 at \*5 (D. Nev. Aug. 7, 2012); *Patton v. Wal Mart Stores, Inc.*, 2013 WL 6158461, at \*5 (D. Nev.  
24 Nov. 20, 2013); *Smith v. Wal Mart Stores, Inc.*, 2014 WL 3548206, at \*5 (D. Nev. July 16, 2014).

25 1. Plaintiff did not provide any computation of future damages prior to trial.

26 Although Plaintiffs continued to update their **past** medical bills throughout discovery,  
27 Plaintiffs never provided a computation of the damages they would be seeking for such future medical  
28 care. Attached as Exhibit "A" is the last computation of medical bills for each Plaintiff provided,  
which did not include any costs for future care. In addition to the computation being required under  
NRCPP 16.1, Plaintiffs were required to provide this information in response to Defendant's  
interrogatories (Exhibits "B" and "C"). The first time that Plaintiff presented any actual computation



1 of future damages was during the middle of trial, when the Court finally compelled the Plaintiff's to  
2 disclose the computation of damages just hours before Plaintiff's physicians testified as to the costs  
3 of future medical care.<sup>1</sup> This notice is insufficient as a matter of law. See *Calvert v. Ellis*, 2015 WL  
4 631284, at \*4 (D. Nev. Feb. 12, 2015):

5 "[m]ere notice of an upcoming surgery ... cannot substitute for the disclosure that is required  
6 by Rule 26(a)." *Patton v. Wal-Mart Stores, Inc.*, 2013 WL 6158461, at \*4 (D. Nev. Nov. 20, 2013).

7 2. Justice required that Defendants be provided all medical opinions and documentary  
8 evidence, along with computation of damages, prior to trial.

9 Our system of civil justice is founded on the premise that a party be given sufficient notice  
10 of evidence to be presented at trial. The discovery rules are designed "to take the surprise out of trials  
11 of cases so that all relevant facts and information pertaining to the action may be ascertained in  
12 advance of trial." *Washoe County Bd. of Sch. Trustees v. Pirhala*, 84 Nev. 1, 5, 435 P.2d 756, 758  
13 (1968).

14 "Gamesmanship' and actions designed to minimize adequate notice to one's adversary have  
15 no place within the principles of professionalism governing the conduct of participants in litigation."  
16 *Collins v. CSX Transp., Inc.*, 441 S.E.2d 150, 153-54 (N.C. Ct. App. 1994). The discovery rules are  
17 designed to make trials "fair contest[s] with the basic issues and facts disclosed to the fullest  
18 practicable extent." *U.S. v. Proctor & Gamble*, 356 U.S. 677, 682 (1958) (internal quotation marks  
19 omitted).

20 3. Plaintiff's Failure To Disclose Was Neither "Substantially Justified" or "Harmless"

21 NRCP 37(c)(1) states:

22 A party that without **substantial justification fails to disclose**  
23 **information required by Rule 16.1 is not**, unless such failure is  
**harmless**, permitted to use as evidence at a trial, at a hearing, or on a  
motion any witness or information not so disclosed.

24 (Emphasis added.) "The party facing sanctions bears the burden of proving that its failure to disclose  
25 the required information was substantially justified or is harmless." *R & R Sails, Inc. v. Ins. Co. Of*

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27 <sup>1</sup> The amount disclosed by Plaintiff's per the Court's Order was not the same amount that  
28 was testified to by Plaintiff's doctors.



1 *Pennsylvania*, 673 F.3d 1240, 1246 (9<sup>th</sup> Cir. 2012). Magistrate Johnston, in *Baltodano v. Wal-Mart*  
2 *Stores, Inc.*, 2011 WL 3859724 (August 31, 2011), found that, “among the factors” that could be  
3 considered by a Court when making the determination as to whether a failure to disclose was  
4 substantially justified or harmless are: (1) Prejudice to the party to whom the disclosure should have  
5 been made; (2) the ability of the prejudiced party to cure the prejudice; (3) the likelihood of the  
6 disruption of the trial; and (4) bad faith or willfulness in not disclosing the evidence. These factors  
7 weigh in favor of a finding that Plaintiff’s failure to comply with NRCP 16.1(a)(1)(C) was neither  
8 substantially justified or harmless.

9 *I. Prejudice to Non-Offending Party*

10 Defendants have suffered prejudice as a result of Plaintiff’s failure to comply with NRCP  
11 16.1(a)(1)(C) because they were not afforded the benefits that timely disclosures of computations of  
12 damages are designed to provide.

13 *ii. Ability of Non-Offending Party to Cure Prejudice*

14 Defendant could not cure the prejudice they suffered as a result of Plaintiff’s failure to comply  
15 with the discovery rules.

16 *iii. Likelihood of Disruption of Trial*

17 Trial was not disrupted.

18 *iv. Bad Faith or Willfulness of Offending Party*

19 Bad faith or willfulness is not required. However, Oversight is not a substantial justification.  
20 *R & R Sails*. at 526 (S.D.Cal.2008). Plaintiff never actually complied with the rule, instead arguing  
21 that no computation was required. Plaintiff’s attempt to place the burden on Defendant to calculate  
22 the damages, even if not in bad faith or willful, is sanctionable.

23 In the instant case, however, a real argument can be made that Plaintiffs acted willfully.  
24 Plaintiff’s ignored not only written requests (interrogatories) and well-established Rules governing  
25 the disclosure (NRCP 16.1), but testimony by their own doctors that no computation had been  
26 requested as well as a Motion in Limine indicating that no computation had been produced and that  
27 such damages should be excluded. Simply put, Plaintiffs were on notice at least four times that they  
28 had not disclosed a computation of future damages and each time, they could have disclosed their

1 damages months prior to trial but elected to do so in the middle of trial. Their repeated failure to do  
2 so implies at least extreme negligence and at most, a calculated plan to ambush the Defendants at  
3 trial.

4 Under the several Nevada District Court cases cited above, Defendant was unfairly prejudiced  
5 with the late disclosure of the future medical care. As these damages were not timely and properly  
6 disclosed under the rules, Defendant request that this court grant Remittur of these amounts (future  
7 medical care, future pain and suffering) or simply grant a new trial outright. In addition, upon re-trial,  
8 other errors occurring at the trial are set forth to prevent their recurrence.

9 **B. Plaintiff Should Not be Allowed to Present Inflated and Unreasonable Billed Amounts**  
10 **as a Recoverable Medical Special Damages.**

11 Traditionally, any request by a party to present the amounts paid (whether it be by an insurer  
12 or private party after a negotiation), is met with a claim that this is a violation of the "collateral  
13 source" Rule that prohibits the introduction of evidence regarding insurance or "collateral sources"  
14 of payment. Proctor v. Castalletti, 112 Nev. 88, 911 P.2d 853 (1996). Recent cases from nearby  
15 jurisdictions show that the cry of "collateral source" does not necessarily mean that the just result is  
16 to allow Plaintiff to reap the benefit of the reduction of medical bills by an insurer or other payor.  
17 See, e.g., Hanif v. Housing Authority (1988) 200 Cal. App.3d 635, 246 Cal.Rptr. 192, Olszewski v.  
18 Scripps Health, supra, 30 Cal.4th 798, 135 Cal.Rptr.2d 1, 69 P.3d 927 Nishihama v. City and County  
19 of San Francisco (2001) 93 Cal.App.4th 298, 112 Cal. Rptr.2d 861, Parnell v. Adventist Health  
20 System/West (2005) 35 Cal.4th 595, 598, 26 Cal.Rptr.3d 569, 109 P.3d 69 .

21 Thus, even the collateral source rule is being interpreted in such a way as would limit a  
22 Plaintiff's recovery to a reduced, negotiated amount instead of the "extremely high" amount charged  
23 by doctors.

24 More importantly, however, is the actual holding of the Howell Court with respect to whether  
25 a Plaintiff can claim as damages an amount higher than the amount paid:

26 We conclude the negotiated rate differential is not a collateral  
27 payment or benefit subject to the collateral source rule. We  
28 emphasize, however, that the rule applies with full force here and in  
similar cases. Plaintiff here recovers the amounts paid on her behalf  
by her health insurer as well as her own out-of-pocket expenses. No  
"credit[]" against the tortfeasor's liability" (Rest.2d Torts, § 920A,

1 subd. (2)) and no deduction from the "damages which the plaintiff  
2 would otherwise collect from the tortfeasor" (Helfend, supra, 2 Cal.3d  
3 at p. 6, 84 Cal.Rptr. 173, 465 P.2d 61) is allowed for the amount paid  
4 through insurance. Plaintiff thus receives the benefits of the health  
insurance for which she paid premiums: her medical expenses have  
been paid per the policy, and those payments are not deducted from  
her tort recovery.

5 Plaintiff's insurance premiums contractually guaranteed  
6 payment of her medical expenses at rates negotiated by the insurer  
7 with the providers; they did not guarantee payment of much higher  
8 rates the insurer never agreed to pay. Indeed, had her insurer not  
9 negotiated discounts from medical providers, Plaintiff's premiums  
10 presumably would have been higher, not lower. In that sense, Plaintiff  
11 clearly did not pay premiums for the negotiated rate differential.  
Recovery of the amount the medical provider agreed to accept from  
the insurer in full payment of her care, but no more, thus ensures  
Plaintiff "receive[s] the benefits of [her] thrift" and the tortfeasor  
does not "garner the benefits of his victim's providence." (Helfend,  
supra, 2 Cal.3d at p. 10, 84 Cal.

11 Rptr. 173, 465 P.2d 61.)

12 Howell v. Hamilton Meats and Provisions, Inc., 257 P.3d 1130, 1144 (2011). The remarkable holding  
13 by the Howell Court is that reducing Plaintiff's medical specials to the amount paid, whether by  
14 insurance or not, is acceptable and does not implicate the collateral source rule.

15 1. Tami Rockholt was qualified to testify as an expert witness.

16 Defendant was prevented from challenging Plaintiffs paid medical bills through the expected  
17 expert testimony of Tammi Rockholt. Ms. Rockholt's testimony would have been helpful to the jury,  
18 and Ms. Rockholt had the same (or at least functionally similar) database foundation as Dr. Koka,  
19 who was allowed to testify as to reasonableness and necessity of medical bills that were not his own.  
20 See NRS 50.275 "If scientific, technical or other specialized knowledge will assist the trier of fact to  
21 understand the evidence or to determine a fact in issue, a witness qualified as an expert by special  
22 knowledge, skill, experience, training or education may testify to matters within the scope of such  
23 knowledge."

24 2. Defendant was entitled to present evidence of liens.

25 Defendant was also precluded from introducing evidence that the medical treatment was on  
26 a lien basis. Health and auto insurance are collateral sources, and are inadmissible under *Proctor v.*  
27 *Castelletti*, 112 Nev 88 (1996). A lien is not a collateral source, and is admissible evidence of bias,  
28

1 prejudice, and interest in the outcome of the trial, which are never collateral. See *Amlotte v. United*  
2 *States*, 292 F. Supp 2d 922) (Collateral sources do not include entities entitled to a lien against  
3 recovery of the Plaintiff in an action for damages.) See also *Sears v. Rutishauser*, 466 N.E. 2d 210,  
4 213 (Ill. 1984) (“A medical expert can be questioned about fee arrangements, prior testimony for the  
5 same party, and financial interests in the outcome of the case.”).

6 If a physician has an interest in the outcome of the litigation, evidence of a lien is relevant to  
7 bias. See *Lobato v. State*, 120 Nev. 512 (2004):

8  
9 Extrinsic evidence relevant to prove a witness’ motive to testify in a  
10 certain way, i.e. bias, interest, corruption or prejudice, is never  
collateral to the controversy and not subject to the limitations  
contained in NRS 50.085(3).

11 In conclusion, collateral source evidence should be excluded, but there was no justification  
12 for exclusion of evidence of medical liens. The financial interests of Plaintiff’s treating physicians  
13 are relevant for trial. Further, the exclusion of Tami Rockholt while allowing Dr. Koka to testify  
14 was not only highly prejudicial, but unfair.

15 **C. Defendant should be allowed to introduce the surveillance video.**

16 The parties agreed to a stipulation which extended discovery until January 9, 2015. Ex. “D”.  
17 This stipulation was approved and signed by the court. Defendant timely produced a copy of the  
18 video surveillance pursuant to this discovery extension. Defendant should be allowed to present  
19 such evidence for impeachment or rebuttal purposes.

20 **D. Dr. Duke Should be allowed to Testify Regarding Secondary Gain**

21 As noted in arguments during trial, All of Plaintiffs’ doctors acknowledged the possibility  
22 of secondary gain motivating a patient’s care. Many of Plaintiffs’ doctors acknowledged the  
23 possibility that patients involved in litigation could also exaggerate their symptoms due to  
24 secondary gain motivations. Dr. Duke’s opinions were based on evidence, which was described  
25 in his report, that showed there were discrepancies in the record keeping and methods of Plaintiffs’  
26 doctors that indicated that secondary gain was likely a factor in Plaintiffs’ treatment. It was  
27 prejudicial to preclude those opinions at trial.

28 ...

1 **E. Plaintiffs arguments should be properly limited.**

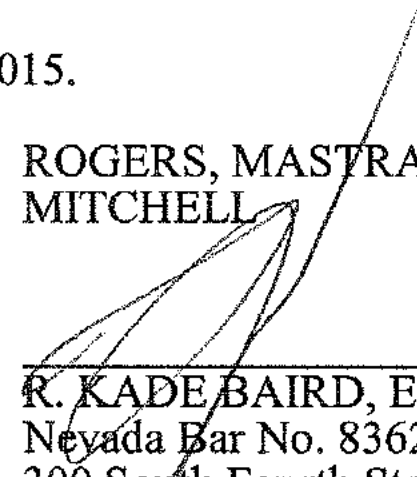
2 Plaintiffs counsel referenced insurance several times, as well as requested that the jury "send  
3 a message" with their verdict. In addition to other arguments objected to at trial, Plaintiffs counsels  
4 opening and closing arguments violated *Lioce v. Cohen*, 124 Nev. 1, 23, 174 P.3d 970, 984 (2008).  
5 Such arguments should be precluded upon re-trial.

6 **CONCLUSION**

7 Defendants motion should be granted and Plaintiff's improper future damages should be  
8 remitted and/or a new trial granted.

9 DATED this 27<sup>th</sup> day of March, 2015.

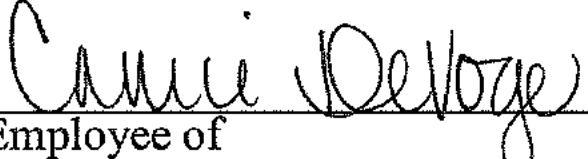
10 ROGERS, MASTRANGELO, CARVALHO &  
11 MITCHELL

12   
13 R. KADE BAIRD, ESQ.  
14 Nevada Bar No. 8362  
15 300 South Fourth Street, Suite 710  
16 Las Vegas, Nevada 89101  
17 Attorney for Defendants  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(a), and EDCR 7.26(a), I hereby certify that I am an employee of  
3 Rogers, Mastrangelo, Carvalho & Mitchell, and on the 27<sup>th</sup> day of March, 2015, a true and correct  
4 copy of the foregoing **DEFENDANT'S MOTION FOR REMITTUR AND/OR NEW TRIAL**  
5 was served via Wiznet Electronic Service, upon the following counsel of record:

6  
7 Daniel S. Simon, Esq.  
8 Nevada Bar No: 4750  
9 Simon & Associates  
10 810 South Casino Center Blvd.,  
11 Las Vegas, NV 89101  
12 P: (702) 364-1650  
13 F: (702) 364-1655  
14 *Attorneys for Plaintiffs*

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An Employee of  
Rogers, Mastrangelo, Carvalho & Mitchell

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# EXHIBIT “A”

SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

1 **ECC**  
2 DANIEL S. SIMON, ESQ.  
3 Nevada Bar No. 4750  
4 BENJAMIN J. MILLER, ESQ.  
5 Nevada Bar #010406  
6 SIMON LAW  
7 810 South Casino Center Blvd.  
8 Las Vegas, Nevada 89101  
9 (702) 364-1650  
10 Attorney for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

8 CHRISTIAN CERVANTES-LOPEZ,  
9 an individual,  
10 MARIA AVARCA, an individual

11 Plaintiffs,

12 vs.

13 EVANGELINA ORTEGA, an individual;  
14 MIRIAM PIZARRO-ORTEGA, an individual  
15 DOES I through V; inclusive  
16 and ROE CORPORATIONS I through V,  
17 inclusive

18 Defendants.

Case No.: A667141  
Dept. No.: XXIII

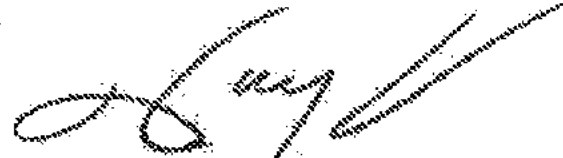
**PLAINTIFF CHRISTIAN CERVANTES-LOPEZ'S SIXTH SUPPLEMENT TO**  
**EARLY CASE CONFERENCE WITNESS AND EXHIBIT LIST**

18 Plaintiff CHRISTIAN CERVANTES-LOPEZ, by and through his attorney, Daniel S.  
19 Simon, Esq., produced the following potential witness and exhibit list, pursuant to NRCP 16.1 for  
20 purposes of the Early Case Conference in this matter.

**EXHIBIT LIST**

- 22 1. Updated Summary of Medical Specials for Christian Cervantes-Lopez.
- 23 2. Billing statements and medical records from Primary Care Consultants.

24 Dated this 27 day of October, 2014.

25   
26 DANIEL S. SIMON, ESQ.  
27 Nevada Bar #004750  
28 BENJAMIN J. MILLER, ESQ.  
Nevada Bar #010406  
Attorney for Plaintiff

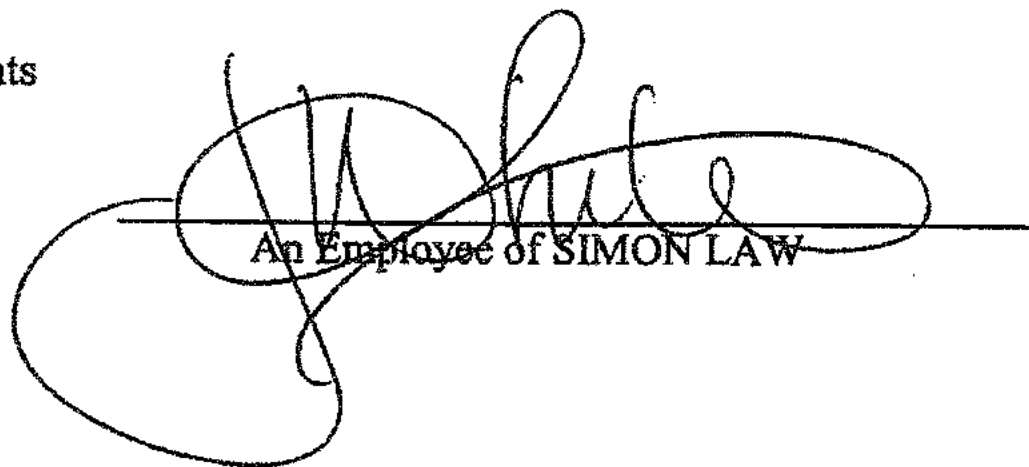


SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

**CERTIFICATE OF E-SERVICE**

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 27 day of October, 2014, I served the foregoing **PLAINTIFF'S SUPPLEMENT TO EARLY CASE CONFERENCE WITNESS AND EXHIBIT LIST** on the following parties by electronic transmission through the Wiznet system:

Stephen Rogers, Esq.  
Kade Baird, Esq.  
Rogers, Masterangelo, Carvalho & Mitchell  
300 S. Fourth Street, Suite 710  
Las Vegas, NV 89101  
(702) 383-3400  
Fax (702) 384-1460  
Attorneys for Defendants

  
An Employee of SIMON LAW

## **EXHIBIT 1**

**Updated Summary of Medical Specials for Christian Cervantes**

1.	University Medical Center	\$3,814.45
2.	Neck and Back Clinic	\$7,865.00
3.	Las Vegas Radiology	\$60.00
4.	Primary Care Consultants	\$2,246.00
5.	Advantage Diagnostic Imaging Center	\$1,550.00
6.	Alain Coppel, M.D./Nevada Comprehensive Pain	\$19,480.00
7.	Alain Coppel, M.D./Pharmacy	\$240.00
8.	Centennial Medical Group	\$23,175.00
9.	Western Regional Center for Brain & Spine Center	\$1,150.00
	<b>TOTAL</b>	<b>\$59,580.45</b>

SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

DANIEL S. SIMON, ESQ.  
Nevada Bar #004750  
BENJAMIN J. MILLER, ESQ.  
Nevada Bar #010406  
SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
Telephone (702) 364-1650  
Fax (702) 364-1655  
Attorneys for Plaintiffs

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHRISTIAN CERVANTES-LOPEZ,  
an individual,  
MARIA AVARCA, an individual

Plaintiffs,

vs.

EVANGELINA ORTEGA, an individual;  
MIRIAM PIZARRO-ORTEGA, an individual  
DOES I through V; inclusive  
and ROE CORPORATIONS I through V,  
inclusive

Defendants.

Case No.: A667141  
Dept. No.: XXIII

**PLAINTIFF MARIA ABARCA'S FIFTH SUPPLEMENT TO  
EARLY CASE CONFERENCE WITNESS AND EXHIBIT LIST**

Plaintiff MARIA ABARCA, by and through her attorney, Daniel S. Simon, Esq.,  
produced the following potential witness and exhibit list, pursuant to NRCP 16.1 for purposes of  
the Early Case Conference in this matter.

**EXHIBIT LIST**

1. Updated Summary of Medical Specials for MARIA ABARCA;
2. Billing statements from Alain Coppel, M.D./Nevada Comprehensive Pain Center.

Dated this 3 day of October, 2014.



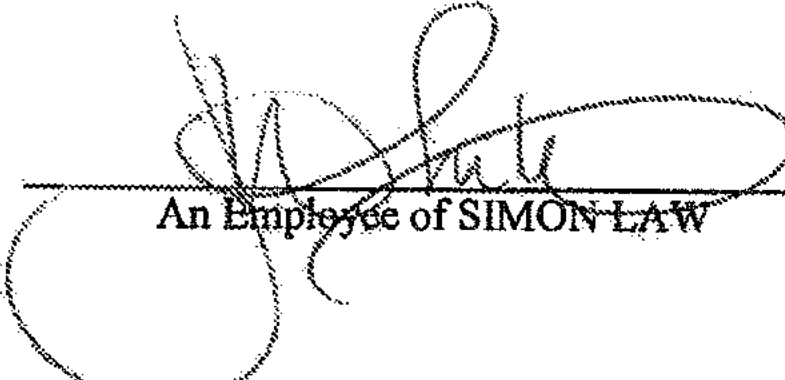
DANIEL S. SIMON, ESQ.  
Nevada Bar #004750  
BENJAMIN J. MILLER, ESQ.  
Nevada Bar #010406  
Attorney for Plaintiff

SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

**CERTIFICATE OF E-SERVICE**

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 6 day of October, 2014, I served the foregoing **PLAINTIFF'S SUPPLEMENT TO EARLY CASE CONFERENCE WITNESS AND EXHIBIT LIST** on the following parties by electronic transmission through the Wiznet system:

Stephen Rogers, Esq.  
Kade Baird, Esq.  
Rogers, Masterangelo, Carvalho & Mitchell  
300 S. Fourth Street, Suite 710  
Las Vegas, NV 89101  
(702) 383-3400  
Fax (702) 384-1460  
Attorneys for Defendants

  
An Employee of SIMON LAW

**Updated Summary of Medical Specials for Maria Abarca**

1.	University Medical Center	\$7,948.14
2.	North Las Vegas Fire Department/EMS	\$988.30
3.	Desert Radiologists	\$442.03
4.	Neck & Back Clinics	\$7,310.00
5.	Las Vegas Radiology	\$240.00
6.	Primary Care Consultants	\$1,388.00
7.	Advanced Diagnostic Imaging Center	\$1,550.00
8.	Pharmacy for Dr. Coppel/Nevada	
	Comprehensive Pain	\$8,430.00
9.	Centennial Surgery Center	\$5,250.00
8.	Nevada Comprehensive Pain Center	\$7,780.00
	<b>TOTAL</b>	<b>\$41,326.47</b>

From:

10/01/2014 13:02

#805 P.002/003

### Patient Ledger

**Patient (Account):**  
Avarca, Maria (Main)

**Responsible Party**  
Avarca, Maria

Daytime Phone:

Account Credits :

Last Payment Date:

Last Statement Date:

Patient Liability:

Last Patient Payment:

Total Amount Billed : \$8,430.00

**Superbill #37110**      **Renderer:** Coppel, Alain, M.D.      **Service Date:** 5/18/2012      **Diagnosis:** 722.10, 722.93, 724.4

Charge	Posted Date	Description	Payer Name	Ref Number	Amount
89213	5/22/2012	OFFICE/OUTPATIENT VISIT EST			\$150.00

**Amount Billed:** \$150.00  
**Amount Due:** \$150.00

**Superbill #36166**      **Renderer:** Coppel, Alain, M.D.      **Service Date:** 5/4/2012      **Diagnosis:** 722.10, 724.4

Charge	Posted Date	Description	Payer Name	Ref Number	Amount
64483	5/8/2012	BIL INJ FORAMEN EPIDURAL L/S			\$2,400.00
72275	5/8/2012	EPIDUROGRAPHY			\$750.00
99070	5/8/2012	FACILITY FEE			\$4,000.00
98144	5/8/2012	MOD CS BY SAME PHYS 5 YRS +			\$500.00

**Amount Billed:** \$7,650.00  
**Amount Due:** \$7,650.00

**Superbill #33641**      **Renderer:** Coppel, Alain, M.D.      **Service Date:** 3/27/2012      **Diagnosis:** 722.10, 722.93, 724.4

Charge	Posted Date	Description	Payer Name	Ref Number	Amount
99213	3/28/2012	OFFICE/OUTPATIENT VISIT EST			\$150.00

**Amount Billed:** \$150.00  
**Amount Due:** \$150.00

**Superbill #31230**      **Renderer:** Coppel, Alain, M.D.      **Service Date:** 2/22/2012      **Diagnosis:** 722.10, 722.93, 724.4

Charge	Posted Date	Description	Payer Name	Ref Number	Amount
99244	2/24/2012	OFFICE CONSULTATION			\$480.00

**Amount Billed:** \$480.00  
**Amount Due:** \$480.00



# EXHIBIT “B”

1 KRISTIAN LAVIGNE, ESQ.  
Nevada Bar No.11629  
2 THE LAW OFFICE OF KRISTIAN LAVIGNE AND ASSOCIATES, P.C.  
5265 S. Durango Dr. Suite 1  
3 Las Vegas, NV 89113  
4 Attorneys for Plaintiff

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 CHRISTIAN CERVANTES-LOPEZ,  
8 an individual,  
9 MARIA AVARCA, an individual,  
10 Plaintiffs,

CASE NO.: A-12-667141-C  
DEPT. NO.: XXIII

11 vs.

12 EVANGELINA ORTEGA, an individual;  
13 MIRIAM PIZARRO-ORTEGA, an individual;  
DOES I through V, inclusive;  
14 and ROE CORPORATIONS I  
through V, inclusive

15 Defendants.

16 **PLAINTIFF CHRISTIAN CERVANTES-LOPEZ'S ANSWERS TO DEFENDANT**  
17 **EVANGELINA ORTEGA AND MIRIAM PIZARRO-ORTEGA'S INTERROGATORIES**

18 TO: EVANGELINA ORTEGA and MIRIAM PIZARRO-ORTEGA, Defendants;

19 TO: STEPHEN ROGERS, ESQ., Attorney for Defendants

20 Plaintiff, CHRISTIAN CERVANTES-LOPEZ by and through his attorney,  
21 KRISTIAN LAVIGNE, ESQ., of THE LAW OFFICE OF KRISTIAN LAVIGNE AND  
22 ASSOCIATES, pursuant to NRCP 26 and 33, hereby answers the first set of interrogatories  
23 propounded by Defendant, as follows, reserving the right to supplement and/or amend answers  
24 as discovery continues and additional information or documentation comes to light.

25 **INTERROGATORY NO. 1:**

26 State your full name and names by which you have been known.

27 **ANSWER:**

28 Christian Cervantes-Lopez

1 **INTERROGATORY NO. 2:**

2 State your date of birth and birthplace

3 **ANSWER:**

4 Date of Birth: November 2, 1987

5 Birthplace: Guadalajara, Mexico

6 **INTERROGATORY NO. 3:**

7 State each and every address which you have had in the last five years, including your  
8 present address, and the dates of your residence at each.

9 **ANSWER:**

10 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
11 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
12 admissible evidence. Without waiving said objection, Plaintiff discloses his current address.

14 Current Residence:  
15 4770 East Owens Ave, No. 204  
16 Las Vegas, NV 89110

17 **INTERROGATORY NO. 4:**

18 State the name of your spouse and of any previous spouse and their address(es) if  
19 different from yours.

20 **ANSWER:**

21 Spouse: Maria Avarca (same address)

22 **INTERROGATORY NO. 5:**

23 Have you ever been convicted of one or more felonies?

24 **ANSWER:**

25 The Plaintiff has not ever been convicted of any felonies.

26 **INTERROGATORY NO. 6:**

27 State the date, time, and place of the accident or incident which is the basis of this lawsuit  
28 (the "subject incident").

1 **ANSWER:**

2 The subject incident occurred on Saturday, November 12, 2011, at 7:02 p.m.. The  
3 accident occurred on eastbound Lake Mead Boulevard at the intersection with Statz.

4 **INTERROGATORY NO. 7:**

5 If you were a victim or a party to the subject incident, state:

- 6 (a) In detail, your account of the happening of the subject incident.  
7 (b) The persons you feel are responsible for the subject incident;  
8 (c) The specific acts or omissions upon which you base your allegations of responsibility  
9 for the subject incident as to the persons listed in (b) above.

10 **ANSWER:**

- 11 (a) I was driving on westbound Lake Mead Boulevard approaching the intersection of Statz.  
12 A 2000 Chevrolet Impala driven by Defendant Miriam Pizarro-Ortega and owned by  
13 Evangelina Ortega was in the middle lane of eastbound Lake Mead Boulevard . The  
14 2000 Chevrolet Impala driven and owned by the Defendants then made an illegal left turn  
15 into my travel path resulting a collision with my vehicle.  
16  
17 (b) I believe that both defendants were responsible for the subject accident.  
18 (c) I believe Defendant Miriam Pizarro-Ortega is responsible because she made an illegal left  
19 turn which caused an unavoidable violent collision. I believe Defendant Evangelina  
20 Ortega is responsible for the subject accident because she was the registered owner of the  
21 2000 Chevrolet Impala and she allowed Miriam Pizarro-Ortega to drive the 2000  
22 Chevrolet Impala.

23 **INTERROGATORY NO. 8:**

24 State the names and addresses of all witnesses to the subject incident known to you, your  
25 attorney, agent or any investigator or detective employed by you or your attorney or anyone  
26 acting on your behalf. Please also state the substance of their anticipated testimony.  
27  
28

1 **ANSWER:**

2 Please see the Plaintiff's Early Case conference Production of Documents and Witnesses  
3 and each supplement thereto (which is intended to supplement this request as well). Additionally,  
4 discovery is ongoing and this answer will be seasonably supplemented as new information  
5 becomes available.

6 **INTERROGATORY NO. 9:**

7 Are you aware of the existence of any written or recorded statement made by any party or  
8 witness, whether signed or not? If so, state:

- 9 (a) The name of each person making the statement  
10 (b) In whose custody such written or recorded statement reposes.

11 **ANSWER:**

- 12 (a) Plaintiff is aware only of the police report of the subject incident  
13 (b) Please see the Plaintiff's Early Case conference Production of Documents and  
14 Witnesses and each supplement thereto (which is intended to supplement this request  
15 as well).

16 **INTERROGATORY NO. 10:**

17 State whether any party or witness known to any of your representatives claims to have  
18 heard any statement or statements by the Defendant herein or any agent of a Defendant herein,  
19 concerning the manner in which the subject incident occurred, or the person or persons at fault in  
20 the subject incident?  
21

22 **ANSWER:**

23 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
24 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
25 admissible evidence.

26 //

27 //

28

1 **INTERROGATORY NO. 11:**

2 Are you aware of the existence of any maps, motion pictures, photographs, plats,  
3 drawings, diagrams, measurements, or other written description of the subject incident, the scene  
4 of the subject incident, the area or persons involved?

5 **ANSWER:**

6 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
7 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
8 admissible evidence.

9 **INTERROGATORY NO. 12:**

10 Do you know of any person who is skilled in any particular field or science whom you  
11 expect to testify as an expert upon the trial of this action?

12 **ANSWER:**

13 Objection. Said information is not required at this time. Plaintiff's attorney will disclose  
14 all information regarding expert witnesses by the deadline for such disclosures.

15 **INTERROGATORY NO. 13:**

16 If you claim to have suffered personal injuries in the subject incident, list all such injuries  
17 or ailments and symptoms experienced by you.

18 **ANSWER:**

19 Objection. This interrogatory seeks an expert medical opinion for which Plaintiff is not  
20 qualified. Furthermore, this interrogatory seeks speculative information. Without waiving said  
21 objections, Plaintiff answers as follows: following the accident I have suffered from severe pain  
22 in my shoulder, back, and neck.

23 **INTERROGATORY NO. 14:**

24 List all injuries, symptoms or ailments which you had before the subject incident.

25 **ANSWER:**

26 Objection. This interrogatory seeks an expert medical opinion for which Plaintiff is not  
27 qualified. Furthermore, this interrogatory seeks speculative information. Without waiving said  
28

1 objections, Plaintiff answers as follows: I did not have any injuries, symptoms, or ailments  
2 before the subject incident.

3 **INTERROGATORY NO. 15:**

4 List the name of and address of each medical provider of any kind, including but without  
5 limitation, hospitals, quick care facilities, chiropractic and/or physical therapists, with whom you  
6 have treated at any time.

7 **ANSWER:**

8 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
9 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
10 admissible evidence. Without waiving said objection, this information is readily available in  
11 Plaintiff's initial disclosures.

12 **INTERROGATORY NO. 16:**

13 State the full name and address of each doctor or physician who has examined, treated or  
14 consulted with you since the subject incident.

15 **ANSWER:**

16 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
17 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
18 admissible evidence. Without waiving said objection, this information is readily available in  
19 Plaintiff's initial disclosures.

20 **INTERROGATORY NO. 17:**

21 List any accidents, incidents or occurrences, wither prior or subsequent to the subject  
22 incident, wherein you incurred any injuries whatsoever which required or resulted in medical  
23 care, consultation, examination or treatment.

24 **ANSWER:**

25 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
26 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
27

1 admissible evidence. Without waiving said objection, Plaintiff does not recall any such  
2 accidents, incidents, or occurrences.

3 **INTERROGATORY NO. 18:**

4 Identify your health insurance provider(s) for the last ten (10) years, setting forth the  
5 name and address as well as your insurance identification or member number.

6 **ANSWER:**

7 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
8 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
9 admissible evidence. Without waiving said objection, Plaintiff recalls obtaining health insurance  
10 from United Health Care, with an effective date of January 1, 2013. Plaintiff further recalls not  
11 having health insurance prior to the aforementioned date.

12 **INTERROGATORY NO. 19:**

13 State the date and place of any accident or occurrence, prior to or subsequent to the  
14 subject incident, out of which you made a claim against any person or organization for damages  
15 for personal injuries or damage to your property.

16 **ANSWER:**

17 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
18 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
19 admissible evidence. Without waiving said objection, Plaintiff does not recall any such accidents  
20 or prior occurrences.

21 **INTERROGATORY NO. 20:**

22 State your business or occupation during the past five (5) years, and further state:

23 **ANSWER:**

24 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
25 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
26 admissible evidence. Without waiving said objection, Plaintiff discloses his current place of  
27 work.  
28



1           Employer:     Pinoeer Gypsum  
2                       4880 Donovan Way  
3                       North Las Vegas, NV 89031  
4                       Immediate Supervisor: Kenneth Traver

5           Plaintiff has been employed at aforementioned place of work for six years.

6           **INTERROGATORY NO. 21:**

7                       State whether you have lost any salary, compensation or income since the subject  
8           incident.

9           **ANSWER:**

10                    Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
11                    limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
12                    admissible evidence. Without waiving said objection, Plaintiff discloses that his work duties  
13                    have changed as a result of the subject incident. Plaintiff's injuries caused by the subject incident  
14                    may prevent him from working in the future.

15           **INTERROGATORY NO. 22:**

16                    If you have incurred any expenses other than for medical care or loss of income as a  
17                    result of the subject incident, list each such expense, including the name and address of the  
18                    person or entity to whom expense was incurred, the nature of the expense, and the date that said  
19                    expense was incurred.

20           **ANSWER:**

21                    Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
22                    limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
23                    admissible evidence. Without waiving said objection, Plaintiff does not recall any such medical  
24                    expenses.

25           **INTERROGATORY NO. 23:**

26                    If you claim that, as a result of the subject incident, you have suffered injuries or  
27                    disabilities which have caused you to limit or cease your participation in any hobbies or other  
28                    forms of recreation, please state in detail all such claimed losses, including the exact nature of

1 your participation in the hobby or form of recreation before the subject incident and how that  
2 participation has changed since the incident.

3 **ANSWER:**

4 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
5 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
6 admissible evidence. Without waving said objection, Plaintiff reports inability to remain seated  
7 or standing for long periods of time.

8 **INTERROGATORY NO. 24:**

9 In the 24 hour period preceding the incident, you had anything of an alcoholic nature to  
10 drink, and/or any prescriptions, illegal or over the counter drugs, or any other controlled  
11 substances?

12 **ANSWER:**

13 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
14 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
15 admissible evidence. Without waving, Plaintiff did not consume any such controlled substances  
16 in the aforementioned time frame.

17 **INTERROGATORY NO. 25:**

18 List your social security number.

19 **ANSWER:**

20 987-87-3791

21 **INTERROGATORY NO. 26:**

22 If you have filed federal and/or state income tax returns for any of the past five years,  
23 please state the place(s) and form(s) filed.

24 **ANSWER:**

25 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
26 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
27

1 admissible evidence. Without waiving said objection, Plaintiff discloses that he filed tax returns  
2 jointly with his spouse each and every year beginning in 2009.

3 **INTERROGATORY NO. 27:**

4 If you have been advised that you will require future medical care for any injury or  
5 symptom resulting from Sid subject incident, give the name and address of the medical provider  
6 so advising you, describe the recommended care and procedure, and state your understanding of  
7 the purpose of such future medical care.

8 **ANSWER:**

9 Objection. This interrogatory seeks an expert medical opinion for which Plaintiff is not  
10 qualified. Furthermore, this interrogatory seeks speculative information. Without waiving said  
11 objection, this information is readily available in Plaintiff's initial disclosures.

12 **INTERROGATORY NO. 28:**

13 If you intend to undergo future medical care for any injury or symptom resulting from  
14 said subject incident, give the name and address of the medical provider(s) you intend to treat  
15 with, the (sic) describe the nature of the medical care you intend to undergo.

16 **ANSWER:**

17 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
18 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
19 admissible evidence. Without waiving said objection, this information is readily available in  
20 Plaintiff's initial disclosures.

21  
22 DATED this 6 day of AUGUST, 2013

23  
24 LAW OFFICE OF KRISTIAN LAVIGNE, P.C.

25 

26 KRISTIAN LAVIGNE, ESQ.  
27 Nevada Bar No. 11629  
28 5265 S. Durango Dr. Suite 1  
Las Vegas, NV 89113  
Attorneys for Plaintiff  
702-379-4413

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VERIFICATION

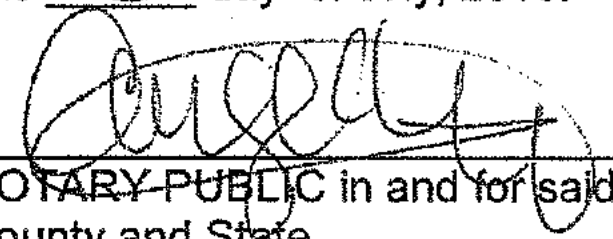
COUNTY OF CLARK       )  
                                  )ss:  
STATE OF NEVADA       )

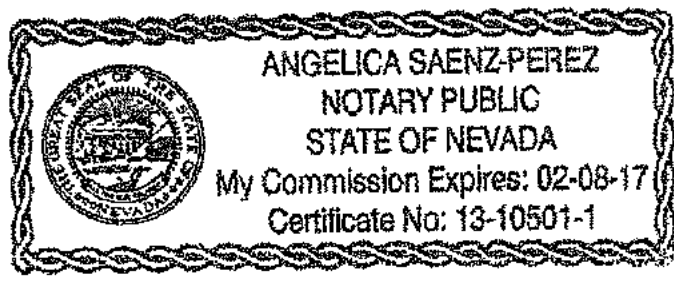
CHRISTIAN CERVANTES-LOPEZ, being first duly sworn, deposes and states as follows:

That she is the Plaintiff in the above-entitled action, that she is over the age of 21 years and that /her Answers to Interrogatories are true to the best of her knowledge and belief.

  
CHRISTIAN CERVANTES-LOPEZ

SUBSCRIBED AND SWORN to before me  
this 23 day of July, 2013.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for said  
County and State.



CERTIFICATE OF RECIEPT

The undersigned certifies that on the 6 day of AUGUST, 2013, a copy of the foregoing PLAINTIFF'S ANSWERS TO DEFENDANTS' INTERROGATORIES was received via delivery in person, addressed as follows:

Stephen Rogers, Esq.  
Rogers, Mastrangelo, Carvalho, & Mitchell  
300 South Fourth Street, suite 710  
Las Vegas, NV 89101

 3:17 pm

An employee of Rogers, Mastrangelo, Carvalho, & Mitchell

# EXHIBIT “C”

1 KRISTIAN LAVIGNE, ESQ.  
Nevada Bar No.11629  
2 THE LAW OFFICE OF KRISTIAN LAVIGNE AND ASSOCIATES, P.C.  
5265 S. Durango Dr. Suite 1  
3 Las Vegas, NV 89113  
4 Attorneys for Plaintiff

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 CHRISTIAN CERVANTES-LOPEZ,  
8 an individual,  
MARIA AVARCA, an individual,  
9 Plaintiffs,

CASE NO.: A-12-667141-C  
DEPT. NO.: XXIII

10 vs.

11 EVANGELINA ORTEGA, an individual;  
12 MIRIAM PIZARRO-ORTEGA, an individual;  
DOES I through V, inclusive;  
13 and ROE CORPORATIONS I  
14 through V, inclusive  
15 Defendants.

16 PLAINTIFF MARIA AVARCA'S ANSWERS TO DEFENDANTS EVANGELINA  
17 ORTEGA AND MIRIAM PIZARRO-ORTEGA'S INTERROGATORIES

18 TO: EVANGELINA ORTEGA and MIRIAM PIZARRO-ORTEGA, Defendants;

19 TO: STEPHEN ROGERS, ESQ., Attorney for Defendants

20 Plaintiff, MARIA AVARCA by and through her attorney, KRISTIAN  
21 LAVIGNE, ESQ., of THE LAW OFFICE OF KRISTIAN LAVIGNE AND ASSOCIATES,  
22 pursuant to NRCP 26 and 33, hereby answers the first set of interrogatories propounded by  
23 Defendant, as follows, reserving the right to supplement and/or amend answers as discovery  
24 continues and additional information or documentation comes to light.

25 INTERROGATORY NO. 1:

26 State your full name and names by which you have been known.

27 ANSWER:

28 MARIA AVARCA

1 **INTERROGATORY NO. 2:**

2 State your date of birth and birthplace

3 **ANSWER:**

4 Date of Birth: April 19, 1984

5 Birthplace: Guerrero, Mexico

6 **INTERROGATORY NO. 3:**

7 State each and every address which you have had in the last five years, including your  
8 present address, and the dates of your residence at each.

9 **ANSWER:**

10 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
11 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
12 admissible evidence. Without waiving said objection, Plaintiff discloses her current address.

14  
15 Current Residence:  
16 4770 East Owens Ave, No. 204  
Las Vegas, NV 89110

17 **INTERROGATORY NO. 4:**

18 State the name of your spouse and of any previous spouse and their address(es) if  
19 different from yours.

20 **ANSWER:**

21 Spouse: CHRISTIAN CERVANYES-LOPEZ (same address)

22 **INTERROGATORY NO. 5:**

23 Have you ever been convicted of one or more felonies?

24 **ANSWER:**

25 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
26 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
27 admissible evidence. Without waiving said objection, the Plaintiff has not been convicted of any  
28 felonies.



1 **INTERROGATORY NO. 6:**

2 State the date, time, and place of the accident or incident which is the basis of this lawsuit  
3 (the "subject incident").

4 **ANSWER:**

5 The subject incident occurred on Saturday, November 12, 2011, at 7:02 p.m.. The  
6 accident occurred on eastbound Lake Mead Boulevard at the intersection with Statz.

7 **INTERROGATORY NO. 7:**

8 If you were a victim or a party to the subject incident, state:

- 9 (a) In detail, your account of the happening of the subject incident.  
10 (b) The persons you feel are responsible for the subject incident;  
11 (c) The specific acts or omissions upon which you base your allegations of responsibility  
12 for the subject incident as to the persons listed in (b) above.

13 **ANSWER:**

- 14 (a) I was a passenger in a vehicle which was westbound on Lake Mead Boulevard  
15 approaching the intersection of Statz. A 2000 Chevrolet Impala driven by Defendant  
16 Miriam Pizarro-Ortega and owned by Evangelina Ortega was in the middle lane of  
17 eastbound Lake Mead Boulevard . The 2000 Chevrolet Impala driven and owned by the  
18 Defendants then made an illegal left turn into my travel path resulting a collision with my  
19 vehicle.  
20  
21 (b) I believe that both defendants were responsible for the subject accident.  
22 (c) I believe Defendant Miriam Pizarro-Ortega is responsible because she made an illegal left  
23 turn which caused an unavoidable violent collision. I believe Defendant Evangelina  
24 Ortega is responsible for the subject accident because she was the registered owner of the  
25 2000 Chevrolet Impala and she allowed Miriam Pizarro-Ortega to drive the 2000  
26 Chevrolet Impala.  
27  
28

1 **INTERROGATORY NO. 8:**

2 State the names and addresses of all witnesses to the subject incident known to you, your  
3 attorney, agent or any investigator or detective employed by you or your attorney or anyone  
4 acting on your behalf. Please also state the substance of their anticipated testimony.

5 **ANSWER:**

6 Please see the Plaintiff's Early Case conference Production of Documents and Witnesses  
7 and each supplement thereto (which is intended to supplement this request as well). Additionally,  
8 discovery is ongoing and this answer will be seasonably supplemented as new information  
9 becomes available.

10 **INTERROGATORY NO. 9:**

11 Are you aware of the existence of any written or recorded statement made by any party or  
12 witness, whether signed or not? If so, state:

13 (a) The name of each person making the statement

14 (b) In whose custody such written or recorded statement reposes.

15 **ANSWER:**

16 (a) Plaintiff is aware only of the police report of the subject incident

17 Please see the Plaintiff's Early Case conference Production of Documents and Witnesses and  
18 each supplement thereto (which is intended to supplement this request as well).

19 **INTERROGATORY NO. 10:**

20 State whether any party or witness known to any of your representatives claims to have  
21 heard any statement or statements by the Defendant herein or any agent of a Defendant herein,  
22 concerning the manner in which the subject incident occurred, or the person or persons at fault in  
23 the subject incident?  
24

25 **ANSWER:**

26 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
27 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
28 admissible evidence.

1 **INTERROGATORY NO. 11:**

2 Are you aware of the existence of any maps, motion pictures, photographs, plats,  
3 drawings, diagrams, measurements, or other written description of the subject incident, the scene  
4 of the subject incident, the area or persons involved?

5 **ANSWER:**

6 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
7 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
8 admissible evidence.

9 **INTERROGATORY NO. 12:**

10 Do you know of any person who is skilled in any particular field or science whom you  
11 expect to testify as an expert upon the trial of this action?

12 **ANSWER:**

13 Objection. Said information is not required at this time. Plaintiff's attorney will disclose  
14 all information regarding expert witnesses by the deadline for such disclosures.

15 **INTERROGATORY NO. 13:**

16 If you claim to have suffered personal injuries in the subject incident, list all such injuries  
17 or ailments and symptoms experienced by you.

18 **ANSWER:**

19 Objection. This interrogatory seeks an expert medical opinion for which Plaintiff is not  
20 qualified. Furthermore, this interrogatory seeks speculative information. Without waiving said  
21 objections, Plaintiff answers as follows: following the accident I have suffered from severe pain  
22 in my shoulder, back, and neck.

23 **INTERROGATORY NO. 14:**

24 List all injuries, symptoms or ailments which you had before the subject incident.

25 **ANSWER:**

26 Objection. This interrogatory seeks an expert medical opinion for which Plaintiff is not  
27 qualified. Furthermore, this interrogatory seeks speculative information. Without waiving said  
28

1 objections, Plaintiff answers as follows: I did not have any injuries, symptoms, or ailments  
2 before the subject incident.

3 **INTERROGATORY NO. 15:**

4 List the name of and address of each medical provider of any kind, including but without  
5 limitation, hospitals, quick care facilities, chiropractic and/or physical therapists, with whom you  
6 have treated at any time.

7 **ANSWER:**

8 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
9 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
10 admissible evidence. Without waiving said objection, this information is readily available in  
11 Plaintiff's initial disclosure.

12 **INTERROGATORY NO. 16:**

13 State the full name and address of each doctor or physician who has examined, treated or  
14 consulted with you since the subject incident.

15 **ANSWER:**

16 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
17 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
18 admissible evidence. Without waiving said objection, this information is readily available in  
19 Plaintiff's initial disclosures.

20 **INTERROGATORY NO. 17:**

21 List any accidents, incidents or occurrences, wither prior or subsequent to the subject  
22 incident, wherein you incurred any injuries whatsoever which required or resulted in medical  
23 care, consultation, examination or treatment.

24 **ANSWER:**

25 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
26 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
27  
28

1 admissible evidence. Without waiving said objection, Plaintiff does not recall any such  
2 accidents, incidents, or occurrences.

3 **INTERROGATORY NO. 18:**

4 Identify your health insurance provider(s) for the last ten (10) years, setting forth the  
5 name and address as well as your insurance identification or member number.

6 **ANSWER:**

7 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
8 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
9 admissible evidence. Without waiving said objection, Plaintiff has not had health insurance in  
10 the last ten years.

11 **INTERROGATORY NO. 19:**

12 State the date and place of any accident or occurrence, prior to or subsequent to the  
13 subject incident, out of which you made a claim against any person or organization for damages  
14 for personal injuries or damage to your property.

15 **ANSWER:**

16 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
17 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
18 admissible evidence. Without waiving said objection, Plaintiff does not recall any such accidents  
19 or prior occurrences.

20 **INTERROGATORY NO. 20:**

21 State your business or occupation during the past five (5) years.

22 **ANSWER:**

23 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
24 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
25 admissible evidence as Plaintiff is not making a claim for lost wages.

26 //

27 //

1 **INTERROGATORY NO. 21:**

2 State whether you have lost any salary, compensation or income since the subject  
3 incident.

4 **ANSWER:**

5 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
6 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
7 admissible evidence as Plaintiff is not making a claim for lost wages.

8 **INTERROGATORY NO. 22:**

9 If you have incurred any expenses other than for medical care or loss of income as a  
10 result of the subject incident, list each such expense, including the name and address of the  
11 person or entity to whom expense was incurred, the nature of the expense, and the date that said  
12 expense was incurred.

13 **ANSWER:**

14 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
15 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
16 admissible evidence. Without waiving said objection, Plaintiff does not recall any such expenses.

17 **INTERROGATORY NO. 23:**

18 If you claim that, as a result of the subject incident, you have suffered injuries or  
19 disabilities which have caused you to limit or cease your participation in any hobbies or other  
20 forms of recreation, please state in detail all such claimed losses, including the exact nature of  
21 your participation in the hobby or form of recreation before the subject incident and how that  
22 participation has changed since the incident

23 **ANSWER:**

24 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
25 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
26 admissible evidence. Without waving said objection, Plaintiff reports inability to remain seated  
27 or standing for long periods of time.  
28

1 **INTERROGATORY NO. 24:**

2 In the 24 hour period preceding the incident, you had anything of an alcoholic nature to  
3 drink, and/or any prescriptions, illegal or over the counter drugs, or any other controlled  
4 substances?

5 **ANSWER:**

6 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
7 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
8 admissible evidence. Without waving, Plaintiff did not consume any such controlled substances  
9 in the aforementioned time frame.

10 **INTERROGATORY NO. 25:**

11 List your social security number.

12 **ANSWER:**

13 910-19-1526

14 **INTERROGATORY NO. 26:**

15 If you have filed federal and/or state income tax returns for any of the past five years,  
16 please state the place(s) and form(s) filed.

17 **ANSWER:**

18 Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
19 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
20 admissible evidence. Without waiving said objection, Plaintiff discloses that she filed tax returns  
21 jointly with her spouse each and every year since 2009.

22 **INTERROGATORY NO. 27:**

23 If you have been advised that you will require future medical care for any injury or  
24 symptom resulting from Sid subject incident, give the name and address of the medical provider  
25 so advising you, describe the recommended care and procedure, and state your understanding of  
26 the purpose of such future medical care.

27 //

1 **ANSWER:**

2       Objection. This interrogatory seeks an expert medical opinion for which Plaintiff is not  
3 qualified. Furthermore, this interrogatory seeks speculative information. Without waiving said  
4 objection, this information is readily available in Plaintiff's initial disclosures.

5 **INTERROGATORY NO. 28:**

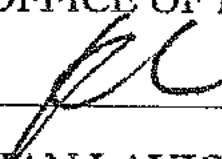
6       If you intend to undergo future medical care for any injury or symptom resulting from  
7 said subject incident, give the name and address of the medical provider(s) you intend to treat  
8 with, the (sic) describe the nature of the medical care you intend to undergo.

9 **ANSWER:**

10       Objection. This interrogatory is overly broad, unduly burdensome, not appropriately  
11 limited to scope, and seeks information not reasonably calculated to lead to the discovery of  
12 admissible evidence. Without waiving said objection, this information is readily available in  
13 Plaintiff's initial disclosures.

14 DATED this 6 day of AUGUST, 2013

17 LAW OFFICE OF KRISTIAN LAVIGNE, P.C.

18   
19 KRISTIAN LAVIGNE, ESQ.  
20 Nevada Bar No. 11629  
21 5265 S. Durango Dr. Suite 1  
22 Las Vegas, NV 89113  
23 Attorneys for Plaintiff  
24 702-379-4413  
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VERIFICATION


COUNTY OF CLARK     )  
                                  )ss:  
STATE OF NEVADA     )

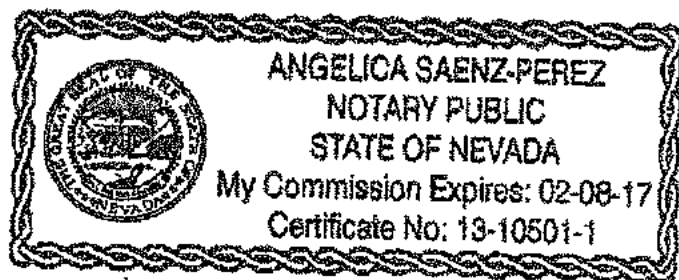
MARIA AVARCA, being first duly sworn, deposes and states as follows:

That she is the Plaintiff in the above-entitled action, that she is over the age of 21 years and that /her Answers to Interrogatories are true to the best of her knowledge and belief.

  
\_\_\_\_\_  
MARIA AVARCA

SUBSCRIBED AND SWORN to before me  
this 23 day of July, 2013.

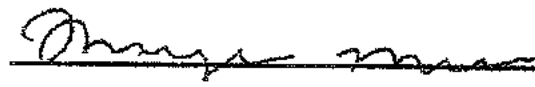
  
\_\_\_\_\_  
NOTARY PUBLIC in and for said  
County and State.



1 CERTIFICATE OF RECIEPT

2 The undersigned certifies that on the 6 day of AUGUST, 2013, a copy of the  
3 foregoing **PLAINTIFF'S ANSWERS TO DEFENDANTS' INTERROGATORIES** was  
4 received via delivery in person, addressed as follows:  
5

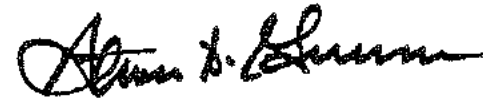
6 Stephen Rogers, Esq.  
7 Rogers, Mastrangelo, Carvalho, & Mitchell  
8 300 South Fourth Street, suite 710  
9 Las Vegas, NV 89101  
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15  3:17pm

16 An employee of Rogers, Mastrangelo, Carvalho, & Mitchell  
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# EXHIBIT “D”

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CLERK OF THE COURT

1 SAO  
2 STEPHEN H. ROGERS, ESQ.  
3 Nevada Bar No. 5755  
4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
5 300 South Fourth Street, Suite 710  
6 Las Vegas, Nevada 89101  
7 Phone (702) 383-3400  
8 Fax (702) 384-1460  
9 Attorneys for Defendants

6 DISTRICT COURT  
7 CLARK COUNTY, NEVADA

8 CHRISTIAN CERVANTES-LOPEZ,  
9 an individual; MARIA AVARCA, an individual,  
10 Plaintiffs,

CASE NO.: A-12-667141-C

DEPT. NO.: XXIII

11 vs.

12 EVANGELINA ORTEGA, an individual;  
13 MIRIAM PIZARRO-ORTEGA, an individual;  
14 DOES I through V, inclusive; and  
15 ROE CORPORATIONS I through V, inclusive,  
16 Defendants.

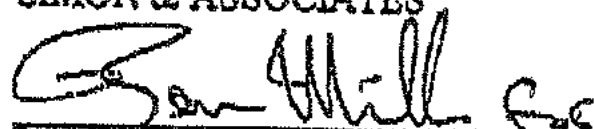
16 STIPULATION AND ORDER TO CONTINUE TRIAL DATE

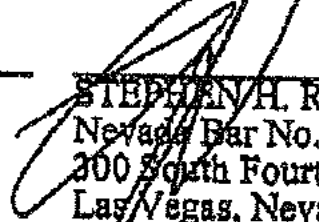
17 IT IS HEREBY STIPULATED by and between the parties, through their respective counsel,  
18 that the trial date for the above-captioned matter which is currently set for November 12, 2014 be  
19 continued and reset on the trial stack of February 9, 2015, at 9:00 a.m., with a calendar call on  
20 Feb. 3, 2015, at 11:00 a.m. and the Pre-Trial Memorandums due on Jan. 30, 2015

21 DATED this 5 day of November 2014. DATED this 5<sup>th</sup> day of November, 2014.

22 SIMON &amp; ASSOCIATES

23 ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL #5362

24   
DANIEL S. SIMON, ESQ.

25   
STEPHEN H. ROGERS, ESQ.

26 Nevada Bar No: 4750  
810 South Casino Center Blvd.  
Las Vegas, NV 89101  
Attorneys for Plaintiffs

27 Nevada Bar No. 5755  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Attorneys for Defendants

28 ...

**ORDER**

IT IS SO ORDERED that the civil jury trial presently scheduled for November 12, 2014 in the above-entitled matter be, and hereby is continued to the 9<sup>th</sup> day of February, in the year of 2015 at 9:00 a.m. A pretrial conference with the designated attorney and/or parties in proper person will be held on Feb. 3, 2015 at 11:00 a.m. A calendar call will be held on Jan 30, 2015 with a courtesy copy delivered to Department XII. All parties (attorneys and parties in proper person) must comply with ALL REQUIREMENTS of E.D.C.R. 2.67. All pretrial motions, including motions in limine, must be in writing and set for hearing no later than January 9, 2015. Any pretrial motion must be filed by 4:00 p.m. on December 9, 2014. Orders shortening time will not be signed except in extrema emergencies. The last day to supplement your documents and witness list, including expert and rebuttal witnesses, is January 9, 2015. All other orders of the prior Order Setting Civil Jury Trial shall remain in full force and effect.

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

Submitted by:

ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

STEPHEN H. ROGERS, ESQ.  
Nevada Bar No. 5755  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Attorneys for Defendants

DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY

McKale/Originals, Curvatore-Lopez/Pleadings/Sup Court/Jury Trial/Sup to Curvatore Trial - 11-05-14.rpd