

No. 71348

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 15 2018 01:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EMILIA GARCIA,
Appellant,

v.

ANDREA AWERBACH,
Respondent.

**APPELLANT'S APPENDIX
VOLUME VIII, BATES NUMBERS 1751 TO 2000**

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
Jeremy R. Alberts, Esq.
Nevada Bar No. 10497
Marisa Rodriguez, Esq.
Nevada Bar No. 13234
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC.
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
lroberts@wwhgd.com
jalberts@wwhgd.com
mrodriguez@wwhgd.com

Corey M. Eschweiler, Esq.
Nevada Bar No. 6635
Craig A. Henderson, Esq.
Nevada Bar No. 10077
GLEN J. LERNER & ASSOCIATES
4795 South Durango Drive
Las Vegas, Nevada 89147
Telephone: (702) 877-1500
ceschweiler@glenlerner.com
chenderson@glenlerner.com

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
I	22 – 28	Amended Complaint	01/14/2013
V	1031 – 1282	Appendix of Exhibits to Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
V, VI	1304 – 1486	Appendix of Exhibits to Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
I	1 – 6	Complaint	03/25/2011
III	642 – 646	Decision and Order Denying Defendant Andrea Awerbach's Motion for Relief from Final Court Order	04/27/2015
III	623 – 629	Decision and Order Denying Plaintiff's Motion to Strike Andrea Awerbach's Answer; Granting Plaintiff's Motion for Order to Show Cause; and Granting in Part and Denying in Part Plaintiff's Motion to Strike Supplemental Reports	02/25/2015
I	164 – 165	Defendant Andrea Awerbach's Correction to Her Responses to Plaintiff's First Set of Requests for Admission	10/20/2014
III	630 – 641	Defendant Andrea Awerbach's Motion for Relief from Final Court Order	03/13/2015
I	96 – 163	Defendant Andrea Awerbach's Motion for Summary Judgment	11/08/2013
I	13 – 21	Defendant Andrea Awerbach's Responses to Request for Admissions	06/05/2012
I	29 – 35	Defendants' Answer to Amended Complaint	02/07/2013
I	7 – 12	Defendants' Answer to Complaint	01/23/2012
I	36 – 60	Defendants' Second Supplement to List of Witnesses and Documents and Tangible Items Produced at Early Case Conference	07/22/2013
I	61 – 95	Deposition of Andrea Awerbach [Vol. 1]	09/12/2013
I, II	166 – 391	Deposition of Andrea Awerbach [Vol. 2]	10/24/2014

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
XXVI, XXVII	6441 – 6942	Deposition of Jared Awerbach	
III	581 – 616	Deposition of Teresa Meraz	01/08/2015
IV	948 – 997	Jury Instructions	03/08/2016
IV	998 – 1000	Jury Verdict	03/10/2016
VI, VII	1499 – 1502	Minute Order	08/22/2016
VII	1513 – 1554	Notice of Appeal	09/19/2017
III	647 – 649	Notice of Department Reassignment	08/27/2015
VII	1508 – 1512	Notice of Entry of Judgment Upon the Verdict	08/21/2017
III	617 – 622	Order Granting, in Part, and Denying, In Part, Plaintiff's Motion for Partial Summary Judgment that Defendant Jared Awerbach was Per Se Impaired Pursuant to NRS 484C.110(3); and Denying Defendant Jared Awerbach's Motion for Partial Summary Judgment on Punitive Damage Claims	01/28/2015
IV	946-947	Order Modifying Prior Order of Judge Allf	02/12/2016
VI	1487 – 1498	Order Re: Post –Trial Motions	08/12/2016
VII	1503 - 1507	Order Vacating Judgment as to Jared Awerbach only	08/21/2017
V	1001 – 1030	Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
III, IV	650 – 900	Plaintiff's Motion to Disqualify Defendant Jared Awerbach's Counsel Randall Tindall and Motion For Reassignment to Department 27 on Order Shortening Time and Request for Leave to File Extended Memorandum of Points and Authorities	09/08/2015
II, III	392 – 580	Plaintiff's Motion to Strike Defendant Andrea Awerbach's Answer	12/02/2014
V	1283 – 1303	Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
IV	933 – 945	Plaintiff's Trial Brief Regarding	02/10/2016

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
		Permissive Use	
IV	901 – 932	Reporter’s Transcript of Proceedings	09/15/2015
VII, VIII	1555 – 1765	Trial Transcript – 02/08/2016	11/10/2017
VIII	1766 – 1996	Trial Transcript – 02/09/2016	11/10/2017
VIII, IX, X	1997 – 2290	Trial Transcript – 02/10/2016	11/10/2017
X	2291 – 2463	Trial Transcript – 02/11/2016	11/10/2017
X, XI	2464 – 2698	Trial Transcript – 02/12/2016	11/10/2017
XI, XII	2699 – 2924	Trial Transcript – 02/16/2016	11/10/2017
XII, XIII	2925 – 3177	Trial Transcript – 02/17/2016	11/10/2017
XIII, XIV	3178 – 3439	Trial Transcript – 02/18/2016	11/10/2017
XIV, XV	3440 – 3573	Trial Transcript – 02/19/2016	11/10/2017
XV, XVI	3574 – 3801	Trial Transcript – 02/22/2016	11/10/2017
XVI, XVII	3802 – 4038	Trial Transcript – 02/23/2016	11/10/2017
XVII, XVIII	4039 – 4346	Trial Transcript – 02/24/2016	11/10/2017
XVIII, XIX	4347 – 4586	Trial Transcript – 02/25/2016	11/10/2017
XIX, XX	4578 – 4819	Trial Transcript – 02/26/2016	11/10/2017
XX, XXI	4820 – 5045	Trial Transcript – 03/01/2016	11/10/2017
XXI, XXII	5046 – 5361	Trial Transcript – 03/02/2016	11/10/2017
XXII, XXIII	5362 – 5559	Trial Transcript – 03/03/2016	11/10/2017
XXIII, XXIV	5560 – 5802	Trial Transcript – 03/04/2016	11/10/2017

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
XXIV	5803 – 5977	Trial Transcript – 03/07/2016	11/10/2017
XXIV, XXV	5978 – 6203	Trial Transcript – 03/08/2016	08/23/2018
XXV, XXVI	6204 – 6422	Trial Transcript – 03/09/2016	08/23/2018
XXVI	6423 – 6440	Trial Transcript – 03/10/2016	08/23/2018

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
I	22 – 28	Amended Complaint	01/14/2013
V	1031 – 1282	Appendix of Exhibits to Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
V, VI	1304 – 1486	Appendix of Exhibits to Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
I	1 – 6	Complaint	03/25/2011
III	642 – 646	Decision and Order Denying Defendant Andrea Awerbach's Motion for Relief from Final Court Order	04/27/2015
III	623 – 629	Decision and Order Denying Plaintiff's Motion to Strike Andrea Awerbach's Answer; Granting Plaintiff's Motion for Order to Show Cause; and Granting in Part and Denying in Part Plaintiff's Motion to Strike Supplemental Reports	02/25/2015
I	164 – 165	Defendant Andrea Awerbach's Correction to Her Responses to Plaintiff's First Set of Requests for Admission	10/20/2014
III	630 – 641	Defendant Andrea Awerbach's Motion for Relief from Final Court Order	03/13/2015
I	96 – 163	Defendant Andrea Awerbach's Motion for Summary Judgment	11/08/2013
I	13 – 21	Defendant Andrea Awerbach's Responses to Request for Admissions	06/05/2012
I	29 – 35	Defendants' Answer to Amended Complaint	02/07/2013
I	7 – 12	Defendants' Answer to Complaint	01/23/2012
I	36 – 60	Defendants' Second Supplement to List of Witnesses and Documents and Tangible Items Produced at Early Case Conference	07/22/2013
I	61 – 95	Deposition of Andrea Awerbach [Vol. 1]	09/12/2013
I, II	166 – 391	Deposition of Andrea Awerbach [Vol. 2]	10/24/2014

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
XXVI, XXVII	6441 – 6942	Deposition of Jared Awerbach	
III	581 – 616	Deposition of Teresa Meraz	01/08/2015
IV	948 – 997	Jury Instructions	03/08/2016
IV	998 – 1000	Jury Verdict	03/10/2016
VI, VII	1499 – 1502	Minute Order	08/22/2016
VII	1513 – 1554	Notice of Appeal	09/19/2017
III	647 – 649	Notice of Department Reassignment	08/27/2015
VII	1508 – 1512	Notice of Entry of Judgment Upon the Verdict	08/21/2017
III	617 – 622	Order Granting, in Part, and Denying, In Part, Plaintiff's Motion for Partial Summary Judgment that Defendant Jared Awerbach was Per Se Impaired Pursuant to NRS 484C.110(3); and Denying Defendant Jared Awerbach's Motion for Partial Summary Judgment on Punitive Damage Claims	01/28/2015
IV	946-947	Order Modifying Prior Order of Judge Allf	02/12/2016
VI	1487 – 1498	Order Re: Post –Trial Motions	08/12/2016
VII	1503 - 1507	Order Vacating Judgment as to Jared Awerbach only	08/21/2017
V	1001 – 1030	Plaintiff's Motion for New Trial or, in the Alternative, for Additur	05/26/2016
III, IV	650 – 900	Plaintiff's Motion to Disqualify Defendant Jared Awerbach's Counsel Randall Tindall and Motion For Reassignment to Department 27 on Order Shortening Time and Request for Leave to File Extended Memorandum of Points and Authorities	09/08/2015
II, III	392 – 580	Plaintiff's Motion to Strike Defendant Andrea Awerbach's Answer	12/02/2014
V	1283 – 1303	Plaintiff's Renewed Motion for Judgment as a Matter of Law	05/26/2016
IV	933 – 945	Plaintiff's Trial Brief Regarding	02/10/2016

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
		Permissive Use	
IV	901 – 932	Reporter’s Transcript of Proceedings	09/15/2015
VII, VIII	1555 – 1765	Trial Transcript – 02/08/2016	11/10/2017
VIII	1766 – 1996	Trial Transcript – 02/09/2016	11/10/2017
VIII, IX, X	1997 – 2290	Trial Transcript – 02/10/2016	11/10/2017
X	2291 – 2463	Trial Transcript – 02/11/2016	11/10/2017
X, XI	2464 – 2698	Trial Transcript – 02/12/2016	11/10/2017
XI, XII	2699 – 2924	Trial Transcript – 02/16/2016	11/10/2017
XII, XIII	2925 – 3177	Trial Transcript – 02/17/2016	11/10/2017
XIII, XIV	3178 – 3439	Trial Transcript – 02/18/2016	11/10/2017
XIV, XV	3440 – 3573	Trial Transcript – 02/19/2016	11/10/2017
XV, XVI	3574 – 3801	Trial Transcript – 02/22/2016	11/10/2017
XVI, XVII	3802 – 4038	Trial Transcript – 02/23/2016	11/10/2017
XVII, XVIII	4039 – 4346	Trial Transcript – 02/24/2016	11/10/2017
XVIII, XIX	4347 – 4586	Trial Transcript – 02/25/2016	11/10/2017
XIX, XX	4578 – 4819	Trial Transcript – 02/26/2016	11/10/2017
XX, XXI	4820 – 5045	Trial Transcript – 03/01/2016	11/10/2017
XXI, XXII	5046 – 5361	Trial Transcript – 03/02/2016	11/10/2017
XXII, XXIII	5362 – 5559	Trial Transcript – 03/03/2016	11/10/2017
XXIII, XXIV	5560 – 5802	Trial Transcript – 03/04/2016	11/10/2017

ALPHABETICAL INDEX

Vol	Page Numbers	Description	Date Filed
XXIV	5803 – 5977	Trial Transcript – 03/07/2016	11/10/2017
XXIV, XXV	5978 – 6203	Trial Transcript – 03/08/2016	08/23/2018
XXV, XXVI	6204 – 6422	Trial Transcript – 03/09/2016	08/23/2018
XXVI	6423 – 6440	Trial Transcript – 03/10/2016	08/23/2018

1 could award money?

2 PROSPECTIVE JUROR NO. 091: No.

3 MR. ROBERTS: You would have trouble with
4 that?

5 PROSPECTIVE JUROR NO. 091: Yeah. I mean,
6 you either prove your case or you don't. It's not, you
7 did it a little better; right? I mean, I don't see a
8 scale in here, someone just trying to be the first guy
9 to hit 51 percent. So in my opinion, you would either
10 prove to me or disprove to me what your client
11 deserved. Not maybe, sort of, kind of.

12 MR. ROBERTS: But assuming the Judge
13 instructed you that under the law, I have proven my
14 case --

15 PROSPECTIVE JUROR NO. 091: This is my --

16 MR. ROBERTS: -- I did tip the scale.

17 PROSPECTIVE JUROR NO. 091: Sorry for
18 interrupting.

19 MR. ROBERTS: No, no.

20 PROSPECTIVE JUROR NO. 091: This is my first
21 time, and I'm having a hard time understanding you;
22 right? My mind does not function that way. I don't
23 know if this process is going to be like, Hey, let's
24 flip a coin, see who wins. But I do not follow you.
25 You can explain it a third time, but I still will not

1 understand.

2 MR. ROBERTS: I think everyone here would
3 agree, and there's actually a case where a judge -- a
4 verdict was reversed because the jury flipped a coin.
5 That's illegal and -- but in all seriousness, we do
6 have to prove our case more likely than not true than
7 not true on the things that we need to do to establish
8 our burden. So I don't want to give you that
9 impression that I'm trying to say it's a coin flip or
10 it's random. It has to be based on the facts and the
11 evidence.

12 PROSPECTIVE JUROR NO. 091: So that's why I'm
13 having a difficult time with your question because
14 that's how I'm walking in the door with that
15 impression, you're either going to prove it or not.

16 MR. ROBERTS: Thank you, sir.

17 Ms. Abeles.

18 PROSPECTIVE JUROR NO. 043: Hi.

19 MR. ROBERTS: Hi.

20 PROSPECTIVE JUROR NO. 043: Number 043.
21 Again, there's nothing here now. Evidence, people,
22 facts, people's opinion, whatever is presented, the
23 Judge will tell us in what way, shape, or form we
24 should be concluding and forming an opinion. And with
25 that, basing everything on that, giving you in good

1 faith, you know, what I think.

2 MR. ROBERTS: Okay. Thank you. And you're
3 comfortable doing that?

4 PROSPECTIVE JUROR NO. 043: Absolutely.

5 MR. ROBERTS: Thank you so much. I
6 appreciate it.

7 Ms. Perreida.

8 PROSPECTIVE JUROR NO. 130: Yes.

9 MR. ROBERTS: How comfortable are you going
10 to be -- you know, if -- if you're told to apply a
11 more-likely-than-not standard, are you going to be okay
12 with that? Are you going to be able to make that
13 decision?

14 PROSPECTIVE JUROR NO. 130: Yes, to follow by
15 evidence and information, whatever is -- I think is
16 true.

17 MR. ROBERTS: And I'm sorry. I missed that.

18 PROSPECTIVE JUROR NO. 130: Whatever I think
19 is true.

20 MR. ROBERTS: Oh, yes. Thank you.

21 Mr. Evans?

22 PROSPECTIVE JUROR NO. 053: My badge number
23 is 53. And I guess I listen to the Judge on his
24 instructions and -- and I would be comfortable with
25 making a decision, like, on 51, 52, 53, whatever.

1 MR. ROBERTS: More likely true than not true.
2 You're comfortable with that if that's what the Judge
3 instructs you?
4 PROSPECTIVE JUROR NO. 053: Yes.
5 MR. ROBERTS: Mr. Roberts.
6 PROSPECTIVE JUROR NO. 058: Yes, sir. 058.
7 MR. ROBERTS: What about you?
8 PROSPECTIVE JUROR NO. 058: No problem at
9 all.
10 MR. ROBERTS: No problem at all. In fact, I
11 think you said that's how you made some of your
12 decisions at work; right?
13 PROSPECTIVE JUROR NO. 058: Actually.
14 MR. ROBERTS: Thank you.
15 Mr. Berkery.
16 PROSPECTIVE JUROR NO. 063: No problem.
17 MR. ROBERTS: No problem.
18 Ms. Bias.
19 PROSPECTIVE JUROR NO. 066: No problem at
20 all.
21 MR. ROBERTS: Ms. -- let see. Jose -- I
22 don't know why I keep missing that. Avilaroa?
23 PROSPECTIVE JUROR NO. 078: Yes. 078. Yes,
24 I feel comfortable.
25 MR. ROBERTS: Now, you're not just saying

1 that because it's easy now; right?

2 PROSPECTIVE JUROR NO. 078: No.

3 MR. ROBERTS: Leave you alone if you're
4 comfortable?

5 PROSPECTIVE JUROR NO. 078: Not at all.

6 MR. ROBERTS: Okay. Thank you.

7 Mr. Retzlaff.

8 PROSPECTIVE JUROR NO. 088: Badge 088. And I
9 would be comfortable, you know, provided the
10 information proves whichever side I'm deciding on.
11 Because a lot of times, like everyone was saying, you
12 won't have 100 percent. You're not always allotted a
13 lot of time to make decisions as well. So you have to
14 rule in favor of whatever the evidence shows.

15 MR. ROBERTS: What about you -- we talked to
16 a couple of people after I spoke to you about do you
17 make decisions sometimes in groups?

18 PROSPECTIVE JUROR NO. 088: Well, it depends.
19 My decisions, I -- I typically work alone.

20 MR. ROBERTS: When you're in the field --

21 PROSPECTIVE JUROR NO. 088: So I have to be
22 decisive according to the books, according to what's
23 safe, what's -- you know. But when I've been in group
24 environments, you know, it's still -- this same thing
25 still kind of applies, you know. Whatever the

1 information, you know, is showing, you know, my way of
2 doing things might have been wrong, but, you know, the
3 information says, Okay, well, if we do it this, it's
4 more efficient, it's better, then, you know, it would
5 be a no-brainer for me to say, Okay, we'll do it that
6 way. Because it's got, you know, evidence, everything
7 backing it up. So whatever, I guess, the information
8 shows you have to go with.

9 MR. ROBERTS: In the other parts of your
10 life, do you sometimes make decisions in groups?

11 PROSPECTIVE JUROR NO. 088: Yeah, I have.
12 Like, you know, getting -- getting a condo with my --
13 my girlfriend and myself, that was a group decision,
14 you know. But, you know, we both had our, you know,
15 facts and everything. We put them together and just
16 went, you know, what the best outcome would be, so ...

17 MR. ROBERTS: When you're making those
18 decisions as a group, do you find yourself being a
19 leader usually or -- or listening to others and -- and
20 relying on others?

21 PROSPECTIVE JUROR NO. 088: I -- it's kind of
22 hard to say because, like I said, I make my decisions
23 based on, you know, the facts. So in some situations,
24 I might have to step up and say, Okay, this is what
25 we're going to do because, you know, like you were

1 saying, you know, it could be 51-49, you know. So I'll
2 step in and say, Hey, we have to take the 51, better --
3 better information, better odds, whatever.

4 But if it's a group, you know, I like to
5 listen to everything too. I don't like to just get my
6 facts and just go with what I was thinking. I have to,
7 you know, get everybody's facts, what they have got and
8 then process it accordingly.

9 MR. ROBERTS: Thanks. I appreciate that.

10 Mr. Cyganek.

11 PROSPECTIVE JUROR NO. 106: Very good. I
12 agree. The key word is "reasonable doubt," you know,
13 and that's what you're looking at when you present your
14 case, the evidence. If this is a little higher than
15 this, obviously you've proven your case, so ...

16 MR. ROBERTS: Thank you, sir. I appreciate
17 that.

18 Ms. Gold.

19 PROSPECTIVE JUROR NO. 036: Yes.
20 Badge No. 036. I understand preponderance of the
21 evidence due to my last career. And I -- I get the
22 51-49, and I don't have any problem with it.

23 MR. ROBERTS: Do you think it's fair?

24 PROSPECTIVE JUROR NO. 036: Yes.

25 MR. ROBERTS: Thank you so much.

1 Mr. Joyce, Badge 29.

2 PROSPECTIVE JUROR NO. 029: 029. I have a
3 real hard time awarding somebody lots of sums of money
4 if it's not proven really well. I have -- even if the
5 judge said, hey, whatever you think. You know, I
6 got -- I have to hear it -- I have to hear a very good
7 case before I would award somebody a very large sum of
8 money.

9 MR. ROBERTS: So when you say you would have
10 to hear a really good case, are you saying you would
11 have trouble if the weight of the evidence --

12 PROSPECTIVE JUROR NO. 029: Was very low.

13 MR. ROBERTS: -- was very low.

14 PROSPECTIVE JUROR NO. 029: Yeah. Because I
15 don't like large jury awards, period.

16 MR. ROBERTS: And I believe that you did put
17 that on your questionnaire.

18 PROSPECTIVE JUROR NO. 029: Yes, I did.

19 Yeah.

20 MR. ROBERTS: Yes.

21 PROSPECTIVE JUROR NO. 029: I hope somebody
22 read it.

23 MR. ROBERTS: I did read it. So let's see.
24 We'll probably talk more about that tomorrow because
25 we've got about five minutes, and I'd like to get

1 through the end of the row on this question. But
2 hopefully someone will remind me, and we'll talk more
3 about that tomorrow because I'd like to hear your
4 thoughts more on that.

5 Mr. Foerstel.

6 PROSPECTIVE JUROR NO. 023: 023.

7 MR. ROBERTS: Thank you.

8 PROSPECTIVE JUROR NO. 023: And I'm a Libra,
9 so the scales, I like the scales. So I wouldn't have a
10 problem with it which way the scales go.

11 MR. ROBERTS: Thank you, sir.

12 Mr. Jensen, Badge 15.

13 PROSPECTIVE JUROR NO. 015: 015. And I'm
14 comfortable with it.

15 MR. ROBERTS: Thank you very much.

16 Ms. Flores.

17 PROSPECTIVE JUROR NO. 010: 010. I'm
18 comfortable with the higher percentage. I'm
19 comfortable with the 51.

20 MR. ROBERTS: You're comfortable making
21 decisions on that basis.

22 PROSPECTIVE JUROR NO. 010: Uh-huh.

23 MR. ROBERTS: Thank you.

24 Mr. Brandon, Badge 3?

25 PROSPECTIVE JUROR NO. 003: Yeah. I'm

1 comfortable, but I do prefer more, you know. 49 to 51,
2 that's close. If you can get it to go one way or the
3 other way a little bit more, then I would go with the
4 higher.

5 MR. ROBERTS: Hopefully, I will put it here,
6 but I appreciate that. We all prefer the higher weight
7 of evidence. We prefer it, you prefer it. No matter
8 which way it goes, I'm sure you prefer it.

9 PROSPECTIVE JUROR NO. 003: Yeah. Obviously,
10 if you're up here in the 51, you got your facts, you've
11 done your research, you've done what it takes to get
12 that point. But then, again, maybe the other -- the
13 lower side might be able to come back with something if
14 we -- you know, may come back, give me something else.
15 They might flip-flop. Don't know. But higher
16 percentage, I'm comfortable.

17 MR. ROBERTS: Very good. Thank you, sir. I
18 appreciate that.

19 Last, Mr. Solomon.

20 PROSPECTIVE JUROR NO. 001: 001. I'm still
21 more on the higher end just from the -- my trade. You
22 can't be 51 percent sure something's dead before you
23 touch it. And --

24 MR. ROBERTS: And you think that would carry
25 over into the courtroom?

1 PROSPECTIVE JUROR NO. 001: It's the way I've
2 been raised. Both my parents are electricians; if
3 they're not, you know, 100 percent sure, they don't
4 come home.

5 MR. ROBERTS: And I -- and I certainly am not
6 going to argue with you when it comes to electricians
7 and being sure that it's dead.

8 But what about in the courtroom? Because
9 we're not dealing with electricity. We're dealing with
10 money and -- and proof in a courtroom. And in this
11 setting, can you set aside the way that you deal with
12 things personally and at work and follow the Court's
13 instructions, or you just don't think you're going to
14 be able to do that?

15 PROSPECTIVE JUROR NO. 001: I honestly don't
16 know. I mean, driving drunk is kind of one of those
17 things. You start hurting people.

18 MR. ROBERTS: All right. Judge, if -- we --
19 we just got to the end of the line on this question.
20 It's two minutes early, but if you're ready to break, I
21 believe we can go home.

22 THE COURT: Come on up, Counsel.

23 (A discussion was held at the bench,
24 not reported.)

25 THE COURT: Okay. Folks, we're going to go

1 ahead and take our evening break. I need everybody to
2 come back tomorrow. I know that's not making you
3 happy. I don't know that we will even have a jury by
4 the end of the day tomorrow. But you need -- we need
5 this group to keep coming back until we have a jury.
6 Okay? I got additional people that I can call in if we
7 get through all of you folks and we still don't have a
8 jury, but I don't want to do that and take the hour and
9 a half that it takes me to do my intro stuff unless we
10 need to.

11 So I've got a calendar in the morning. I
12 think I can be done by 10:00 o'clock. So I'm going to
13 ask you guys all to be here by 10:00 o'clock tomorrow,
14 and that will still give us most of the day tomorrow.
15 We'll see how fast we can get through it.

16 During our break this evening, you're
17 instructed not to talk with each other or with anyone
18 else about any subject or issue connected with this
19 trial. You are not to read, watch, or listen to any
20 report of or commentary on the trial by any person
21 connected with this case or by any medium of
22 information, including, without limitation, newspapers,
23 television, the Internet, or radio. You are not to
24 conduct any research on your own, which means you
25 cannot talk with others, Tweet others, text others,

1 Google issues, or conduct any other kind of book or
2 computer research with regard to any issue, party,
3 witness, or attorney involved in this case. You're not
4 to form or express any opinion on any subject connected
5 with this trial until the case is finally submitted to
6 you.

7 See you back tomorrow morning at 10:00.
8 Thanks, folks. Have a good night.

9 PROSPECTIVE JUROR NO. 058: We don't have to
10 go back to the jury room to check in, do we?

11 THE COURT: You know what, ask Tom. I don't
12 know the answer to that question.

13 (The following proceedings were held
14 outside the presence of the jury.)

15 THE COURT: All right. Guys, we're outside
16 the presence of the jury. I know that Jared's counsel
17 did file a trial brief on whether or not I'm going to
18 allow questions about marijuana. I haven't had a
19 chance to read the whole thing. I know you want to
20 make a record on it. Let's do it in the morning so I
21 have a chance to read it first.

22 Is there anything that we need to put on the
23 record tonight as it relates to the jurors?

24 MR. TINDALL: No, Your Honor.

25 MR. MAZZEO: No, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. STRASSBURG: I don't think so, Judge.

THE COURT: Let's go off the record.

(Thereupon, the proceedings
concluded at 4:49 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

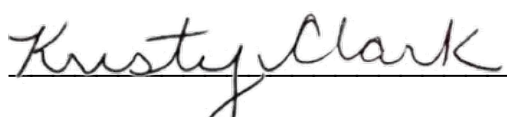
STATE OF NEVADA)
COUNTY OF CLARK) ss:

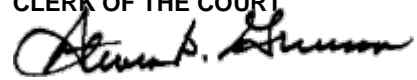
I, Kristy L. Clark, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify: That I reported the proceedings commencing on
Monday, February 8, 2016, at 10:49 o'clock a.m.

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

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

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
8th day of February, 2016.


KRISTY L. CLARK, CCR #708



1 CASE NO. A-11-637772-C
2 DEPT. NO. 30
3 DOCKET U
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 EMILIA GARCIA, individually,)
10 Plaintiff,)
11 vs.)
12 JARED AWERBACH, individually;)
13 ANDREA AWERBACH, individually;)
14 DOES I-X, and ROE CORPORATIONS)
15 I-X, inclusive,)
Defendants.)
16

17 REPORTER'S TRANSCRIPT
18 OF
19 PROCEEDINGS
20 BEFORE THE HONORABLE JERRY A. WIESE, II
21 DEPARTMENT XXX
22 DATED TUESDAY, FEBRUARY 9, 2016
23

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

1 APPEARANCES:

2 For the Plaintiff:

3 GLEN J. LERNER & ASSOCIATES
4 BY: ADAM D. SMITH, ESQ.
4795 South Durango Drive
Las Vegas, Nevada 89147
5 (702) 977-1500
asmith@glenlerner.com

6 - AND -

7 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL,
8 BY: D. LEE ROBERTS, JR., ESQ.
BY: TIMOTHY MOTT, ESQ.
9 BY: MARISA RODRIGUEZ-SHAPOVAL, ESQ.
6385 South Rainbow Boulevard
10 Suite 400
Las Vegas, Nevada 89118
11 (702) 938-3838
lroberts@wwhgd.com

12
13 For the Defendant Andrea Awerbach:

14 MAZZEO LAW, LLC
15 BY: PETER MAZZEO, ESQ.
BY: MARIA ESTANISLAO, ESQ.
631 South 10th Street
16 Las Vegas, Nevada 89101
(702) 382-3636

17
18 For the Defendant Jared Awerbach:

19 RESNICK & LOUIS
20 BY: ROGER STRASSBURG, ESQ.
BY: RANDALL W. TINDALL, ESQ.
5940 South Rainbow Boulevard
21 Las Vegas, Nevada 89118
(702) 997-3800

22
23

24 * * * * *

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

VOIR DIRE EXAMINATION	PAGE
By Mr. Roberts	22
By Mr. Mazzeo	204

1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 9, 2016;

2 10:16 A.M.

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

5 * * * * *

6
7 THE MARSHAL: Remain seated, come to order.

8 THE COURT: All right. Good morning, guys.

9 Sorry I'm late. I had another judge in my office.

10 So you want to talk about Jared's trial
11 memorandum? Is that what we were talking about?

12 MR. STRASSBURG: Yes, sir.

13 THE COURT: Do you have other things? This
14 is like a omnibus motion in limine. There's a whole
15 bunch of things in this.

16 MR. TINDALL: We're talking Pete's omnibus
17 motion.

18 THE COURT: All right. Pick the one or two
19 that are most important to you.

20 MR. TINDALL: Well, the ones that were most
21 important were the ones about evidence about the
22 negligent entrustment not being allowed to be produced
23 on voir dire, but now that we have this situation with
24 the rebuttable presumption, that's a whole different
25 scenario, so I think that part can be disregarded.

1 THE COURT: Okay.

2 MR. TINDALL: We're simply asking on -- when
3 Stan Smith testifies, we be allowed to voir dire him.
4 We believe we can show that he does not meet the
5 Hallmark standard.

6 THE COURT: I don't know that there's a
7 problem with that.

8 MR. TINDALL: We believe there should be no
9 voir dire allowed on marijuana. The word shouldn't be
10 used. No -- no opening with marijuana. And, again,
11 this a little bit ties into the -- yesterday's ruling
12 as well.

13 THE COURT: So I guess here's the question I
14 have: Is there a stipulation that Jared Awerbach is
15 negligent, and there's a stipulation that there's
16 negligent entrustment?

17 MR. TINDALL: There's no stipulation he's
18 negligent. He's been found negligent as a matter of
19 law, and we are stipulating and we put in our pretrial
20 memorandum that we are withdrawing the comparative
21 negligence defense. There's no information about
22 perception that's going to come from Mr. Awerbach,
23 meaning nothing is relevant now about anything to do
24 with when he smoked, if he smoked, how soon in time to
25 the accident did he smoke. That should all be excluded

1 now because there's no perception evidence going to be
2 offered.

3 THE COURT: Okay.

4 MR. ROBERTS: The thing that that leaves out
5 is the punitive damages request under the statute. And
6 when the Court made a finding of impairment and
7 negligence based on that impairment, the Court did --
8 they argued that while he may be impaired as a matter
9 of law, we should be able to argue he wasn't that
10 impaired. And the Court reserved the right for them to
11 argue that although he was impaired as a matter of law,
12 he wasn't that impaired for the purposes of assessing
13 punitive damages against him.

14 And I think that we believe that we should
15 show his level of impairment, the level of metabolites
16 for the purposes of punitive damages to show that he
17 wasn't just a little over the limit, he wasn't just
18 slightly impaired, but he was ten times over the legal
19 limit almost. So -- so we believe that that still is
20 fair game under the punitive damages part of the case,
21 and under the DUI statute as opposed to the 42.005
22 standard, there is no bifurcation of punitive phase for
23 the DUI so that all comes in the case and should.

24 MR. TINDALL: And in rebuttal on the portion
25 about bifurcation, we've set forth in the brief, and

1 this still is relevant, that it prejudices Andrea
2 Awerbach greatly to have all this information dumped
3 into the compensatory phase which also prejudices
4 Jared. For the convenience of the Court, both phases
5 should be bifurcated, and the Court has the power to
6 bifurcate. The statute, NRS 42.010, which indicates
7 that 42.005, those provisions don't apply to 42.010,
8 that doesn't mean the Court can't bifurcate it. It
9 simply means the Court is not required to apply the
10 provisions.

11 So we submit for judicial economy and for
12 fairness to the defendants, both -- both parties should
13 have a bifurcated phase where punitives are discussed
14 only after the jury makes a compensatory award without
15 any information that would prejudice them to inflating
16 a compensatory award.

17 MR. MAZZEO: Andrea would join in that
18 argument.

19 THE COURT: There's got to be a -- there's
20 got to be a line on the verdict form, even if we have a
21 punitive phase, that says, Are punitive damages
22 warranted? So there's got to be some analysis of that
23 prior to the original verdict form; right?

24 MR. TINDALL: Well, I don't -- I don't agree,
25 Your Honor. I don't believe there's any authority that

1 requires a line item award on the compensatory form.

2 THE COURT: Not an award.

3 MR. TINDALL: No, no, what I'm saying --

4 THE COURT: Just a checkmark saying --

5 MR. TINDALL: Do you want to?

6 THE COURT: Right.

7 MR. TINDALL: But why couldn't it work this
8 way: Why can't we wait until a compensatory award is
9 made, and then while the jury's in the box after the
10 verdict's read, Mr. Roberts gets to stand up -- or the
11 Court actually would do this, in my mind. The Court
12 would say, Now that there's been a compensatory award
13 made, there's some additional information the jury
14 needs to consider. And Mr. Roberts could put on his
15 information about why punitive damages should be
16 awarded. Then they get to decide should damages be
17 awarded. But why would we inject nothing but
18 inflammatory and now irrelevant information into the
19 compensatory phase that's only going to inflate the
20 compensatory award?

21 It can be done either way, and I don't
22 believe there's any authority that requires the
23 checkmark on the box for, Do you want to award punitive
24 damages?

25 THE COURT: Well, the problem is if I don't

1 put that checkmark there, the jury comes back with a
2 verdict, and then we -- then we say, Okay, now, we have
3 another question for you about punitive damages. Every
4 jury is going to say no, because they don't want to
5 stick around.

6 MR. TINDALL: But really isn't that the same
7 thing as putting the check -- the line item on the
8 form? Because they're going to read that and know
9 they're going to have to stick around.

10 THE COURT: I don't think they know that.
11 That's what's sneaky about the verdict form, that we
12 just leave that blank. Because they don't realize that
13 if they put the checkmark that they have to stick
14 around for a second phase, and we don't tell them that
15 in advance.

16 MR. STRASSBURG: We don't.

17 THE COURT: No, we never tell them that.

18 MR. STRASSBURG: We can't explain -- sorry.
19 We can't explain the verdict form to them on closing?

20 THE COURT: You can't tell them that if they
21 mark that box, then they have to stick around longer.

22 MR. STRASSBURG: Okay. Thanks for clarifying
23 that, Judge. I was looking forward to that.

24 THE COURT: No. They just decide whether or
25 not they think punitive damages are -- are appropriate

1 or not, and they mark the box "yes" or "no," and then
2 if they mark the box "yes," then they get the bad news
3 that they have to stick around. I think that's the
4 only fair way to do it.

5 MR. ROBERTS: And of course, counsel said
6 there was no authority for that procedure. The
7 authority is in 42.0053 which mandates bifurcation and
8 says that in the first phase, that the trier of fact
9 shall make a finding of whether such damages will be
10 assessed. Therefore, conscious regard is dealt with in
11 the first phase, and we have to put on evidence and
12 witnesses on that.

13 THE COURT: Yeah, I don't think I'm going to
14 exclude it, guys. I think it's relevant for the
15 punitives, so I think I got to allow it.

16 MR. STRASSBURG: Judge, in terms of the
17 marijuana, isn't it really correct that their evidence
18 is regarding marijuana metabolite? And the scope of
19 your ruling just now pertains -- is limited to
20 marijuana metabolite. And if they want to say he
21 was -- he was five times over the legal limit for
22 marijuana metabolite, okay. You've now ruled -- which
23 I'm not happy about, but I mean, I understand the scope
24 of your ruling that covers it. But that doesn't cover
25 marijuana by itself.

1 And just so that is made clear to them, that
2 what we're talking about is the metabolite, just so
3 there's no confusion.

4 THE COURT: I don't -- I don't know that I
5 understand -- I understand the distinction, so ...

6 MR. STRASSBURG: They're two different
7 chemical substances. And I can see how that second
8 word, "metabolite," can get lost in the heat of the --
9 heat of the trial. And I'm just moving to clarify that
10 your ruling that they may voir dire and prove up on the
11 marijuana metabolite is limited to just that it --
12 exceedance of the legal limit for that substance.

13 THE COURT: All right. So 42.010 talks about
14 punitive damages where a defendant causes an injury
15 after being involved in an accident after willfully
16 consuming or using alcohol or another substance knowing
17 that they were there after operating a motor vehicle;
18 right?

19 MR. STRASSBURG: Yes.

20 THE COURT: So it cites to the several
21 different statutes here. Which one talks about the
22 metabolite, 484C.110 --

23 MR. STRASSBURG: That's the one.

24 THE COURT: -- 484C.130?

25 MR. STRASSBURG: It's -- the relevant one is

1 484C.110, subsection 3, sub-subsection (g) and (h).

2 THE COURT: Okay.

3 MR. STRASSBURG: (G) is marijuana. (H) is
4 marijuana metabolite. They are two separate legal
5 limits.

6 THE COURT: That's true.

7 MR. STRASSBURG: Jared's been adjudicated as
8 per se impaired as a matter of law for exceeding the
9 (h), the marijuana metabolite.

10 THE COURT: I think that's true.

11 MR. STRASSBURG: Yes, that's true. And I
12 think Mr. Roberts agrees with that.

13 THE COURT: So you just want whenever we're
14 talking about marijuana that it should be a reference
15 to marijuana metabolite.

16 MR. STRASSBURG: Yeah, just so it's clear.

17 THE COURT: I think that's actually a fair
18 request because I think the -- under the statute,
19 marijuana is listed as a separate subsection.

20 MR. ROBERTS: When I talk about what's in his
21 blood, I believe that it's fair, and I will try to
22 always refer to it as marijuana metabolites.

23 But the problem is the way you get marijuana
24 metabolites in your blood is by using marijuana. And
25 he contends he didn't use any marijuana the day of the

1 accident, and these are just leftover metabolites in
2 his blood from prior use, and he wasn't high. Well, we
3 have evidence that contradicts that, and we ought to be
4 able to put that evidence on so he can't make that
5 argument without rebuttal. We ought to be able to show
6 his marijuana use on the day of the incident and the
7 evidence that he was actually impaired from that use.

8 THE COURT: When you're referring to what's
9 in the blood or when you're referring to the punitive
10 damages as a result of the statute, 4 -- 42.010, it
11 should be referred to as marijuana metabolite.

12 MR. ROBERTS: When I refer to what's in the
13 blood, but not overall when I refer to the statute,
14 with respect, Your Honor, because 42.0101 says that
15 you're liable for willfully consuming or using a
16 substance knowing that you're going to be driving. So
17 we've got to talk about him willfully using or
18 consuming marijuana because that's part of the showing.
19 It's not the metabolite he's -- he's consuming. The
20 metabolite is what's left in his blood after he
21 consumes the illegal substance.

22 THE COURT: I don't know that it's a
23 distinction that the jury is going to understand, guys.
24 I think if you want to make a distinction between the
25 metabolite and the marijuana, I mean, you can -- you

1 can do that.

2 MR. STRASSBURG: Judge, if -- if I can just
3 have one more comment.

4 THE COURT: I don't know that I can tell them
5 that they have to say the word "metabolite" every time
6 they say the word "marijuana."

7 MR. STRASSBURG: Judge, the only reason this
8 evidence is coming in, if I understand your ruling on
9 it, is on punitive damages. The sole basis for
10 punitive damages is 42.010. The sole basis for 42.010,
11 is 484C110.3(h), the metabolite. The marijuana is
12 irrelevant. He's already been adjudicated; liable for
13 negligence? He's been adjudicated as per se impaired.
14 They have to take yes for an answer here, Judge.

15 THE COURT: I guess I don't know what you're
16 asking for.

17 MR. STRASSBURG: I'm saying that they should
18 be limited to arguing and -- and putting on evidence of
19 marijuana metabolite. The problem with the marijuana
20 thing is it's not connected with anything. It's not
21 connected with his driving. It's not connected with
22 anything he did. Its sole purpose is to inflame the
23 jury against him, and that's not fair. And that's not
24 what you intended.

25 THE COURT: No, 42.010 requires that they

1 prove that he willfully consumed or used alcohol or
2 another substance knowing that he would thereafter
3 operate a motor vehicle.

4 MR. STRASSBURG: They proved that by showing
5 he has marijuana metabolite in his blood. It only gets
6 there one way. They don't have to put on additional
7 evidence to use the word "marijuana." I mean,
8 Mr. Roberts said yesterday that he was high. That's --
9 it's per se impairment. I mean, we have fought this
10 for a year and a half. And I've lost, but that's the
11 part I lost. It's per se impairment from marijuana
12 metabolite.

13 THE COURT: Right.

14 MR. STRASSBURG: Any evidence on marijuana,
15 it's not connected to anything about how he drove.

16 THE COURT: I think it's required per the
17 statute in order for them to get punitives. They have
18 to -- they have to prove that he -- that he took
19 marijuana, that he willfully consumed marijuana knowing
20 that he would thereafter drive a motor vehicle. He's
21 not going to -- he's not going to willfully consume
22 marijuana metabolite; right? You can't consume the
23 metabolite. You consume the marijuana and it leaves a
24 metabolite; right?

25 MR. STRASSBURG: Yes. Yes, sir. Yeah.

1 THE COURT: So how are they going to be able
2 to establish the punitive damages under this section
3 without saying that he consumed marijuana?

4 MR. STRASSBURG: The probative value of the
5 marijuana evidence is dramatically outweighed by its
6 prejudicial effect. I mean, once they -- they've
7 shown -- they get to show he has marijuana metabolite.
8 To -- to just gild the lily with marijuana, that adds
9 nothing but inflammatory evidence for punitive damages.

10 THE COURT: I think it's the same thing,
11 essentially, Mr. Strassburg. But I've got to allow
12 them to use it. They got to be able to say the word
13 "marijuana" because it's required under the statute.

14 I think you guys can -- you can explain the
15 difference. You can explain the distinction to them
16 through witnesses, through experts, however you need to
17 do it. But I'm not going to say they can't use the
18 word "marijuana." Sorry.

19 MR. STRASSBURG: Thank you for your
20 consideration, Judge.

21 MR. TINDALL: Um, Your Honor, Mr. Mott and I
22 need to report that Juror No. 3 in Seat 2, Mr. Brandon,
23 he spoke to both of us in the elevator this morning.
24 There was no -- no words said back to him by either of
25 us.

1 THE COURT: What did he say to you?

2 MR. TINDALL: I don't remember.

3 MR. MOTT: We were having a conversation
4 and -- to ourselves privately, and he jumped in and
5 said something, and we said nothing after that.

6 THE COURT: All right. I'll talk to him
7 again.

8 MR. ROBERTS: And before we move on to a new
9 issue, I do want to say that I am concerned about the
10 marijuana use and the inflammatory nature of that
11 discussion. And although I agree that -- I mean, I
12 reserve the right to argue the statute and say,
13 Marijuana at trial, I am willing to have all counsel
14 stipulate that we won't discuss marijuana use and
15 attitudes toward marijuana use in voir dire. We'll get
16 through it quicker. We'll avoid a lot of cause
17 challenges, and -- and I don't think it's necessary
18 because I don't know that it's really that relevant.

19 MR. STRASSBURG: But you're going to put on
20 evidence of marijuana use?

21 MR. ROBERTS: Yes.

22 MR. STRASSBURG: I think I want to talk about
23 their attitudes about that, if you don't mind.

24 MR. MAZZEO: We can't agree with that.

25 MR. STRASSBURG: Thanks for your handsome

1 offer. Tempting, but no.

2 THE COURT: Good try, Mr. Roberts.

3 MR. ROBERTS: And -- and -- and I do want to
4 say that Mr. Mazzeo approached me before court, and
5 he -- he wants -- he argued -- wants to argue that we
6 aren't allowed to take the deposition again, that we
7 had an adequate opportunity of the claims adjustor.
8 We -- I've discussed it with co-counsel, and we've
9 reviewed the deposition again after we argued this, and
10 although we reserve all of our rights other than taking
11 the deposition, we are willing to agree to forego the
12 deposition and rely on the current record.

13 THE COURT: Okay.

14 MR. MAZZEO: And then part of that discussion
15 was based on an order that Discovery Commissioner Bulla
16 had issued on -- the hearing date was December 12th of
17 2014. And in it she had permitted the deposition of
18 Teresa Merez. Specifically, the scope of the
19 examination of Ms. Merez at deposition is limited to
20 only her factual investigation concerning the issues
21 reflected in the January 17, 2011, claim note and any
22 prelitigation conversations Ms. Merez may have had with
23 Defendant Andrea Awerbach and/or Jared Awerbach about
24 the use of subject vehicle by Defendant Jared Awerbach.

25 So based on that, we believe that Mr. Smith

1 had sufficient latitude and opportunity at that time to
2 discuss all the issues pertaining to the permissive use
3 with -- with -- with Ms. Merez. And I have a copy of
4 the order and a copy of the transcript if the Court
5 wants to -- a copy of it for your own.

6 THE COURT: Sounds like it's not a disputed
7 issue.

8 MR. MAZZEO: Not an issue.

9 MR. ROBERTS: We dispute everything he just
10 said about the reasons why we shouldn't be allowed to
11 take it, but we're not asking to take it. So it's
12 moot.

13 THE COURT: Okay.

14 MR. MAZZEO: Okay.

15 THE COURT: I got a -- my JEA received an
16 e-mail from Juror 29, James Joyce, sitting in Seat
17 No. 6. He wants to go to the GOP caucus. It starts at
18 5:00 o'clock in Northwest Las Vegas on, I believe it's
19 February 23rd, and he wants to be excused so he can go
20 to that. My inclination is to tell him no, that if
21 he's seated on the jury, we can stop early that
22 afternoon. Fair enough?

23 MR. ROBERTS: Fair enough.

24 THE COURT: I don't want to ruin anybody's
25 political aspirations, and if he wants to go --

1 MR. MAZZEO: Agreed.

2 THE COURT: -- be involved in politics that
3 day, I don't have a problem with that. But I don't
4 think it's a reason to excuse him.

5 Mr. Strassburg?

6 MR. STRASSBURG: I thought the better of it,
7 Judge.

8 THE COURT: Okay. So I'm going to let him
9 know that when he comes in.

10 But anything else before we bring the jury
11 in?

12 MR. ROBERTS: Just a quick disclosure. I
13 don't like to discuss this with the jurors, and if they
14 abide by the rules and don't discuss the case and us
15 with anyone, it shouldn't be an issue. But in reading
16 the questionnaires and then talking to people
17 yesterday, I just wanted to disclose to opposing
18 counsel that we've got jurors who are employed or have
19 family that are employed by people I represent. And
20 the people include -- there's RTC bus driver. My
21 client, Veolia Transdev, operates part of the bus
22 system. I'm currently representing them on another
23 matter. I represent Southwest Gas, UPS, Clark County,
24 and the Cosmopolitan. Those are the ones that have
25 come up so far, and I just wanted to disclose it.

1 MRS. AWERBACH: Did you say Clark County?
2 MR. ROBERTS: Yes.
3 MRS. AWERBACH: Did you say Clark County?
4 MR. ROBERTS: Clark County.
5 MRS. AWERBACH: Clark County.
6 MR. ROBERTS: So I don't think it's an issue
7 but ...
8 THE COURT: I don't think it is either.
9 MR. STRASSBURG: You're just bragging now.
10 MR. TINDALL: We have clients too, you know.
11 MR. STRASSBURG: Yeah, we've got clients,
12 real clients.
13 THE COURT: Are we ready?
14 MR. ROBERTS: Yes, Your Honor.
15 THE MARSHAL: Jury entering.
16 (The following proceedings were held in
17 the presence of the jury.)
18 THE MARSHAL: Jury is present, Judge.
19 THE COURT: Thank you. Go ahead and be
20 seated. Good morning, ladies and gentlemen. Back on
21 the record, Case No. 637772, Garcia versus Awerbach.
22 We are back to jury selection. Just going to remind
23 you all that you're still under oath to tell the truth
24 when you are asked questions.
25 We received an e-mail from Mr. Joyce, in Seat

1 No. 6, Badge 029. As far as this obligation that you
2 have, if you're seated on the jury, we can take it up
3 as it gets closer, and we can just end early that day
4 if we need to. We'll make arrangements for you.

5 PROSPECTIVE JUROR NO. 029: Fine.

6 THE COURT: All right. We are still in the
7 plaintiff's questioning.

8 MR. ROBERTS: Thank you, Your Honor.

9 THE COURT: Go ahead, Counsel.

10

11 VOIR DIRE EXAMINATION

12 MR. ROBERTS: One thing that someone reminded
13 me of was when I was introducing everyone on the team,
14 to make sure you heard all the names, that I went
15 straight to my -- the guys in my law firm and then I
16 went back around the circle, and I never came all the
17 way back to Carol in the middle. And this is Carol
18 Bauss, like in house, and she's just helping out with
19 jury selection. She won't be here after the case
20 starts.

21 But does anyone know Carol?

22 THE COURT: Not seeing any hands.

23 MR. ROBERTS: So I would like to talk to you
24 now about lawsuits and your feelings, attitudes toward
25 lawsuits. There's a question on the jury questionnaire

1 about whether people here believe there should be caps
2 on the amounts of certain types of damages. That's
3 sometimes called tort reform. A negligence case is
4 called a tort case, and tort reform is a movement to
5 try to limit the amount that people can recover in a
6 lawsuit, usually for pain and suffering damages.

7 Now, as a result, there's some people who
8 think the court system needs to change and there should
9 be caps. And -- and I know what you put on your
10 questionnaire. And there's some people who think that
11 the system is fine as it is and we don't need caps.

12 MR. MAZZEO: Excuse me, Judge. Sidebar,
13 please.

14 THE COURT: Come on up.

15 (A discussion was held at the bench,
16 not reported.)

17 THE COURT: Go ahead, Mr. Roberts.

18 MR. ROBERTS: Thank you, Your Honor.

19 So the question I was setting up, people who
20 think there should be caps and there should be tort
21 reform and people who don't believe there should be
22 caps, and I'd like to discuss those attitudes with you.

23 You know, we know what you said and how you
24 felt, and there are three or four people who think
25 there should be caps, but there wasn't a whole lot of

1 discussion about the reasons. And I'd like to hear
2 more about the reasons and whether or not the people
3 who believe there should be caps have a personal limit
4 that if they were to be on a jury, they could never go
5 beyond even if justified by the facts and the evidence.

6 I will say, I don't think it's any of you,
7 but someone said that plaintiffs and their lawyers who
8 file lawsuits should be thrown in jail. And I don't
9 think there's anyone here that extreme, but let's --
10 let's -- show me your hand if you said there should be
11 caps, in your jury questionnaire, and I'll just call on
12 you quick and talk to you first.

13 Okay. Ms. Gold.

14 PROSPECTIVE JUROR NO. 036: Yes. Badge 036.

15 MR. ROBERTS: Thank you. Tell me a little
16 bit more about why you personally believe there should
17 be caps.

18 PROSPECTIVE JUROR NO. 036: I think that
19 people can get greedy. I think that some of the --
20 some of the awards or settlements have been
21 sensationalized as far as money amounts, and I think
22 that creates litigation that's not necessary from other
23 people.

24 MR. ROBERTS: Now, I'm -- I'm going to throw
25 what I think is a rhetorical question at you. But

1 let's assume that The Venetian burnt down due to
2 someone's negligence. Should Mr. Adelson and
3 The Venetian have caps as to how many millions they can
4 recover for burning down The Venetian Hotel?

5 PROSPECTIVE JUROR NO. 036: I think so. I
6 think, in my opinion, it's -- of course it's a
7 case-by-case situation. I believe they should be
8 reimbursed for their losses, and I also believe that if
9 there's pain and suffering involved, I think that a
10 conservative amount would be -- would be good.

11 MR. ROBERTS: No, I don't need you to give me
12 a number because you haven't heard the facts and
13 evidence.

14 But putting aside whatever the facts and the
15 evidence are, is there a number in your head that you
16 believe is more than conservative and you could never
17 award regardless of what the evidence was?

18 PROSPECTIVE JUROR NO. 036: Not a specific
19 number. But millions of dollars I think is -- is way
20 over the top.

21 MR. ROBERTS: And regardless of the evidence,
22 you couldn't award millions of dollars.

23 PROSPECTIVE JUROR NO. 036: Well, it depends
24 on the situation. I'm not saying I would never, but
25 I'm not saying that I -- I would. I would have to

1 assess the case and assess the loss and take it from
2 there.

3 MR. ROBERTS: Now, Mr. Joyce, who also just
4 had his hand up when you did, told us yesterday that
5 the higher the damages, the more he's going to want
6 certainty in the proof.

7 PROSPECTIVE JUROR NO. 036: Uh-huh.

8 MR. ROBERTS: And to award a lot of money,
9 he's going to have to be pretty certain. Probably more
10 than 50-50.

11 Did I get that right, Mr. Joyce?

12 PROSPECTIVE JUROR NO. 029: Way more than
13 that.

14 MR. ROBERTS: Way more than just 51 percent
15 versus 49.

16 PROSPECTIVE JUROR NO. 029: Has to heavily
17 weight that scale.

18 MR. ROBERTS: Heavily weight the scale to
19 award a significant amount of dollars.

20 Is that what you're saying, that that -- that
21 maybe if the evidence is extreme enough, you could
22 award significant amounts but if -- the scale better be
23 pretty heavily weighed to justify an award that high?

24 PROSPECTIVE JUROR NO. 036: I'm not saying
25 that -- that the weight of the evidence has to be huge.

1 I'm saying that -- I was in risk management, and so
2 I -- it was my job to assess losses, and that's what I
3 would do. I would assess the situation, assess the
4 loss. If -- if there were pain and suffering involved,
5 again, I would have to assess the situation and the
6 person.

7 MR. ROBERTS: Is it fair to say that in the
8 back of your mind, you've had some reservations about
9 awarding large amounts for pain and suffering?

10 PROSPECTIVE JUROR NO. 036: Sure. Sure.
11 That's fair to say. I -- I mean, huge amounts, you
12 know, millions and millions of dollars.

13 MR. ROBERTS: How long have you held these
14 beliefs?

15 PROSPECTIVE JUROR NO. 036: Probably my
16 entire career.

17 MR. ROBERTS: And -- and that would be in
18 your career as a claims adjustor.

19 PROSPECTIVE JUROR NO. 036: I was -- I wasn't
20 a claims adjustor. I was in commercial insurance, and
21 I oversaw third-party administrators. So they would --
22 they would have to ask me for authority to settle a
23 case. So I've had experience in this type of thing.

24 MR. ROBERTS: Those opinions are probably not
25 going to change during this trial.

1 PROSPECTIVE JUROR NO. 036: Probably not.

2 MR. ROBERTS: If you were representing a
3 plaintiff, you were in my client's position, a
4 plaintiff in a case in which you were seeking
5 significant damages for pain and suffering, are you the
6 type of juror that you would want on her jury?

7 PROSPECTIVE JUROR NO. 036: I think so. I
8 think I could be fair about it.

9 MR. ROBERTS: Do you think that you could
10 award pain and suffering damages and compensate for
11 those the same way you would compensate for economic
12 damages, for medical bills --

13 PROSPECTIVE JUROR NO. 036: Sure.

14 MR. ROBERTS: -- for fixing things?

15 PROSPECTIVE JUROR NO. 036: Yeah. I feel
16 like I have a good feel for that type of thing.

17 MR. ROBERTS: Mr. Joyce.

18 PROSPECTIVE JUROR NO. 029: Yes.

19 MR. ROBERTS: Okay. What about you? Now,
20 you -- you believe in caps; right? Do you believe in
21 caps?

22 PROSPECTIVE JUROR NO. 029: Caps on certain
23 dollar amounts.

24 MR. ROBERTS: Do you believe there should be
25 a maximum dollar amount for pain and suffering damages,

1 that juries can never award over that specific dollar
2 amount?

3 PROSPECTIVE JUROR NO. 029: Yes.

4 MR. ROBERTS: Yes? Do you have a dollar
5 amount in -- in mind?

6 PROSPECTIVE JUROR NO. 029: No, I don't.

7 MR. ROBERTS: Okay. Is there any specific
8 dollar amount that you -- you believe you could never
9 award for pain and suffering regardless of the
10 damages -- of the facts and the evidence?

11 PROSPECTIVE JUROR NO. 029: I'm not sure. I
12 don't know. I guess I have to see it.

13 But I think you did misquote or I maybe
14 misspoke what you said to the lady next to me. You
15 said that I said something yesterday. I forget what it
16 is right now. I'm a little bit nervous. You said
17 something to her which I thought to myself, I didn't
18 really say that or I didn't mean to say that.

19 MR. ROBERTS: And a lot of times I'll repeat
20 back my recollection to give you a chance to correct.
21 Because my memory is not perfect, and -- and I've
22 read -- I've read a couple hundred questionnaires and
23 I'm talking to a lot of people.

24 PROSPECTIVE JUROR NO. 029: My stance is --
25 on the whole tort issue and caps and all that, is that

1 I pay a butt load for a 61-year-old guy with a
2 59-year-old wife in auto insurance, and this type of
3 stuff doesn't help if it's -- if it's not a solid --
4 rock solid in the court in a wheelchair, you know,
5 unconscious, you know, total pain and suffering.
6 That's about the only way that I would even consider or
7 want to be a part of a case.

8 MR. ROBERTS: So -- so you saw my client
9 yesterday. She's not in a wheelchair. We don't want
10 you on our jury, do we?

11 PROSPECTIVE JUROR NO. 029: Probably not.

12 MR. ROBERTS: Now, there are a lot of people
13 who feel the same way as Mr. Joyce with regard to the
14 cost to society of big lawsuits. They feel big
15 lawsuits can increase the price of goods and services,
16 can increase the price of everyone's insurance, and
17 that's going to be in the back of their mind when they
18 decide how much a verdict can be.

19 Who -- who here feels that way, that they
20 might be thinking about the impact of big verdicts on
21 the cost of goods and services or some other reason
22 outside the facts and evidence that are going to be
23 presented in the courtroom? Any -- anyone else feel
24 that way as Mr. Joyce? No?

25 PROSPECTIVE JUROR NO. 029: I'm a loner.

1 MR. ROBERTS: Okay. Who -- who have I not
2 talked to who believes in caps? Okay. Very good.

3 Mr. Brandon.

4 PROSPECTIVE JUROR NO. 003: 003. I believe
5 there should be caps to a point. Vehicle accident,
6 cars paid for, medical bills paid for. You're not here
7 to get a free paycheck and get out of work. Pain and
8 suffering loss, yeah, you know, we can award for that.
9 Time spent out of work, going to the doctors, yeah,
10 we'll award for that. But going above and beyond to
11 where, oh, I don't have to work because they're going
12 to pay my way through life, that needs to be, you know,
13 caps put over that.

14 MR. ROBERTS: So just so I understand,
15 when -- when you say that there should be caps, and you
16 shouldn't get what you believe to be free money so you
17 don't have to work anymore, are you including money
18 that -- that might be compensation for pain and
19 suffering as apart from lost wages?

20 PROSPECTIVE JUROR NO. 003: No. It's just,
21 you know, if you -- when you come in and say, Well, we
22 want this amount of money, okay, that's covering the
23 vehicle or medical bills. Okay? Well, everything's
24 paid for. Now, you're trying to get money for what?
25 If everything's paid for, the time you lost from work,

1 everything like that, okay, well, now I want an extra
2 \$50,000 just because I want it. You know, sometimes
3 people do come in, oh, I want to sue them just because
4 I want money. So it's kind of -- got to look at the
5 facts and is it really worth, you know, with -- I
6 didn't catch her name, but --

7 MR. ROBERTS: Ms. Gold.

8 PROSPECTIVE JUROR NO. 003: What she said.
9 She's worked with risk management. I work in the hotel
10 industry. So just throwing money out and giving
11 somebody -- awarding somebody money is -- you know they
12 got to really get it.

13 MR. ROBERTS: And I can just about promise
14 you that the judge will not instruct you that you're
15 allowed to give us money just because we ask for it.
16 So -- so in order to -- for you to allow damages, we
17 have to put on proof of damages.

18 PROSPECTIVE JUROR NO. 003: Yeah. Doctor
19 bills.

20 MR. ROBERTS: Doctor bills.

21 PROSPECTIVE JUROR NO. 003: Show me you went
22 there to the doctor because of this. Not, oh, I had a
23 previous thing that I'm still trying to pay off. Maybe
24 I can get -- I broke my arm rollerblading down the
25 street, but I hurt that in a car accident, you know.

1 Show me you were there at the doctor for that reason.
2 Okay. Then okay, we'll pay for that. This and that,
3 you know. I want evidence and proof that it's all for
4 one case.

5 MR. ROBERTS: Okay. And that's fair. And if
6 you heard the evidence and the proof and we tipped the
7 scales to show that the costs are related to the
8 accident, you can consider that and award it.

9 PROSPECTIVE JUROR NO. 003: Yes.

10 MR. ROBERTS: What about pain and suffering?

11 PROSPECTIVE JUROR NO. 003: Yes, because if
12 you're missing work, you know, you got to -- for this
13 instance, it's a vehicle accident. You're out of a
14 car. That's your transportation to get to work. You
15 know, you got to make up for that. If you had to rent
16 a car, use your own money to get a rent-a-car, you got
17 to make that money back, and -- you know, until the
18 time, you know. You're not at fault, but yeah,
19 somebody's got to pay for that vehicle. But then
20 again, we do have insurance, and nowadays most
21 insurance companies will pay for that.

22 MR. ROBERTS: What about not missing work,
23 not cars, just pain? Can you compensate someone just
24 because they were in pain if they put in proof of that?

25 PROSPECTIVE JUROR NO. 003: I would have to

1 see what type of pain. Like, why? Why am I going to
2 award you this money for pain? Like, what -- I got to
3 have evidence or proof, facts, anything.

4 MR. ROBERTS: But you're open to looking at
5 the evidence?

6 PROSPECTIVE JUROR NO. 003: I'm open. You
7 know, I don't have a set number. You know, you present
8 me with a number, evidence, then I can sit here and go
9 through it with the jury and we can make our decision.
10 Yeah, that's too much; no, that's the right amount,
11 give it to them, you know. You got to use the scale.
12 Is it right, not right? Is it enough, not enough?

13 MR. ROBERTS: But you're willing to make that
14 decision based on the evidence that comes in --

15 PROSPECTIVE JUROR NO. 003: Yes.

16 MR. ROBERTS: -- and -- and not any attitudes
17 that you had before you entered the courtroom.

18 PROSPECTIVE JUROR NO. 003: Nope.

19 MR. ROBERTS: One of the things that you had
20 on your questionnaire was that you thought that
21 plaintiffs who bring lawsuits are just trying to make a
22 quick buck.

23 Do you remember saying that?

24 PROSPECTIVE JUROR NO. 003: Yeah. That's
25 what I was trying to refer to. You know, sometimes

1 plaintiffs, defendant -- you know, just -- that's what
2 they come here, well, I just -- quick way to make money
3 or make a paycheck, if -- you know, like I was saying
4 before. But if you show me evidence of why you're
5 asking for that money, okay. I see why now. Okay.

6 MR. ROBERTS: So would you agree using the --
7 the biases and opinion that you held before the
8 courtroom that you bring here today, you come into this
9 with a little bit of a bias against plaintiffs who
10 bring lawsuits because your attitude is they're just
11 sometimes looking for a free buck?

12 PROSPECTIVE JUROR NO. 003: Yeah.

13 MR. ROBERTS: All right. And -- and this is
14 an artistic rendering, and I don't know if anything's
15 in there, but those scales are supposed to be even
16 right now. You haven't heard any facts. You haven't
17 heard any evidence in this case. You haven't heard the
18 law.

19 Because of that preexisting attitude that you
20 have about plaintiffs who bring lawsuits, do we start a
21 little bit behind the defendant?

22 PROSPECTIVE JUROR NO. 003: Absolutely not
23 because I haven't even heard this case or evidence or
24 anything like that. So it's an even scale right now.

25 MR. ROBERTS: Even scale. You're not

1 assuming that my client's one of the plaintiffs trying
2 to make a quick buck.

3 PROSPECTIVE JUROR NO. 003: Nope. I saw her.
4 I mean, she could have tons of medical bills and stuff
5 like that. I don't even know how bad the accident was
6 or anything like that. So it's -- I got to see first.
7 And then I can start, okay.

8 MR. ROBERTS: Thank you.

9 Anyone else who answered the question that
10 they believe in caps, or as they listened to Mr. Joyce,
11 Mr. Gold [sic], and Mr. Brandon, now believes that --
12 that maybe there should be caps, that jurors shouldn't
13 be allowed to award ever how much they think the
14 evidence justifies? Anyone?

15 PROSPECTIVE JUROR NO. 003: Speak up. Don't
16 leave me hanging.

17 MR. ROBERTS: Now, someone wrote on their
18 questionnaire that money can't make the pain go away,
19 so they don't believe in awarding money for pain and
20 suffering. It wasn't someone here in the box.

21 Is there anyone else who feels a little bit
22 like that, that money can't make the pain go away, so
23 why award money for pain and suffering?

24 Is there anyone who feels uncertain or in the
25 middle on that issue? Who has some reservations?

1 Okay. Ms. Bias.

2 PROSPECTIVE JUROR NO. 066: Ms. Bias.

3 MR. ROBERTS: Tell me what your reservations,
4 thoughts are about.

5 PROSPECTIVE JUROR NO. 066: Badge No. 066. I
6 just think it has to be the extent of the pain and
7 suffering before I can make the decision on how much to
8 give.

9 MR. ROBERTS: Okay. So you have to hear the
10 evidence.

11 PROSPECTIVE JUROR NO. 066: The evidence
12 first, correct.

13 MR. ROBERTS: And you're willing to try to
14 balance the scales, and --

15 PROSPECTIVE JUROR NO. 066: Yes, sir.

16 MR. ROBERTS: -- figure out what compensation
17 is just based on the evidence.

18 PROSPECTIVE JUROR NO. 066: Yes, sir.

19 MR. ROBERTS: That's good.

20 So you really don't have reservations about
21 it. You're just not prejudging the case. You want to
22 see proof.

23 PROSPECTIVE JUROR NO. 066: Exactly.

24 MR. ROBERTS: Okay. Mr. Berkery.

25 PROSPECTIVE JUROR NO. 063: Keith Berkery,

1 063. It's -- for me, it's not a matter of reservation.
2 It's fairness, if you will. As you said, what comes
3 out during the case is what's important. If I'm -- if
4 I physically spill coffee on myself, do I deserve
5 \$40 million? You know, I think there's a certain
6 amount of fairness. I have -- from Day 1, I have a
7 value on this planet, at least in our society. So, you
8 know, what -- what is my potential? What is the pain
9 that I'm going to face in the future? What are the
10 things that can happen after this because of what
11 happened? All of that has to be weighed. But I don't
12 think it's something that that goes to infinity.

13 MR. ROBERTS: Okay. And -- and I appreciate
14 you -- you sharing that with me. And -- and the things
15 that you described are all things that you would be
16 comfortable weighing and determining just compensation
17 for.

18 PROSPECTIVE JUROR NO. 063: Oh, yeah.

19 MR. ROBERTS: What if the facts and evidence
20 seem to keep going up beyond your comfort level? Do
21 you have a point at which you would stop regardless of
22 the facts and evidence?

23 PROSPECTIVE JUROR NO. 063: It's not a matter
24 of my comfort level. It's a matter of what we're here
25 to do. And, you know, if that's -- I can't imagine

1 that I'm going to be part of some landmark case by any
2 means, but if -- if something's proven a certain way,
3 then you provide accordingly, if that's what's fair.

4 MR. ROBERTS: So you -- you don't think it's
5 likely that proof is going to get to a point up here,
6 but you're willing to consider the evidence and award a
7 just amount based on the evidence.

8 PROSPECTIVE JUROR NO. 063: Whatever --
9 whatever's fair.

10 MR. ROBERTS: A number of people mentioned
11 the McDonald's verdict in their questionnaire. It's
12 always something --

13 PROSPECTIVE JUROR NO. 063: I was probably
14 one of them.

15 MR. ROBERTS: Yes, you -- you were. And it
16 just seems to always come up when we're talking about a
17 tort case and we have a jury in the box.

18 Tell me what -- what your thoughts and
19 feelings were when you read that verdict in the
20 McDonald's case.

21 PROSPECTIVE JUROR NO. 063: You know what, I
22 wasn't there. Did somebody throw the coffee on the
23 person, or were they laughing at them afterwards or
24 whatever. I don't know the information. I know a
25 number and what happened. But if I spilled coffee on

1 myself, that's on me, you know. As a matter of fact, I
2 did it before I came in yesterday. Button up the
3 shirt.

4 MR. ROBERTS: Nothing worse than hitting the
5 court in a white shirt.

6 PROSPECTIVE JUROR NO. 063: So -- but -- but
7 if it's -- if -- if something happens, and -- and it
8 needs to be sorted out. I -- I believe in fairness.
9 That's my only point in raising my hand.

10 MR. ROBERTS: So you -- you didn't hear the
11 facts and evidence in that case. You're not sure --

12 PROSPECTIVE JUROR NO. 063: No.

13 MR. ROBERTS: -- what it all was, but it's
14 hard for you to conceive of a coffee spill justifying
15 the award you read about.

16 PROSPECTIVE JUROR NO. 063: That was a lot of
17 money, and I should be going to Dunkin' Donuts far more
18 often.

19 MR. ROBERTS: Who else here was thinking
20 about the McDonald's verdict when we were talking about
21 tort reform and you're coming into the case? Okay.

22 Let's see. Mr. Jensen; right?

23 PROSPECTIVE JUROR NO. 015: Yes.

24 MR. ROBERTS: What are your thoughts about
25 the McDonald's case?

1 PROSPECTIVE JUROR NO. 015: From the little
2 bit I know, it appeared to be a frivolous lawsuit. I
3 mean, the lady buys a coffee, and she should know that
4 it's hot, sticks it between her legs on the seat as
5 she's driving away. Now, that's what I think is the
6 case. And the coffee spilled and she got burned. Any
7 reasonable person knows the coffee is hot from
8 McDonald's, sticks it in a cup tray not in the seat
9 between her legs. So, again, I thought that was a
10 frivolous lawsuit.

11 MR. ROBERTS: So based on what you believe
12 the facts to be, you have a problem more with the --
13 the fact that she got any verdict at all, or do you
14 have more of a problem with the amount of the verdict?
15 It sounds like you're more on the she shouldn't have
16 gotten anything because she stuck the coffee between --

17 PROSPECTIVE JUROR NO. 015: Shouldn't have
18 ever made it to court.

19 MR. ROBERTS: Who else? Was it Mr. Joyce
20 again? Yes.

21 PROSPECTIVE JUROR NO. 029: I didn't put --
22 I'm -- exactly what he said.

23 MR. ROBERTS: Okay.

24 PROSPECTIVE JUROR NO. 029: 100 percent.

25 MR. ROBERTS: Who else agrees with

1 Mr. Jensen?

2 Okay. We've got Mr. Evans; right?

3 PROSPECTIVE JUROR NO. 053: Yeah. Juror 53.

4 MR. ROBERTS: Thank you, sir.

5 PROSPECTIVE JUROR NO. 053: Well, I didn't
6 put it on the questionnaire because I didn't think of
7 it. But I felt that the -- the amount that was awarded
8 to that lady was -- was too much.

9 MR. ROBERTS: Okay.

10 PROSPECTIVE JUROR NO. 053: You expect coffee
11 to be hot. In fact, you complain if it wasn't.

12 MR. ROBERTS: So when -- when we're talking
13 about the McDonald's case and people who disagree, say
14 there's something wrong with the system if this is
15 really happening, who thinks that might be in their
16 mind when -- when they're deciding the evidence in this
17 case? Or are we just writing that off to something
18 that happened that you disagree with, but it's not
19 going to affect your decision here in any way? Those
20 are the two extremes. Who thinks, you know, I know
21 about it, I disagree with it, but it's not going to
22 affect me at all here? Everyone?

23 Mr. Joyce, it's going to affect you; right?
24 Because of some of the things you have shared with us
25 earlier.

1 PROSPECTIVE JUROR NO. 029: Yeah, exactly.

2 MR. ROBERTS: So let me talk to you about
3 just your -- you personally and how you perceive pain.
4 So as we go down the line again, I'm going to let
5 everyone talk for a minute about it, but what -- what
6 I'd like you to tell me is whether you believe you have
7 a high tolerance for pain, a low tolerance for pain,
8 and what's the worst pain you've ever experienced on a
9 scale of 1 to 10, 10 being the worst pain possible.

10 Mr. Solomon.

11 PROSPECTIVE JUROR NO. 001: I believe I have
12 a high pain tolerance.

13 MR. ROBERTS: Uh-huh.

14 PROSPECTIVE JUROR NO. 001: From heavy weight
15 exercising and martial arts, I tend to be a little bit
16 thick skinned.

17 MR. ROBERTS: What about (noise). You ever
18 touch that live wire?

19 PROSPECTIVE JUROR NO. 001: Yeah, I have.

20 MR. ROBERTS: What would you say is the
21 highest pain you've ever experienced was on a scale of
22 1 to 10.

23 PROSPECTIVE JUROR NO. 001: Two or 3.

24 MR. ROBERTS: How many volts was that?

25 PROSPECTIVE JUROR NO. 001: 277.

1 MR. ROBERTS: Two to 3. Wow. You do have a
2 high tolerance.

3 All right. Let's -- Mr. Brandon.

4 PROSPECTIVE JUROR NO. 003: I'm up there in
5 the high tolerance. Always getting hurt, cutting
6 myself. I have a race car at home. I hit the wall
7 head on. So my tolerance -- seat belts crushed my
8 body. It's a 10, but I managed.

9 MR. ROBERTS: How fast were you going when
10 you hit the wall?

11 PROSPECTIVE JUROR NO. 003: 130.

12 MR. ROBERTS: Wow.

13 PROSPECTIVE JUROR NO. 003: Coming out of a
14 corner, just straight into it.

15 MR. ROBERTS: Congratulations on being here.

16 PROSPECTIVE JUROR NO. 003: I was black and
17 blue from the seat belts, and -- yeah, paramedics had
18 to get me out of the car while it was on fire. So I
19 don't remember much about it.

20 MR. ROBERTS: Have you ever had any other
21 experiences where you had pain that approached that
22 level?

23 PROSPECTIVE JUROR NO. 003: Falling on my arm
24 and bending it all the backwards and breaking it the
25 other way when I was little, but that was about it.

1 MR. ROBERTS: You still remember how much
2 that hurt?

3 PROSPECTIVE JUROR NO. 003: I remember that
4 one, yeah.

5 MR. ROBERTS: What would you say that was on
6 a scale of 1 to 10.

7 PROSPECTIVE JUROR NO. 003: That one probably
8 felt like a 4 to 5, just because the way it bent
9 backward and snapped.

10 MR. ROBERTS: Thanks.

11 Ms. Flores.

12 PROSPECTIVE JUROR NO. 010: Like, my high
13 tolerance for, like, physical pain?

14 MR. ROBERTS: Yes.

15 PROSPECTIVE JUROR NO. 010: I would say it's
16 pretty high. I work in a kitchen. You get, you know,
17 cuts, burns, scrapes. Like, I would say it's, like, a
18 5. I don't know. When you're in the moment in that
19 kitchen, like, you don't really think about it. You
20 just do. You see that you're hurt, but you just kind
21 of move along.

22 MR. ROBERTS: Sometimes when you're cooking,
23 you cut yourself, you sort of look at. You know, it's
24 going to hurt later.

25 PROSPECTIVE JUROR NO. 010: Yeah. And you

1 don't -- you don't really focus in on it. You just
2 keep on going.

3 MR. ROBERTS: So is that the worst pain that
4 you've ever felt is that type of sort of mishappen in
5 the kitchen and cuts and scrapes.

6 PROSPECTIVE JUROR NO. 010: Yep.

7 MR. ROBERTS: Never run into a wall at
8 130 miles an hour?

9 PROSPECTIVE JUROR NO. 010: No.

10 MR. ROBERTS: But it's interesting that you
11 asked to distinguish mental and physical pain. I don't
12 think anyone's ever told me that because the assumption
13 was probably physical pain. But -- but I guess how
14 would you compare your tolerance for emotional pain to
15 your tolerance for physical pain? Which do you have a
16 higher tolerance for?

17 PROSPECTIVE JUROR NO. 010: I feel like I
18 have a low tolerance for emotional pain. Like, my
19 brother was in the hospital, and that was like -- like
20 a really big deal to me. And that's something that,
21 you know, I couldn't even handle. But in the kitchen,
22 I see, like, a cut, hurt, bruise, burn, and it's --
23 doesn't really faze me that much. But in the emotional
24 sense, yeah, I feel like I have a low tolerance for
25 emotional pain.

1 MR. ROBERTS: When -- when you -- the example
2 you gave was of someone else in pain which was causing
3 you emotional pain; is that fair?

4 PROSPECTIVE JUROR NO. 010: Yes.

5 MR. ROBERTS: Yeah. And is that a common --
6 do you empathize a lot with people who are in pain, or
7 is it just because he was someone very, very close to
8 you?

9 PROSPECTIVE JUROR NO. 010: Just because it
10 was someone very close to me. Like, outside, I'll
11 like -- I won't empathize as much. If you're really
12 close to me, then, yes, I empathize with him because
13 he's my brother.

14 MR. ROBERTS: And -- and one of the things
15 that -- that I think you'll probably be told is that
16 you can't make your decision in this case based on
17 sympathy. And it can't be sympathy for -- for the
18 plaintiff because she's hurt, and it can't be sympathy
19 for the defendants for being in this position. You
20 know, which some of us may be in soon.

21 But, you know, of course you're going to feel
22 those emotions for people in both these positions
23 because they're both uncomfortable positions to be in.
24 But the important thing is that you can set that aside
25 and only judge it based on the facts and evidence and

1 not sympathy, which would be improper.

2 Is everyone okay? I think what -- you'd be
3 okay doing that; right?

4 PROSPECTIVE JUROR NO. 010: Yes.

5 MR. ROBERTS: And is there anyone here who
6 thinks that -- that sympathy for either side in the
7 position they're in in this lawsuit might enter into
8 their thoughts and their verdict once they start
9 talking about this?

10 All right. Mr. Jensen, I think you're next.
11 And if you want to draw a distinction between emotional
12 and physical pain, everyone can do that.

13 PROSPECTIVE JUROR NO. 015: Physical pain, I
14 guess. 015. I have a high tolerance for pain. I had
15 my wrist put back together here two years ago, and I
16 came out of the anesthesia and the doctor said, What's
17 your pain level? And I go, 2. My wife was there, and
18 she goes, 2 to him is a 6 on a normal scale at least.

19 So the greatest physical pain I've had is
20 probably an 8 on my 1 to 10 scale. I have a back that
21 sometimes decides to just go out on me. And I can be
22 standing -- in fact, about three years ago, I was
23 talking to my neighbor just in the driveway, and I hit
24 the ground. I was on the ground so fast that he
25 thought I had died.

1 MR. ROBERTS: Just standing there talking?

2 PROSPECTIVE JUROR NO. 015: Just standing
3 there talking. It was just instantaneous pain. You
4 know, after about 20 minutes, I crawled back to the
5 house and took 20 white pills and I was okay.

6 MR. ROBERTS: And emotional pain? How's your
7 tolerance for that? Is it also a curb, like, high
8 tolerance for emotional pain?

9 PROSPECTIVE JUROR NO. 015: You know,
10 probably a little bit -- not quite as high. But I
11 don't believe I really deal with emotional pain for
12 myself, very similar, close family members or friends
13 or something, then that's -- that's harder to deal
14 with.

15 MR. ROBERTS: Harder to see loved ones suffer
16 than you have yourself suffer sometimes; right?

17 PROSPECTIVE JUROR NO. 015: Exactly.

18 MR. ROBERTS: Thank you, sir.

19 Mr. Foerstel.

20 PROSPECTIVE JUROR NO. 023: Yes, 023.
21 Different tolerances for different types of pain.
22 Like, acute pain, I'm probably, like, average, but,
23 like, a long-suffering pain. The acute pain, the worst
24 I had was like a -- having kidney stones. I mean, that
25 had me down on all fours just thinking I was dying

1 right then and there and -- but I also -- then the
2 suffering pain, I can suffer with the best of them.
3 I've run a bunch of marathons and nothing can describe
4 the suffering for the last -- sometimes when you don't
5 run the race very well, last 5, 6 miles of the marathon
6 and then -- but I've suffered through it a number of
7 times.

8 Emotional pain, pretty much the same as
9 Larry. I mean, for myself, seeing other ones hurt and
10 not really, you know, myself, you know.

11 MR. ROBERTS: Thanks so much, Mr. Joyce.

12 PROSPECTIVE JUROR NO. 029: Yes.

13 MR. ROBERTS: Tolerance for pain, and the --
14 on the scale of 1 to 10, what's the most severe pain
15 you can recall now and what caused it?

16 PROSPECTIVE JUROR NO. 029: What caused it?
17 I had C6 and 7 fused and had a lot of pain in my neck
18 and shoulders and arm from a diving accident.

19 MR. ROBERTS: C6 is the cervical?

20 PROSPECTIVE JUROR NO. 029: Yes.

21 MR. ROBERTS: Right.

22 PROSPECTIVE JUROR NO. 029: Had some sciatica
23 problems similar to like he was describing. Pretty
24 painful stuff.

25 MR. ROBERTS: Scale of 1 to 10, what do you

1 recall that pain being?

2 PROSPECTIVE JUROR NO. 029: Bad.

3 MR. ROBERTS: Bad.

4 PROSPECTIVE JUROR NO. 29: Just bad. I don't

5 really know that scale very well. Just bad pain.

6 MR. ROBERTS: Do you consider yourself to

7 have a high tolerance for pain or a low tolerance?

8 PROSPECTIVE JUROR NO. 029: Mediocre. I

9 don't know.

10 MR. ROBERTS: Average?

11 PROSPECTIVE JUROR NO. 029: Yeah.

12 MR. ROBERTS: Ms. Gold.

13 PROSPECTIVE JUROR NO. 036: Yes.

14 MR. ROBERTS: Badge number. I'm sorry.

15 PROSPECTIVE JUROR NO. 036: 036.

16 MR. ROBERTS: Thank you.

17 PROSPECTIVE JUROR NO. 036: I think I have a

18 high tolerance for pain. I endured eight rounds of

19 chemo last year, and that is the worse pain I've ever

20 had, deep-in-your-bones pain.

21 And emotionally, I'm old, and I've been

22 through a lot. So I do feel for -- for my loved ones

23 when they're in pain. Emotionally, I think I can --

24 I'm pretty strong. I think I can get through things at

25 my age.

1 MR. ROBERTS: So you have a very high
2 tolerance for emotional pain, strong person.

3 PROSPECTIVE JUROR NO. 036: Yes. Uh-huh.

4 MR. ROBERTS: Thank you so much.

5 And I had to -- I had to check the
6 pronunciation. I got it in the notes. Cyganek.

7 PROSPECTIVE JUROR NO. 106: That's right.
8 0106. High tolerance for pain. I was thrown out of a
9 vehicle back in 1997. Wasn't driving, went through the
10 whole procedures of everything. Insurance company,
11 claims, all that. So I tie that into -- I'm 20 percent
12 disabled for life with a broke -- with an artificial
13 hip. But I get up every day and I go to work. I
14 probably count on this hand in 45 years of taking off
15 work, something like that.

16 So then you get to the emotional, I don't
17 worry about me, but I worry about family and loved
18 ones. Obviously, I have a big family, 6 children,
19 12 grandchildren and growing. But you get up every
20 day, and you do the best you can to create that example
21 for everybody around you. So that's --

22 MR. ROBERTS: So when was the accident again?

23 PROSPECTIVE JUROR NO. 106: '97.

24 MR. ROBERTS: Long time ago. And --

25 PROSPECTIVE JUROR NO. 106: And we were

1 talking too, earlier, about McDonald's. I retired from
2 McDonald's. Went to Hamburg University, so very
3 familiar with it. But sometimes I'll just let people
4 say what they want.

5 MR. ROBERTS: So based on what you know about
6 the McDonald's case, you have a different opinion than
7 has been expressed here?

8 PROSPECTIVE JUROR NO. 106: I've heard a lot
9 of different things. Again, I wasn't there privy to
10 the -- to the situation. But I learned a long time
11 ago, like with McDonald's, for every attorney we think
12 we have, they got ten. And you can present your case
13 and have all the facts and everything, but they're
14 going to -- you have to look at the evidence.
15 Everything is presented. And I tie it in yesterday
16 with the 51 to 49 percent. A lot of times you can
17 learn more in a situation like that than being way up
18 at 95 or 100 percent. You know, it's the learning
19 experience and keep an open mind.

20 MR. ROBERTS: What was your pain level -- the
21 accident was your highest pain that you experienced.

22 PROSPECTIVE JUROR NO. 106: Correct.

23 MR. ROBERTS: What do you recall that being?

24 PROSPECTIVE JUROR NO. 106: I'll be honest
25 with you. I'm sitting on the side of the road coming

1 back from Arizona, Phoenix. I'm heading towards Vegas,
2 and we flipped and rolled a 1997 Suburban. So we're
3 facing going back to Arizona. I'm -- all I can
4 remember is shock sets in. You're sitting on the side
5 of the road, a big semi blocks us so you don't get run
6 over. I didn't have my whole family with me, which is
7 good. I had a son that was five years old at the time.
8 If the car would have rolled another 2 feet, he
9 wouldn't be here.

10 So somebody upstairs was looking out for you,
11 but you learn from that because you take so many things
12 for granted when you're healthy and everything is going
13 your way with money, whatever, good job, career. Been
14 there done all that. You have to appreciate your
15 health and -- and be the best you can be around
16 everybody in your life each day. And if you do that,
17 you'll be fine, so ...

18 MR. ROBERTS: Did I hear you right that --
19 that every day since then that you get up, you still
20 have pain?

21 PROSPECTIVE JUROR NO. 106: No. I -- I wear
22 a brace. You still deal with pain, but you don't
23 let -- because of my high tolerance of physical pain,
24 you don't let that bother you. You still get up, and
25 you move, you be productive, and you stay active. Four

1 more years, I want to retire. So it's kind of like you
2 still want to be yourself and do things, so ...

3 MR. ROBERTS: Thank you, sir.

4 PROSPECTIVE JUROR NO. 106: You're welcome.

5 MR. ROBERTS: Appreciate you sharing all that
6 with me.

7 Mr. Retzlaff.

8 PROSPECTIVE JUROR NO. 088: Badge 088. I
9 think I have a high tolerance for pain. Been a chef.
10 I have cut parts of my fingers off, burned myself.
11 About 2011, I ended up in a long boarding incident. I
12 was going about 35 miles an hour and broke my
13 collarbone, dislocated my shoulder, had to have
14 reconstructive surgery on it. That was probably the
15 most pain because that was about maybe four days out of
16 actually having the surgery to reconstruct my shoulder.
17 And I would say I was probably about, maybe, like, a 4
18 or 5. That was just when I was trying to get up
19 because you really can't do anything when you have a
20 collarbone injury, so ...

21 Other than that, I mean, I'm pretty sure I've
22 got a high pain tolerance because I've caught -- I
23 worked with electricity too. I know I've caught
24 534 volts -- it was DC, though -- but coming off of the
25 solar panels. But that, you know, was nothing more

1 than, you know, shaking it off and screaming an
2 expletive, and then going back to work.

3 But as far as emotional, I think it's just
4 kind of in everybody. I think it would be kind of
5 weird to hear somebody say that, you know, they don't
6 feel for the ones that, you know, they can't really
7 necessarily help. You know, you can't be there and
8 experience the pain for them knowing you have a high
9 tolerance. You can't take that in and take, you know,
10 some of that away from them. But, you know, it's
11 just -- it's one of those things where I think I have a
12 high emotional tolerance too because seeing a lot
13 growing up, experienced a lot, but it just -- you got
14 take it and let it make you stronger.

15 MR. ROBERTS: And I don't mean to be -- I'm
16 making assumptions, but I grew up in the '70s in
17 Virginia Beach, and long boarding was surfing.

18 Is that what you were doing?

19 PROSPECTIVE JUROR NO. 088: No. Long
20 board -- sorry. Long boarding, skateboarding. So it's
21 basically a surf board on wheels.

22 MR. ROBERTS: Very good. Okay. Just trying
23 to picture what happened.

24 PROSPECTIVE JUROR NO. 088: Yeah. I rolled
25 and -- and stood up, and my friend that was actually

1 with me was looking at me, and he passed out because my
2 bone was hanging out of my arm. And I put it back in,
3 and then some guy walking down the street just ran past
4 me because he was scared. So it was one of those
5 things where you just kind of suck it up, and you have
6 to deal with it.

7 MR. ROBERTS: Mr. Avilaroa, and I practiced
8 that last night.

9 PROSPECTIVE JUROR NO. 078: Badge No. 078.
10 I'm -- I would guess, like, I do have a high tolerance
11 for pain, like, physical pain. I do. I'm -- obviously
12 I have tattoos and a few of them covered. So I think I
13 dropped -- I dropped a box of quarters that I was
14 delivering to -- one time to -- to a company and -- on
15 my foot, and was that pretty painful for me. But I,
16 fortunately, never, you know, had any severe pain.
17 I've never really broken anything.

18 I think it's more of a emotional kind of -- I
19 have a high tolerance for emotional pain. But it's
20 kind of like everybody says, you know. It's -- it's
21 more of, like, seeing people hurt that's -- kind of
22 makes me feel bad or -- like, I have kids. When my
23 daughter, she broke her arm, you know, so that -- that
24 to me is like, oh, I wish -- I wish it would happen to
25 me instead of her. You know, just like, you know,

1 emotional -- emotionally, like, I have a high tolerance
2 for pain like for -- on myself, when it's, like,
3 something happens to me, I can handle it pretty well.
4 But when it's, like, somebody else, when something
5 happens to somebody else, that's when it's kind of hard
6 for me to take that, but -- but yeah.

7 MR. ROBERTS: So how would you -- how would
8 you put that experience with -- how much does a box of
9 quarters weigh?

10 PROSPECTIVE JUROR NO. 078: I'm not sure.
11 It's pretty -- it's pretty like -- like, 25 pounds, I
12 would guess about 25 pounds. Yeah, like, that was --
13 that was a horrible experience because, I mean, if I
14 loose -- it broke, so all -- pennies were all over --
15 like, quarters were all over the -- all over the place.
16 So I was, like, you know, limping everywhere trying to
17 pick up every quarter. It was all over the street that
18 was horrible. That was embarrassing. So yeah, I
19 mean --

20 MR. ROBERTS: Which hurt worse, the quarters
21 or the tattoos?

22 PROSPECTIVE JUROR NO. 078: Oh, the quarters.

23 MR. ROBERTS: The quarters.

24 PROSPECTIVE JUROR NO. 078: Oh, yeah, the
25 quarters.

1 MR. ROBERTS: And, Ms. Bias.

2 PROSPECTIVE JUROR NO. 066: Badge No. 066. I
3 would say I have a pretty high level. I've been
4 through childbirth, so you know --

5 MR. ROBERTS: Yes.

6 PROSPECTIVE JUROR NO. 066: -- that's pretty
7 painful. And I actually went natural. So I had no
8 drugs or anything, because it was kind of too late. So
9 I think I have a high level of pain tolerance.

10 MR. ROBERTS: My wife planned to go to
11 natural. It was a plan.

12 PROSPECTIVE JUROR NO. 066: It was not fun.

13 MR. ROBERTS: What would you say the highest,
14 1 to 10, in your childbirth?

15 PROSPECTIVE JUROR NO. 066: Fifteen. It was
16 not -- it was not -- you know. But if you ask me if I
17 will do it over again, I definitely would.

18 But emotional, I think it's when it comes to
19 my family members, especially my daughter, because
20 before I started working, it was just me and her,
21 because my husband worked constantly. And it's like
22 you have that bond. So when she gets hurt, it's like
23 you kind of get the feeling that you're hurt too. So
24 yeah, it's just only to people that I really have that
25 connection with that I feel for them. And -- and

1 animals so yeah.

2 MR. ROBERTS: And animals?

3 PROSPECTIVE JUROR NO. 066: And animals,

4 yeah.

5 MR. ROBERTS: Did you put something on your
6 jury questionnaire about that?

7 PROSPECTIVE JUROR NO. 066: Yeah.

8 MR. ROBERTS: You like animals better than
9 most people?

10 PROSPECTIVE JUROR NO. 066: Yeah. They don't
11 talk back.

12 MR. ROBERTS: Mr. Berkery.

13 PROSPECTIVE JUROR NO. 063: I don't know how
14 to follow that. I don't.

15 My pain tolerance is situationally dependent.
16 It kind of pisses me off when you go to give blood and
17 they stick your finger. It really hurts. On the other
18 hand, I was a firefighter, EMT for ten years. And when
19 I -- the worst pain I ever experienced was during a
20 rescue. We had to go evacuate a building and the
21 person weighed over 350, and because of the -- the
22 stairwell, only two of us could carry. So my back
23 popped, and there was no choice but to go two more
24 flights down. So when it happened, you -- everything
25 goes white, you're sweating, you don't know what to do.

1 You can't breathe, and then you still have to do what
2 you have to do. So, you know, that's why -- that's why
3 I kind of look at it as situationally dependent.

4 Emotionally, I would say my tolerance is very
5 high. I think I react like everybody else does. But I
6 haven't crumbled from an emotion yet. I have had
7 horrible ones. I've had great ones, but I think
8 everybody here tolerates whatever emotion is given to
9 them. And if -- if we all fell apart, none of us would
10 be sitting in the box.

11 MR. ROBERTS: True, very true.

12 How would you, as you think back on it, rate
13 that pain in your back from 1 to 10?

14 PROSPECTIVE JUROR NO. 063: I always like to
15 leave the room for something else, so I would have to
16 say maybe 8, 9.

17 MR. ROBERTS: But it's nothing else you have
18 experienced that's higher than that.

19 PROSPECTIVE JUROR NO. 063: No.

20 MR. ROBERTS: Thank you.

21 Mr. Roberts.

22 PROSPECTIVE JUROR NO. 058: 058.

23 THE COURT: Let me interrupt you for just a
24 minute, Mr. Roberts.

25 MR. ROBERTS: Sure.

1 THE COURT: Ladies and gentlemen, we have
2 some kids here. We usually have -- about two or three
3 days a week, we have probably 50 or 60 elementary
4 school kids that come in and do field trips here, and I
5 usually take about 20 minutes to talk to them. I'm not
6 going to do that today because we're in the middle of a
7 trial, obviously. But you may see kids not just today,
8 but during the next several weeks, we're going to have
9 kids coming in and out of here. Don't be distracted by
10 them. They're just here to watch and listen.

11 We're glad to have you guys here. We're in
12 the middle of jury selection. So the questions that
13 are going to be asked by the attorneys, we're just
14 trying to pick a jury out of all these people that are
15 here. And then the next day or two, we're going to
16 have a jury of ten people. You can just listen to some
17 of the questions that are asked. Unfortunately, I'm
18 not going to have a lot -- any time to really talk to
19 you guys and answer questions today. But maybe next
20 time. Maybe I can come to your class. We'll see.

21 Sorry. Go ahead.

22 MR. ROBERTS: Thank you, Judge.

23 So, Mr. Roberts, we were about to talk about
24 your pain tolerance and the most painful experience
25 you've had in life.

1 PROSPECTIVE JUROR NO. 058: I think
2 physically, I have -- I have endured some pretty high
3 tolerances. I'm a former athlete, professional, and
4 I've broken things, sprained things. I've been hit in
5 various ways. Just part of what the job.

6 MR. ROBERTS: What sport did you play on a
7 professional --

8 PROSPECTIVE JUROR NO. 058: I played
9 basketball.

10 MR. ROBERTS: Basketball?

11 PROSPECTIVE JUROR NO. 058: Yes, sir.

12 MR. ROBERTS: And what's the highest pain you
13 can remember experiencing, scale of 1 to 10.

14 PROSPECTIVE JUROR NO. 058: I'm sure 9, 10.
15 You know, when you break bones or you -- you end up in
16 a heap on a floor because of, you know, severe other
17 issues going on, tweaked knees, tweaked legs, my
18 ankles. I've had the whole gamut of things.

19 MR. ROBERTS: You've experienced a lot of
20 pain, but you -- you have a high tolerance for it, and
21 you just had to deal with it as part of your career.

22 PROSPECTIVE JUROR NO. 058: Yeah. And
23 oftentimes with certain types of injuries, you know,
24 you're down for the -- that -- that day, but you're
25 back up working and back practicing the next day. I

1 mean, I've had ankles that size and back working the
2 next day.

3 MR. ROBERTS: Really?

4 PROSPECTIVE JUROR NO. 058: True.

5 MR. ROBERTS: Thank you, sir.

6 Mr. Evans.

7 PROSPECTIVE JUROR NO. 053: 053. I guess I
8 have a fair -- medium tolerance for pain. And the
9 worst was when I broke my shoulder. Not right after,
10 but a little bit after, it just really, really hurt.

11 MR. ROBERTS: When you say "a little bit
12 after," like, a couple of minutes after or --

13 PROSPECTIVE JUROR NO. 053: Yeah.

14 MR. ROBERTS: Did it keep increasing?

15 PROSPECTIVE JUROR NO. 053: Well, a few
16 minutes after, in fact, somebody asked me if I was okay
17 and I said yes. And it didn't really hit yet.

18 MR. ROBERTS: Then you realized you weren't
19 okay?

20 PROSPECTIVE JUROR NO. 053: Yeah.

21 MR. ROBERTS: And how would you rate that
22 pain on a scale of 1 to 10?

23 PROSPECTIVE JUROR NO. 053: I guess 5, maybe.

24 MR. ROBERTS: Highest it got was 5?

25 PROSPECTIVE JUROR NO. 053: It seemed like

1 higher at the time.

2 MR. ROBERTS: So as you look back on it, it
3 was a 5. But at the time, you weren't thinking scale.

4 PROSPECTIVE JUROR NO. 053: (Inaudible
5 response.)

6 MR. ROBERTS: Ms. Perreida.

7 PROSPECTIVE JUROR NO. 130: Yes. 130.

8 MR. ROBERTS: Thank you.

9 PROSPECTIVE JUROR NO. 130: High tolerance
10 pain, I think when I give birth to my daughter in the
11 car.

12 MR. ROBERTS: In?

13 PROSPECTIVE JUROR NO. 130: In a car.

14 MR. ROBERTS: That's what I thought you said.

15 PROSPECTIVE JUROR NO. 130: Yes.

16 MR. ROBERTS: In the car.

17 PROSPECTIVE JUROR NO. 130: It was about
18 eight minutes from the house to the hospital, and I
19 don't know that -- I still remember that pain and think
20 about a number 10 for me at that time. Because never
21 pain from anything else, accident or whatever.

22 MR. ROBERTS: Wow.

23 PROSPECTIVE JUROR NO. 130: You know.

24 MR. ROBERTS: Did you say daughters?

25 PROSPECTIVE JUROR NO. 130: Yes. And she

1 come out -- came out with the sac. It's not water
2 break for me.

3 MR. ROBERTS: Wow.

4 PROSPECTIVE JUROR NO. 130: Yeah. And -- and
5 the oldest -- my oldest daughter, she broken her arm, I
6 think about eight years old, at school. And the
7 teacher, I don't know. They didn't check -- they
8 didn't know that the -- she broke her arm, and they
9 send her home with the bus. Yeah. And I don't know.
10 I kind of cried on that. Yeah.

11 MR. ROBERTS: So emotionally that was pretty
12 painful to know your daughter had been through that?

13 PROSPECTIVE JUROR NO. 130: Uh-huh. And
14 teacher didn't know that she broke her arm and send her
15 to the bus, and it's my baby broke more, you know.

16 MR. ROBERTS: Did it heal up okay?

17 PROSPECTIVE JUROR NO. 130: Yeah, she healed
18 up okay. Right now, she ten years old and -- and
19 that's two years ago.

20 MR. ROBERTS: Thank you for sharing.

21 Ms. Abeles.

22 PROSPECTIVE JUROR NO. 043: Hi.

23 Juror No. 043. I guess I'm not alone. I gave birth
24 naturally. I planned it that way. At the hospital,
25 they begged me to take an epidural because I was

1 cursing. I remind myself on Mother's Day with a video,
2 because perception is reality. And as you're going
3 through something at the moment, you think it's just
4 holy moly; right? So my number would be, I think, a 7.
5 I'm sure there's other things that I'm sure I don't
6 want to experience that could be more painful. But in
7 the end I ended up with a child. So it was all good.
8 If I could do it again, I would. And I mean, like I
9 probably said yesterday, I'm happily divorced, but it
10 was the one thing that my ex-husband was able to give
11 me, that I have a child now, so, you know. But let the
12 powers be known, you know. It's fine.

13 Emotionally, I work with kids. I do a lot of
14 philanthropy, a lot of charity work, volunteer work.
15 And one of my philosophies that I try to instill in my
16 son and everything is we're here to make the whole
17 world a better place. So I do what I have to do in
18 life. I try to provide. And sometimes do I wear, you
19 know, my feelings out here? Probably. I'm a girl, you
20 know. But things happen and we get on with life.

21 MR. ROBERTS: And, you know, as we're talking
22 about pain and transitioning to kids and the making the
23 world a better place, it's interesting to see how you
24 got there.

25 Who -- who feels like part of your job as a

1 person is to make the world a better place? Who feels
2 that's not part of their job? So everyone else is sort
3 of in the middle. You're not really thinking about it,
4 but appreciate you bringing that up.

5 So, Mr. Franco, let's talk about -- go back
6 to pain.

7 PROSPECTIVE JUROR NO. 096: Pain?

8 MR. ROBERTS: Yes.

9 PROSPECTIVE JUROR NO. 096: 96. Sorry about
10 that. I'm pretty -- it's pretty high. I can deal with
11 a little bit of pain. I think the highest, probably 8
12 or 9, kidney stone. And little cut on my nipple.
13 Don't recommend it.

14 Emotional, pretty strong emotionally. Yeah,
15 I don't -- about 8 or 9.

16 MR. ROBERTS: Okay. Eight or 9?

17 PROSPECTIVE JUROR NO. 096: (Nods head.)

18 MR. ROBERTS: Physical?

19 PROSPECTIVE JUROR NO. 096: No -- yeah,
20 physical. Emotional, I'm up there, 8 or 9 I can
21 handle.

22 MR. ROBERTS: You've experienced 8 or 9 in
23 emotional pain?

24 PROSPECTIVE JUROR NO. 096: Yeah.

25 MR. ROBERTS: Yes. I won't ask you what that

1 was from. Physical, we can talk about.

2 PROSPECTIVE JUROR NO. 096: Right.

3 MR. ROBERTS: Ms. Go.

4 PROSPECTIVE JUROR NO. 141: Badge 141. For
5 emotional pain, I'm very much emotional person. My
6 father just passed away two weeks ago and still
7 mourning his death.

8 And as far as physical pain, probably a
9 little higher than emotional. Just like the mothers
10 here, I gave birth to two children, and I ask for
11 epidural right away. So pain level, probably 7 and 8.

12 MR. ROBERTS: That's --

13 PROSPECTIVE JUROR NO. 141: But emotional,
14 lower for me. But it has to be within the family
15 member, of course.

16 MR. ROBERTS: And that seems to be common
17 with everyone here is you feel -- other people that
18 you're close to, you feel their pain more.

19 PROSPECTIVE JUROR NO. 141: Yes.

20 MR. ROBERTS: Affects you more emotionally,
21 and you're the same way.

22 PROSPECTIVE JUROR NO. 141: Yes.

23 MR. ROBERTS: Mr. Corum.

24 PROSPECTIVE JUROR NO. 093: Yes. Well, I've
25 gone through some things with pain. I've had ulcers in

1 my stomach, in my intestines and all that, so I've
2 actually been bedridden for weeks with, you know,
3 random sporadic pain, maybe up to 7, 8, you know. And
4 it lasts. So it lasted for a long time. I got over
5 it. So I -- you know, I have a tolerance for pain.
6 That may be not the most, the highest level of pain I
7 have ever felt, but it's the highest and longest
8 duration that I have ever felt.

9 MR. ROBERTS: It lasted for weeks?

10 PROSPECTIVE JUROR NO. 093: I was out of
11 school for the last six weeks of tenth grade. And
12 then, you know, I got on a diet and I had my plan or
13 whatever. So I don't remember exactly how long it
14 lasted, but it still can pop up again, you know.

15 MR. ROBERTS: At that time, you had about six
16 weeks of continuous, seven-day pain.

17 PROSPECTIVE JUROR NO. 093: (Nods head.)
18 Yeah. Emotionally --

19 MR. ROBERTS: Yes, sir.

20 PROSPECTIVE JUROR NO. 093: -- I had a lot of
21 emotional feats to hurdle. I don't want to discuss
22 them here today.

23 MR. ROBERTS: And you don't have to.

24 PROSPECTIVE JUROR NO. 093: And -- but I --
25 I've gone through it, you know. I'm still working on

1 it, but, I'm -- I'm pretty good.

2 MR. ROBERTS: Stronger, the things you've
3 been through made you stronger emotionally, do you
4 think?

5 PROSPECTIVE JUROR NO. 093: Yeah.

6 MR. ROBERTS: Yes.

7 And, Mr. Inglett, you're last, this issue.

8 PROSPECTIVE JUROR NO. 091: High tolerance.

9 I had my eardrum replaced a few years ago. So they cut
10 my skull open, took fascia from my head, and rebuilt my
11 eardrum.

12 MR. ROBERTS: That does -- does sound
13 painful.

14 How would you rate that pain?

15 PROSPECTIVE JUROR NO. 091: That was a 10 for
16 sure.

17 MR. ROBERTS: That was a 10 for sure.

18 PROSPECTIVE JUROR NO. 091: Yes.

19 MR. ROBERTS: Sorry you had to go through
20 that.

21 Mr. Corum, I'm going to pick on you a little
22 bit more about yesterday.

23 PROSPECTIVE JUROR NO. 093: Okay.

24 MR. ROBERTS: I hope you don't think I'm
25 picking on you, but I need to go back to a subject

1 and -- and maybe ask you to think about things more.
2 Maybe you were thinking about things yesterday after we
3 spoke. And -- and what I wanted to talk was about your
4 statement that you weren't sure how the lawsuit being
5 prosecuted by Glen Lerner against you might affect you;
6 that if it heated up and things might happen, you're
7 not sure how that might affect your judgment-making in
8 this case.

9 PROSPECTIVE JUROR NO. 093: Yes.

10 MR. ROBERTS: But you're not there yet where
11 it would affect you, but you're not sure how it might
12 affect you.

13 So what I would ask you to do is think about
14 this again, and, you know, if the trial goes three to
15 four weeks, we don't know what's going to happen in
16 your lawsuit, we don't know if it's going to heat up.
17 As you thought about that, can you -- can you promise
18 me and my client that you're not going to let that
19 affect you at all? Or do you think that, There's still
20 a possibility that it may affect me, it might be in the
21 back of my mind depending on what happens, so I
22 probably wouldn't be the best juror for your case.
23 Even though I'm willing to do my duty, I may not be the
24 right guy for this case given my personal situation
25 with the lawyers.

1 PROSPECTIVE JUROR NO. 093: Well, I've gone
2 through a lot of, like, random things, like, with
3 family. You know, I've come to a point where I don't
4 really -- I try to be fair. I've been given the shit
5 stick a lot of times. Like, you know, what I'm saying?
6 I've gotten -- I've been on the wrong end of things a
7 lot. And I don't like it at all. So I try to be the
8 fairest that I can.

9 MR. ROBERTS: So because you felt you've been
10 treated unfairly in the past, you would do your
11 absolute best to be fair to others --

12 PROSPECTIVE JUROR NO. 093: Yes.

13 MR. ROBERTS: -- so they never feel the way
14 you did.

15 PROSPECTIVE JUROR NO. 093: Pretty much.

16 MR. ROBERTS: And I know some people have
17 been involved in -- in claims and litigation.

18 Is there anyone else who feels that maybe
19 in -- in their personal life, especially dealing with
20 the money dispute or an accident or a lawsuit, anything
21 like that that might be close to -- to a legal
22 proceeding, that you got treated unfairly, that you got
23 the shaft in that? Anyone else feel that way, have
24 that type of personal life experience?

25 And I'm -- I'm going to go back and -- to

1 you, Mr. Solomon, and the reason I'm going to go back
2 is I know we talked about this some before, but I did
3 notice that in your jury questionnaire, you wrote that
4 you could not award money for pain and suffering.

5 Do you remember putting that down?

6 PROSPECTIVE JUROR NO. 001: It was more on
7 the effect of blatant disregard for individuals, like
8 drunk driver or somebody who was on some sort of
9 narcotic ran into somebody. I think that's like
10 blatant negligence. And I don't know what word I want
11 to use. Worry about frivolous lawsuits, that type of
12 thing. The burglar falling through the skylight type
13 of thing. I heard that one too.

14 MR. ROBERTS: But if you listen to the facts
15 and the evidence in a case after you were selected as a
16 juror and you didn't think the lawsuit was frivolous
17 based on the facts you heard, then you're okay awarding
18 money for the pain that someone else caused through
19 their negligence. You're okay with that? Or you're
20 still not quite there.

21 PROSPECTIVE JUROR NO. 001: No.

22 MR. ROBERTS: You're not there. You would
23 have trouble doing that?

24 PROSPECTIVE JUROR NO. 001: To some extent.

25 MR. ROBERTS: Okay. So we've talked about

1 your highest levels of pain and what caused it.
2 Looking back at those experiences or even others that
3 might not have been as severe, has anyone had pain
4 interfere with their ability to do something that they
5 enjoy doing, whether it's a hobby or work or time with
6 family?

7 Ms. Bias.

8 PROSPECTIVE JUROR NO. 066: Yes. Number is
9 066. Well, I have a bulging disk in my lower back, and
10 sometimes if I turn wrong, it, like, grabs so I get a
11 pinched nerve in my back. And sometimes it's really
12 hard to, like, do activities with my daughter. So I
13 just put a heating pad and do whatever I can do. And
14 then I guess get through it, because I'd rather have
15 her happy than me just laying around, you know. So,
16 yeah. But I know the pain, it's not fun.

17 MR. ROBERTS: Yes. Thank you.

18 Any -- anyone else have something?

19 Mr. Roberts.

20 PROSPECTIVE JUROR NO. 058: 058. Just from
21 wearing them out, I tell people I have -- I have
22 2 million miles on my knees versus the million miles
23 they were designed for. I still enjoy playing and
24 getting out, but there's -- there's days when the knees
25 won't let me play no more.

1 MR. ROBERTS: It's tough.

2 PROSPECTIVE JUROR NO. 058: Go through these
3 bouts, but it impedes that -- that enjoyment. It's
4 something that I enjoy.

5 MR. ROBERTS: Thank you for sharing that,
6 Mr. Roberts.

7 Mr. Jensen, yes.

8 PROSPECTIVE JUROR NO. 015: 015. Due to my
9 wrist, it's been three years that I haven't been able
10 to do sports that I normally would have, golfed,
11 tennis, bowling. You know, those are minor, to be
12 honest with you.

13 MR. ROBERTS: And if I recall, when you told
14 us about that, you had surgery on your wrist?

15 PROSPECTIVE JUROR NO. 015: That's correct.

16 MR. ROBERTS: But the surgery didn't resolve
17 all the issues?

18 PROSPECTIVE JUROR NO. 015: No. But they
19 actually want to go in and fuse all the bones together,
20 but I don't think that sounds like fun.

21 MR. ROBERTS: I think that helps your golf
22 swing.

23 PROSPECTIVE JUROR NO. 015: Only with the
24 golf, but I was terrible anyways.

25 MR. ROBERTS: Anybody else?

1 Ms. Gold.
2 PROSPECTIVE JUROR NO. 036: Yeah.
3 MR. ROBERTS: I'm sorry. Badge number.
4 PROSPECTIVE JUROR NO. 0136: I'm sorry too.
5 036.
6 MR. ROBERTS: Okay.
7 PROSPECTIVE JUROR NO. 036: While I was going
8 through chemo, I didn't want to do anything. It just
9 wears you out. It just gives you intense fatigue as
10 well as the pain. It was very intense.
11 Currently, I'm taking a medication to keep
12 the cancer at bay, and it causes arthritis, so I -- I'm
13 battling pain from that too. And -- and, you know, it
14 prevents me. I live with my daughter and her seven
15 kids and her husband, and it prevents me from, you
16 know, interacting with them as much as I would like to.
17 MR. ROBERTS: Other than interfering with the
18 things you used to do with the kids, what other areas
19 of your life has that impacted?
20 PROSPECTIVE JUROR NO. 036: Writing, using
21 the computer. It's -- it's the arthritis basically in
22 my -- my fingers now. And it hurts.
23 MR. ROBERTS: Mr. Retzlaff, you had your hand
24 up?
25 PROSPECTIVE JUROR NO. 088: Yes. Badge 088.

1 Since this shoulder injury and stuff, I can't -- you
2 know, I can't -- I can run them, but, you know, doing
3 things like doing marathons, like the Spartan races,
4 it's very hard whenever it requires, you know, pulling
5 body strength and stuff since I have to overcompensate
6 for my left arm.

7 MR. ROBERTS: Did you used to do the Spartan
8 races?

9 PROSPECTIVE JUROR NO. 088: Yeah, yeah. I
10 used to before as well. And I've done one since and I
11 made it through, so -- but yeah, it's just -- it's a
12 lot difficult. I mean, simple things is, you know, if
13 I'm not wearing certain types of clothes, and, you
14 know, my seat belt cover isn't resting on my shoulder
15 right, I can feel the nerves connect and it shoots up
16 my neck and stuff. So it's -- it's something I have to
17 deal with, you know, constantly, but, you know, you
18 work around it. Do the best you can with it.

19 MR. ROBERTS: Thank you.

20 Anyone -- anyone else I've missed that had
21 their hand up?

22 THE COURT: Going to do a different line of
23 questioning?

24 MR. ROBERTS: Yes, Your Honor.

25 THE COURT: Why don't we break now for lunch.

1 That way, I can talk to the attorneys and maybe we can
2 excuse some people. Maybe not. But we'll go ahead and
3 take lunch from 12:00 to 1:00, have you guys come back
4 at 1:00 o'clock.

5 During our break, you're instructed not to
6 talk with each other or with anyone else about any
7 subject or issue connected with this trial. You are
8 not to read, watch, or listen to any report of or
9 commentary on the trial by any person connected with
10 this case or by any medium of information, including,
11 without limitation, newspapers, television, the
12 Internet, or radio. You are not to conduct any
13 research on your own, which means you cannot talk with
14 others, Tweet others, text others, Google issues, or
15 conduct any other kind of book or computer research
16 with regard to any issue, party, witness, or attorney
17 involved in this case. You're not to form or express
18 any opinion on any subject connected with this trial
19 until the case is finally submitted to you.

20 I know that there was somebody that tried to
21 have a -- make a comment to the lawyers in the elevator
22 today. Please don't do that. They're not going to
23 talk back to you. Don't talk to them.

24 Thank you. See you back at 1:00 o'clock.

25 (The following proceedings were held

1 outside the presence of the jury.)

2 THE COURT: We're outside the presence of the
3 jury.

4 You want to put anything on the record now or
5 no?

6 MR. MAZZEO: Yes.

7 THE COURT: Okay.

8 MR. MAZZEO: During -- at one point,
9 Mr. Roberts was speaking to the jurors. I guess he
10 was -- he was still on that topic of tort reform or
11 caps, and he had mentioned -- this was in a general
12 statement before he went into individual questioning.
13 He said, Does anybody have any concerns -- something in
14 his -- his preamble, he was saying something to the
15 effect that, Does anybody have any concerns about
16 frivolous lawsuits that might affect higher insurance
17 premiums? And that's specifically excluded by Jared
18 Awerbach's Motion in Limine No. 19, where he was
19 allowed to question about tort reform, but specifically
20 not about higher insurance premiums or -- or mention
21 that, and that came up.

22 MR. ROBERTS: And he -- he is correct. I
23 didn't ask about it first. It was Mr. Joyce, I
24 believe, who said that's why he thinks there should be
25 caps in place, and I did repeat it when I asked back

1 the panel. I shouldn't have done that. I -- I missed
2 that. But my associate has just shown me the part of
3 the order which says I can't do it. So I can't defend
4 other than to say it wasn't intentional.

5 THE COURT: Okay. Be careful.

6 MR. ROBERTS: Thank you, Your Honor.

7 MR. MAZZEO: Did you --

8 MR. ROBERTS: Yes, Your Honor, we'd like to
9 move to excuse Mr. Joyce for cause. I think he was
10 pretty clear that he -- there are a number of things
11 that have gone on during the questionnaire where I
12 don't think he wants to be here. He's trying to get
13 off for financial hardship. He said that in order to
14 award a significant sum of money, I'm going to have to
15 weigh the scales pretty heavily down to one side. It
16 would be hard for him to award significant sums for
17 pain and suffering. I don't think I'm starting at an
18 even keel here with just having to meet my
19 preponderance burden, and I just don't think he's the
20 right juror for this case, and I'd ask to have him
21 excused.

22 MR. MAZZEO: Judge, I think Mr. Joyce had
23 expressed at one point when Mr. Roberts had made a
24 reference to what he might have said the day before.
25 He said he wanted to clarify something, and he wasn't

1 clear about what it was, but he thought that he had
2 been misquoted. And so I -- I don't think -- I would
3 like to traverse Mr. Joyce just to discuss this topic
4 with him because I'm not certain that he was definitive
5 in being biased or not being able to follow the rule of
6 law, so ...

7 THE COURT: I think he said that the
8 plaintiffs wouldn't want him on the jury unless the
9 plaintiff was in a wheelchair.

10 MR. MAZZEO: Well, Judge, I mean, we also
11 have jurors who will say things to get out of a trial.
12 Doesn't mean that --

13 THE COURT: True.

14 MR. MAZZEO: -- that -- and we have jurors
15 who are skeptical. It doesn't mean they're biased. So
16 they make statements that may not actually reflect
17 their -- their values, so it's -- I would like to
18 question him briefly about that topic to see if -- if
19 that's indeed the case. And if so, I'll withdraw the
20 objection. But at this point, I'm not going to
21 stipulate.

22 THE COURT: You guys want to talk to him?

23 MR. STRASSBURG: Judge, we also would claim
24 the right to question the juror before a ruling is made
25 on this. We believe that he has been subjected to an

1 erroneous description of the preponderance of evidence
2 standard in this case. The preponderance of the
3 evidence is that -- that the jurors can be as sure as
4 they want to be about whether the scales have tipped or
5 not. They have been presented the law in the sense of
6 you get to be -- you get to have 49 percent lack of
7 confidence that you're correct and the plaintiffs still
8 wins. That's an erroneous statement of the law.
9 And -- and I don't think that the plaintiffs should be
10 allowed to capitalize on leading them astray like that.
11 And naturally, Mr. Joyce is -- is reacting in
12 opposition to what he perceives to be something that's
13 unfair. And there's good reason for that because it's
14 not a correct statement of the law.

15 So based on that, we think that you should
16 not excuse him yet until we have a chance to present
17 him our understanding of the preponderance of the
18 evidence standard.

19 Thank you, Judge.

20 MR. ROBERTS: Your Honor, I think it's a
21 waste of time because even if you want to nitpick the
22 preponderance statements, you can't come back under
23 Jitnan from, You have to be in a wheelchair before I
24 could award pain and suffering. He was very clear on
25 that. And then as you said, I followed it up with, So

1 since my client's not in a wheelchair, she doesn't want
2 you on this jury, and he said yes. I don't see how you
3 come back from that under Jitnan.

4 THE COURT: I'm going to let them ask him
5 questions.

6 MR. ROBERTS: Thank you, Judge.

7 MR. MAZZEO: Thank you, Judge. Have a good
8 lunch.

9 THE COURT: Is that the only one?

10 MR. MAZZEO: Oh, sorry.

11 MR. ROBERTS: And -- and I'm -- I'm --
12 probably shouldn't preface this. It's not good
13 advocacy to say I'm not sure I got there with these two
14 jurors.

15 MR. MAZZEO: Let me get that down.

16 MR. ROBERTS: But I don't believe -- I don't
17 believe either one of them have really stated that they
18 could be fair and impartial and --

19 MR. STRASSBURG: Which ones?

20 MR. ROBERTS: -- on the issues of pain and
21 suffering, and maybe I'll get a stipulation. Maybe the
22 Court agrees. I would move to excuse Mr. Brandon,
23 Badge 3, and Mr. Solomon, Badge 1.

24 And as part of the rationale for Mr. Solomon,
25 I'd point out in the jury questionnaire where he hates

1 everyone. He says he cannot award pain and suffering.
2 So even if he says so now, you know, I still don't
3 know, based on the totality of the evidence, whether
4 he's really articulated he can be fair and impartial.

5 MR. MAZZEO: And I would agree with
6 Mr. Roberts that he's probably uncertain as to whether
7 he has it for cause. We would like to traverse both of
8 them.

9 THE COURT: I wrote down similar notes as to
10 what you just said. Mr. Solomon said he's not sure he
11 can award pain and suffering, but that doesn't mean he
12 can't.

13 MR. ROBERTS: Right.

14 THE COURT: Mr. Brandon says that he thinks
15 he's biased against plaintiffs who bring lawsuits but
16 doesn't necessarily assume that the plaintiff in this
17 case brought a frivolous lawsuit, and he thinks that
18 you're starting with even scales.

19 MR. ROBERTS: Yes.

20 THE COURT: So I don't think that you have
21 met the burden to excuse him for cause at this point,
22 so we'll leave them where they are for now.

23 MR. MAZZEO: So when we return, we resume
24 two -- we only have to traverse, then, Mr. Joyce, not
25 Mr. Solomon or Mr. Brandon.

1 THE COURT: Well, I'm going to let him keep
2 going, and you can get to him when you get to him.

3 MR. MAZZEO: Well, I think he's already moved
4 to --

5 MR. ROBERTS: I think --

6 THE COURT: You want me to let them go?

7 MR. ROBERTS: I think I'd rather be having
8 them traverse Mr. Joyce just because if Mr. Joyce is
9 going to be replaced, I'd rather get the new panel
10 member up there, so like I said, I'm going to let them
11 intrude on my voir dire briefly.

12 THE COURT: We'll let them do that. Bring
13 them back. We'll let you guys do Mr. Joyce first and
14 then we'll move on.

15 THE MARSHAL: Juror No. 290 wanted to speak
16 to you out of the presence of the rest of the jury.

17 THE COURT: 291?

18 THE MARSHAL: 290. He's -- he's out in the
19 hallway.

20 THE COURT: Okay.

21 THE MARSHAL: Bring him in?

22 THE COURT: Yeah, let's bring him in.

23 MR. ROBERTS: The brother and sister walk
24 home from school, Your Honor.

25 THE COURT: Hello, Mr. Lambert.

1 PROSPECTIVE JUROR NO. 290: How you doing?

2 THE COURT: Badge No. 290; right?

3 PROSPECTIVE JUROR NO. 290: Yes, sir.

4 THE COURT: What can I do for you?

5 PROSPECTIVE JUROR NO. 290: Well, yesterday
6 when we were doing the explanations on why we should be
7 excused, I didn't really feel comfortable speaking in
8 front of everybody because I'm not really a talker.
9 But, you know, my mom is a single mother on welfare,
10 and I -- I -- whatever I do online and whatever I make
11 goes to her. And, you know, I really can't come
12 tomorrow. If I -- if I end up staying, I cannot be
13 here tomorrow. I have to get my little brother and
14 sister. She can't afford, you know, capable to watch
15 the kids or what is it called? Safekey. We just -- we
16 can't do it right now. My mom's in a really financial
17 burden.

18 THE COURT: How far do you live from the
19 school, where you pick these kids from school?

20 PROSPECTIVE JUROR NO. 290: A mile and a
21 half. I walk and get them usually, and I live on Lake
22 Mead and Nellis way down there.

23 THE COURT: And the kids are how old?

24 PROSPECTIVE JUROR NO. 290: My little sister
25 is 12, and -- wait. My little sister is 13. My little

1 brother is 8.

2 THE COURT: And they can't walk home from
3 school by themselves?

4 PROSPECTIVE JUROR NO. 209: My little brother
5 cannot. My little sister, you know, debatable. But my
6 little brother, no.

7 THE COURT: All right. Go ahead. We'll
8 excuse you. Go back down to the third floor. Let them
9 know you've been excused by Department 30.

10 PROSPECTIVE JUROR NO. 290: All right. Thank
11 you.

12 THE COURT: Thank you, sir. I ordinarily
13 don't do that.

14 MR. STRASSBURG: We understand, Judge. Very
15 fair.

16 MR. ROBERTS: We understand. It's -- it's
17 good those kids have someone --

18 THE COURT: It is.

19 MR. ROBERTS: -- for them.

20 THE COURT: They need somebody to take care
21 of them.

22 MR. STRASSBURG: And you don't know the
23 neighborhood they have to walk through.

24 THE COURT: I do.

25 MR. STRASSBURG: Oh, you do.

1 THE COURT: I didn't grow up too far away
2 from Lake Mead and Nellis. That's part of the reason I
3 let them go.

4 All right. Thanks, guys. See you back at
5 1:00 o'clock. Off the record.

6 (Whereupon a lunch recess was taken.)

7 THE MARSHAL: Jury entering.

8 (The following proceedings were held in
9 the presence of the jury.)

10 THE MARSHAL: Jury is present.

11 THE COURT: Go ahead and be seated. Welcome
12 back, folks. We're back on the record, Case
13 No. A637772. What we're going to do now is defense
14 counsel's going to ask some questions of Mr. Joyce,
15 so -- not to single you out or anything. But sorry.

16 All right. Mr. Mazzeo.

17 MR. MAZZEO: Thank you, Your Honor.

18

19 VOIR DIRE EXAMINATION

20 MR. MAZZEO: Good afternoon, everyone.

21 THE COURT: Hold on. Can we give him the
22 mic, Tom? He kind of has a soft voice. Kristy's
23 having a hard time hearing him, so hopefully it works.

24 Working?

25 PROSPECTIVE JUROR NO. 029: That for me?

1 THE COURT: Put it close to your mouth so
2 that it actually works. Thank you.

3 PROSPECTIVE JUROR NO. 029: Test, test.

4 MR. MAZZEO: We just returned from lunch.
5 Good afternoon, everyone.

6 IN UNISON: Good afternoon.

7 MR. MAZZEO: But it's not my time yet. As
8 the judge told you, I can only ask Mr. Joyce some
9 questions.

10 Mr. Joyce, good afternoon.

11 PROSPECTIVE JUROR NO. 029: Good afternoon.

12 MR. MAZZEO: Before lunch, you had made a
13 statement, a reference to -- in response to
14 Mr. Roberts' question about awarding money for pain and
15 suffering.

16 Do you recall that line of questioning?

17 PROSPECTIVE JUROR NO. 029: Yes.

18 MR. MAZZEO: Okay. And you had made a
19 statement about unless the -- something to the effect,
20 I'll paraphrase you. Unless the person or the
21 plaintiff is in a wheelchair, comes in here in a
22 wheelchair, you wouldn't award money for pain and
23 suffering. Or something to that effect?

24 PROSPECTIVE JUROR NO. 029: Something to that
25 effect. I think wheel them in. But yeah, it's --

1 MR. MAZZEO: So what I wanted to ask you is,
2 I -- my guess is, as I'm sitting here listening to you,
3 I'm thinking is that -- is that a figure of speech
4 where you want to -- Mr. Joyce, you want to see
5 evidence of injury as opposed to, you know, speculation
6 regarding injury, or you want to see actual evidence?

7 PROSPECTIVE JUROR NO. 029: Exactly.

8 MR. MAZZEO: Okay. So if I -- if I -- the
9 literal translation is you don't really need -- in
10 order to sit on a jury and be a member of the jury, you
11 don't need a plaintiff to come in here in a wheelchair,
12 specifically. You just want to see hard evidence
13 before awarding money for pain and suffering.

14 PROSPECTIVE JUROR NO. 029: I want to see the
15 hard evidence, yes.

16 MR. MAZZEO: Okay. So -- now, as -- you
17 received a summons in this case; right?

18 PROSPECTIVE JUROR NO. 029: Yes.

19 MR. MAZZEO: And the summons directed you to
20 come to court.

21 PROSPECTIVE JUROR NO. 029: Yes, it did.

22 MR. MAZZEO: And here you are participating
23 in the jury selection process; right?

24 PROSPECTIVE JUROR NO. 029: Yes.

25 MR. MAZZEO: So you understand that there are

1 certain rules that you have to abide by as -- as a
2 selected juror, as a juror who is summoned; right?

3 PROSPECTIVE JUROR NO. 029: Certain rules?

4 MR. MAZZEO: Certain rules. Specifically,
5 when you got the summons, you had to come here.

6 PROSPECTIVE JUROR NO. 029: Right.

7 MR. MAZZEO: It wasn't optional.

8 PROSPECTIVE JUROR NO. 029: Yeah.

9 MR. MAZZEO: Okay. And -- and also, the --
10 you haven't heard any evidence. The judge will give
11 you the instructions, the rule of law that you have to
12 apply. So we don't make it up. We don't make up what
13 the rule of law is.

14 So knowing that -- and it's hard to process
15 this at this point, but if you can anticipate being in
16 the jury selection room, you're going to be
17 deliberating with other jurors. And if you get the
18 evidence -- at that point, you'll have all the
19 evidence, and if you get the instructions from the
20 Court, do you think, in your heart with sincerity, that
21 you could follow both the rule of law, applying the law
22 to the facts and evidence that you received in this
23 case to make a decision?

24 PROSPECTIVE JUROR NO. 029: No, I wouldn't
25 feel good about it.

1 MR. MAZZEO: You would not.

2 PROSPECTIVE JUROR NO. 029: No.

3 MR. MAZZEO: Why is that?

4 PROSPECTIVE JUROR NO. 029: Like I said
5 before, I think it's overused. I think the monetary
6 damages, the awards, the amounts of money that are
7 handed out sometimes -- I have no idea what this
8 case --

9 MR. MAZZEO: Sure.

10 PROSPECTIVE JUROR NO. 029: -- if it's large
11 or small, but I have a really hard time in my heart
12 seeing people get awarded large amounts of money.

13 MR. MAZZEO: And -- and I understand and I
14 think that's the sentiment --

15 PROSPECTIVE JUROR NO. 029: I would find it
16 very hard to be in a room with a lot of people saying,
17 Yeah, we should go \$5 million. I'm thinking I would
18 be, No. No.

19 MR. MAZZEO: Yeah. No, I understand. And I
20 think the sentiments of many people are these runaway
21 verdicts and the frivolous claims.

22 But you haven't heard any evidence. There's
23 no suggestion that this is a frivolous claim; right?

24 PROSPECTIVE JUROR NO. 029: Right.

25 MR. MAZZEO: So -- so you're just talking

1 about what you've heard in the media, in the news,
2 hearsay.

3 PROSPECTIVE JUROR NO. 029: I'm talking about
4 personal feelings based on everything I see in the
5 news, yes.

6 MR. MAZZEO: But do you have any specific,
7 personal -- do you have any personal experience with
8 any cases where you have a family member, friend,
9 associate that might have been involved in a situation
10 which involved a frivolous type case?

11 PROSPECTIVE JUROR NO. 029: No.

12 MR. MAZZEO: Okay. So it's -- it's all
13 speculation as far as whether you -- you don't know the
14 percentage -- if there's a percentage of frivolous
15 cases versus legitimate cases; right?

16 PROSPECTIVE JUROR NO. 029: I have no idea
17 the percentages, no.

18 MR. MAZZEO: So I guess what we're asking you
19 to do -- and we want everybody to have an opportunity
20 to serve as jurors in a trial. So we're asking you to
21 put aside any preconceived notion and, I guess,
22 skepticism. What I'm picking up from you is -- and
23 there's a difference, do you agree, between skepticism
24 and bias?

25 PROSPECTIVE JUROR NO. 029: Sure.

1 MR. MAZZEO: Okay. It's healthy to have
2 skepticism about something, but you -- the -- the goal
3 and the idea is to have a -- have an open mind to
4 receive the evidence and to base your decision just on
5 the evidence. And so -- so we're not talking about
6 basing it on any preconceived notions you have about
7 other cases. We're talking about this specific case.

8 And it's hard to do it because you haven't
9 received any evidence yet; right?

10 PROSPECTIVE JUROR NO. 029: I have not.

11 MR. MAZZEO: And do you think it would be --
12 after two or three weeks of listening to witnesses on
13 the witness stand and looking at documents that come
14 in, do you think it would be easier then to -- because
15 it's -- it's more concrete, now we have evidence that
16 we can actually discuss and deliberate on, and you get
17 to decide that with seven other jurors, do you think
18 you would be able to do that?

19 PROSPECTIVE JUROR NO. 029: I might be able
20 to decide more along the lines of fault situation, but
21 as far as monetary damages, no, I can't. I have a
22 problem with -- with amounts of money.

23 MR. MAZZEO: Okay. And even though that --
24 even though that may be a -- and I'm just trying to
25 identify, you know, more specifically what it is.

1 Do you think that -- do you think injured
2 people should not be awarded compensation for injuries?

3 PROSPECTIVE JUROR NO. 029: No, I think they
4 should be awarded some compensation for injuries, for
5 sure. Just like I think one of the gentleman down
6 there was saying earlier, hospital, you know, pain and
7 suffering, you know, to a point. And -- and all the
8 bills, the car, whatever got destroyed and, you know,
9 help them out in the future.

10 MR. MAZZEO: I appreciate that, Mr. Joyce.
11 And I think you had said -- I think you said, you would
12 have to see -- I wrote this down. You would have to
13 see the evidence first before you can really make a
14 decision. Because I think Mr. Roberts asked you about,
15 well, do you have in your mind a specific cap? And --
16 and I -- and I think there was some colloquy between
17 you and Mr. Roberts. And you said, well, you'd have to
18 see the evidence.

19 So it seems like you -- out here as jurors,
20 you're not -- you don't have any evidence to -- to
21 deliberate on. So it's very hard to conceptualize
22 being two weeks down the road where you have all the
23 evidence.

24 So is it fair to say that -- that you would
25 consider -- you'd say -- you'd look at the evidence in

1 a case, and that -- that your decision would be based
2 solely on the evidence and not on any preconceived
3 ideas about the justice system or other types of cases?

4 PROSPECTIVE JUROR NO. 029: Not sure how to
5 answer that.

6 MR. MAZZEO: Okay. Do you have any problem
7 with the system of justice that we have for
8 compensating injured individuals?

9 PROSPECTIVE JUROR NO. 029: The mechanics of
10 it, no, I don't have a problem with it.

11 MR. MAZZEO: And so -- and the mechanics of
12 it involve receiving evidence --

13 PROSPECTIVE JUROR NO. 029: Right.

14 MR. MAZZEO: -- and making a decision and --
15 and following the rule of law that allows injured
16 individuals to receive compensation for various things.
17 Medical, which was said, lost wages, pain and suffering
18 is one of them; right?

19 PROSPECTIVE JUROR NO. 029: Correct.

20 MR. MAZZEO: And I believe you said you
21 didn't have a problem with awarding money for pain and
22 suffering. In your mind, though, as you sit here, what
23 I'm sensing is that you don't know how much, like
24 you -- there would be -- at some point, there would be
25 a cap of some sort in your mind.

1 PROSPECTIVE JUROR NO. 029: Yep.

2 MR. MAZZEO: Okay. So you would be able to
3 award money for pain and suffering? Some.

4 PROSPECTIVE JUROR NO. 029: To a point.

5 MR. MAZZEO: And we can't discuss figures
6 because we don't have any evidence yet. So, again,
7 this is just the jury selection process.

8 And when you say "to a point," what is that
9 point based on? Is it based on your perception or your
10 evaluation of the evidence?

11 MR. ROBERTS: May we approach, Your Honor?

12 THE COURT: Sure.

13 (A discussion was held at the bench,
14 not reported.)

15 MR. MAZZEO: May I proceed, Your Honor?

16 THE COURT: You may.

17 MR. MAZZEO: Thank you.

18 Mr. Joyce, I believe -- I think I started --
19 or the last question. And so with regard to -- and you
20 told us, and we appreciate your candor. We all do.
21 It's -- I'm sorry.

22 PROSPECTIVE JUROR NO. 029: I hope so.

23 MR. MAZZEO: No, yeah, we do. It helps with
24 this jury selection process.

25 So with regard to the last question I was

1 going to ask you, in evaluating -- after getting the
2 evidence and evaluating it, how much -- because you
3 never gave us a cap, like, I'm never awarding more than
4 \$10,000. I won't award more than \$500 million. By way
5 of example, if someone is paralyzed in a motor vehicle
6 accident, would you award pain and suffering?

7 PROSPECTIVE JUROR NO. 029: Paralyzed for
8 life?

9 MR. MAZZEO: Yes.

10 PROSPECTIVE JUROR NO. 029: Yes.

11 MR. MAZZEO: If someone is -- is injured and
12 becomes a quadriplegic as a result of a motor vehicle
13 accident, would you award pain and suffering?

14 PROSPECTIVE JUROR NO. 029: Yes.

15 MR. MAZZEO: And -- and the -- there may --
16 whatever the limit is on that might depend on the
17 evidence regarding the pain and suffering that this
18 individual suffers with on a daily basis and will for
19 the rest of his or her life; right?

20 PROSPECTIVE JUROR NO. 029: Uh-huh.

21 MR. MAZZEO: "Yes"?

22 PROSPECTIVE JUROR NO. 029: (Nods head.)

23 MR. MAZZEO: And -- so one thing I didn't
24 hear from you is that you don't have any -- as you
25 walked into this courtroom yesterday and even today,

1 you don't have a specific number in your mind that's --
2 that says, I will not go above this amount.

3 So when we say "cap," you don't really have a
4 specific number amount in terms of a cap that you'd put
5 on any case; right?

6 PROSPECTIVE JUROR NO. 029: No, I have no
7 specific dollar amount, just walking into the
8 courtroom, any specific dollar amount, nor do I think
9 of the word "cap."

10 MR. MAZZEO: So basically whatever award you
11 would give would be based on your evaluation of what a
12 reasonable compensation should be for whatever injuries
13 are allowed by the Court; right?

14 PROSPECTIVE JUROR NO. 029: Repeat that,
15 please. I'm sorry.

16 MR. MAZZEO: If I can remember it.

17 So your evaluation or your decision with
18 regard to awarding any compensation would be based on
19 your -- let me rephrase that.

20 Your -- your determination or decision about
21 awarding money for pain and suffering -- for any
22 damages would be based on your reasonable evaluation of
23 the evidence; is that fair to say?

24 PROSPECTIVE JUROR NO. 029: Yes.

25 MR. MAZZEO: Okay. Thank you.

1 Thank you, Judge.

2 THE COURT: Mr. Strassburg?

3 MR. STRASSBURG: Judge, I don't see the point
4 of prolonging this, so I won't ask any questions.
5 Thank you.

6 THE COURT: All right. Come on up, guys.

7 (A discussion was held at the bench,
8 not reported.)

9 THE COURT: All right. Mr. Roberts, go ahead
10 and proceed with the -- your questioning.

11 MR. ROBERTS: Thank you so much.

12 Just my turn. Doesn't mean you're off the
13 hook, Mr. Joyce. I just want to want to follow up --

14 PROSPECTIVE JUROR NO. 029: Bring it on.

15 MR. ROBERTS: -- just briefly on those
16 things.

17 And as I was listening to you and hearing you
18 say to award pain and suffering, you could do it, but
19 you want to see some concrete evidence; right? Did I
20 hear you say something like that? I'm paraphrasing, so
21 tell me back if I'm right or if I'm on target.

22 PROSPECTIVE JUROR NO. 029: I think I said
23 words to the effect, Somebody would have to come in on
24 a stretcher. I have to see it, and I have to see you
25 guys present all your evidence and make sure the guy on

1 the stretcher isn't faking before we consider any type
2 of monetary award.

3 MR. ROBERTS: Okay. And then -- and -- and
4 with the apologies to Mr. Retzlaff, I'm going to use
5 his injury which you just heard about.

6 So in this case, you don't need an X-ray
7 because you got a collarbone sticking up in the air.
8 So that's hard evidence, and you could award pain and
9 suffering for that; right?

10 PROSPECTIVE JUROR NO. 029: He did it
11 himself.

12 MR. ROBERTS: Had someone caused that injury
13 through negligence, you could award pain and suffering
14 to Mr. Retzlaff.

15 PROSPECTIVE JUROR NO. 029: Sure.

16 MR. ROBERTS: But now, it's years later. His
17 collarbone is back in. You can take an X-ray. No one
18 can see anything. The only way to know Mr. Retzlaff is
19 still in pain and can't do some of the activities he
20 wants to do is because he says so.

21 Can you award pain and suffering for that in
22 the future, the fact that he can't do the activities he
23 used to do, the fact that it hurts when he puts on his
24 seat belt? Could you award pain and suffering in the
25 future for that even though the only hard evidence is

1 he says so, that he's still in pain?

2 PROSPECTIVE JUROR NO. 029: Probably not.

3 MR. ROBERTS: And -- and this is not just
4 Mr. Retzlaff. This is something where if it's just
5 some -- if you have to rely on someone's description of
6 their pain without medical testimony, without an X-ray,
7 without hard proof, you have trouble; right?

8 PROSPECTIVE JUROR NO. 029: I have trouble
9 with what? I'm sorry.

10 MR. ROBERTS: Relying on something less than
11 solid medical evidence. In other words, we're talking
12 about the 95 percent certainty. You want to be able to
13 see hard proof so you can be 95 percent certain that
14 they're still in pain because you can see it.

15 PROSPECTIVE JUROR NO. 029: Uh-huh.

16 MR. ROBERTS: Right?

17 PROSPECTIVE JUROR NO. 029: Yes.

18 MR. ROBERTS: Thank you, sir.

19 You just threw out a number, and I want to
20 make sure that I understand it, and it may have been
21 just an example, but you -- you -- you threw out the
22 \$5 million number?

23 PROSPECTIVE JUROR NO. 029: I did. No, I
24 didn't. I don't know that I did.

25 MR. ROBERTS: I thought I heard you say

1 5 million as an example of something too high.

2 PROSPECTIVE JUROR NO. 029: Okay. If he says
3 I did, I did.

4 MR. ROBERTS: And whether it's the 5 million
5 or not, I don't need to know.

6 But without knowing anything about the facts,
7 can you already, as you sit here, say it's really going
8 hard for me to award over this amount?

9 PROSPECTIVE JUROR NO. 029: Yes, it's going
10 to be very hard for me to award a large amount of
11 money. Again.

12 MR. ROBERTS: Okay. Thank you.

13 PROSPECTIVE JUROR NO. 029: I don't know how
14 else to put it.

15 MR. ROBERTS: Mr. Roberts, I'm going to come
16 back to you for a minute.

17 And thank you, Audra. I told you she helps
18 keep me organized.

19 And after we talked again over lunch, I went
20 back and -- and -- and took a look at your
21 questionnaire, and I wanted to follow up on some of
22 your questionnaire answers.

23 When the judge was talking to you yesterday
24 morning, you said you had some preconceptions about the
25 Glen Lerner firm based on your experiences as a claims

1 adjustor.

2 PROSPECTIVE JUROR NO. 058: (Nods head.)

3 MR. ROBERTS: Can you tell me more about what
4 those preconceptions are?

5 PROSPECTIVE JUROR NO. 058: Having done the
6 work for multiple years, I've had several, let's say,
7 more than a few cases come across my desk that were
8 handled by that firm and/or subordinates within the
9 firm. And there's a certain pattern of -- of
10 submission for the cases. So there's a preconception
11 of what they're looking for and how they're doing.

12 MR. ROBERTS: And -- and what is that
13 preconception?

14 PROSPECTIVE JUROR NO. 058: Basically, it's a
15 business. Get them in, get them out. Let's try to get
16 our offer -- our demand out and get our offer back and
17 finish the case.

18 MR. ROBERTS: All right. And I think you may
19 have said something else, that your opinion of
20 attorneys was that they're trying to make money not
21 help people. Sometimes.

22 PROSPECTIVE JUROR NO. 058: I don't know if I
23 said that, but maybe I did.

24 MR. ROBERTS: I don't want to misquote.
25 Looking to get money more than help people.

1 PROSPECTIVE JUROR NO. 058: Okay.

2 MR. ROBERTS: Does that sound better?

3 PROSPECTIVE JUROR NO. 058: Yeah, that's
4 probably closer to the truth.

5 MR. ROBERTS: So -- so that's a preconception
6 that you have maybe about the law firm.

7 Did -- did that bleed over -- do you have any
8 preconceptions about the merits of a case that was
9 handled by Glen Lerner, whether it's more likely to be
10 frivolous because he's handling it?

11 PROSPECTIVE JUROR NO. 058: So every case is
12 presented with its own set of facts, and I take those
13 as they are. I think what I'm referring to is -- is a
14 general types of cases maybe. You might see -- let's
15 say in a year, let say I see 20 cases from his office,
16 and there's a lot of similarity in -- in the amount of
17 treatment that a person has, the injuries that are
18 stipulated, and, you know, they come into this and the
19 demands are very close. So those are kind of the
20 preconceptions I'm talking about. Kind of, you look at
21 something, you see something, okay.

22 But if the facts are more significant, the
23 facts are more significant. I don't care if it's Glen
24 Lerner or anybody else. You know, if somebody gets
25 whacked and it's serious damage to your car and you got

1 serious injuries, it's serious injuries. It's laid
2 out. I'm talking more like your soft tissue, minimal
3 soft-tissue, low-impact-type accidents, that kind of
4 stuff.

5 MR. ROBERTS: And -- and that -- that
6 actually was going to be my next question was about --

7 PROSPECTIVE JUROR NO. 058: Okay.

8 MR. ROBERTS: -- what you said where you were
9 sort of suspicious of soft-tissue, low-impact
10 accidents.

11 And -- and soft tissue is sort of --
12 different people have different thoughts on what is a
13 soft-tissue injury. Describe to me -- when you said
14 you're suspicious of soft-tissue injury, what -- define
15 "soft-tissue injury" for me.

16 PROSPECTIVE JUROR NO. 058: Well, to me, soft
17 tissue is sprains, strains, bruises. As I told you,
18 I'm a former athlete. So for me, I -- I dealt with
19 those on a regular basis, and -- and you get knocked
20 around and you keep moving. People grow up in sports.
21 They play football. I'm a coach now. I have kids that
22 will hurt on a regular basis. They -- they take a
23 week. They're back to -- to normal.

24 You know, I think most of us as humans can
25 sustain a certain amount of physical jarring. It's

1 just part of the nature. And, you know, something
2 that's not, like I said, a wham. You know, you're
3 looking at somebody's car that's completely totaled,
4 and, you know, car ran through there, you expect them
5 to be seriously hurt. But, you know, low impact, I
6 don't know.

7 MR. ROBERTS: So soft tissue, to make sure I
8 understand, is injury to muscle, ligaments, things that
9 are going to heal and not have a permanent disabling
10 effect.

11 PROSPECTIVE JUROR NO. 058: Generally
12 speaking. I mean, obviously in my -- in my previous
13 occupation, I've seen people claim, you know, spinal
14 injuries where they were considering setting a disk or
15 this or that. And I don't consider those necessarily
16 low -- I mean, I don't consider those necessarily soft
17 tissue. But they might be of a low-impact nature in
18 which they're claiming was directed as a result of an
19 accident or something.

20 MR. ROBERTS: Okay. So -- so now I'm going
21 to have to ask you to define "low impact."

22 What do you what -- you're looking at a
23 claims file. You're at work. You're suspicious of low
24 impact. What type of speeds are you looking for? Are
25 you looking more for damage to the vehicle and whether

1 that correlates to the injury?

2 PROSPECTIVE JUROR NO. 058: A combination of
3 both. If someone's driving a Ford F-250 dually, you
4 know, that sits up, you know, 6 inches off the --
5 8 inches off the ground and, gets tapped by a
6 Volkswagen, I don't know. But if you flip that and
7 it's the -- the F-250 that's hitting the Volkswagen,
8 there's some disparities of weight, and there's
9 possibility that, you know, there might be a little
10 more substantive impact in that kind of situation. So,
11 again, you got to look -- you got to look at the
12 weighted picture.

13 MR. ROBERTS: And looking just -- and I
14 understand the difference in mass and how that could
15 cause things to vary, but just if you're thinking low
16 impact speed, 5, 10, 15, 20, 30, 40, where does that
17 lie?

18 PROSPECTIVE JUROR NO. 058: Five to 15 miles
19 an hour, I would think, is probably low impact. I
20 mean, again, it's -- it's kind of a subjective number.
21 It's not purely, you know, scientifically this is --

22 MR. ROBERTS: Sure.

23 PROSPECTIVE JUROR NO. 058: Yeah.

24 MR. ROBERTS: I'm just trying to get not the
25 right answer, the scientific answer, but your answer.

1 PROSPECTIVE JUROR NO. 058: My answer, yeah.
2 So, again, if the description of the accident is, Hey,
3 I was, you know, backing out of a parking lot. I just
4 started my car, probably not roaring out, generally
5 that doesn't happen. I -- I was just picking up from a
6 stop sign, and the guy in front of me stopped and
7 (noise), again, it's we -- may only went about 4 feet,
8 not going to have a whole lot of speed in that. So
9 those kind of things. Just the nature of the
10 description of the accident.

11 MR. ROBERTS: And you mentioned spine.

12 PROSPECTIVE JUROR NO. 058: Uh-huh.

13 MR. ROBERTS: Even though a spine is not a
14 soft tissue; right?

15 PROSPECTIVE JUROR NO. 058: That's what I
16 said. I said not necessarily a soft tissue.

17 MR. ROBERTS: Is it fair to say that you're
18 also suspicious of people claiming spine injuries in
19 automobile accidents?

20 PROSPECTIVE JUROR NO. 058: In low-impact
21 ones, yes. But not in all cases. But in
22 low-impact-type cases you might -- I won't say
23 "suspicious" is the word. You'd have to look at and
24 try to make a qualified assessment as to, Is this seem
25 plausible that this occurred from this accident?

1 MR. ROBERTS: And are you like Mr. Joyce, you
2 want to look and see hard medical evidence and not just
3 a -- a subjective complaint?

4 PROSPECTIVE JUROR NO. 058: Well, you know,
5 any time you receive a package from you guys, it has
6 medical evidence that is -- that is support whatever is
7 being asked of. So that's part of the review process.
8 As an adjustor, you go through that stuff. You try to
9 see if the information makes sense. Lot of times,
10 we'll ask for additional records to see if there's
11 information that -- additional records that support
12 or -- or diminish what you submitted. So there's a
13 process. So it's not just like that.

14 MR. ROBERTS: So are you biased against
15 people who claim spine injuries out of automobile
16 accidents?

17 PROSPECTIVE JUROR NO. 058: I don't know if I
18 would say biased. I would just say that
19 professionally -- I am suspicious professionally, and I
20 don't -- I don't know how you want to perceive that,
21 but it's part of my job to -- to say or look at -- at
22 the stuff and say, Is this plausible?

23 MR. ROBERTS: So let me use the example that
24 Mr. Mazzeo gave: Skeptical? You got to prove it to
25 me, and I'm not going to believe it till it's proven,

1 or I've seen a whole lot of frivolous claims for
2 injuries, and you're going to have to really prove it
3 to me more than someone who doesn't have my personal
4 life experiences?

5 PROSPECTIVE JUROR NO. 058: So I can only go
6 with the aggregate of my life experiences. And they
7 are what they are. You know, when you've seen multiple
8 types of cases, you tend to have a certain assessment
9 of what you expect to see out of those cases.
10 Something doesn't fit that ordinary, then you're
11 obviously going to have skepticism about it.

12 MR. ROBERTS: We sit here today, we got a
13 claim being made for spine injuries, and it's being --
14 Glen Lerner's involved.

15 Do you have any opinion about the merits of
16 the case as you sit here before you've seen or heard
17 any evidence?

18 PROSPECTIVE JUROR NO. 058: No. Well, I
19 don't have any opinion because I don't know the case.
20 I mean --

21 MR. ROBERTS: Right.

22 PROSPECTIVE JUROR NO. 058: If -- if the case
23 is Glen Lerner's office presenting it, I'm assuming
24 that he's bringing me an injury claim. Generally, in
25 my previous experience, he doesn't go to court that

1 often. So for him to go to court, a little more
2 serious. And -- and, again, it's just my previous
3 experiences.

4 MR. ROBERTS: And if you were selected to the
5 jury and you saw the evidence that satisfied you,
6 that -- your previous dealings with the Lerner firm
7 would not impact the way you evaluated the case or your
8 assessment of damages?

9 PROSPECTIVE JUROR NO. 058: I'm not going to
10 impact the case based on the name Glen Lerner. I want
11 to evaluate the case based on what you present.

12 MR. ROBERTS: Okay.

13 PROSPECTIVE JUROR NO. 058: As I just stated
14 to you. Whatever -- whatever it is, it is. I will
15 make the assessment based on that.

16 MR. ROBERTS: Thank you, Mr. Roberts. I
17 appreciate it.

18 And make sure I get it -- read the writing
19 correctly.

20 PROSPECTIVE JUROR NO. 058: You probably
21 can't read it.

22 MR. ROBERTS: There were a couple of words I
23 was having trouble with.

24 PROSPECTIVE JUROR NO. 058: Sometimes I can't
25 read my own writing, but I'll try my best.

1 MR. ROBERTS: So in Question 52, which asks
2 about limits on how much money should be allowed to
3 award a person for pain and suffering in a motor
4 vehicle case, you put yes, and -- and other people have
5 talked about that.

6 PROSPECTIVE JUROR NO. 058: I couldn't
7 remember my answer, to be honest with you.

8 MR. ROBERTS: Here -- and so I went back and
9 took another look before I asked you about it.

10 But here, "If yes, please explain why." What
11 you said is "Should be limited by amount need to care
12 for or maintain that person."

13 PROSPECTIVE JUROR NO. 058: Okay.

14 MR. ROBERTS: All right. So here's what I
15 want to understand: The amount needed to care for or
16 maintain a person is paying for the things that -- to
17 fix what can be fixed; right?

18 PROSPECTIVE JUROR NO. 058: That's part of
19 it, yeah.

20 MR. ROBERTS: The pain and compensation for
21 pain has nothing to do with the money that's needed to
22 care for or maintain that person. It's money just for
23 the pain, and it's on top of the money to maintain and
24 care for.

25 PROSPECTIVE JUROR NO. 058: Yes, sir.

1 MR. ROBERTS: And your jury sheet seems to
2 say you have a problem with that, the amount that's
3 over the amount to care for or maintain the person.

4 Do you still feel that way?

5 PROSPECTIVE JUROR NO. 058: I think -- I
6 think my answer stipulates that every individual, if
7 they have sustained an injury that's -- that's the
8 responsibility of somebody else and they can't do
9 something, then we need to help them be able to
10 maintain that for whatever the time they need to be.

11 Awarding above that amount, I think that --
12 to me, it's inclusive of that prospect. If a person is
13 paralyzed and they can no longer perform certain
14 functions, but they have to have, let's say, nurses
15 come in on a regular basis, well, you're going to
16 compensate them in a way that that takes care of them
17 for whatever length of time it needs to be taken care
18 of.

19 Obviously there's always some portion that is
20 considered compensation for the anguish that goes along
21 with it. And there is some portion, I don't know if
22 it's a large number, but I do believe that that's
23 appropriate.

24 MR. ROBERTS: Okay. So going back to
25 Mr. Retzlaff, his injuries have all healed. He doesn't

1 need any more medical treatment. There's nothing to,
2 as you said, to care for or maintain him because of his
3 injury, but it's just pain, and he can't do the things
4 he used to do or if he does them, it hurts.

5 Can you award money for that?

6 PROSPECTIVE JUROR NO. 058: If I -- if I
7 think that the evidence and the record support that he
8 truly has pain. And that it's continuous and a direct
9 result of -- of the -- the accident or whatever it is
10 that caused it. But I would have to make that
11 connection.

12 MR. ROBERTS: And by the record, is it enough
13 if the only evidence you have is that he tells you it's
14 still -- he's still in pain?

15 PROSPECTIVE JUROR NO. 058: Then it's just a
16 subjective whether I believe him or don't believe him.

17 MR. ROBERTS: If you believe him, you're okay
18 and you can award it?

19 PROSPECTIVE JUROR NO. 058: Yeah, I'll do
20 something. I would do something. I would award
21 something if I felt that it was appropriate. And would
22 not award if I didn't think it was appropriate.

23 MR. ROBERTS: If justified by the facts and
24 evidence, could you award a really big number just for
25 pain?

1 PROSPECTIVE JUROR NO. 058: I don't know. I
2 mean, I've always done it as a cohesive part of the
3 process. So I can't see myself just focusing on one
4 aspect alone. It's all -- it's all encompassing.
5 Obviously, we do add for a certain period, but, you
6 know, there has to be that other component in there
7 also.

8 MR. ROBERTS: It's possible that you get to
9 the end of this case, if you're selected for the jury,
10 and there are going to be separate lines, separate
11 lines for medical and a separate line for pain, and
12 you're just going to have to focus on that one element
13 and put a number in there.

14 Are you going to have trouble doing that?

15 MR. TINDALL: May we approach, Your Honor?

16 THE COURT: Sure.

17 (A discussion was held at the bench,
18 not reported.)

19 THE COURT: Go ahead.

20 MR. ROBERTS: And I -- I got distracted. Did
21 you finish your answer on that, the -- would you have
22 trouble -- if you were required to put a number just
23 for pain and suffering on the verdict form, would you
24 have trouble separating out and putting a number for
25 that?

1 PROSPECTIVE JUROR NO. 058: When after you --
2 when I thought about it a little more, probably
3 wouldn't have a problem putting a number. It's part of
4 a process. But when I do the evaluations, you know,
5 you look at here are the actual damages, and then what
6 do you pay above it. So we don't have a separate line
7 per se that we come up with. Just here's your offer.

8 MR. ROBERTS: Okay. So you -- you're sort of
9 equating the process in the jury and the process that
10 you do to reach a number as a claims examiner.

11 PROSPECTIVE JUROR NO. 058: Unfortunately.
12 That's the expertise or -- that's the experience I
13 bring to the table.

14 MR. ROBERTS: If -- if the Court instructs
15 you that you're to follow a process and consider
16 factors that perhaps you don't consider in your job
17 experience adjusting claims, you going to be able to do
18 it the way the judge tells you to do it?

19 PROSPECTIVE JUROR NO. 058: Absolutely.

20 MR. ROBERTS: Excellent. Thank you, sir.

21 We were talking about pain before lunch. And
22 all of you went through and told me a number that you
23 experienced when you -- when you had a very painful
24 experience in your life, and you subjectively told me a
25 number. At least most of you did. I think one person

1 may have had trouble putting a number on it. But now
2 we're -- picture, you know, just the -- the courtroom,
3 not this courtroom, we've been talking about the
4 judicial system and just people in general that bring
5 claims where pain and suffering is an element.

6 Some people feel that most people would
7 exaggerate their pain if that meant they got more money
8 in the courtroom. Some people don't feel that way and
9 are willing to listen but really are not presuming that
10 they're going to exaggerate.

11 Who thinks that most people would exaggerate
12 their pain to get more money from a lawsuit? Does
13 anyone feel that way?

14 PROSPECTIVE JUROR NO. 029: I do.

15 MR. ROBERTS: Okay. Tell me about that,
16 Mr. Joyce.

17 PROSPECTIVE JUROR NO. 029: That's my
18 feelings. I just told you that's how I feel.

19 MR. ROBERTS: Is that based on personal
20 experiences that you've had?

21 PROSPECTIVE JUROR NO. 029: It's based on
22 lawyers and their clients going to get the best results
23 they possibly can.

24 MR. ROBERTS: Is that so -- so you think that
25 most people would do it, not just some people, most

1 people.

2 PROSPECTIVE JUROR NO. 029: I think that most
3 lawyers -- yeah, most lawyers and most clients when
4 they come in a courtroom, if they got to stretch it a
5 little bit, yeah, I think that's a fact. In my mind, I
6 think that's true.

7 MR. ROBERTS: So you just broadened my
8 question. You think most lawyers who are bringing
9 claims are going to exaggerate their claims to get more
10 money.

11 PROSPECTIVE JUROR NO. 029: Yes.

12 MR. ROBERTS: So who else here agrees with
13 either one of those points? Is there anyone else who
14 feels that way?

15 Mr. Solomon.

16 PROSPECTIVE JUROR NO. 001: The fact --

17 MR. ROBERTS: Badge No. 1. You're an easy
18 one. I can remember yours.

19 PROSPECTIVE JUROR NO. 001: I believe that
20 some people do exaggerate on it. Somebody rear-ends
21 you or something, Oh, I got a bad back, and it's just a
22 quick way to get some money.

23 MR. ROBERTS: You said "some people" versus
24 Mr. Joyce said "most people."

25 You think most people or just some people

1 might do that?

2 PROSPECTIVE JUROR NO. 001: I mean, to be
3 truthful, I only trust about 20 people on this planet.
4 So it's kind of a crap shoot, to be honest with you.

5 MR. ROBERTS: So most people in your mind
6 might do that?

7 PROSPECTIVE JUROR NO. 001: Sure.

8 MR. ROBERTS: Are you going to presume that
9 someone on the stand talking about their pain is
10 exaggerating as you're hearing it?

11 PROSPECTIVE JUROR NO. 001: I mean, it's --
12 I'll trust any individual or whatnot. So I mean, I
13 guess I would have to put some sort of weight to it.

14 MR. ROBERTS: So you haven't heard any facts
15 and evidence about this case, but there's going to be
16 evidence of pain in this case.

17 So my question to you: Do you have any
18 preconceived feelings already as to whether the
19 plaintiff in this case is going to exaggerate her pain?

20 PROSPECTIVE JUROR NO. 001: I honestly don't
21 know. And if it goes to his case where the fact you
22 have to write an amount on a line, I don't know if I
23 could actually do that. I mean, I don't have all the
24 facts, and I'm not a doctor. There's several different
25 factors in there that I don't know, kind of that ...

1 MR. ROBERTS: So not talking about now, but
2 at the end of the case, and let's assume that you're
3 picked as a juror and you hear all the facts and all
4 the evidence, at that point, are you going to be able
5 to -- to weigh the harms and weigh how much money it
6 takes to equal those? Is that something you're going
7 to be able to do?

8 PROSPECTIVE JUROR NO. 001: I don't think so.
9 Honestly.

10 MR. ROBERTS: And in your jury questionnaire
11 where you said that you couldn't award pain and
12 suffering, and I know we talked about that, and we --
13 we -- you expanded on that answer quite a bit and
14 explained it.

15 As you're finding out that you might have to
16 put a number just for pain on the form, are you coming
17 back to that original viewpoint in the jury
18 questionnaire that you just don't think you can do
19 that?

20 PROSPECTIVE JUROR NO. 001: Yeah. I don't --
21 I don't have any experience in doing a jury, so it's
22 kind of guessing on the questionnaire, to be honest.

23 MR. ROBERTS: Okay. Thank you.

24 Does anyone else feel that way now that
25 they've heard Mr. Solomon talk about that?

1 And, you know, one thing he said is that, you
2 know, he's not a doctor, but that's part of the jury
3 system. I think when the Court described it as the
4 enlightened conscience of the jury is the way to
5 measure compensation for pain and suffering. So it's
6 something that you're going to have to do personally
7 when you hear the evidence and try to think, how do you
8 balance the harms and losses with the amount of money.

9 Everyone else, other than Mr. Solomon,
10 Mr. Joyce, comfortable with doing that? Even though
11 you're not going to have any strict guidance? There's
12 no table.

13 Mr. Roberts, did you have a table? Table
14 that told you how much that you got if your leg was cut
15 off?

16 PROSPECTIVE JUROR NO. 058: No.

17 MR. ROBERTS: No.

18 PROSPECTIVE JUROR NO. 058: Didn't have that.

19 MR. ROBERTS: Let's shift gears a little bit
20 and talk about values. And we can start in the front,
21 and we will go -- we'll start with Mr. Franco and then
22 go across.

23 And what I'd like you to tell me is what you
24 believe are the most important values that you should
25 teach your children, or if you have no children, loved

1 ones that you're trying to set an example for. What
2 are those values, and how we put them into practice in
3 your own life. Tough one.

4 PROSPECTIVE JUROR NO. 096: Yeah. 096.
5 Values, boy, there's a lot. Family, honesty, thinking
6 of other people. Gosh, there's so much to that. We
7 taught the kids right from wrong. Lying, the truth,
8 stay away from the lies, help others, take care of the
9 family.

10 MR. ROBERTS: You try to let those values
11 guide you in your personal life?

12 PROSPECTIVE JUROR NO. 096: Yes. You respect
13 your elders. Listen to what people are saying. Learn
14 from others. Just a lot of stuff that goes into trying
15 to teach your kids. Our kids did well. Till now.
16 They're -- we did our homework, we did our jobs.

17 MR. ROBERTS: It sounds like they're very
18 successful.

19 PROSPECTIVE JUROR NO. 96: Yes, they are,
20 so --

21 MR. ROBERTS: Congratulations.

22 PROSPECTIVE JUROR NO. 096: Thanks. So
23 there's a lot. But we started when they were 2 or
24 3 years old. You don't wait till they're 16 or 17 and
25 try to get those values in them. It's not going to

1 work. But no, just be a good person all the way
2 around.

3 MR. ROBERTS: And sometimes it depends on
4 context. And you can't do it.

5 But can you say which of those values is most
6 important to you to instill in your children?

7 PROSPECTIVE JUROR NO. 096: I guess they all
8 come together.

9 MR. ROBERTS: They do.

10 PROSPECTIVE JUROR NO. 096: They all come
11 together somewhere.

12 MR. ROBERTS: Thank you, Mr. Franco.
13 Appreciate it.

14 Ms. Go.

15 PROSPECTIVE JUROR NO. 141: I value --

16 MR. ROBERTS: I'm sorry. What is your badge
17 number?

18 PROSPECTIVE JUROR NO. 141: Badge 141.

19 MR. ROBERTS: Thank you, ma'am.

20 PROSPECTIVE JUROR NO. 141: I value life,
21 family, and my friends. I guess life is short, so
22 enjoy every minute of it. My family is the same.
23 Without life, I don't have my family and friends,
24 so ...

25 MR. ROBERTS: So you teach them to have

1 respect for life.

2 PROSPECTIVE JUROR NO. 141: Yes. And love
3 life.

4 MR. ROBERTS: Is that something you do, you
5 love life?

6 PROSPECTIVE JUROR NO. 141: Yes.

7 MR. ROBERTS: Yes. And you're smiling a lot
8 for someone on a jury: I appreciate that.

9 PROSPECTIVE JUROR NO. 141: I try not to
10 focus on what happened, just, you know -- yeah.

11 MR. ROBERTS: That's very nice. Thank you,
12 Ms. Go.

13 Mr. Corum, what are the most important values
14 that -- that -- to you that you would want to instill
15 in your children, if you had them?

16 PROSPECTIVE JUROR NO. 093: Respect. Well,
17 family too, you know, got to stick by the family, see
18 them, being there. That's all I can really say right
19 now.

20 MR. ROBERTS: Thanks for sharing that with
21 me.

22 Mr. Inglett.

23 PROSPECTIVE JUROR NO. 091: 091.

24 MR. ROBERTS: Thank you, sir.

25 PROSPECTIVE JUROR NO. 091: Respect,

1 compassion, loyalty, and to always be driven and strive
2 for something.

3 MR. ROBERTS: And you implement those values
4 in your own life and try to.

5 PROSPECTIVE JUROR NO. 091: Yes.

6 MR. ROBERTS: Thank you, sir.

7 Ms. Abeles.

8 PROSPECTIVE JUROR NO. 043: Hi. No. 043.

9 Every year on my son's birthday, I read a list of
10 things that I wish for him in his life, and I wish --
11 it's probably on my phone. So what I wish for my son
12 and for everyone, first thing is that I always say to
13 even other kids and other adults, is that no one can
14 take away your education. Don't stop learning and
15 being part of the here and now. Of course, compassion
16 and honesty and advocacy and charity, philanthropy
17 takes part in all of that.

18 I think everyone should try to live their
19 life to the fullest. We have plans in life and life
20 gets in the way of that. And you have to compensate
21 and revisit that and come back to it.

22 I hope my son is very respectful to others.
23 And, you know, throughout life, try to be a good
24 person, karma thing. Try to do good. Try to repair
25 the world -- my son has done a -- about three years of

1 doing a good deed every day for the last couple of
2 years to repair the world, to just make this a better
3 place. It's not a perfect place, but this is where I
4 want to be, so ...

5 MR. ROBERTS: And --

6 PROSPECTIVE JUROR NO. 043: And I try to
7 model it, so --

8 MR. ROBERTS: They're on --

9 PROSPECTIVE JUROR NO. 043: I'm that crazy
10 mom.

11 MR. ROBERTS: That's good. And you said they
12 were on your phone.

13 Have they been the same every year?

14 PROSPECTIVE JUROR NO. 043: No, because life
15 tweaks itself every year. My son was born with a
16 disability. So he's perfectly perfect in every way
17 just a little bit different. And you get through life,
18 everyone is different and you get through life
19 different, and you revisit it every year. Now, is it
20 the same? No. He's a teenager now, learned how to
21 roll his eyes. So you roll with that.

22 MR. ROBERTS: Do I recall -- I know you said
23 you were at the Clark County School District. Do I
24 recall you mentioning the Homebound program? Are you
25 involved with that?

1 PROSPECTIVE JUROR NO. 043: Yeah, guilty as
2 charged.

3 MR. ROBERTS: And the values that you just
4 recited to me, have those played a role in your choice
5 of being in that program?

6 PROSPECTIVE JUROR NO. 043: No. I was
7 actually kind of coerced into that.

8 MR. ROBERTS: Really?

9 PROSPECTIVE JUROR NO. 043: Oh, yeah. I was
10 told it would be the best choice for me at the time.
11 My background was at a children's rehab hospital in
12 New Jersey, and I was called and said, We have a
13 position and you will be taking it, and it's been good
14 for me for the last -- I think I've been in that
15 department 10 or 11 years. It's diversity. I accept
16 diversity, socioeconomic, medical, not medical, mental,
17 the whole gamut. So I get to do general ed and special
18 ed from no brain waves up until trying to get kids
19 through their, you know, general ed diplomas. So I get
20 to teach almost every subject. It keeps me fresh and
21 going.

22 MR. ROBERTS: To make sure I have a correct
23 understanding of the program, what kind of children are
24 in the program you work?

25 PROSPECTIVE JUROR NO. 043: It is anywhere

1 from -- according to Nevada Revised Statute, you need a
2 medical professional to sign you in. You're out of the
3 comprehensive campus for -- I believe it's, like, two
4 weeks on until expiring of life. Some kids have
5 cancer. I've worked with gunshot wounds, pregnant
6 teenagers, and we also have some medically fragile
7 children that for whatever reason just can't be on that
8 main campus. And also mental incapacities that are a
9 danger to be on a comprehensive campus.

10 So I get the gamut. I get the gamut of kids
11 that are just with me for a couple weeks or a couple of
12 years. And I'm countywide. I love it.

13 MR. ROBERTS: Thank you, Ms. Abeles.

14 Ms. Perreida, your values?

15 PROSPECTIVE JUROR NO. 130: 0130. I teach my
16 kid about almost the same as her. You have to focus on
17 the study. If you have a -- if you want to have a
18 better life. If -- I came from a different country
19 than here, I know the culture is different, very
20 different. So I try and adjust, whatever is better, is
21 good, you know.

22 MR. ROBERTS: The country is different, but
23 are the values different? Are the things that you
24 would teach your children as values different because
25 you're in the United States?

1 PROSPECTIVE JUROR NO. 130: The value, I try
2 to adjust for my parent teach me something, because I
3 think it's -- maybe is, like, too much old-fashion. So
4 I want to -- and I teach them more old-fashion and new
5 fashion. Like, they have to think that old way to be a
6 good person to this real world. Yeah.

7 MR. ROBERTS: Adapt, but keep the
8 old-fashioned stuff that's good and meaningful.

9 PROSPECTIVE JUROR NO. 130: Yeah. Something
10 is old-fashion is good.

11 MR. ROBERTS: Thank you, Ms. Perreida.
12 Mr. Evans.

13 PROSPECTIVE JUROR NO. 053: 053. I guess
14 honesty is a big thing and respect for others and
15 yourself. And always to keep trying new things.

16 MR. ROBERTS: Honesty is a great first value.
17 Is that just something you've always believed in, or do
18 you have a personal belief where you were lied to, and
19 it's caused you to really elevate honesty to the first
20 thing you would say?

21 PROSPECTIVE JUROR NO. 053: My dad was a very
22 honest person. He believed in -- in -- well, he was a
23 musician, and -- he was a jazz musician, and he
24 wouldn't have been the way other people wanted him to.
25 I guess I value that highly.

1 MR. ROBERTS: You respect that quality in
2 your dad?

3 PROSPECTIVE JUROR NO. 053: Yeah.

4 MR. ROBERTS: Thank you, sir.

5 Mr. Roberts.

6 PROSPECTIVE JUROR NO. 058: Try to live by
7 the Golden Rule, treat others as you want to be
8 treated. My children and our family have always
9 stressed integrity, honesty, hard work, faith, sense of
10 fairness. We're a multiethnic family, so we -- we
11 include people, don't exclude people. So that's
12 another piece that's broad. Try to be broad minded in
13 how we see the world and we -- we interact with it.
14 Don't just put walls around. Those are all things that
15 are important to me, and I think that between myself
16 and my wife we've -- we've given that to our children
17 too. Both my children were born abroad, so we started
18 out overseas with a slightly different bend in life
19 before they came back to the States.

20 MR. ROBERTS: Thank you, sir.

21 Mr. Berkery.

22 PROSPECTIVE JUROR NO. 063: 063. Love,
23 honesty, compassion, personal responsibility, honor,
24 courage. Those are the biggies.

25 MR. ROBERTS: And a lot of times I get to

1 personal responsibility before I got this far through
2 the panel as one of the key values that people have.

3 Explain what personal responsibility means to
4 you.

5 PROSPECTIVE JUROR NO. 063: It's a pretty big
6 topic, really. You know, you're -- you're here on the
7 planet, and you interact with it and people, and
8 sometimes things go right, sometimes things go wrong.
9 For my kids, a lot of times things went wrong. But --
10 but whatever that impact is, you need to engage,
11 whether it's you have to say, Hey, I did this. Then
12 fix it. Move forward. Learn from it. It's -- it's --
13 it's a big topic.

14 MR. ROBERTS: Very broad helps their way
15 through life.

16 PROSPECTIVE JUROR NO. 063: Yes, sir.

17 MR. ROBERTS: Thank you.

18 PROSPECTIVE JUROR NO. 063: Of course.

19 MR. ROBERTS: Ms. Bias.

20 PROSPECTIVE JUROR NO. 066: 066. I would say
21 trust is the main thing in our household because
22 without trust, you don't have nothing. And I try
23 teaching my daughter to be open minded about a lot of
24 aspects of life, to be responsible, love,
25 compassionate, happiness, and know her self-worth,

1 never to strive for anything below what she wants, to
2 be successful, kindhearted. Just all around just be a
3 person that when you see -- like, not to prejudge. You
4 know what I mean? Like, never judge somebody just by
5 looks. Go for the inside to see how people will treat
6 you and treat them with the same respect they treated
7 you, and that's how I'm brought up.

8 MR. ROBERTS: Give the people the benefit of
9 the doubt?

10 PROSPECTIVE JUROR NO. 066: Yes, sir.

11 MR. ROBERTS: Thank you, Ms. Bias.

12 Mr. Avilaroa.

13 PROSPECTIVE JUROR NO. 078: Hello. 078. I
14 would say family, loyalty, faith, honor, and, you know,
15 compassion towards people. And always -- always pick
16 the -- I like to always pick the most difficult thing
17 to do or, you know, always pick the most difficult
18 option, you know, because I always -- I found out at an
19 early age in my life where that's always the best
20 option instead of picking the easiest thing. And I
21 want my kids to understand that, that not everything in
22 life is going to be easy, and there's going to be a lot
23 of difficult things in life that you're going to come
24 across. And, you know, you got to have family in your
25 heart and honor and courage, and I believe in those

1 things. And just my big thing is just family. Family
2 and never -- never be scared, you know. Follow your
3 gut and follow your heart. So just that.

4 MR. ROBERTS: Thank you. I appreciate that.
5 Mr. Retzlaff.

6 PROSPECTIVE JUROR NO. 088: 088. I think for
7 myself, I know, or I hope anyways, I've got a lot more
8 years to continue growing, but I think for myself, my
9 values, at least focusing still, would be from my
10 parents. They kind of taught me how to survive.
11 Where, you know, we're all here. We're, you know, a
12 species that likes to help each other. So it's not
13 necessarily something that you -- you don't always have
14 to teach somebody to be compassionate or help somebody
15 up if they fall, something that's kind of built into
16 us.

17 But there are definitely ways to make
18 decision-making and stuff along those lines of helping
19 each other, helping ourselves a lot easier. So I feel
20 that's kind of the values my parents taught me, just to
21 be open and adapt, you know, so, you know, you can help
22 others to -- you know, you may know something more than
23 someone else does. You can help them out with that.
24 Or they might know something you don't know that might
25 make surviving and getting along and getting by a lot

1 easier. So I would say that's the value I hold closest
2 to being open and able to adapt.

3 MR. ROBERTS: Thank you.

4 PROSPECTIVE JUROR NO. 088: Uh-huh.

5 MR. ROBERTS: Mr. Cyganek.

6 PROSPECTIVE JUROR NO. 106: 0106. Feel
7 blessed each day. Do three things: Think, laugh, cry.
8 And keep things in a positive and you're winning.
9 That's all.

10 MR. ROBERTS: Thank you.

11 Ms. Gold.

12 PROSPECTIVE JUROR NO. 036: 036. Faith in
13 God, honesty, service.

14 MR. ROBERTS: Those are the values you try to
15 live your life by?

16 PROSPECTIVE JUROR NO. 036: (Nods head.)

17 MR. ROBERTS: Thank you.

18 Mr. Joyce.

19 PROSPECTIVE JUROR NO. 029: 029. Try to
20 teach them to be ethical, good ethics, and the Golden
21 Rule of, do unto others. Teach them to be fair.

22 MR. ROBERTS: Hanging --

23 PROSPECTIVE JUROR NO. 029: Ethics. I'll
24 pass. That's good enough.

25 MR. ROBERTS: Good enough? Okay. That's a

1 good list.

2 Mr. Foerstel.

3 PROSPECTIVE JUROR NO. 023: 023. I like the
4 Platinum Rule instead of the Golden Rule, which is
5 treat other people the way they wanted to be treated.
6 Just don't treat them the way you wanted to be treated.
7 They may want to be treated differently than the way
8 you want to be treated.

9 MR. ROBERTS: Never heard of that.

10 PROSPECTIVE JUROR NO. 023: The Platinum
11 Rule, yeah. Just treat people nice, be friendly to
12 people, try to respect other people's opinions even
13 though they may differ from yours, and ...

14 MR. ROBERTS: Thank you, sir.

15 PROSPECTIVE JUROR NO. 023: Sure.

16 MR. ROBERTS: Mr. Jensen.

17 PROSPECTIVE JUROR NO. 015: 014 -- or, excuse
18 me, 015. My core values are God, family, honor, and
19 integrity, and truthfulness.

20 MR. ROBERTS: Thank you, sir.

21 Ms. Flores.

22 PROSPECTIVE JUROR NO. 010: 010. To love
23 yourself, love others, respect others, be honest, and
24 know what you're doing, right from wrong.

25 MR. ROBERTS: Thank you, ma'am.

1 MR. ROBERTS: Mr. Brandon.

2 PROSPECTIVE JUROR NO. 003: 003. Keeping it
3 short, heard from 18 other people, 17 other people
4 almost the same, you know. I'm in the same boat.
5 Couple people hit it right on the head with some of
6 their values. But my biggest is honest -- honesty,
7 loyalty, and respect.

8 MR. ROBERTS: Thank you.

9 And, Mr. Solomon.

10 PROSPECTIVE JUROR NO. 001: 001. My parents
11 always taught me is honesty, family comes first,
12 question everything, including your leaders, fight for
13 everything, work hard at everything.

14 MR. ROBERTS: Thank you. And just out of
15 curiosity, does DC hurt less than AC, 570 volts?

16 PROSPECTIVE JUROR NO. 001: No, DC is worse.

17 MR. ROBERTS: So out of the group, we had
18 Mr. Berkery mention personal responsibility as one of
19 the key values he tries to teach his family.

20 Is there anyone who -- who disagrees with his
21 description of that as a key value? And even though it
22 wasn't on the list, does everyone agree that that is an
23 important value to them, or people think that -- that
24 it's not as important as maybe Mr. Berkery said?

25 Feel -- if you got something to share.

1 Anyone have a different definition of how
2 they feel about what is personal responsibility?

3 Mr. Retzlaff, when he was talking about some
4 of his values, mentioned, you know, helping others, and
5 I think that was included in. And it was a little bit
6 broader into the community, and I know -- I know that
7 Ms. Abeles believes pretty strongly in helping people
8 outside your -- your immediate family and trying to
9 give back to the -- to the whole -- all people, not
10 just the people you're close to.

11 And I want to try to distinguish this, but we
12 talked before about how a lot of the -- the emotional
13 pain and the empathy that we feel is much stronger when
14 it's part of our -- our close-knit group. But if any
15 of you do something to give back to -- to the community
16 to make the world a better place outside of your
17 individual family, I'd like you to tell me about that
18 and why you do it.

19 Mr. Roberts.

20 PROSPECTIVE JUROR NO. 058: I do other things
21 outside of my core.

22 MR. STRASSBURG: Judge, is it possible for us
23 to take a short break?

24 MR. MAZZEO: Can we approach, Judge?

25 THE COURT: Come on up.

1 MR. MAZZEO: Sorry.

2 (A discussion was held at the bench,
3 not reported.)

4 THE COURT: All right. So maybe I didn't
5 tell you guys this, that would be my fault. If anybody
6 needs a break, and I'm not calling a break yet, and you
7 need to let us know. Let Tom know. The universal sign
8 for a break is go like this, like you're breaking a
9 stick. Okay? Somebody will see it. And as soon as
10 somebody sees it, we'll take a break. All right?
11 We're getting a notification that somebody needed a
12 break, so we're going to take a break.

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

1 any opinion on any subject connected with this trial
2 until the case is finally submitted to you.

3 Take about ten minutes. When I say ten
4 minutes in the middle of the afternoon, it almost
5 always turns into 15.

6 PROSPECTIVE JUROR NO. 001: Can I stay
7 sitting right here?

8 THE COURT: No. I'm sorry. When we all take
9 a break, we all have to go out.

10 (The following proceedings were held
11 outside the presence of the jury.)

12 THE COURT: We're outside the presence of the
13 jury.

14 Anything we need to take care of, Counsel?

15 MR. MAZZEO: No, Your Honor.

16 MR. ROBERTS: No. When we get back, I'll
17 probably ask to excuse Mr. Joyce again. I think he
18 said a few more things that continued to -- to show
19 that -- that he's not completely fair and impartial.

20 THE COURT: You want to do it now, or you
21 want to take a break first?

22 MR. ROBERTS: If we break first so I can pull
23 his quotes. It's been a while. I don't want to
24 misstate them.

25 THE COURT: That's fine. Let's go off the

1 record, and we'll come back in a couple of minutes.

2 (Whereupon a short recess was taken.)

3 THE COURT: Go ahead and go back on the
4 record. We are back on the record, Case No. A637772.
5 We're outside the presence.

6 Go ahead, Mr. Roberts.

7 MR. ROBERTS: Thank you, Your Honor. We
8 would move to excuse Mr. Joyce, Juror 13-0029, and
9 Mr. Solomon, Juror 13-0001 for cause. And with the
10 Court's indulgence, because I wasn't taking notes,
11 could I have Mr. Mott explain to the Court what -- he's
12 reviewed the realtime and explain the -- the quotes
13 that we think are sufficient for the cause challenge?

14 THE COURT: Sure. I probably wrote them down
15 already, but I'm happy to let you guys make a record.

16 MR. MOTT: So in addition to everything else
17 we have already mentioned to Joyce, these are the two
18 new things that came out. Number one would be he has a
19 strong belief that -- that clients as well as lawyers
20 will exaggerate their claims just to try to get more
21 money. The specific quote on it is, if you're
22 following, Your Honor, it's 13:53:53.

23 THE COURT: I wasn't looking at it on there.
24 I was just looking at it on my notes.

25 MR. MOTT: That's what I'm doing. I pulled

1 it up on here. This is his quote. "I think that most
2 lawyers, yeah, most lawyers and most clients when they
3 come in a courtroom if, they get to stretch it a little
4 bit, yeah, I think that's a fact. In my mind, I think
5 that's true." Association you just --

6 (Clarification by the Reporter.)

7 MR. MOTT: So this is from Mr. Roberts now.
8 "So you just broadened my question. You think that
9 most lawyers who are bringing claims are going to
10 exaggerate their claims to get more money." And his
11 answer is "Yes."

12 So in addition to that, he has one more thing
13 where he's talking about standard to award pain and
14 suffering which I know we've talked about several
15 times. He first started with the wheelchair coming in.
16 We had follow-up with that couple of times. Then it
17 was asked of him again, and he said, You would need
18 95 percent proof in order to award pain and suffering,
19 which of course is far beyond preponderance. And that
20 quote is at 13:32, if I can get to it.

21 MR. MAZZEO: That's Mr. Roberts we're still
22 on; right?

23 MR. MOTT: We're on Mr. Joyce. We've been on
24 Mr. Joyce.

25 MR. ROBERTS: That was this Mr. Roberts that

1 that was being -- that was my question.

2 MR. MAZZEO: I switched to Roberts.

3 MR. MOTT: He was asking a question. I'm
4 sorry, it was Mr. Joyce.

5 THE COURT: Mr. Roberts' questioning of
6 Mr. Joyce.

7 MR. MAZZEO: Okay. Like, I don't see that
8 there. Okay. That's why.

9 MR. MOTT: And this is Mr. Lee Roberts.
10 We'll clarify here. Mr. Lee Roberts saying, "Relying
11 on something less than solid medical evidence, in other
12 words, we're talking about the 95 percent certainty,
13 you want to be able to see hard proof so you can be
14 95 percent certain that they're still in pain because
15 you can't see it."

16 His answer was "Uh-huh," and he followed up
17 with, "Yes." And that was in going along the lines of
18 the line of questioning. I didn't give the whole line
19 of questioning there to save time a little bit.

20 So based on that, we would renew to strike
21 Mr. Joyce.

22 Do you want to address that now, or do you
23 want to jump to Mr. Solomon?

24 THE COURT: Let's do Mr. Joyce first.

25 You guys want to make a record on that first?

1 MR. MAZZEO: Yes, Your Honor. I think in
2 light of the follow-up questions that I had of
3 Mr. Joyce earlier, he was unequivocal in his statement
4 that he did not have a cap, that he could award money
5 for pain and suffering, that it would depend on his
6 evaluation of the evidence. And this new statement
7 that he made with regard to, I guess, lawyers and
8 plaintiffs, that most exaggerate pain to increase
9 money, that makes him skeptical. I don't think -- he
10 didn't have any personal experience or personal
11 knowledge of any specific lawyers or -- or parties that
12 actually did that. So that gives him skepticism. And
13 if -- at the very least, I should be able to be
14 entitled to traverse Mr. Joyce regarding this topic.

15 MR. STRASSBURG: Judge, we, too, would join
16 in Mr. Mazzeo's comments. His statements about human
17 nature, that people would exaggerate if they think it's
18 in their benefit to do so, we don't believe disqualify
19 him from being a juror. In fact, that's virtually a
20 Roman Catholic doctrine, if I remember my catechism
21 right.

22 So we -- we -- we believe that he is entitled
23 to require a feeling of persuasion that the
24 preponderance of the evidence has really tipped, that
25 the scales have really moved. We don't subscribe to

1 Mr. Lee Roberts' characterization of how the
2 preponderance of the evidence standard works. We think
3 that the witness is simply expressing a feeling that
4 the mischaracterization of the standard is not fair.
5 I -- I tend to agree with him on that. So we think
6 that he is an appropriate person to serve on a jury.

7 Thank you, Judge.

8 THE COURT: In the Jitnan case, we've talked
9 about the Sears-Page and the Jitnan case as being the
10 cases that deal primarily with jury selection. In the
11 Jitnan case, it cites to NRS 16.050, paragraph --
12 subparagraphs (f) and (g). (F) talks about an
13 unqualified opinion or belief as to merits of the
14 action. Subparagraph (g) talks about the existence of
15 a state of mind in a juror evidencing enmity against or
16 bias to either party. The Court talks about the
17 relevant inquiry focusing on whether the juror's views
18 would prevent or substantially impair the performance
19 of their duties. They say if -- if a perspective juror
20 expresses a preconceived opinion or bias about a case,
21 the juror should not be removed for cause if the record
22 as a whole demonstrates that the perspective juror can
23 lay aside his impression or opinion and render a
24 verdict based on the evidence presented. They talk
25 about detached language alone is not enough. You have

1 to look at the record as a whole.

2 And I think looking at the record as a whole,
3 I think Mr. Joyce has expressed several times that he's
4 not going to award a big dollar figure. He doesn't
5 know what that dollar figure is that he won't go over,
6 but he doesn't like pain and suffering. He's not going
7 to award pain and suffering just based on somebody's
8 testimony. He does believe that most clients and
9 lawyers exaggerate pain to get more money from a
10 lawsuit. And I think the record as a whole
11 demonstrates that he has a bias against plaintiffs and
12 personal injury cases.

13 I understand you guys want to ask him more
14 questions. It's not going to do any good with this
15 guy, so I'm going to excuse him.

16 THE CLERK: Badge number?

17 MR. MOTT: Thank you, Your Honor.

18 THE COURT: Mr. Joyce is Badge No. 029; is
19 that right?

20 THE CLERK: Yes. So we are going to replace
21 Seat 6.

22 MR. MOTT: Are we ready to address
23 Mr. Solomon, Your Honor?

24 THE COURT: Hold on. Mr. Joyce is going to
25 be replaced with -- tell me the name again.

1 THE CLERK: Janelle Klein, No. 146.

2 THE COURT: Okay. Next one is who?

3 MR. MOTT: Mr. Solomon, Juror No. 001.

4 THE COURT: Okay.

5 MR. MOTT: Sorry I jumped the gun on you.

6 The most recent line of questioning from
7 Mr. Lee Roberts, I'll specify that for Your Honor, he
8 made the comment that he doesn't trust people in
9 general. He only trusts about 20 people on this
10 planet. That quote is in 13:54:51, where he says, "I
11 mean, to be truthful, I only trust about 20 people on
12 this planet. So it's kind of a crap shoot to be honest
13 with you."

14 And more importantly is where he's discussing
15 his ability to award pain and suffering and to write
16 that down as line item to actually give an award. And
17 he expresses that -- he says, "I honestly don't think I
18 can do that. And that's at 13:54:51 -- just joking.
19 That's 13:56:04.

20 And this is Mr. Lee Roberts asking him, "So
21 not talking about now, but at the end of the case, and
22 let's assume that you're picked as a juror and you hear
23 all of the facts and all the evidence, at that point,
24 are you going to be able to -- to weigh the harms and
25 weigh how much money it takes to equal those? Is that

1 something you're going to be able to do?"

2 And his answer was, "I don't think so.
3 Honestly." And he left it at that.

4 So this is a cumulation of things we've
5 already addressed with a lot of other jurors, Your
6 Honor. He -- he was questioned about it objectively,
7 and his objective opinion is that he honestly doesn't
8 think he's going to be able to award those damages. So
9 we move to strike him as well, Your Honor.

10 MR. MAZZEO: Your Honor, Mr. Solomon is
11 certainly different than Mr. Joyce. He hasn't said as
12 much as Mr. Joyce and expressed as many opinions along
13 the range. But Mr. Solomon, as with any jurors, they
14 come into this courtroom with their own experience.
15 That does not automatically disqualify them because
16 they have expressed certain statements such as I only
17 trust 20 people in this world.

18 What's different about Mr. Solomon from
19 Mr. Joyce is that Mr. Solomon did qualify his answer to
20 Mr. Lee Roberts, and he said that "Some -- he used the
21 word "some" -- "exaggerate pain to increase money."
22 And that's -- I think that refers to and suggests the
23 skepticism as might be held by everyone in this
24 courtroom, even by yourself, Your Honor, and the staff.
25 So -- so that -- that by itself is not grounds to -- to

1 dismiss him for cause.

2 As far as he doesn't think he can weigh the
3 harms and award money damages, again, this is -- it's a
4 difficult -- it's difficult for these -- for jurors,
5 perspective jurors to make a statement about how they
6 would render a decision or what -- what rendering -- or
7 what verdict they would give without hearing any
8 evidence whatsoever. So he qualified that statement by
9 saying he didn't think he would be able to weigh -- he
10 would be able to weigh the harm and award money
11 damages.

12 I'm not so certain that goes to his actual
13 belief as opposed to his willingness or desire to -- to
14 not want to serve as a juror or want to be somewhere
15 else other than in the courtroom. So I would -- I
16 would want to traverse Mr. Solomon.

17 THE COURT: Mr. Strassburg, anything else?

18 MR. STRASSBURG: Well, I have never -- I've
19 never been so tempted by a union tradesman before as a
20 defendant. But we would -- I am -- I consent to his
21 being excused, Judge.

22 THE COURT: Well, 11:45 this morning, he was
23 talking about how he didn't -- he wasn't sure if he
24 could award pain and suffering. I think this most
25 recent statement that he made at 13:56 -- I mean, the

1 question was pretty clear. Not talking about now, but
2 at the end of the case, if he's picked as a juror,
3 after you hear all the facts and all the evidence, are
4 you going to be able to weigh the harms and -- and
5 weigh how much money it takes to equal those? Is that
6 something you're going to be able to do?

7 I don't think so. Honestly.

8 I think he was trying to be honest. Now,
9 that honest answer may be simply getting out of jury
10 duty because we all know he doesn't want to be here.
11 But I think in the light of that answer, I think it
12 shows a bias against plaintiff. So I am going to let
13 him go too.

14 THE CLERK: Dean Blurton, Badge 150.

15 THE COURT: What's the last name, Blurton?

16 THE CLERK: Yeah, B-l-u-r-t-o-n. Seat No. 1.

17 THE COURT: Did you have more?

18 MR. ROBERTS: We'd renew Roberts, but we
19 don't really have anything to add, Your Honor.

20 THE COURT: And I don't think you got there
21 on Roberts. I think I wrote down some stuff on
22 Mr. Roberts that he talked about low impact, but if
23 they're serious damages or serious injuries, it's real.
24 He says he's not going to decide a case based on
25 Mr. Lerner involved. He'd evaluate it based on what's

1 presented. So I think he --

2 MR. ROBERTS: He actually rehabilitated.

3 THE COURT: He indicated he was --

4 MR. ROBERTS: He did.

5 THE COURT: -- going to be able to be fair.

6 MR. ROBERTS: But given his -- his

7 questionnaire answers, we probably -- if we move to

8 preempt him, I'd ask to simply incorporate my last

9 three challenges as my racially neutral reason for my

10 peremptory rather than reciting it again.

11 THE COURT: We can take -- we'll take care of

12 that if there's a challenge.

13 MR. ROBERTS: Thank you, Your Honor.

14 THE COURT: We ready?

15 MR. MAZZEO: Ready.

16 THE COURT: Let's bring them back.

17 THE MARSHAL: Jury entering.

18 (The following proceedings were held in

19 the presence of the jury.)

20 THE MARSHAL: Jury is present, Judge.

21 THE COURT: Thank you. Go ahead and be

22 seated.

23 Counsel, come up for a second. Let me ask

24 you one question real quick.

25 /////

1 (A discussion was held at the bench,
2 not reported.)

3 THE COURT: Sorry for the delay, folks. I
4 don't know what else to say. I'm sorry.

5 We're going to release a couple of people.
6 Mr. Joyce, Badge 029, we're going to thank and excuse
7 you. You can report back down to the third floor. Let
8 them know you've been excused by Department 30.

9 Who's our next juror for Seat No. 6?

10 THE CLERK: Badge No. 146, Janelle Klein.

11 THE COURT: Ms. Klein, you got that seat on
12 the back row up there in Seat No. 6.

13 And we are also going to release Mr. Solomon,
14 Badge 001. Thank and excuse you, sir. You can report
15 back down to the third floor also.

16 THE CLERK: Badge 150, Dean Blurton.

17 THE COURT: You guys in the back thought you
18 were getting safe all this time had passed. You're not
19 safe.

20 Back row, all the way on this end,
21 Mr. Blurton.

22 So before -- before Mr. Roberts goes, I'm
23 just going to ask the two of you those general
24 questions. First of all, are there questions that were
25 asked that you folks would have responded -- you can

1 think of a response that you've been sitting there
2 thinking of that you would offer if you would have been
3 up here?

4 Start with Ms. Klein.

5 PROSPECTIVE JUROR NO. 146: No.

6 THE COURT: No? Mr. Blurton?

7 PROSPECTIVE JUROR NO. 150: No, sir.

8 THE COURT: Really? All right. Let me do
9 this: Ms. Klein, I'm just going to ask you those
10 generic questions that I asked everybody.

11 How long in Vegas?

12 PROSPECTIVE JUROR NO. 146: I moved back to
13 Vegas 11 years ago.

14 THE COURT: And do you have a spouse or
15 significant other?

16 PROSPECTIVE JUROR NO. 146: Spouse. I'm a
17 teacher and he's a programmer.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 146: We have custody
20 of one child. She's in high school.

21 THE COURT: Okay. Doesn't work outside the
22 home?

23 PROSPECTIVE JUROR NO. 146: No.

24 THE COURT: Ever served on a jury before?

25 PROSPECTIVE JUROR NO. 146: No.

1 THE COURT: All right. Thank you, ma'am.
2 Mr. Blurton, how long in Vegas?
3 PROSPECTIVE JUROR NO. 150: Five years.
4 THE COURT: Do you work?
5 PROSPECTIVE JUROR NO. 150: I do.
6 THE COURT: What do you do?
7 PROSPECTIVE JUROR NO. 150: I'm a senior IT
8 architect for a slot machine manufacturer.
9 THE COURT: Do you have a spouse or
10 significant other?
11 PROSPECTIVE JUROR NO. 150: I do not.
12 THE COURT: Do you have any children?
13 PROSPECTIVE JUROR NO. 150: Yes, I do. I
14 have a 14-year-old son.
15 THE COURT: Doesn't work outside the home
16 yet?
17 PROSPECTIVE JUROR NO. 150: No, sir.
18 THE COURT: Have you served on a jury before?
19 PROSPECTIVE JUROR NO. 150: No, sir.
20 THE COURT: All right. Thank you.
21 Mr. Roberts, it's yours.
22 MR. ROBERTS: Thank you, Your Honor.
23 Okay. Mr. Blurton, we'll start with you, and
24 we'll try to catch you up quickly to where the rest of
25 the panel is, and you may have already been thinking

1 about some of these questions as you sat in the back
2 room. So let's -- back of the room.

3 Let's start out with your personal pain
4 tolerance and the most painful experience that you can
5 recall as you sit here today.

6 PROSPECTIVE JUROR NO. 150: Well, as a --
7 Dean Blurton, 150. As some others had said, there's a
8 distinction between mental and physical pain. I would
9 say my physical pain tolerance is probably fairly low.
10 Worst physical pain is a back injury, bulging disk
11 injury caused by myself. I was pretty much on the
12 floor in about 3 seconds, and I don't even know what I
13 did to do it. It was not very -- it was not a pleasant
14 thing. I can tell you that.

15 Mental pain, I kind of wear my heart on my
16 sleeve. I empathize with people a lot. And I do
17 sympathize with people as well. So for me, me myself,
18 I can tolerate whatever comes to me if it happens to
19 me. But like so many others had said, you know, if
20 it's happening to someone else, I -- it hurts.

21 MR. ROBERTS: And are you -- are you like
22 many of the jurors in that it hurts a whole lot more
23 when it's someone that you're close to, or do you have
24 that ability to empathize or sympathize with a broader
25 group of people?

1 PROSPECTIVE JUROR NO. 150: I empathize more
2 with people that are closer to me. But I can empathize
3 with people that are not close to me. It depends on
4 the situation.

5 MR. ROBERTS: And, Ms. Klein.

6 PROSPECTIVE JUROR NO. 146: Janelle Klein,
7 Badge 146. I have a fairly high physical pain
8 tolerance. I'm not sure whether or not the shredded
9 ACL or the endometrial ablation were more painful. But
10 both of those, I was at work the next day. So like I
11 said, I have a fairly high pain tolerance physically.

12 Emotionally, kind of a wreck. So I don't
13 handle emotional pain well for myself or others.

14 MR. ROBERTS: And so the ACL tear, let's just
15 pick that one since they're about the same.

16 What was your pain level there?

17 PROSPECTIVE JUROR NO. 146: I couldn't walk.
18 Physically my leg couldn't support me. But I guess it
19 was like maybe a 6. The doctor was kind of surprised
20 that I was still conscious.

21 MR. ROBERTS: Those hurt.

22 PROSPECTIVE JUROR NO. 146: Yeah.

23 MR. ROBERTS: Either of you believe there
24 should be caps on the amount of pain and suffering
25 awarded by a jury in a case involving negligence?

1 PROSPECTIVE JUROR NO. 150: I do.

2 MR. ROBERTS: Tell me about that,
3 Mr. Blurton.

4 PROSPECTIVE JUROR NO. 150: So I
5 understand -- 150. I understand that there should
6 be -- you should be duly compensated for things that
7 have happened to you. Like I said, I empathize with
8 people a lot. But there should be a limit; right?
9 There's -- it just can't go all the way -- as someone
10 else had said it, it can't go to infinity; right?

11 MR. ROBERTS: Without telling me what the
12 number is, have you put any thought into what the cap
13 should be regardless of the facts and evidence?

14 PROSPECTIVE JUROR NO. 150: It depends on the
15 facts and the evidence.

16 MR. ROBERTS: All right.

17 PROSPECTIVE JUROR NO. 150: For me.

18 MR. ROBERTS: So agree or disagree, the jury
19 should not award more money than is reasonable based on
20 the evidence presented to them?

21 PROSPECTIVE JUROR NO. 150: Agree.

22 MR. ROBERTS: Okay. I don't care what the
23 evidence is, pain's never worth that much. Agree or
24 disagree?

25 PROSPECTIVE JUROR NO. 150: Disagree. If the

1 evidence states that -- it shows that the pain is that
2 much, then I will support that.

3 MR. ROBERTS: Thank you.

4 Ms. Klein, how do you feel about caps? Do
5 you think there should be caps?

6 PROSPECTIVE JUROR NO. 146: Pain is
7 subjective. The value of one's living condition is
8 variable, so it really depends on the circumstances.
9 You know, how much is a person's life and -- and value
10 of life subjective and -- and all relative, so you
11 can't set a finite number on something before you know
12 what -- what the circumstances are.

13 MR. ROBERTS: So, again, two viewpoints, two
14 people. The jury who hears the facts and the evidence
15 should have discretion to award whatever number they
16 think is reasonable? Or the other side, the
17 legislature should decide how much money is the maximum
18 regardless of the facts and evidence? Where are you
19 leaning?

20 PROSPECTIVE JUROR NO. 146: It's a
21 case-by-case basis. You can't set a cap arbitrarily.
22 I mean, unless your cap is, you know, so high that it's
23 meaningless.

24 MR. ROBERTS: Do either one of you have any
25 concerns about your ability to award a high amount for

1 damages if justified by the facts and the evidence?

2 Mr. Blurton?

3 PROSPECTIVE JUROR NO. 150: 150. If it's
4 justified, I can award it. We were -- you had talked
5 about scales earlier?

6 MR. ROBERTS: Yes. And Mr. Joyce was the one
7 saying the higher the number gets, the more weight of
8 evidence I'm going to want to see.

9 PROSPECTIVE JUROR NO. 150: Yeah, I generally
10 agree with that.

11 MR. ROBERTS: Okay. So if the Court were to
12 instruct you that it's more likely than not is the
13 standard, the preponderance of the evidence --

14 PROSPECTIVE JUROR NO. 150: Well, there's --

15 MR. ROBERTS: -- regardless of the amount
16 being asked for, can you follow that instruction, or is
17 there part of you that's going to just need more proof
18 the higher the money gets?

19 PROSPECTIVE JUROR NO. 150: I'm going to need
20 more proof the higher the money gets.

21 MR. ROBERTS: Not just proof of more pain,
22 but proof of -- you're going to require that the scales
23 balance a little bit higher than 51 percent; is that
24 right?

25 PROSPECTIVE JUROR NO. 150: That's correct.

1 MR. ROBERTS: Because of that, do you -- and
2 the need to have fair and impartial jurors who can
3 follow the law, do you think maybe you're not the right
4 juror for a case where someone is seeking a substantial
5 amount for pain and suffering?

6 PROSPECTIVE JUROR NO. 150: I think that
7 would be a correct statement.

8 MR. ROBERTS: Thank you, sir.

9 What about you, Ms. Klein?

10 PROSPECTIVE JUROR NO. 146: Badge No. 146. I
11 can follow rules. If the law says that this is what
12 you need to do, you do that.

13 MR. ROBERTS: And if the facts and evidence
14 justify a high award, you can do that?

15 PROSPECTIVE JUROR NO. 146: If that's what
16 the -- the rule of the law says, you follow the rule of
17 the law. And if you disagree with the law, there's a
18 process to change that later.

19 MR. ROBERTS: And if the facts and evidence
20 justify a low award, we're not looking just for --
21 we're looking for fair and impartial. You can award a
22 low amount?

23 PROSPECTIVE JUROR NO. 146: You do what the
24 law says.

25 MR. ROBERTS: You heard some discussion about

1 plaintiffs and their attorneys exaggerating the facts,
2 exaggerating the amount of pain just to get more money.

3 Do you believe that most people would do
4 that?

5 PROSPECTIVE JUROR NO. 150: 150. I don't
6 agree.

7 MR. ROBERTS: Okay. Ms. Klein.

8 PROSPECTIVE JUROR NO. 146: Badge No. 146. I
9 believe that by the time it reaches a courtroom, the --
10 the facts should be enough to substantiate it if it's
11 a -- you know, it's a case. It's not, you know,
12 somebody just saying, oh, this has happened. By that
13 time, the attorneys should have weighed whether or not
14 this is a justified case not just somebody blowing
15 something out of proportion. Most people aren't going
16 to try to take it all the way to a courtroom if they're
17 just exaggerating.

18 MR. ROBERTS: Thank you. Stay with you.

19 What are the most important values that you
20 would want to teach your family that you try to
21 implement in your personal life?

22 PROSPECTIVE JUROR NO. 146: My husband calls
23 it Wheaton's Law, Don't be a dick. You know, it's --
24 be a decent person, be the best person you can be at
25 all times.

1 MR. ROBERTS: Is that Wheaton?

2 PROSPECTIVE JUROR NO. 146: Yeah, as in Wil
3 Wheaton.

4 MR. ROBERTS: Okay. Yes, the Star Trek guy.

5 PROSPECTIVE JUROR NO. 146: Among other
6 things.

7 MR. ROBERTS: Among other things. Sorry for
8 pigeonholing it. Thank you.

9 Mr. Blurton.

10 PROSPECTIVE JUROR NO. 150: Dean Blurton,
11 150. Be humble. Be kind. If someone needs your help,
12 regardless of the circumstances, don't refuse. Be
13 truthful. Be honest. If the person next to me says he
14 needs the shirt off my back, he probably does because I
15 can get another shirt; right? So I will give that
16 person whatever is required because I know as a person
17 that I can replenish those things and they're just
18 things.

19 MR. ROBERTS: So if a person tells you they
20 need the shirt that you're wearing, are you going to
21 assume that they're sincere and they really need it?
22 Or are you going to question that and want to know more
23 before you give them your shirt?

24 PROSPECTIVE JUROR NO. 150: I try to give
25 people the benefit of the doubt.

1 MR. ROBERTS: That's what it sounded like.

2 PROSPECTIVE JUROR NO. 003: He's not a dick.

3 PROSPECTIVE JUROR NO. 150: I am not.

4 MR. ROBERTS: Although you may not have known
5 the name, you do adhere to Wheaton's Law.

6 PROSPECTIVE JUROR NO. 150: That's a new one.

7 MR. ROBERTS: So I don't want to -- to -- to,
8 you know, take up everyone's time. We've been through
9 this process. You've heard everyone else's answers.

10 If you were in my shoes or my client's shoes,
11 the defense, is there anything else you think we should
12 know about you that -- is there a reason why you would
13 be a really good juror for a case like this or a reason
14 that you probably wouldn't be right for a case like
15 this?

16 And, Ms. Klein, I'll ask you first.

17 PROSPECTIVE JUROR NO. 146: Janelle Klein,
18 Badge No. 146. I have a degree in civil engineering
19 and worked as an assistant to a forensic engineer
20 during my internship. So I used to do car accident
21 reconstructions as part of my work.

22 MR. ROBERTS: And I notice that on your
23 questionnaire that you work for an accident
24 reconstructionist. I wasn't positive the extent to
25 which you actually did that work.

1 PROSPECTIVE JUROR NO. 146: I did it, and he
2 presented it in court.

3 MR. ROBERTS: Yes. So you use the software
4 to enter the values and the forces --

5 PROSPECTIVE JUROR NO. 146: Did the research
6 on the vehicles and -- and the weather conditions and
7 the road conditions and the extent of damage based on
8 the damage to the vehicles, transfer of forces from the
9 vehicle to human bodies. Yeah. All of that.

10 MR. ROBERTS: Which program or programs did
11 you use as a regular part of your work?

12 PROSPECTIVE JUROR NO. 146: Most of the
13 programs that we used had been written by my employer,
14 so it was --

15 MR. ROBERTS: Proprietary --

16 PROSPECTIVE JUROR NO. 146: -- proprietary.
17 It's not commercially available.

18 MR. ROBERTS: Did you attend any classes at
19 ACTAR or any of the other institutes, Northwest
20 University?

21 PROSPECTIVE JUROR NO. 146: No. I was still
22 attending classes at UNLV at the time, in the process
23 of earning my degree in engineering. And I did not
24 pursue that line of specialty.

25 MR. ROBERTS: And when you say crush and

1 transfer of forces, determining energies due to --
2 based on the crush damage of the vehicles, you did
3 that?

4 PROSPECTIVE JUROR NO. 146: Yes.

5 MR. ROBERTS: And having -- how often -- how
6 long did you do that type of work?

7 PROSPECTIVE JUROR NO. 146: I worked for that
8 firm for, I want to say, about a year or year and a
9 half. It's been a really long time. And that
10 comprised probably maybe 25 percent of our workload.

11 MR. ROBERTS: So you did the research. You
12 entered the data. The computer gives you answers;
13 right?

14 PROSPECTIVE JUROR NO. 146: And then I would
15 prepare exhibits for him to present in court.

16 MR. ROBERTS: So at the end of doing this
17 regularly for a year, do you already have a pretty good
18 idea -- could you kind of look at the values of what
19 you were entering in and guess what the program was
20 going to say about forces and speeds and energy?

21 PROSPECTIVE JUROR NO. 146: I had a decent
22 idea. A lot of it depends on -- because there's so
23 many different kinds of vehicles, it really depended on
24 the individual vehicles. So, you know, for your basic
25 sedans and, you know, your basic vehicles, it was --

1 you get an idea. But there was a very wide variety.
2 Everything from semis to motorcycles that were
3 involved. So it kind of makes it a really big
4 different.

5 MR. ROBERTS: In Mr. Roberts' example, you
6 didn't want to be in the Volkswagen; right?

7 PROSPECTIVE JUROR NO. 146: Right. So -- and
8 like I said, it's been quite a while since I've done
9 that, so ...

10 MR. ROBERTS: And -- and you brought that up
11 when I was asking you, a good juror, bad juror.

12 Do you think that would help you as a juror
13 in a case involving a car accident?

14 PROSPECTIVE JUROR NO. 146: Probably.

15 MR. ROBERTS: Okay.

16 PROSPECTIVE JUROR NO. 146: Make me a
17 well-informed juror.

18 MR. ROBERTS: Would you be able to rely on
19 the testimony in court -- I don't think there will be
20 based on your explanation, but are you going to be able
21 to rely, like the other jurors, on what they hear in
22 court, not do your own analysis if the judge instructs
23 you that you shouldn't do that?

24 PROSPECTIVE JUROR NO. 146: I would not be
25 able to at this point do a separate analysis. I would

1 have to rely on the -- the testimony of the expert
2 witnesses if there was testing.

3 MR. ROBERTS: What was the name of the
4 accident reconstructionist that you worked for?

5 PROSPECTIVE JUROR NO. 146: Gary Presswood.
6 He worked mainly with one specific law firm in town, so
7 it was -- he was kind of their expert witness.

8 MR. ROBERTS: In the course of being involved
9 in a lot of litigation work, you're preparing reports
10 and exhibits to assist your expert in his trial
11 presentations, did you form any type of opinions about
12 legal work or cases or presumptions that might carry
13 over that we should know about?

14 PROSPECTIVE JUROR NO. 146: There's a lot of
15 paperwork. Other than that, it's just, you know, a lot
16 of -- a lot of paperwork that goes into it that's --
17 you know, it's got to be sifted through.

18 MR. ROBERTS: If -- if we're going to hear
19 from not necessarily a reconstructionist, but if we're
20 going to hear from experts during the course of the
21 trial, and we got different experts on different sides
22 with conflicting opinions, you think you're the type of
23 person who's going to be qualified to weigh their
24 opinions and the facts supporting their opinions, the
25 rationale and make judgments about which expert's

1 opinion is more persuasive?

2 PROSPECTIVE JUROR NO. 146: I should hope I
3 should be able to tell which one presents a accurate
4 depiction of -- of whatever the analysis is, whether
5 it's a medical opinion or a engineering opinion.
6 It's -- it's not a -- it's -- they're presenting facts
7 as they found them.

8 MR. ROBERTS: Now, when -- your accident
9 reconstructionist, Mr. Presswood, when he testified in
10 court, did he get paid by the person who hired him?

11 PROSPECTIVE JUROR NO. 146: He got paid by
12 the lawyer as part of the legal team. It was not
13 contingent upon whether or not the case won or lost.
14 It was, he got paid for the service to the lawyer as
15 part of -- as a consultant.

16 MR. ROBERTS: And so you're aware that --
17 that experts who are qualified by education, training,
18 and experience can come into court, try to assist the
19 jury in understanding the facts.

20 PROSPECTIVE JUROR NO. 146: Yes.

21 MR. ROBERTS: Okay. Does the fact that the
22 expert is being paid by the party that's putting them
23 on the stand, is that going to impact you, make it
24 harder to believe him? Would you just not believe him
25 at all? How does that weigh into your analysis of the

1 opinion?

2 PROSPECTIVE JUROR NO. 146: In general, an
3 expert is paid to present an analysis, and that's what
4 they do. Whether it's, you know, for one side or
5 another, they look at the facts and present their
6 findings. They may be, you know, presenting the
7 findings from either the defense or, you know,
8 whatever, but it's the facts as they have found them.

9 MR. ROBERTS: So -- so the fact that they're
10 getting paid, you might consider that, but it
11 wouldn't -- you'd still listen to what they have to
12 say.

13 PROSPECTIVE JUROR NO. 146: Yes. Everybody
14 should be paid for their work.

15 MR. ROBERTS: Very good.

16 What about everyone else? We haven't talked
17 about this. There will be experts, and they will have
18 been paid to both prepare for and present their
19 findings. And some of the medical doctors are going to
20 have very high hourly rates, in excess of a thousand
21 dollars an hour. Who -- who's going to be bothered by
22 that? Anyone?

23 Everyone going to be able to consider that
24 opinion and -- and weigh their opinions fairly based on
25 the foundation they have for the opinion, the work they

1 did, the reasons they give you for how they feel?

2 And that was such a good answer. We talked
3 for so long, I can't remember. We didn't talk yet, did
4 we, Mr. Blurton?

5 PROSPECTIVE JUROR NO. 150: No, but it's --

6 MR. ROBERTS: Anything I should know about
7 you that -- that make you a good juror or not the right
8 juror for a case like this?

9 PROSPECTIVE JUROR NO. 150: Dean Blurton,
10 150. Apart from my previous statements, probably not.

11 MR. ROBERTS: Okay. And your previous
12 statement, I think we -- you said you probably wouldn't
13 be a very good juror for a case like this based on your
14 beliefs; right?

15 PROSPECTIVE JUROR NO. 150: That's correct,
16 yeah.

17 MR. ROBERTS: I'd like to talk to you about
18 the issue of punitive damages. This is a case in which
19 we are going to ask for the jury to assess punitive
20 damages. Now, let me explain what that is.

21 Punitive damages have nothing to do with
22 compensation to the plaintiff. It's not compensation
23 for harms and losses. Instead, punitive damages are
24 damages intended to punish -- that's where the word
25 punitive comes from -- to punish someone for their

1 conduct. Or the other way the law refers to them is
2 exemplary damages. You might see some law where it
3 says an award for sake of example. For sake of example
4 to deter them and others similarly situated from the
5 same conduct.

6 Now, some people don't believe in punitive
7 damages because they don't believe it's right to punish
8 with money. And some people think that they simply
9 wouldn't be able due to their own personal beliefs to
10 judge someone and -- and punish them or make them an
11 example. Others don't have the concerns like that and
12 believe that punitive damages might be appropriate
13 under the right facts and circumstances if proven. So
14 I'm not talking about this case. I'm just talked about
15 your general beliefs about punitive damages.

16 Is there anyone here -- and this goes back to
17 the death penalty a little bit. You know, some people
18 just say, look, I couldn't even consider the death
19 penalty. I could put someone in prison, but I couldn't
20 consider the death penalty because I just don't think
21 that's right and I couldn't personally do that to
22 someone. Some people feel that way about punitive
23 damages, that I don't want sit in judgment of someone
24 and judge how much money is enough, not just to deter
25 them but other people if justified by the facts.

1 So is there anyone here start out with you
2 think it might be tough for you to sit on a jury and
3 either determine whether punitive damages should be
4 awarded under the facts or to determine the amount of
5 punitive damages that are necessary for punishment or
6 for sake of example? Anyone think they would have a
7 problem with that?

8 Okay. Thank you, Mr. Jensen.

9 PROSPECTIVE JUROR NO. 015: 015. I have a
10 problem with the amount because I would have to be
11 shown how that would be figured, I mean, to make it
12 punitive. I would have no information from a personal
13 level to say, you know, is it a dollar or is it X,
14 whatever. So if that's part of the proceedings, then I
15 think I would be okay. But just off the top of my
16 head, I'd have a tough time with that issue.

17 MR. ROBERTS: So if the judge were to give
18 you some rules and the lawyers were to present a
19 framework for you to consider, would you be comfortable
20 making the decision yourself?

21 PROSPECTIVE JUROR NO. 015: Yes.

22 MR. ROBERTS: Anyone else have -- have any
23 concerns?

24 Who -- who here thinks that punitive damages
25 would be proper under some circumstance, that, hey, I

1 can see the reason for that?

2 Okay. Mr. Cyganek, let's start with you.

3 Tell me about how you feel about punitive damages.

4 PROSPECTIVE JUROR NO. 106: Well, I have to
5 hear the evidence.

6 MR. ROBERTS: We're not talking about this
7 case. We're just talking general.

8 PROSPECTIVE JUROR NO. 106: There's a reason
9 you're asking for punitive damages. So I would look at
10 that as -- with an open mind and there's -- and you can
11 present that in court. That would be sufficient for
12 me.

13 MR. ROBERTS: Thank you.

14 Ms. Gold. And I hope I didn't misspeak
15 earlier. I was going through Mr. --

16 PROSPECTIVE JUROR NO. 036: No.

17 MR. ROBERTS: No? Okay. I didn't call you
18 Mr. Gold. I was scared at lunch I might have.

19 PROSPECTIVE JUROR NO. 036: Maybe you did.

20 MR. ROBERTS: I apologize.

21 PROSPECTIVE JUROR NO. 036: No problem. 036.
22 I think punitives are appropriate. Nothing hurts
23 somebody like pulling their pocketbook. And I think if
24 that's a way to punish them, then that's a way to
25 punish them.

1 MR. ROBERTS: Thank you, Ms. Gold.

2 Ms. Klein.

3 PROSPECTIVE JUROR NO. 146: Punitive damages
4 are totally appropriate in given circumstances. It
5 really just depends on the circumstances of each case,
6 what sort of punitive measures are necessary.

7 MR. ROBERTS: Thank you.

8 Mr. Foerstel.

9 PROSPECTIVE JUROR NO. 023: 023. Basically
10 what she said. I definitely feel the same way.
11 It's -- it's one way to punish someone and to prevent
12 them from doing it in the future or to prevent other
13 people from doing it in the future as well. I can see
14 it under the right circumstances.

15 MR. ROBERTS: Ms. Flores.

16 PROSPECTIVE JUROR NO. 010: I see it just
17 like they do. It's just a way of punishing someone for
18 them not to do it again.

19 MR. ROBERTS: Thank you.

20 Mr. Brandon.

21 PROSPECTIVE JUROR NO. 003: What they all
22 said.

23 MR. ROBERTS: What they all said.

24 Did -- is there anyone who feels a little
25 differently than -- than what the first group said?

1 Might have a little different view of it?

2 Mr. Evans.

3 PROSPECTIVE JUROR NO. 053: 053. I guess I
4 would have a question, is -- I mean, how big is their
5 bank account? I mean, if you're punishing somebody
6 like Steve Wynn, fine him a thousand dollars, I mean,
7 it's nothing to him. To another person, a thousand
8 dollars is a lot.

9 MR. ROBERTS: And -- and the Court is going
10 to give you guidance about the factors that you can
11 consider, and I can't talk to you about the specific
12 factors right now. I'm just trying to get your
13 thoughts. But I understand what you're -- what you're
14 saying.

15 Now, let's think about compensatory damages,
16 damages to compensate for harms and losses. Now, in
17 that case, sympathy for the defendants and -- and
18 really who the defendants are doesn't factor in.
19 That's an outside factor. Because if you're
20 compensating someone for their harms and losses, it
21 doesn't matter whether it's an individual or whether
22 it's General Electric. The harms and losses doesn't
23 change based on how much money the defendants have.

24 Is there anyone who might have a problem with
25 that, who might want to consider what they believe to

1 be the circumstances an individual defendant, or just
2 the fact that the defendant is an individual, and have
3 a hard time keeping that out of their analysis of
4 compensation?

5 PROSPECTIVE JUROR NO. 058: Can you say that
6 again -- 58 -- what your question was.

7 MR. ROBERTS: Sure. Let's -- let's say
8 that -- I'm just going to keep picking on Mr. Retzlaff.
9 Let's say his accident was caused because one of his
10 buddies on another long board ran into him and was
11 negligent and caused the accident and he brought a
12 lawsuit. Let's assume that his accident was caused by
13 the company who negligently manufactured the long board
14 and caused his accident, and they're a huge
15 corporation. The amount of money necessary to
16 compensate him for his broken collarbone doesn't change
17 whether it's the individual or whether it's a human
18 corporation.

19 You following me?

20 PROSPECTIVE JUROR NO. 058: (Nods head.)

21 MR. ROBERTS: Is there anyone here who has a
22 problem with that, who thinks compensatory damages to
23 compensate for harms and losses should be smaller if
24 it's a person and bigger if it's a corporation?

25 So was there anything else that you wanted to

1 add, Mr. Evans? No? Sorry I took that away from you.

2 Anyone else feel a little different or have
3 anything to add to their thoughts about punitive
4 damages.

5 Ms. Go, did I see you?

6 PROSPECTIVE JUROR NO. 141: Sorry.

7 MR. ROBERTS: You started; right?

8 And without telling you amounts, we will, at
9 the end of the case, if justified by the facts and
10 evidence, be asking for a substantial amount of
11 punitive damages.

12 Is there anyone who believes that based on
13 their own personal beliefs or the fact that we've got
14 individuals and not corporations on the other side
15 think they would have trouble awarding a substantial
16 punitive damage award regardless of what the facts and
17 evidence shows?

18 And I'm just going to raised hands here
19 rather than go through this individually.

20 Who here considers themselves a strong leader
21 in some part of their life, whether it's a leader in
22 your family, a leader at work, a leader in a civic
23 organization. Got a lot of leaders in this group, and
24 I don't remember the -- I don't think anyone's ever
25 been a foreperson on a jury; right?

1 So this is one that may spark a lot of
2 conversation. I'm going to get out my big sheets so
3 I've got all your answers to your questions. The
4 questionnaire had Questions 55 and 56. I'm going to
5 read those again to refresh your recollection as to
6 what they were because I think the wording is
7 important.

8 Question 55: "Would you be able to serve as
9 a fair and impartial juror in a case where the operator
10 of a motor vehicle used marijuana and was involved in a
11 motor vehicle accident?" And you were asked to say yes
12 or no, whether you can be a fair and impartial juror in
13 a case like that.

14 And, Your Honor -- I don't know if you
15 remember that notebook, that was a list of all the
16 things we're not supposed to talk about, according to
17 the judge.

18 So can I have a sidebar just real quick,
19 Judge? Thank you. Want to get clarification.

20 THE COURT: Come on up.

21 (A discussion was held at the bench,
22 not reported.)

23 THE COURT: Go ahead, Mr. Roberts.

24 MR. ROBERTS: Thank you, Your Honor.

25 So the context I wanted permission to tell

1 you about is when talking to -- to me and the Court and
2 the defense about whether you could be fair and
3 impartial in a case where the operator of a motor
4 vehicle used marijuana and was involved in a motor
5 vehicle accident, what you need to know about this case
6 is there's already been a finding by the Court that
7 Mr. Awerbach was in excess of the legal limits and,
8 therefore is at fault for the accident. So that's not
9 a question that you're going to have to decide.

10 MR. STRASSBURG: May I approach, Judge?

11 MR. ROBERTS: Whether the accident caused the
12 injury --

13 MR. STRASSBURG: Permission to approach.

14 THE COURT: Come on up, Mr. Roberts.

15 (A discussion was held at the bench,
16 not reported.)

17 THE COURT: All right. So I'm going to
18 strike the last comment and question that was asked
19 you. And he's going to start over.

20 Go ahead, Mr. Roberts.

21 MR. ROBERTS: Thank you.

22 I'm going to be more precise this time.

23 There's already been a finding by the Court
24 that the level of marijuana metabolites in
25 Mr. Awerbach's blood at the time of the accident

1 exceeded the legal limit. Therefore, he -- there's
2 been a finding he was legally impaired and responsible
3 for the accident. So you won't need to determine
4 whether to hold him responsible. You'll need to
5 determine what damages, if any, to Ms. Garcia was
6 caused by the accident. So I think that's a very
7 important distinction when we're talking about whether
8 you can be fair and impartial in a case where a driver
9 used marijuana and was involved in an accident.

10 Some of you may say, you know, I can still
11 fairly and impartially determine compensation to
12 Ms. Garcia. If -- if her injuries were caused by the
13 accident, I can determine that. I can determine the
14 amount of money. I can be fair even though I know the
15 reason that the defense is responsible is because they
16 used marijuana, a drug.

17 Some jurors might say, I can't be fair. I'm
18 going to award more damages than the evidence shows
19 because I'm mad. But that's -- that's an outside
20 factor. Some may think it's fine to drive and smoke,
21 and -- and I'm -- I wouldn't award damages regardless
22 of what the Court said.

23 So tell me about how you feel. And I think
24 this is an important enough question that I'd like to
25 start at the beginning. No longer with Badge 1, but

1 Mr. Blurton, Badge 150, tell me how you feel about
2 these things.

3 PROSPECTIVE JUROR NO. 150: Dean Blurton,
4 150. I feel I could be fair. If he was legally
5 liable, he's legally liable. There's -- that's the end
6 of that.

7 MR. ROBERTS: And you can fairly apply the
8 law the Court instructs you on, the evidence that comes
9 in that's presented to you and reach a fair verdict?

10 PROSPECTIVE JUROR NO. 150: Yes, sir.

11 MR. ROBERTS: Okay. Thank you, sir.

12 Mr. Brandon.

13 PROSPECTIVE JUROR NO. 003: 003. I can be
14 fair based on evidence, everything, you know.

15 MR. ROBERTS: Very good.

16 And -- and -- and as I recall from my notes,
17 you may have been the juror who said that you believe
18 some people drive better on marijuana.

19 PROSPECTIVE JUROR NO. 003: Yeah. My dad
20 when -- my stepdad smoked marijuana when he was around.
21 Working on the racecar, his welds looked like crap.
22 He'd go inside, smoke a little marijuana, come back
23 out, and they're like amazing. Get in the racecar
24 under a yellow flag, I'd see a orange glow going around
25 in the cockpit. Talking to a guy smoking a marijuana

1 stick right now. Awesome. He drove fine. Other
2 times, it's just certain people have different -- they
3 can handle it differently. Sometimes marijuana will
4 help somebody. Sometimes it impairs them.

5 MR. ROBERTS: Did he ever run into any of
6 those walls at 130 miles an hour?

7 PROSPECTIVE JUROR NO. 003: No. He was more
8 experienced. He was actually able to, you know, use
9 the brake pedal and turn the car. I just -- you know.
10 I'm all about going fast. So, you know, there's a
11 wall, just hold on. It's going to hurt.

12 MR. ROBERTS: So -- so my question for you
13 might be a little different than the question for the
14 other jurors. If the Court's already made a finding of
15 responsibility, are you going to be able to follow that
16 and award damages despite maybe your personal beliefs
17 that people drive better on marijuana?

18 PROSPECTIVE JUROR NO. 003: Yeah. The Court
19 found him impaired. So obviously I got to be fair, and
20 if you're impaired, this is what you caused.

21 MR. ROBERTS: So when you say some people
22 drive better on marijuana, that might be different for
23 a small amount of marijuana versus a large amount?

24 PROSPECTIVE JUROR NO. 003: Give or take.

25 MR. ROBERTS: That's where you're drawing the

1 distinction, impaired versus maybe just a little?

2 PROSPECTIVE JUROR NO. 003: Yeah, yeah. He
3 was -- obviously he couldn't see the road or whatever,
4 the vehicle, he was far beyond the limits of, okay,
5 you're safe and you're not safe.

6 MR. ROBERTS: Ms. Flores.

7 PROSPECTIVE JUROR NO. 010: Badge 010. I can
8 be fair. He was found over the limit and, you know,
9 the Court has agreed he was found over the limit.

10 MR. ROBERTS: In your -- in your
11 questionnaire, you said, yes, and then your explanation
12 was something along if it was their choice to do drugs.

13 PROSPECTIVE JUROR NO. 010: Yeah, it was his
14 choice. You know, he knew what he was doing. You
15 know, he smoked and he got in a car. He chose -- he
16 chose to drive instead of just staying where he was at.

17 MR. ROBERTS: Thank you.

18 Mr. Jensen.

19 PROSPECTIVE JUROR NO. 015: 015. I think I
20 can be fair and follow the Court's directives.
21 However, I'm going to probably have a bias that's going
22 to have to be overcome towards awarding more for the
23 simple reason that if a person knew that they were
24 impaired, that reasonable person should never have
25 gotten behind the wheel. It gets back to your punitive

1 question that, you know, why did you do it? And I want
2 to be honest, I'm going to have a little harder time
3 getting beyond that point.

4 MR. ROBERTS: So if you were told that
5 compensatory damages, you can't consider, you just have
6 to balance the harms and losses, if any, to the
7 plaintiff, but in the punitive phase, you can consider
8 other factor because it's not for compensation, then
9 that solves that problem for you?

10 PROSPECTIVE JUROR NO. 015: Yes.

11 MR. ROBERTS: Okay. Thank you, Mr. Jensen.
12 Mr. Foerstel.

13 PROSPECTIVE JUROR NO. 023: 023. Yeah, I can
14 follow the Court's directive and whether -- whether
15 they were impaired by drugs, alcohol or no
16 mind-altering substances, I can be fair.

17 MR. ROBERTS: Thank you, sir.

18 And, Ms. Klein.

19 PROSPECTIVE JUROR NO. 146: Badge 146. I'm
20 going to have to agree with Mr. Jensen in that I can
21 follow the Court's directive for the compensatory --
22 compensatory damage and not take into account the
23 status of the driver. But it will definitely factor
24 into the punitive.

25 MR. ROBERTS: Very good. And -- and in your

1 questionnaire, when you were expressing some
2 reservations about whether you could be fair --

3 PROSPECTIVE JUROR NO. 146: No one should --

4 MR. ROBERTS: -- I think you were saying you
5 shouldn't be operating a vehicle, so you should be
6 automatically liable. But now that you know you're not
7 going to have to determine the fault part, you're okay
8 with that. You can be fair on damages.

9 PROSPECTIVE JUROR NO. 146: Right. The
10 compensatory part is based on the evidence. I don't
11 have to determine whether or not he caused it --

12 MR. ROBERTS: Okay.

13 PROSPECTIVE JUROR NO. 146: -- or to what
14 extent.

15 MR. ROBERTS: Thank you. Thank you,
16 Ms. Klein.

17 Ms. Gold.

18 PROSPECTIVE JUROR NO. 036: Yes. 036. I
19 believe that there are two separate issues. I think I
20 could be fair with it.

21 MR. ROBERTS: Okay. And -- and when you said
22 in your questionnaire, if I recall, you were the ones
23 who said no, no, I couldn't be fair.

24 PROSPECTIVE JUROR NO. 036: That doesn't
25 surprise me.

1 MR. ROBERTS: So -- so let's reconcile those
2 things because we need to know sort of the totality of
3 where you're at, where you were at then, where you're
4 at now.

5 PROSPECTIVE JUROR NO. 036: Now I know
6 they're two separate issues, you know, that makes all
7 the difference in the world.

8 MR. ROBERTS: Okay. And you can be fair on
9 damages.

10 PROSPECTIVE JUROR NO. 036: Absolutely.

11 MR. ROBERTS: And you can listen to the
12 evidence on punitive damages and fairly and impartially
13 decide if they should be awarded and, if so, how much.

14 PROSPECTIVE JUROR NO. 036: Yes, I can do
15 that.

16 MR. ROBERTS: Okay. Thank you so much.
17 Okay. Mr. Cyganek.

18 PROSPECTIVE JUROR NO. 106: 0106. Yes, I
19 would be fair with what everybody said and my beliefs.

20 MR. ROBERTS: Just a second. See if I have
21 to ask you a follow-up question. You said you could be
22 fair all along. Excellent.

23 Mr. Retzlaff.

24 PROSPECTIVE JUROR NO. 088: Badge 088. I
25 believe I said no on the questionnaire. But --

1 MR. ROBERTS: You did say no.

2 PROSPECTIVE JUROR NO. 088: I'm in the same
3 boat as her. Now knowing -- you know, after you're
4 explaining it and knowing that they're separate issues,
5 I -- I would have no problem.

6 MR. ROBERTS: No reservations at all?

7 PROSPECTIVE JUROR NO. 088: No, sir.

8 MR. ROBERTS: Thanks very much.

9 Mr. Avilaroa.

10 PROSPECTIVE JUROR NO. 078: 078. Yes, I -- I
11 believe I can be fair.

12 MR. ROBERTS: You also said yes in your
13 questionnaire. So I think we're -- we're good.
14 Nothing's changed about that.

15 PROSPECTIVE JUROR NO. 078: No.

16 MR. ROBERTS: Okay. Ms. Bias.

17 PROSPECTIVE JUROR NO. 066: 066. To be
18 honest, I don't remember if I said yes or no. I just
19 said no one should be driving impaired.

20 MR. ROBERTS: You said yes, I can be fair,
21 but no one should be driving impaired.

22 PROSPECTIVE JUROR NO. 066: Yes. So I
23 believe I can be fair, yes.

24 MR. ROBERTS: Under the facts of this case,
25 you could be fair to the defendant and to the

1 plaintiff?

2 PROSPECTIVE JUROR NO. 066: Yes, sir.

3 MR. ROBERTS: Okay. Very good.

4 Mr. Berkery.

5 PROSPECTIVE JUROR NO. 063: 063. I believe I
6 can follow the Court's orders and be fair.

7 MR. ROBERTS: And the process is to listen
8 and be open minded. I can be fair. That sound
9 familiar?

10 PROSPECTIVE JUROR NO. 063: Probably.

11 MR. ROBERTS: Very good, sir.

12 Mr. Roberts. I don't believe you answered
13 this question.

14 PROSPECTIVE JUROR NO. 058: I wasn't sure if
15 I did or not.

16 MR. ROBERTS: Was that intentional? Were you
17 having trouble?

18 PROSPECTIVE JUROR NO. 058: Yes, I had --
19 it -- you know, a lot has to do with factors. You
20 know, what were the -- what were the issues behind it
21 or what the issues are behind it now. You just told us
22 we don't have to determine liability, but is there any
23 comparative liability? I don't know if that's -- has
24 been answered by the Court or not.

25 Some -- sometimes people have issues that

1 they require medications, stuff like that. I don't
2 know if -- if -- you know, that's the situation here.
3 But it could be just the -- a momentary miss -- what do
4 I mean to say? -- lapse in judgment thinking I can when
5 I can't. But it wasn't -- it wasn't something to be
6 penalized.

7 MR. ROBERTS: But it sounds like you're very
8 open to hearing whatever the evidence and explanation
9 may be and give a fair award.

10 PROSPECTIVE JUROR NO. 058: I think so, yeah.

11 MR. ROBERTS: Are you open to the possibility
12 that punitive damages are appropriate?

13 PROSPECTIVE JUROR NO. 058: Yeah. I think
14 I'm open to the idea of it.

15 MR. ROBERTS: So you're open both ways.

16 PROSPECTIVE JUROR NO. 058: Yeah. I could go
17 one way. I just have to hear information and process
18 it.

19 MR. ROBERTS: There is two quick questions
20 that I forgot when I was looking at your questionnaire.
21 Very quickly. You checked that you knew an attorney at
22 my firm Georlen Spangler.

23 PROSPECTIVE JUROR NO. 058: The name --

24 MR. ROBERTS: Name just sounded familiar to
25 you?

1 PROSPECTIVE JUROR NO. 058: It sounded
2 familiar to me, so I -- I put it there. There's a
3 lot -- you had a long list of people out there, and a
4 lot of them kind of looked like, yeah, I think I came
5 across them. It's been a while since I've been in the
6 field, so I'm not exactly sure of everyone I've come
7 across. But I read hundreds of reports in my records,
8 letters, that kind of stuff, so it's possible.

9 MR. ROBERTS: And you also checked that you
10 knew Maria Estanislao, one of the attorneys for the
11 defense?

12 PROSPECTIVE JUROR NO. 058: So I know a
13 doctor named Stanislaw, and that's who I thought it
14 was. But that's a correct. But she still looks
15 familiar to me. I've been trying to figure it out for
16 this whole time. I -- I been looking at her, going I
17 know that face from somewhere, but I don't know where.
18 And I don't know if she's been in other firms, and I'm
19 in and out of medical buildings and offices all the
20 time.

21 MR. ROBERTS: So nothing about your knowledge
22 or -- or --

23 PROSPECTIVE JUROR NO. 058: I don't know --
24 from what I know, I don't know her personally, but I
25 could have run across her or interacted with her as --

1 that's probably what I --

2 MR. ROBERTS: But the same answer for
3 Ms. Spangler and Ms. Estanislao, nothing that could
4 alter your opinion or cause you to be unfair to anyone
5 in the case; right?

6 PROSPECTIVE JUROR NO. 058: No.

7 MR. ROBERTS: Okay. Mr. Evans back to the
8 can you be fair to -- to --

9 PROSPECTIVE JUROR NO. 053: Yes.

10 MR. ROBERTS: -- someone who used marijuana
11 and drugs?

12 PROSPECTIVE JUROR NO. 053: Yes.

13 MR. STRASSBURG: Objection.

14 MR. ROBERTS: To was --

15 MR. STRASSBURG: Objection.

16 MR. ROBERTS: Was in excess of the --

17 MR. MAZZEO: Approach. Approach. Approach.

18 THE COURT: Mr. Roberts.

19 (A discussion was held at the bench,
20 not reported.)

21 THE COURT: All right, folks. I'm going to
22 strike the last question. It was, Can you be fair to
23 someone who used marijuana and drugs? This case is
24 about marijuana metabolite. You've been instructed --
25 you've been told that that was the finding of the

1 Court, that he was in excess of the legal limit on
2 marijuana metabolite. There's no evidence of other
3 drugs.

4 So that part is going to be stricken.
5 Mr. Roberts is going to ask a new question.

6 MR. ROBERTS: So you could be fair to someone
7 who consumed marijuana and had an excess level of
8 marijuana metabolites in the blood?

9 PROSPECTIVE JUROR NO. 053: Yes.

10 MR. ROBERTS: Yes? Thank you.

11 On your answer --

12 PROSPECTIVE JUROR NO. 053: I don't know what
13 I put.

14 MR. ROBERTS: -- Ms. Perreida.

15 PROSPECTIVE JUROR NO. 130: Yes.

16 MR. ROBERTS: Excuse me just a second. I
17 apologize.

18 PROSPECTIVE JUROR NO. 130: 0130.

19 MR. ROBERTS: 130. And you said yes in your
20 questionnaire.

21 And you still feel you can be fair?

22 PROSPECTIVE JUROR NO. 130: Yes.

23 MR. ROBERTS: Okay. And you said you're not
24 sure on Question No. 56. And Question 56 is the same
25 topic, but it's worded a little differently. "Would

1 you be able to serve as a fair and impartial juror in a
2 case involving driving under the influence of marijuana
3 metabolite or drugs." And you said "Not sure."

4 Have those concerns been alleviated?

5 PROSPECTIVE JUROR NO. 130: I'm not sure what
6 the question. Maybe I don't understand the question.
7 Not exactly.

8 MR. ROBERTS: At the time?

9 PROSPECTIVE JUROR NO. 130: Yeah.

10 MR. ROBERTS: Okay. But do you understand
11 the question now as we're talking today?

12 PROSPECTIVE JUROR NO. 130: No. Excuse me.

13 MR. ROBERTS: Am I talking too fast?

14 PROSPECTIVE JUROR NO. 130: No. Just -- it's
15 kind of my brain -- I don't know. Just don't
16 understand the point, you know.

17 MR. ROBERTS: So -- and let me simplify the
18 question. You know, we've been talking about the
19 circumstances of this case.

20 Is there anything that I've said that makes
21 you believe you cannot be fair and impartial to both
22 sides?

23 PROSPECTIVE JUROR NO. 130: About?

24 MR. ROBERTS: About the amount of damages,
25 about whether punitive damages should be awarded. Can

1 you be fair to both sides on those issues?

2 PROSPECTIVE JUROR NO. 130: It depends on the
3 evidence and whatever I think is -- should be -- how do
4 you say? Whatever I think is true. And you still have
5 to follow the evidence and the case and the result from
6 that accident. If there is result from the accident
7 that affect your life, I mean, whoever injured in that
8 accident, you have to be consider, you know, from the
9 medical or from the doctor things you would be -- so
10 you can decide what to be fair or not fair.

11 MR. ROBERTS: So -- so your decision, if I
12 could say it back to you to make sure I understand, is
13 it would depend on the evidence.

14 PROSPECTIVE JUROR NO. 130: Yes.

15 MR. ROBERTS: Depend on the medical records.

16 PROSPECTIVE JUROR NO. 130: Yes.

17 MR. ROBERTS: Depend on what the doctors say.

18 PROSPECTIVE JUROR NO. 130: Uh-huh.

19 MR. ROBERTS: Look at all the evidence and
20 then be fair based on that evidence.

21 Is that what you're trying to say?

22 PROSPECTIVE JUROR NO. 130: Uh-huh.

23 MR. ROBERTS: Yes? Thank you so much.

24 Okay. And, Ms. Abeles, you're Badge 43?

25 PROSPECTIVE JUROR NO. 043: Yes, sir.

1 MR. ROBERTS: Okay. And you said yes, you
2 could be fair to both questions.

3 PROSPECTIVE JUROR NO. 043: Absolutely.

4 MR. ROBERTS: And you just need to consider
5 all the evidence.

6 PROSPECTIVE JUROR NO. 043: Yes, sir.

7 MR. ROBERTS: Is that still the way you feel?

8 PROSPECTIVE JUROR NO. 043: Yes, sir.

9 MR. ROBERTS: Very good.

10 Mr. Inglett, you're Badge 91. You said you
11 could be fair. You didn't know what a metabolite was,
12 but you're willing to listen to the evidence and -- and
13 be fair.

14 PROSPECTIVE JUROR NO. 091: That's correct.

15 MR. ROBERTS: Okay. Mr. Corum is Badge
16 No. 93.

17 PROSPECTIVE JUROR NO. 093: Yes.

18 MR. ROBERTS: I can look you up here on the
19 sheet. You said you could be fair, and you still feel
20 that way?

21 PROSPECTIVE JUROR NO. 093: (Nods head.)

22 MR. ROBERTS: Ms. Go, what's your badge
23 number?

24 PROSPECTIVE JUROR NO. 141: 141.

25 MR. ROBERTS: You put no to both questions.

1 So tell me if your feelings have changed as we've
2 discussed what your decision is going to be and if you
3 would listen to the rest of the panel.

4 Do you still feel you would have trouble
5 being fair?

6 PROSPECTIVE JUROR NO. 141: It really
7 depends. Just like the other juror said, I guess it
8 depends on the severity. If there's a death involved,
9 then I can't be fair. But if -- if just for the
10 damages, then yes.

11 MR. ROBERTS: So no one's died in this case,
12 so --

13 PROSPECTIVE JUROR NO. 141: So I guess I can
14 be fair.

15 MR. ROBERTS: You can be fair on that?

16 PROSPECTIVE JUROR NO. 141: Yeah.

17 MR. ROBERTS: Okay. Thank you, ma'am.

18 And let's see. Mr. Franco.

19 PROSPECTIVE JUROR NO. 096: 096.

20 MR. ROBERTS: Thank you. That helps me.

21 THE COURT: Bless you.

22 MR. ROBERTS: Bless you.

23 And you said yes to both questions. You can
24 be fair. You have to know the issue of the case, but
25 you feel like you can be fair and even under these

1 circumstances.

2 PROSPECTIVE JUROR NO. 096: And I will be.

3 MR. ROBERTS: Very good.

4 Thanks for letting me go through that with
5 each one of you individually.

6 And we have talked about this a little bit,
7 but there are several people who indicated in their
8 questionnaires they would feel sympathy for the person
9 if a person was injured in an automobile accident.
10 Several people said they felt they would feel sympathy
11 for the defendants being sued in court. So sympathy,
12 of course, is a natural emotion. It's good. A lot of
13 people have it.

14 So the question for us really isn't so much
15 whether you sympathize for either one of the parties
16 that are here, but whether or not you think that that
17 sympathy might affect your verdict. And that's whether
18 or not your -- you bring in that outside factor and
19 that it might affect your verdict even in situations
20 where the Court instructed you that your decision is
21 not to be made on sympathy.

22 So despite some of the sympathy that some of
23 you have expressed that you might feel or you do feel
24 in a case like this, is there anyone that thinks they
25 have trouble setting that aside and just listening to

1 the evidence? Anyone think that?

2 And now I'm going to ask the rest of you a
3 broad question, sort of along the lines I asked
4 Ms. Klein, Mr. Blurton. And that is, we've talked
5 about a lot of things. But given the type of person
6 you are, your attitudes, your life experiences, your
7 opinions, your prejudices, meaning the prejudgments
8 you've made -- might have made about some things based
9 on your life experiences, is there anyone here who
10 thinks maybe they're just not the right juror for this
11 case, that you would have trouble setting some of those
12 things aside, or that you might start out favoring
13 either me or favoring the defendants? Anyone have
14 anything to add?

15 Anything -- one of the questions on the
16 questionnaire was open ended, and sometimes I get a lot
17 of answers, sometimes not many. But it's just, like,
18 Is there anything the lawyers ought to know about you?

19 And as you have -- as you have -- you've
20 talked with me yesterday and today, is there anything
21 that I haven't covered that you think might be helpful
22 to me in deciding whether you're the right juror for
23 this case? Anything you would like me to know about
24 you right now?

25 Okay. Mr. Blurton.

1 PROSPECTIVE JUROR NO. 150: Dean Blurton,
2 150. I do have to mention that I am vision impaired.
3 I don't know how that will affect this case. But I
4 have trouble reading from distances, so I may have
5 issues with that. I try not let it seep into my
6 everyday life and what I do, but sometimes that
7 happens.

8 MR. ROBERTS: And if -- if I recall, did your
9 questionnaire say you were legally blind?

10 PROSPECTIVE JUROR NO. 150: That's correct.

11 MR. ROBERTS: Okay. And do you have the
12 ability to put on glasses to correct that or is it
13 something regardless of correction, you're still going
14 to have trouble seeing?

15 PROSPECTIVE JUROR NO. 150: That's correct,
16 regardless of correction, it's still going to be a big
17 problem for me.

18 MR. ROBERTS: Okay. Do you think that might
19 affect your ability to follow along if exhibits are put
20 up on the board and pictures are shown, if the doctors
21 are holding models of the spines?

22 PROSPECTIVE JUROR NO. 150: Yes, it's
23 possible.

24 MR. ROBERTS: Okay. You think that's going
25 to make you -- another reason why you might not be a

1 good juror for this case?

2 PROSPECTIVE JUROR NO. 150: I will, you know,
3 do my best. But like I said, I do have -- I do have
4 visual impairments that sometimes get in the way.

5 MR. ROBERTS: Okay. Thank you.

6 Your Honor, may we approach?

7 THE COURT: Come on up.

8 MR. ROBERTS: Thank you.

9 (A discussion was held at the bench,
10 not reported.)

11 THE COURT: Mr. Blurton, I don't think any of
12 the attorneys want to be the bad guy and ask you more
13 questions about your vision issues. I would prefer if
14 there's a way that we can keep you to -- to give you
15 whatever accommodations we can because of your vision
16 issues.

17 My -- I guess my concern is if the attorneys
18 have medical records or something like that, portions
19 of that can be turned into brail. Portions of it may
20 not be able to. Photographs I think are going to be
21 another issue.

22 My question is: How much can you see?

23 PROSPECTIVE JUROR NO. 150: So let me give
24 you an example. I can see the clock on the wall behind
25 you. I know it's a clock, but I don't know what time

1 it is.

2 THE COURT: It's really not a clock. It's a
3 seal.

4 PROSPECTIVE JUROR NO. 150: There you go. So
5 I -- let me give you a little bit of background. I was
6 born with cataracts. I've had corneal transplants and
7 things like that, lots of experience with surgeries.
8 My vision's probably not going to get any better. I'm
9 not even close to be able to drive a car. Not even
10 close. I can read things; right? But once I get out
11 about 20 feet, that's it. I can't --

12 THE COURT: You can see things close up
13 better?

14 PROSPECTIVE JUROR NO. 150: Closer better,
15 yes.

16 THE COURT: So if you were given anything
17 that's shown on the screen, if you were given a hard
18 copy of it that you could look at close up, you would
19 be able to see that?

20 PROSPECTIVE JUROR NO. 150: That's correct.

21 THE COURT: Okay. Come on back up.

22 (A discussion was held at the bench,
23 not reported.)

24 THE COURT: Mr. Blurton, we're going to keep
25 you for now.

1 PROSPECTIVE JUROR NO. 150: Okay.

2 THE COURT: We'll try to make whatever
3 accommodations we can if you're seated on the jury.

4 PROSPECTIVE JUROR NO. 150: Thank you.

5 MR. ROBERTS: Mine is correctable. I do this
6 whenever I pick up. They're in my hand.

7 PROSPECTIVE JUROR NO. 150: I wish.

8 MR. ROBERTS: Okay. Here's my question -- my
9 last question for all of you: At the end of the trial,
10 the judge is going to tell you the law, and you will
11 all have been -- have taken an oath. Not the one you
12 took here to tell the truth in this voir dire process,
13 but you'll take another oath to follow those laws.

14 And is there everyone in here who can promise
15 me that you'll follow the law as the judge instructs
16 you at the end of the case? Can everyone make that
17 promise to me individually?

18 IN UNISON: Yes.

19 MR. ROBERTS: And this is a little harder
20 question: Would everyone promise me that if you get
21 back in the jury room and no one's around, other than
22 the other jurors, and someone starts arguing to make a
23 decision on a basis other than the law, that you will
24 speak up and tell them that we have to follow the law?
25 The judge said not to consider that. Are y'all willing

1 to do that for me?

2 IN UNISON: Yes.

3 MR. ROBERTS: Thank you so much for allowing
4 me to take up so much of your valuable time. I
5 appreciate it.

6 Turn it over, Judge. Thank you so much.

7 THE COURT: Thank you.

8 Mr. Mazzeo, go ahead. We'll go for a little
9 bit.

10 MR. MAZZEO: Thank you, Judge.

11 THE COURT: Everybody okay for a little bit
12 longer?

13

14 VOIR DIRE EXAMINATION

15 MR. MAZZEO: Good afternoon, again, ladies
16 and gentlemen.

17 IN UNISON: Good afternoon.

18 MR. MAZZEO: So it's -- it's certainly not
19 easy sitting here. You're in Day 2 now of jury
20 selection, and it's -- it's not easy sitting here. But
21 as you can see with the questions that are being asked
22 and you see us going up to the bench periodically to
23 get rulings and clarifications from the judge, that the
24 jury selection process, it's an important part of the
25 trial as a whole. Even though the trial hasn't

1 started, we haven't even picked a jury, but it's a very
2 important part of the process.

3 And I would like to say on behalf of my
4 client, Andrea Awerbach, we appreciate the candor that
5 you've given in your answers. Some of the questions
6 you are being asked, you'll be asked by myself, you
7 were asked by Mr. Roberts, they're personal questions.
8 Let's face it. And we're asking you to -- in a public
9 setting, to come forward and -- and reveal public
10 information about your -- or personal information about
11 yourself. So we certainly appreciate that.

12 So there's good news and there's bad news.
13 So Mr. Roberts asked a number of questions that I do
14 not now have to cover. Most of them at least. So
15 that's the good news. The bad news is that I still
16 have to ask questions. So I will not be able to finish
17 today. I'm only starting today. And then tomorrow
18 morning when we resume, I'll be able to continue with
19 the -- the questions that I have for you, so --

20 And one of the first -- first question that I
21 have, it's for all of you, it's a general question.
22 And -- and during this process, I will be asking
23 general questions, just a show of hands and then from
24 the responses, I might just move about to ask for
25 individual responses. Other times, less frequently,

1 I'll be asking for questions from each one of you. So
2 just bear with me. It's late in the day.

3 So as you see, and you'll see in this
4 process, even with jury selection, as the defense
5 counsel, plaintiff always goes first with jury
6 selection. Plaintiff goes first with opening
7 statement, with presentation of their case. That means
8 if plaintiff goes first, defendant has to go second.

9 So -- so does that present an issue? Does
10 that -- or actually, what I meant to say was does that
11 put myself or my client at a disadvantage because
12 plaintiff gets to speak to you all first in jury
13 selection and opening statement? Kind of the primacy
14 of recency rule there. Anyone?

15 Okay. Another general question I want to
16 bring up at this point. My client has been here
17 yesterday, today. She has some difficulty ambulating,
18 as you may have seen. She uses a walker. There will
19 be times throughout trial where she may not be able to
20 be here for the entire day because of her -- her
21 ability to ambulate and move about.

22 It's important for me to know at this point,
23 does that present an issue for anyone if you see her
24 not sitting there in the morning or in the afternoon or
25 she might miss an entire day? Okay. No one?

1 Okay. And I bring that up because there are
2 jurors who -- and -- who on other cases that have said,
3 well, if we have to sit here, and we all know you're
4 not getting paid properly, compensated for sitting
5 here, and certainly what we're asking you to do, you're
6 not just sitting here. You're going to be -- we need
7 your attention to evaluate the evidence, not just for
8 this jury selection process but for the next three or
9 four weeks.

10 So if you're sitting there, do you have in
11 your mind, well, I certainly want her there every
12 minute of the day that we're in here, otherwise that
13 might create an issue? And, again, no embarrassment.
14 If -- we just -- we just want to -- at this part of the
15 selection process, we just need to know. Still, we're
16 asking for your candor. So any problems for anyone?
17 No? Okay.

18 Because typically -- I mean, there have
19 been -- I guess it depends on the jury makeup. And in
20 this one, no one has a problem with that, so great.

21 So what I'm going to do is initially I like
22 to learn something about yourselves aside from
23 particular issues in this case. And so what I like to
24 start with is -- and these are -- this is one of those
25 questions where I'm going to ask each of you a specific

1 question. And we probably won't finish today. But I'm
2 going to start with Mr. Blurton.

3 Hi. Good afternoon.

4 PROSPECTIVE JUROR NO. 150: Good afternoon.

5 MR. MAZZEO: You know, what I want to know is
6 something about your work life, and I'm going to be
7 asking all of you this, pretty much the same question.

8 So, Mr. Blurton, can you tell us something
9 about -- I know you said you're a senior IT architect.
10 Can you tell us about what your workday life is about
11 and what are some of your responsibilities.

12 PROSPECTIVE JUROR NO. 150: Dean Blurton,
13 150. So with that senior IT architect role, I actually
14 have a ton of other responsibilities. That's just the
15 title. I lead incidents. So I'm responsible for
16 leading incidents when we -- we deal in -- I deal in
17 online gambling across the globe. So when we have an
18 incident, when something is down, when something is
19 broken and we are losing revenue, it's my
20 responsibility to head up the team to take care of that
21 and to resolve it.

22 As far as the architecture position, I design
23 the systems that go in that generate the money. And I
24 am talking millions and millions and millions of
25 dollars. So building those systems from the ground up,

1 buying the hardware, the software configuration,
2 testing, everything is my responsibility. Not so much
3 in a direct role, but to bring people together to do
4 that; right? So that's generally what I do.

5 MR. MAZZEO: Yeah, I appreciate that.

6 What are some of your challenges or likes and
7 dislikes about your position?

8 PROSPECTIVE JUROR NO. 150: I am not
9 naturally a leader. I would rather be directed. I
10 like to be a doer; right? So I like to contribute, to
11 build, and to put things together rather than be on the
12 other side where I tell you and you and you to do this,
13 this, and this. Because I feel that that's -- that's
14 my bread and butter is I like to do. I like to put
15 things together. You know, if I was a mechanic, for
16 instance, I would like to have my hands in the engine
17 rather than be the manager to tell three other guys to
18 put their hands in the engine. And that's mainly my --
19 my big drawback with my position.

20 I do like seeing something come together. I
21 designed it. I built it. I wrote all the
22 architectural documentation for it, and when it comes
23 together, it's a good feeling. Because a lot of times
24 it's months' long projects that span many different
25 departments and many different technical fields and

1 project management and things like that. So that's --
2 that's one -- that's the main reason I took the job. I
3 have the ability to -- to not take the job, but I said,
4 you know, I've never done this before, I -- I'm going
5 to try it. And I want to see what's it's like. And
6 it's really nice to have to -- when things come
7 together; right?

8 But there's also the opposite spectrum, which
9 is another thing I don't like about the job. There's
10 the opposite spectrum where if something doesn't come
11 together that is supposed to come together, then it's
12 my fault; right? So ...

13 MR. MAZZEO: Yeah. And you receive the
14 benefit of your successes and also the failures that
15 you also have.

16 PROSPECTIVE JUROR NO. 150: Correct.

17 MR. MAZZEO: Outside of work, what hobbies do
18 you have?

19 PROSPECTIVE JUROR NO. 150: I'm a computer
20 guy. So I build computers. Really, that's my --
21 that's -- I live and breathe computers really. But I
22 do have a 14-year-old son. So I have to push a lot of
23 that aside, and usually when I'm out of work, I'm just
24 hanging out with him.

25 MR. MAZZEO: Okay. Great. Thank you. Very

1 good.

2 Mr. Brandon. And I believe your job is you
3 work with Quality Towing?

4 PROSPECTIVE JUROR NO. 003: No, I used to
5 work for Quality Towing. Right now, I'm Rio Hotel as
6 an engineer.

7 MR. MAZZEO: Oh, okay. I believe you did say
8 that.

9 So what are some of your responsibilities and
10 duties that you have with your job?

11 PROSPECTIVE JUROR NO. 003: I pretty much
12 maintain the building. Make sure day to day, it's
13 still standing, plumbing, room calls, lightbulbs,
14 responding to fires, elevators with guests stuck inside
15 of them. I make sure the building's operating
16 properly.

17 MR. MAZZEO: Sure. Constantly on the go with
18 your job, it seems like?

19 PROSPECTIVE JUROR NO. 003: Yeah.

20 MR. MAZZEO: And what are some of the likes
21 and dislikes that you have with your job?

22 PROSPECTIVE JUROR NO. 003: I hate to work
23 graveyard.

24 MR. MAZZEO: I'm sorry?

25 PROSPECTIVE JUROR NO. 003: I hate working

1 graveyard.

2 MR. MAZZEO: Who doesn't; right?

3 PROSPECTIVE JUROR NO. 003: I'm thankful I'm
4 here today and hopefully for four weeks. It's a
5 vacation for me. I do like graveyard in a way on the
6 weekends, because everyone comes to party. And when
7 they party, they can't handle the alcohol, they start
8 acting funny. They fall and trip over and fights.
9 It's fun watching it at the Rio.

10 MR. MAZZEO: Keeps you busy as well.

11 PROSPECTIVE JUROR NO. 003: Yeah, it's very
12 good.

13 MR. MAZZEO: Very good. And what hobbies do
14 you have outside of work?

15 PROSPECTIVE JUROR NO. 003: Hobbies, I was
16 born into racing. NASCAR. I don't know if anybody has
17 watched NASCAR. I hate watching it. I love doing. It
18 love working on my racecar in the garage. I'm trying
19 to put it back together as I hit the wall 130 miles an
20 hour, destroyed the car. I'm trying to get it ready
21 for another race, but pretty much it. And then when
22 I'm not doing that, I'm going to the lake.

23 MR. MAZZEO: And I imagine that race you
24 were -- or the accident that you had where you -- where
25 you ran into the wall at 130, was that on a racetrack?

1 PROSPECTIVE JUROR NO. 003: Yeah.

2 MR. MAZZEO: Okay. So --

3 PROSPECTIVE JUROR NO. 003: Coming out of a
4 corner, all we do is make left-hand turns. Hey,
5 left-hand turns. We make rights to go off the track.
6 But coming off the corner, a guy rear-ended me, picked
7 me up, tried to save the car, and it just shot the
8 other direction straight into the wall.

9 MR. MAZZEO: Nothing that -- the brakes
10 couldn't help you in that situation?

11 PROSPECTIVE JUROR NO. 003: No, I was locked
12 up, just slid too much. The inertia, the force, and
13 speed we were going, it just -- we're on slicks. We're
14 not on street tires. So once you start sliding, you
15 better hope you can spin the car out or do something.

16 MR. MAZZEO: Kind of like being on ice
17 almost?

18 PROSPECTIVE JUROR NO. 003: Yeah.

19 MR. MAZZEO: You can't brake on ice.

20 PROSPECTIVE JUROR NO. 003: Yeah. Any oil or
21 anything on the track, it's very slippery.

22 MR. MAZZEO: Great. Thank you. Appreciate
23 it.

24 Ms. Flores, I know you had told us yesterday
25 you work at Rachel's Kitchen.

1 PROSPECTIVE JUROR NO. 010: Uh-huh.

2 MR. MAZZEO: You kind of gave us a
3 description of some of the things you did.

4 PROSPECTIVE JUROR NO. 010: I work front of
5 the house. I also do prep at times, and then I help
6 our catering manager with making fruit bowls or bars,
7 trays to go out. I love it. I love working in the
8 back with the kitchen and the prep. I love working
9 with people, just not the ones that come in in bad
10 moods or complain about everything.

11 MR. MAZZEO: You talking about employees
12 or --

13 PROSPECTIVE JUROR NO. 010: Customers.

14 MR. MAZZEO: Customers. Okay. Sure.

15 PROSPECTIVE JUROR NO. 010: Have pretty
16 difficult ones, but I love it in general.

17 MR. MAZZEO: And that's generally -- that's
18 a -- that's a lunch and dinner or you work --

19 PROSPECTIVE JUROR NO. 010: Breakfast, lunch
20 dinner. I open. I close. Just depends on what
21 schedule they put me.

22 MR. MAZZEO: Okay. Very good.

23 What hobbies do you have outside work?

24 PROSPECTIVE JUROR NO. 010: I love spending
25 time with my family. If I'm not at work, I'm at home

1 with my brothers and my sisters. I like going --
2 taking them out to the movies or -- I'm a very family
3 person.

4 MR. MAZZEO: And I think I know that when you
5 were asked about the values, what are the important
6 values for yourself? I didn't write them all down. I
7 know that many of you had a list of them, so I wrote
8 down some of the initial ones. I wrote down for you,
9 you had indicated respect and love. I'm not sure,
10 maybe family as well you might have indicated; right?

11 What are some things you do with your family
12 and you?

13 PROSPECTIVE JUROR NO. 010: We go out to the
14 movies or we take them -- we go out to Bonnie Springs
15 or hiking or -- we're just at home, you know, arts and
16 crafts. I have a seven-year-old sister, so she loves
17 doing, you know, arts and crafts, braiding hair.

18 MR. MAZZEO: How many --

19 THE COURT: Mr. Mazzeo.

20 MR. MAZZEO: Yes.

21 THE COURT: Can I have counsel come for a
22 second. Sorry to interrupt.

23 (A discussion was held at the bench,
24 not reported.)

25 THE COURT: Sorry for the interruption,

1 folks.

2 Go ahead, Mr. Mazzeo.

3 MR. MAZZEO: Thank you, Judge.

4 Ms. Flores, I was in the process of -- I was
5 just about to ask you, how many siblings do you have?

6 PROSPECTIVE JUROR NO. 010: Three.

7 MR. MAZZEO: Four including yourself?

8 PROSPECTIVE JUROR NO. 010: Four.

9 MR. MAZZEO: That's a good size family. I
10 know families aren't as big anymore. I'm one of 12, 5
11 brothers and 6 sisters. So we used to do a lot
12 together. We had our own football team against each
13 other, but anyway. Thank you.

14 Mr. Jensen, I know that you work with -- you
15 did, you're retired, National Weather Service you told
16 us. We all have been tuned into the weather reports.

17 Can you tell us something about your
18 responsibilities and your work life at the National
19 Weather Service.

20 PROSPECTIVE JUROR NO. 015: 015. For about 9
21 years, I was the manager of the National Weather
22 service here. And then for approximately 11 years, I
23 was what was considered a senior forecaster. As a
24 manager, obviously I ran the office, took care of the
25 everyday business. And as a senior forecaster, I was

1 responsible for issuing all of the forecasts, issue
2 warnings, all the products that the weather service
3 issues.

4 MR. MAZZEO: Okay. And what are some of the
5 likes and dislikes with that job?

6 PROSPECTIVE JUROR NO. 015: The reason I
7 retired was rotating shift work. We worked anywhere
8 from three to seven days in a row and then got one to
9 three days off. And you work a set of days, a set of
10 evenings, and a set of graveyards. There's no
11 seniority in the weather service, so after a point in
12 time, it just got to be a little hard. So that was the
13 biggest dislike.

14 Like, the challenge. Even in Vegas, it's
15 challenging to try to forecast the weather.

16 MR. MAZZEO: Did you said even here in Vegas
17 it's challenging?

18 PROSPECTIVE JUROR NO. 015: Even in Vegas.
19 Our forecast office does not include just Vegas. The
20 area of responsibility was the four southern counties
21 of Nevada, Mono County of California, as well as 9/10
22 of San Bernardino, and all of Mohave County. So the
23 area was actually the second largest forecast area in
24 the -- in the contiguous United States.

25 MR. MAZZEO: And just -- just I'm curious

1 about this. What would be considered an accurate
2 prediction? What percentage would you have to be if
3 you gauge it, like 30 percent, 50 -- or 50 percent, to
4 have an accurate prediction?

5 PROSPECTIVE JUROR NO. 015: It depends on
6 what you're really talking about. To be 100 percent
7 correct is impossible. But when you take a look at the
8 statistics that are ran, general forecast on if it's
9 going to rain or not, if the temperature is within
10 3 degrees either way, that's considered a hit. Overall
11 for Las Vegas and the forecast area, we actually ran
12 about a 95 percent accuracy. So if I told you it was
13 going to rain tomorrow, you could pretty much guarantee
14 that it was.

15 MR. MAZZEO: Right.

16 PROSPECTIVE JUROR NO. 015: But we always
17 hedged, because we always throw the 30 percent chance
18 out there or 60 percent chance or -- it will rain.

19 MR. MAZZEO: Right. Okay. And now that
20 you're retired, what hobbies do you have?

21 PROSPECTIVE JUROR NO. 015: I enjoy
22 photography, off-roading, hiking, and spending time
23 with grandkids.

24 MR. MAZZEO: Great. Thank you.

25 Mr. Foerstel.

1 PROSPECTIVE JUROR NO. 023: Yes. 023.

2 MR. MAZZEO: Hi. Okay. And I know that you
3 had told us that you -- oh, you've been here in Vegas
4 for only 13 months, a little over a year?

5 PROSPECTIVE JUROR NO. 023: Yes, correct.

6 MR. MAZZEO: I guess you came in the winter.
7 I guess December -- Decemberish of --

8 PROSPECTIVE JUROR NO. 023: Yeah. Late, late
9 December last year. It was a great time to get out of
10 Seattle.

11 MR. MAZZEO: Seattle. Okay. Great.

12 You work at Sprouts Farmers. What are your
13 responsibilities?

14 PROSPECTIVE JUROR NO. 023: Head cashier
15 there, which is basically a glorified cashier, mostly
16 just checking customers, but also auditing cashier's,
17 making sure all the cashiers get their breaks, closing
18 registers, balancing registers. So that's pretty much
19 it.

20 MR. MAZZEO: Have you been there since you
21 move out here?

22 PROSPECTIVE JUROR NO. 023: It took me a
23 couple of months to get the job. I moved out here
24 without a job. I worked for a school in Seattle for
25 the last seven or eight years. So came out here

1 because my parents were out here, getting a little
2 older, so I was ready to get out of Seattle.

3 MR. MAZZEO: Did you work at a business like
4 Sprouts in Seattle?

5 PROSPECTIVE JUROR NO. 023: No. This is the
6 first time I've ever worked a job like this before.
7 First time I worked full time in a long time too. So
8 that's putting a crimp in all my outdoor fun.

9 MR. MAZZEO: I got you.

10 PROSPECTIVE JUROR NO. 023: I worked at a
11 school in Seattle. I was an outdoor -- just kind of a
12 part time, worked in a small private school in Seattle.

13 MR. MAZZEO: As a teacher or professor?

14 PROSPECTIVE JUROR NO. 023: Not a teacher,
15 but I did the outdoor education. I ran after school
16 programs, just helped the children around the school,
17 so yeah.

18 MR. MAZZEO: Great. What are some of the
19 likes and dislikes you have with your job at Sprouts?

20 PROSPECTIVE JUROR NO. 023: I like the --
21 working at a kind of a smaller company. I've worked at
22 bigger companies before. So this is a -- although it's
23 growing quite a bit. So it's getting big.

24 Dislikes, once again, it's a full-time job,
25 which, you know -- yeah.

1 MR. MAZZEO: I know. Understand.

2 Hobbies, I know you like to exercise and run.

3 PROSPECTIVE JUROR NO. 023: Yeah, run. I run
4 marathons. I run 40, 50, 60 miles in a week. And I
5 also like to get out to Red Rock because I rock climb a
6 little bit too. So those are the two biggest pursuits.

7 MR. MAZZEO: Great. Thank you. Appreciate
8 it.

9 Ms. Klein, good afternoon.

10 PROSPECTIVE JUROR NO. 146: Good afternoon.

11 MR. MAZZEO: I know that you had said you
12 worked with an accident reconstructionist, but did you
13 indicate on your questionnaire --

14 PROSPECTIVE JUROR NO. 146: Badge No. 146. I
15 currently am a high school math teacher. I worked as a
16 civil engineer for 12 years, and then when the economy
17 declined, there wasn't a need to design subdivisions
18 anymore, so I now teach math.

19 MR. MAZZEO: At Sandy Valley.

20 PROSPECTIVE JUROR NO. 146: Sandy Valley High
21 School.

22 MR. MAZZEO: How long have you been doing
23 that for?

24 PROSPECTIVE JUROR NO. 146: This is my --
25 well, I've been teaching as a full-time teacher for

1 five years.

2 MR. MAZZEO: Okay.

3 PROSPECTIVE JUROR NO. 146: I have taught as
4 a long-term sub for two years before that while I was
5 getting my teaching degree or my teaching license.

6 MR. MAZZEO: Did you ever teach middle school
7 or just high school?

8 PROSPECTIVE JUROR NO. 146: God, no.

9 MR. MAZZEO: That's what I was going to ask
10 you next. Why -- why is it that people, a lot of
11 teachers say this, it's -- it's really tough working
12 with seventh, maybe even eighth graders are worse than
13 high school students?

14 PROSPECTIVE JUROR NO. 146: Biologically
15 speaking, they are insane during those times. Their
16 brains are going through so many -- their bodies are
17 going through so many changes, they literally forget
18 everything that you've taught them over the weekend,
19 and you have to reteach it every week. And their
20 bodies are so insane crazy that they don't even know
21 what's going on. And so they can't focus. And it's --
22 it's like teaching a room full of squirrels.

23 MR. MAZZEO: Hormonal changes; right? That's
24 what you're referring to. So they're looking at each
25 other rather --

1 PROSPECTIVE JUROR NO. 146: Their bodies,
2 everybody else. They're -- it's crazy.

3 MR. MAZZEO: Right. Yeah, my daughter said
4 that as well when she was in middle school. She said
5 high school was a lot different, so ...

6 PROSPECTIVE JUROR NO. 146: Yes. That's like
7 teaching cats that don't want to do anything.

8 MR. MAZZEO: Love the description.
9 So what grade do you teach?

10 PROSPECTIVE JUROR NO. 146: High school.

11 MR. MAZZEO: I know.

12 PROSPECTIVE JUROR NO. 146: All of it. I am
13 the high school math teacher.

14 MR. MAZZEO: Oh, okay.

15 PROSPECTIVE JUROR NO. 146: There are only 90
16 high school students in Sandy Valley. Currently we
17 have a K through 12 school with about 250 students.

18 MR. MAZZEO: So you stay busy.

19 PROSPECTIVE JUROR NO. 146: Yes. I teach
20 everything from geometry up through AP stats.

21 MR. MAZZEO: Likes and dislikes?

22 PROSPECTIVE JUROR NO. 146: I love working
23 with the students and seeing them grow and understand
24 and become better people. I dislike having to work for
25 one of the fifth largest -- it is the fifth largest

1 school district in the country, and there's a lot of
2 bureaucracy that goes with that where a lot of the
3 mandates that come down don't really apply to a very
4 small rural school. They're much more aimed at the
5 large urban factory schools that make up the majority
6 of the school district.

7 MR. MAZZEO: Meaning paperwork that you have
8 to take care of.

9 PROSPECTIVE JUROR NO. 146: Paperwork,
10 curriculum mandates, a lot of stuff that's just, yeah,
11 bureaucracy.

12 MR. MAZZEO: Sure. Okay.

13 Outside of school hobbies that you have?

14 PROSPECTIVE JUROR NO. 146: I read. I spend
15 a lot of time with my family. My -- I have custody of
16 my niece and we have custody of my nephew. So we spend
17 a lot time with them.

18 MR. MAZZEO: Thank you.

19 Ms. Gold, good afternoon.

20 PROSPECTIVE JUROR NO. 036: Yes. Good
21 afternoon. 036.

22 MR. MAZZEO: Ms. Gold, just give me a second
23 to -- what I did with all the summaries as, I guess,
24 all the attorneys did, is we summarized the
25 information, so we're not sitting up here with a stack

1 of 200 jury questionnaires having to go through them.
2 So sometimes it takes me a minute to get to that
3 summary.

4 Ms. Gold, are you currently employed or are
5 you retired?

6 PROSPECTIVE JUROR NO. 036: No, I'm retired.

7 MR. MAZZEO: And I believe you indicated you
8 worked as a secretary to a workers' compensation judge?

9 PROSPECTIVE JUROR NO. 036: Years ago, yes.
10 My most recent job was risk management claim
11 specialist --

12 MR. MAZZEO: Right.

13 PROSPECTIVE JUROR NO. 036: -- for commercial
14 insurance.

15 MR. MAZZEO: Right. And you did discuss that
16 a couple times.

17 And what are some of your -- what's your
18 workday like when you're doing that?

19 PROSPECTIVE JUROR NO. 036: Lots of phone
20 calls. Lots of going through claims that have been
21 forwarded to me by third-party adjustors to see if they
22 have met the reserves properly, to see if they're
23 handling the cases properly, and getting back to them.
24 Sometimes going out of state for audits. We -- the
25 company that I worked for is international. So there's

1 a lot of traveling involved. I loved it.

2 MR. MAZZEO: And you said you didn't do --
3 you didn't do adjusting. You --

4 PROSPECTIVE JUROR NO. 036: Right. I oversaw
5 adjusting.

6 MR. MAZZEO: You oversaw.

7 PROSPECTIVE JUROR NO. 036: But I do have a
8 little bit of background in workers' comp adjusting --

9 MR. MAZZEO: Oh, okay.

10 PROSPECTIVE JUROR NO. 036: -- as well, so ...

11 MR. MAZZEO: What about hobbies outside of
12 work? I know your last year was pretty --

13 PROSPECTIVE JUROR NO. 036: Steak, my
14 grandkids, and the Packers.

15 MR. MAZZEO: What was the first thing?

16 PROSPECTIVE JUROR NO. 036: Steak.

17 MR. MAZZEO: Oh, steak. You eat steak?
18 Okay. Rib eye or New York?

19 PROSPECTIVE JUROR NO. 036: I look for the
20 best steak in Las Vegas, and this is the greatest place
21 on earth to look.

22 MR. MAZZEO: There's so many steakhouses all
23 over. You're right.

24 Mr. Cyganek.

25 PROSPECTIVE JUROR NO. 106: Yes.

1 MR. MAZZEO: Hi. Good afternoon.

2 PROSPECTIVE JUROR NO. 106: 0106.

3 MR. MAZZEO: And you indicated that you
4 were -- you're a non -- well, you work as a security
5 guard; correct? You don't carry a weapon, though?

6 PROSPECTIVE JUROR NO. 106: I can. I'm
7 armed, unarmed, CC certified. I work for the company
8 that works -- we come in the south door and north door,
9 CSI. And I work for Southwest Gas Corporation, the
10 corporate over on Spring Mountain. And I'm their
11 training manager. I'm kind of like the liaison, if you
12 can picture a private security company and a corporate.
13 And it's really funny sometimes juggling because
14 security's always looked down on as being the lowest on
15 the totem pole, don't have any brains, can't do
16 anything right. And I've been with them for -- there's
17 a company before CSI came in. So it's been with CSI
18 for six months with them. And because I've been with
19 that Southwest Gas, that location for about a year and
20 a half, everybody comes to me to do all the training,
21 supervisors, managers, owners, you name it. I've even
22 been offered to come down here and be a training
23 manager for this facility, the one out on Bonanza, and
24 a few other properties that they have.

25 Feel really great to be considered, but I

1 explained to the owner that I basically want to make
2 sure we make Southwest Gas a training place first. So
3 you come to work with the corporate environment
4 mind-set, you're business, you're professional, you're
5 polite, and you -- and you -- you would -- you walk
6 through the doors, you incorporate that, so ...

7 MR. MAZZEO: And by the way, do you have
8 any -- in training, did you receive any specialized
9 training where you became certified in any aspect of
10 your job?

11 PROSPECTIVE JUROR NO. 106: Basically just
12 gun safety, if I carry my gun, concealed or open.
13 Basically just keeping the immediate environment you're
14 at safe for everybody involved.

15 MR. MAZZEO: Understood. And also, two more
16 questions. Likes and dislikes and -- and hobbies?

17 PROSPECTIVE JUROR NO. 106: Likes, I --
18 sports play. Not Division 1, but just underneath
19 Division 1 basketball, football. Big time Green Bay
20 Packer fan, Chicago White Sox, and Lakers, Kobe. So I
21 love watching it.

22 What else? Bingo, I love. Gosh, what else
23 do I love to do? I don't gamble a whole heck of a lot.
24 Just being involved with your immediate people that are
25 your friends and your family, and you see the -- a team

1 that, you know, you develop friends.

2 MR. MAZZEO: Sure.

3 PROSPECTIVE JUROR NO. 106: So...

4 MR. MAZZEO: Great. Thank you.

5 And, Judge, I believe at this point --

6 THE COURT: We're going to go ahead and take
7 our evening recess, folks. I'm told that it's -- I
8 think we're pretty confident we're going to be able to
9 get a jury tomorrow. So hopefully many of you will be
10 excused after tomorrow. Some of you will be stuck with
11 us for the next three or four weeks. But that,
12 hopefully, will give you a little bit of an idea how
13 long you're going to be here, especially those of you
14 that are sitting in the back wanting to go home.

15 We're going to start at 9:00 o'clock tomorrow
16 morning. Wednesday's one of the days I don't have an
17 early morning calendar. So I'm going to ask everybody
18 to be here at 9:00.

19 During our break this evening, you're
20 instructed not to talk with each other or with anyone
21 else, about any subject or issue connected with this
22 trial. You are not to read, watch, or listen to any
23 report of or commentary on the trial by any person
24 connected with this case or by any medium of
25 information, including, without limitation, newspapers,

1 television, the Internet, or radio. You are not to
2 conduct any research on your own, which means you
3 cannot talk with others, Tweet others, text others,
4 Google issues, or conduct any other kind of book or
5 computer research with regard to any issue, party,
6 witness, or attorney, involved in this case. You're
7 not to form or express any opinion on any subject
8 connected with this trial until the case is finally
9 submitted to you.

10 See you in the morning. Have a good night.

11 (The following proceedings were held
12 outside the presence of the jury.)

13 THE COURT: You are not one of our jurors;
14 right?

15 UNIDENTIFIED SPEAKER: I wish.

16 THE COURT: We are outside the presence of
17 the jury.

18 Anything we need to put on the record,
19 Counsel?

20 MR. MAZZEO: No, Your Honor.

21 MR. ROBERTS: No.

22 THE COURT: All right. See you in the
23 morning at 9:00. Off the record.

24 (Thereupon, the proceedings
25 concluded at 4:44 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

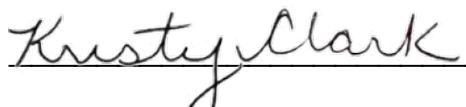
STATE OF NEVADA)
COUNTY OF CLARK) ss:

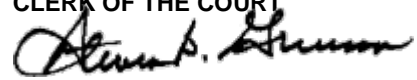
I, Kristy L. Clark, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify: That I reported the proceedings commencing on
Tuesday, February 9, 2016, at 10:16 o'clock a.m.

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

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

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
9th day of February, 2016.


KRISTY L. CLARK, CCR #708



1 CASE NO. A-11-637772-C
2 DEPT. NO. 30
3 DOCKET U
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 EMILIA GARCIA, individually,)
10 Plaintiff,)
11 vs.)
12 JARED AWERBACH, individually;)
13 ANDREA AWERBACH, individually;)
14 DOES I-X, and ROE CORPORATIONS)
15 I-X, inclusive,)
Defendants.)
16

17 REPORTER'S TRANSCRIPT
18 OF
19 PROCEEDINGS
20 BEFORE THE HONORABLE JERRY A. WIESE, II
21 DEPARTMENT XXX
22 DATED WEDNESDAY, FEBRUARY 10, 2016
23

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

1 APPEARANCES:

2 For the Plaintiff:

3 GLEN J. LERNER & ASSOCIATES
4 BY: ADAM D. SMITH, ESQ.
4795 South Durango Drive
Las Vegas, Nevada 89147
5 (702) 977-1500
asmith@glenlerner.com

6 - AND -

7 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL,
8 BY: D. LEE ROBERTS, JR., ESQ.
BY: TIMOTHY MOTT, ESQ.
9 BY: MARISA RODRIGUEZ-SHAPOVAL, ESQ.
6385 South Rainbow Boulevard
10 Suite 400
Las Vegas, Nevada 89118
11 (702) 938-3838
lroberts@wwhgd.com

12
13 For the Defendant Andrea Awerbach:

14 MAZZEO LAW, LLC
15 BY: PETER MAZZEO, ESQ.
BY: MARIA ESTANISLAO, ESQ.
631 South 10th Street
16 Las Vegas, Nevada 89101
(702) 382-3636

17
18 For the Defendant Jared Awerbach:

19 RESNICK & LOUIS
20 BY: ROGER STRASSBURG, ESQ.
BY: RANDALL W. TINDALL, ESQ.
5940 South Rainbow Boulevard
21 Las Vegas, Nevada 89118
(702) 997-3800

22
23

24 * * * * *

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

VOIR DIRE EXAMINATION

PAGE

By Mr. Mazzeo

17, 181, 209

By Mr. Roberts

164, 203, 273

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 10, 2016;

2 9:08 A.M.

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

5 * * * * *

6
7 THE MARSHAL: Remain seated. Come to order.

8 THE COURT: You guys want to do something
9 outside the presence?

10 MR. TINDALL: Yes, Your Honor.

11 THE COURT: All right. We're back on the
12 record, Case No. A637772. We're outside the presence.
13 What do you got?

14 MR. TINDALL: We would like to make a record
15 after yesterday's bench conference regarding
16 Mr. Roberts' comments that -- about marijuana and
17 drugs. At the bench, we moved for the comment to be
18 stricken. It was. Mr. Strassburg also moved for a
19 mistrial.

20 We believe that Mr. Roberts' comments were
21 purposeful, because about ten minutes before that, we
22 had to have a bench conference regarding him attempting
23 to tell the jury about limits, plural, which in this
24 case means only two things: Marijuana and marijuana
25 metabolite. The Court also sustained the motion to