

No. 71348

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
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EMILIA GARCIA,  
Appellant,

v.

ANDREA AWERBACH,  
Respondent.

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**APPELLANT'S APPENDIX  
VOLUME XXII, BATES NUMBERS 5251 TO 5500**

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1 seated. Welcome back, folks. We're back on the  
2 record, Case No. A63772.

3 Do the parties stipulate to the presence of  
4 the jury?

5 MR. SMITH: Yes, Judge.

6 MR. MAZZEO: Yes, Your Honor.

7 THE COURT: Be reminded you are still under  
8 oath.

9 THE WITNESS: Thank you, Your Honor.

10

11 RE CROSS-EXAMINATION

12 BY MR. SMITH:

13 Q. Doctor, you were talking to Mr. Mazzeo about  
14 being better able to review the MRI films than  
15 Dr. Gross.

16 Do you remember that?

17 A. Yes.

18 Q. And what you're saying is you think that you  
19 have a better picture of Ms. Garcia's complaints and  
20 her history than Dr. Gross, who spent a lot more time  
21 with her; right?

22 A. No. I thought the question was regarding MRI  
23 studies.

24 Q. Your answer was you're better situated -- or  
25 part of your answer is you're better situated --

1           A.    Yes.

2           Q.    -- to review the MRIs because you're able to  
3 review all of her medical records and meet her one  
4 time; right?

5           A.    Yes. As I testified, I met her through her  
6 records. And then I had the opportunity to meet her  
7 face-to-face.

8           Q.    And you know from your review of Dr. Gross's  
9 records that he's reviewed all of those same records  
10 and spent a lot more time with her than you have;  
11 right?

12          A.    Correct.

13          Q.    Now, you would also agree that Dr. Gross  
14 learned to read MRI films in medical school; right?

15          A.    Yeah, based on his graduation, they were  
16 available.

17          Q.    He would have used them in his residency;  
18 right?

19          A.    Yes, certainly.

20          Q.    He would have used them extensively in his  
21 fellowship under Dr. Benzel; right?

22          A.    Yes.

23          Q.    And Dr. Gross uses MRI surgeries every day in  
24 his practice; right?

25          A.    I think you misspoke.

1 Q. I might have. Dr. Gross uses MRI films every  
2 day in his practice as a spine surgeon; right?

3 A. Correct.

4 Q. Now, you talked about the inconsistencies in  
5 Ms. Garcia's records; right?

6 A. Correct.

7 Q. And the one that you pointed out was the  
8 inconsistency in when her pain started; right?

9 A. Yes.

10 Q. And that inconsistency in when her pain  
11 started spanned a period of years in the medical  
12 records; right?

13 A. It did.

14 Q. In other words, we're talking about her  
15 describing when her pain started to the emergency room  
16 three days after the accident, but you're also talking  
17 about when they described it to Dr. Kidwell about a  
18 year and a half later; right?

19 A. Yes.

20 Q. And you would expect, as time went on with  
21 Ms. Garcia, and she had been in pain every day for  
22 months and months and ultimately years, she's going to  
23 even have a tough time remembering what it was like to  
24 live without pain; right?

25 MR. MAZZEO: Objection. Foundation.

1 Speculation.

2 THE COURT: Let him testify what his  
3 understanding is.

4 THE WITNESS: I think that should be taken  
5 into consideration over a period of years.

6 BY MR. SMITH:

7 Q. And you review medical records in hundreds of  
8 cases as a defense expert; right?

9 A. I do.

10 Q. And you agree that it is very common for  
11 there to be some inconsistencies in the medical  
12 records; right?

13 A. Yes.

14 Q. Doctors are not perfect in recording  
15 everything that they hear; right?

16 A. That's correct.

17 Q. And patients, even when they are telling the  
18 truth, are not perfect in remembering everything that  
19 happened to them, you know, months and years before;  
20 right?

21 A. Correct.

22 Q. You also talked to counsel about the number  
23 of people that you see in your clinic and why that  
24 qualifies you to talk about spinal surgery and MRIs.

25 You remember that?

1           A.    Yes.

2           Q.    You are in that clinic once a week; right?

3           A.    Correct.

4           Q.    And other than your once-a-week clinic, you

5 gave two examples of people that you can remember from

6 your expert work; right?

7           A.    Recently. That's correct.

8           Q.    You would agree that you see significantly

9 fewer patients with spinal pain than Dr. Gross; right?

10          A.    I do.

11          Q.    You see significantly fewer patients with

12 spinal pain than Dr. Cash?

13          A.    Yes.

14          Q.    You see significantly fewer patients with

15 spinal pain than Dr. Lemper?

16          A.    Yes.

17          Q.    You see significantly fewer patients with

18 spinal pain than Dr. Kidwell?

19          A.    Yes.

20          Q.    And when a patient ends up in your

21 one-day-a-week clinic and they have significant spinal

22 pain that might require surgery, you refer them to a

23 specialist; right?

24          A.    To the spine team. Yes, I do.

25          Q.    And then the spine team determines what type

1 of surgery they think is appropriate; right?

2 A. Usually. Uh-huh.

3 Q. You're not making that decision for the  
4 patient?

5 A. Not usually, no.

6 Q. And, in fact, you haven't made the decision  
7 for what type of surgery to perform on a  
8 spondylolisthesis since the '80s; right?

9 A. It's the late '80s. That's correct.

10 Q. And even in that time, in the late '80s and  
11 the '70s, you only made that decision 10 to 12 times;  
12 right?

13 A. Yes, that's correct. As primary surgeon.  
14 You're correct.

15 Q. And all of those decisions that you made with  
16 respect to how -- how to fix a spondylolisthesis were  
17 before any of the instrumentation was invented that you  
18 just sat up here and talked about; right?

19 A. That's correct.

20 Q. You have never actually placed the  
21 instrumentation that you were talking about; right?

22 A. No. I testified -- you asked me about that  
23 in my depo. I placed pedicle screws.

24 Q. You -- you've placed eight to ten pedicle  
25 screws?



1           A.     Probably, yes.

2           Q.     And not since the '80s?

3           MR. MAZZEO:  Objection, Your Honor.  Beyond  
4 the scope of cross.  This was already went over on  
5 cross-examination the first time.  Asked and answered.

6           THE COURT:  It was.  Let's move on.

7           MR. SMITH:  Okay.

8 BY MR. SMITH:

9           Q.     Let me ask you this.

10          A.     Sure.

11          Q.     The screw that you're saying that  
12 Dr. Gross -- well, let me ask you a different question  
13 first.

14          A.     Sure.

15          Q.     Are you saying he placed it wrong or it moved  
16 after he placed it in there?

17          A.     It's moved after he placed it.

18          Q.     Okay.  And that type of screw you haven't  
19 placed in anyone since the '80s; right?

20          A.     No, no.  In the '80s, we didn't have them,  
21 Mr. Smith.  When I was helping Dr. Lamb or Dr. Pfeiffer  
22 is when I would place a pedicle screw.  That was  
23 probably not -- not -- sometime up to 2001 or 2002.  
24 Not --

25          MR. ROBERTS:  Court's indulgence, Your Honor.

1 I'm sorry.

2 BY MR. SMITH:

3 Q. Now, you said to Mr. Strassburg that there  
4 was sufficient time for the pseudarthrosis to have  
5 developed by the time you saw Ms. Garcia in  
6 September 2014; right?

7 A. Yes. Adequate -- adequate time. Correct.

8 Q. You would agree, in October 2014, when you  
9 wrote your report, you did not opine that Ms. Garcia  
10 has pseudarthrosis --

11 A. I did not.

12 Q. -- right?

13 You also have never said in any report or  
14 your deposition that the rods were placed wrong; right?

15 A. That's correct.

16 Q. You have also never said in your report or  
17 your deposition that the screw was loose and had moved;  
18 right?

19 A. Correct. I hadn't seen those X rays. You're  
20 absolutely correct.

21 Q. The first time that you have ever told those  
22 opinions to Ms. Garcia's counsel or to Ms. Garcia was  
23 today as you sat on the stand a few minutes ago; right?

24 A. Well, we discussed it before. But once I saw  
25 the X rays to affirm my position that there's a

1 pseudarthrosis. But you're correct.

2 Q. You have never said in any deposition  
3 testimony, in any written report, and you and I have  
4 certainly never had a conversation about it, that the  
5 screw became loose; right?

6 A. That's correct. If you remember, you -- you  
7 asked me during my depo about the cause of the ongoing  
8 pain. And I said it could be scar formation or  
9 pseudarthrosis or both. Pseudarthrosis is as a result  
10 of the failure of the construct. By definition, loose  
11 screws.

12 Q. You said at your deposition it might be one  
13 of those things, but you weren't sure; right?

14 A. That's right.

15 Q. When was the first time you told defense  
16 counsel that you had this opinion that the screw was  
17 loose?

18 A. When I was shown those -- the X rays that we  
19 discussed with the jury today.

20 Q. And you didn't write a report updating your  
21 opinions so that we would know about it; right?

22 A. That's correct.

23 Q. Now, you waited until today to give us this  
24 testimony so that we couldn't come to court with  
25 additional scans or evidence to prove that what you're

1 saying is incorrect; right?

2 MR. MAZZEO: Objection, Your Honor.

3 Foundation. Beyond the scope.

4 There's no basis for Mr. Smith to allege that  
5 he has additional scans to contradict what Dr. Klein  
6 testified to.

7 THE COURT: That sounds like testimony by  
8 counsel. I'm going to let him answer the question  
9 based on his understanding.

10 MR. MAZZEO: Thank you, Judge.

11 THE WITNESS: You're right. I -- it wasn't  
12 my purpose beforehand to challenge you. All I -- I  
13 answered your questions based on what I thought would  
14 be causing her pain. But I wasn't challenging you to  
15 give me some studies.

16 BY MR. SMITH:

17 Q. Well -- and what happened the last time that  
18 you gave us studies is, we reviewed those studies,  
19 provided them to you, and you ultimately admitted that  
20 the studies don't say exactly what you said they did;  
21 right?

22 MR. MAZZEO: Objection. Vague. Misstates  
23 prior testimony.

24 THE WITNESS: Yeah. I don't understand your  
25 question. Which studies are you talking about? That

1 was vague.

2 BY MR. SMITH:

3 Q. All the studies that we talked about where  
4 the one doesn't talk about the McKenzie program, the  
5 studies that we talked about that say surgical  
6 treatment is better than conservative treatment, and  
7 you said the opposite of that in your report.

8 MR. MAZZEO: Objection. Asked and answered,  
9 Judge.

10 THE COURT: Overruled.

11 THE WITNESS: Wait. Wait.

12 Mr. Smith, you're talking about studies. We  
13 were talking about articles. Before that, you're  
14 talking about diagnostic studies. And, now, which is  
15 it?

16 BY MR. SMITH:

17 Q. By studies, I meant articles. And now I  
18 understand your confusion.

19 A. Yeah.

20 Q. And I apologize.

21 A. Okay.

22 Q. So previously --

23 A. Yes.

24 Q. -- you talked about these articles, and when  
25 we had time to review those articles, you admitted that

1 they don't say what you said they say in your report.

2 A. No. I didn't admit they didn't say what I  
3 said. I said it's a difference of understanding.

4 You printed the articles, you brought them,  
5 we discussed them, and I shared in my report, and again  
6 at the depo and again today, my interpretation.

7 Sometimes you read an article, you come away  
8 with a different interpretation. I'm trained in  
9 medicine and surgery. You don't have that advantage.  
10 You may, as a layperson, misunderstand the purpose of  
11 the article, so ...

12 Q. Now, waiting until today to give us this  
13 opinion didn't give us an opportunity to come up with a  
14 different interpretation; right?

15 MR. MAZZEO: Objection, Your Honor. Counsel  
16 knows there's a cutoff for experts to disclose  
17 opinions.

18 MR. SMITH: Agreed.

19 THE COURT: That's the point he's trying to  
20 make. Stipulated. Overruled. He can ask the  
21 question.

22 THE WITNESS: Can I have the question again,  
23 Mr. Smith?

24 MR. SMITH: Can you read it back, please.

25 (Record read by the reporter.)

1 THE WITNESS: That's correct.

2 BY MR. SMITH:

3 Q. Now, the slides that counsel put up for you  
4 to review of that June 2014 X ray --

5 A. Yes.

6 Q. -- did you review the actual set of films  
7 taken in June 2014 or just the demonstrative exhibit  
8 that they made?

9 A. Demonstrative exhibit.

10 Q. You're testifying today that this screw came  
11 loose. That's not Ms. Garcia's fault, is it?

12 A. No. Well, it didn't come loose. The X ray  
13 suggests it is loose. In other words, when it comes  
14 loose, it backs out.

15 Q. That's not her fault; right?

16 A. No, it's not her fault.

17 Q. And, again, that's a potential complication  
18 of a fusion surgery; right?

19 A. It is.

20 Q. And the only way you can really tell if the  
21 screw came loose, like you said earlier, is to do a CT  
22 scan; right?

23 A. That is the definitive diagnostic study.

24 Q. If Ms. Garcia gets a CT scan that shows this  
25 screw came loose --

1           A.    Yes.

2           Q.    -- then she's going to need another surgery  
3 at those same levels to fix it; right?

4           A.    Certainly at one level, Mr. Smith.  If the  
5 screws are secure in S1 and L4, something's going to  
6 have to be done on the right side as well.

7           Q.    And that surgery is another fusion surgery;  
8 right?

9           A.    A reexploration and refusion.  Uh-huh.

10          Q.    Reopen her up completely, take out that  
11 hardware, and put in additional hardware; right?

12          A.    I don't know that -- no.  I don't know that  
13 Dr. Gross has that skill set.  It can be done  
14 endoscopically now so she doesn't have to have a big  
15 open procedure.

16          Q.    Still another surgery, she has to go to the  
17 hospital?

18          A.    Yes.  It's another general anesthetic on her  
19 abdomen.  Yes.

20          Q.    This -- this would have to be from the front  
21 this time?

22          A.    No, no, no, no.  Because you can't approach  
23 the screw from the front.  It's from the posterior.  
24 But it could be done now endoscopically.

25          Q.    Which doctors in town do this endoscopically?



1 MR. MAZZEO: Objection. Beyond the scope,  
2 Judge.

3 THE COURT: Overruled.

4 THE WITNESS: I don't know who's done that --  
5 done that training. I know Dr. Duke does some  
6 endoscopic procedures, and I think Dr. Archie Perry  
7 does.

8 BY MR. SMITH:

9 Q. And you don't know anyone specifically that  
10 would do this endoscopically in Las Vegas; right?

11 A. I don't know anybody in town that's taken  
12 Dr. Yeung's course. That's Y-e-u-n-g in Los Angeles.

13 Q. So, again, you're recommending a potential  
14 treatment that you don't even know if she can get?

15 A. Here in town?

16 Q. Right.

17 A. No. I think there's a skill set among  
18 surgeons here in town to do that.

19 Q. Now, you understand that you're the only  
20 doctor that has reviewed her medical records and met  
21 with her -- or met with her who's opined that there's a  
22 pseudarthrosis; right?

23 A. Yes. I'm the only one that has -- it's been  
24 suspected, I think, by -- because Dr. Gross asked  
25 Dr. Lemper to inject the hardware. You remember that.

1 That Dr. -- asked Dr. Kidwell to inject hardware.

2 When the surgeon asks for injection of the  
3 hardware, that's the precursor to suspected loose  
4 hardware.

5 Q. Well, Dr. Kidwell meets with Ms. Garcia every  
6 month, and he has not said she has a pseudarthrosis;  
7 right?

8 A. No. I don't think Dr. Kidwell has the  
9 background and training. He wouldn't know how to make  
10 the diagnosis. He's not a surgeon. He doesn't have  
11 that skill set.

12 Q. He's not a spine surgeon; right?

13 A. Well, he doesn't have the skill set to figure  
14 that out.

15 Q. You know that Dr. Gross meets with Ms. Garcia  
16 periodically and reviews her records and recommended  
17 the treatment you just said --

18 A. Yes.

19 Q. -- and he hasn't opined that she has a  
20 pseudarthrosis; right?

21 A. Well, I think it's the last thing he wants to  
22 know, Mr. Smith.

23 Q. Well --

24 A. But he hasn't opined in a record, no.

25 Q. He doesn't want to have to put her through

1 another surgery; right?

2 MR. MAZZEO: Objection. Speculation.

3 THE WITNESS: I -- I don't know what he wants  
4 to do. He --

5 MR. MAZZEO: Objection. Speculation.

6 MR. SMITH: I'm following up on his  
7 statement.

8 THE COURT: Hold on. Come on up for a  
9 minute, guys.

10 (A discussion was held at the bench,  
11 not reported.)

12 THE COURT: Sorry. Go ahead.

13 BY MR. SMITH:

14 Q. You understand -- well, nonunion is another  
15 word for pseudarthrosis; right?

16 A. Yes.

17 Q. You understand that Dr. Poindexter, the other  
18 defense medical expert, is not opining that Ms. Garcia  
19 had a pseudarthrosis; right?

20 A. Yes. I'm aware of the fact.

21 Q. So these opinions that you are giving about  
22 the pseudarthrosis is another one of those times where  
23 you're in the 85 to 90 percent of disagreeing with all  
24 of the other physicians; right?

25 MR. MAZZEO: Objection, Your Honor.

1 Foundation. Is he talking about this case or every  
2 case?

3 THE COURT: Sustained. Be a little more  
4 specific.

5 BY MR. SMITH:

6 Q. This is another one of those times like the  
7 85 to 90 percent of the times that you disagree with  
8 the treating physicians where you're disagreeing with  
9 the treating physicians; right?

10 MR. MAZZEO: Objection, Your Honor. Beyond  
11 the scope. Foundation.

12 THE COURT: Overruled.

13 THE WITNESS: You're correct. There has to  
14 be a reason why this young woman is putting up with  
15 this pain now that she's 2 1/2 years post-op.

16 Q. And what you're saying here is that you're  
17 right and the other doctors are wrong?

18 A. In this case, I am correct that she has a  
19 pseudarthrosis. That's correct.

20 MR. SMITH: Pass the witness.

21 THE COURT: Go ahead, Mr. Mazzeo.

22 MR. MAZZEO: Thank you.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. MAZZEO:

25 Q. Doctor, from your review of the medical

1 records in this case, how many times did Dr. Gross meet  
2 with Ms. Garcia prior to recommending surgery?

3 A. Twice.

4 Q. When? When was the first time Dr. Gross --

5 A. May of 2011.

6 Q. Okay. And when did Dr. Gross -- and was that  
7 for a second neurosurgical consultation?

8 A. Yes. When she had first seen Dr. Cash.

9 Q. And did Dr. Gross, at that time of the first  
10 consultation in May of 2011, recommend or agree with  
11 Dr. Cash that she needed surgery?

12 A. Yes.

13 Q. So how many times did Dr. Gross meet with  
14 plaintiff prior to recommending surgery?

15 A. One time.

16 Q. One time?

17 A. Yes.

18 Q. How many times did Dr. Cash meet with the  
19 plaintiff prior to recommending surgery?

20 A. At the first visit, May 25, 2011.

21 Q. How many times did Dr. Cash meet with the  
22 plaintiff prior to concluding that Ms. Garcia had a  
23 traumatic injury to a previously -- previously  
24 asymptomatic spondylolytic spondylolisthesis?

25 A. When she was 44 days post-op -- postinjury.

1 Q. And how many times was that -- did he meet  
2 with her before he concluded?

3 A. Once.

4 Q. Thank you.

5 MR. MAZZEO: Nothing further. Pass the  
6 witness.

7 THE COURT: Anything, Mr. Strassburg?

8 MR. STRASSBURG: Pass, Judge.

9 THE COURT: Mr. Smith?

10 FURTHER RECROSS EXAMINATION

11 BY MR. SMITH:

12 Q. You met Ms. Garcia one time; right?

13 A. Yes.

14 MR. SMITH: That's all I have.

15 MR. MAZZEO: Nothing.

16 THE COURT: Ladies and gentlemen, any  
17 questions? We got a couple.

18 Come on up, Counsel.

19 (A discussion was held at the bench,  
20 not reported.).

21 THE COURT: All right. Doctor, a couple of  
22 questions.

23 First one, would the angle of the screws  
24 Dr. Gross put in on the right side at S5 -- S1-L5  
25 during the fusion affect his ability to put the third

1 screw onto L4?

2 THE WITNESS: No.

3 THE COURT: Okay. Mark that the Court's next  
4 in order.

5 According to NASS, overweight patients  
6 benefit more from spinal fusions. Given Ms. Garcia's  
7 weight and condition postsurgery, with the need for  
8 radiofrequency ablations for relief, does that change  
9 your opinion on micromotion or support it?

10 THE WITNESS: Read the question again,  
11 please.

12 THE COURT: Okay. According to NASS,  
13 overweight patients benefit more from spinal fusions.  
14 Given Ms. Garcia's weight and condition postsurgery,  
15 with the need for radiofrequency ablations for relief,  
16 does that change your opinion on micromotion or support  
17 it?

18 THE WITNESS: It supports it.

19 THE COURT: Okay. Mark that next in order.  
20 Whose witness is this? Mr. Mazzeo's?

21 MR. MAZZEO: Yes.

22 THE COURT: Do you have any follow-ups based  
23 on those?

24 MR. MAZZEO: No, Your Honor.

25 THE COURT: Mr. Strassburg?

1 MR. STRASSBURG: No, Judge.

2 THE COURT: Mr. Smith?

3 MR. SMITH: No, Your Honor.

4 THE COURT: Thank you, Doctor.

5 THE WITNESS: Thank you.

6 THE COURT: Appreciate your time. You're  
7 excused.

8 All right. So we've had a lot of defense  
9 witnesses that have already been called, but the  
10 plaintiffs have not yet rested. So we are going to go  
11 back to the plaintiff's case? And the plaintiffs can  
12 now call their next witness.

13 MR. ROBERTS: Thank you, Your Honor. Your  
14 Honor, Emilia Garcia calls Emilia Garcia.

15 THE COURT: Come on up, ma'am. Come all the  
16 way up to the witness stand. I'm going to ask you,  
17 once you get there, to remain standing and raise your  
18 right hand to be sworn.

19 THE CLERK: You do solemnly swear the  
20 testimony you're about to give in this action shall be  
21 the truth, the whole truth, and nothing but the truth,  
22 so help you God.

23 THE WITNESS: I do.

24 THE CLERK: Please state your name and spell  
25 it for the record, please.



1 THE WITNESS: Emilia Garcia. E-m-i-l-i-a,  
2 G-a-r-c-i-a.

3 THE COURT: Thank you, ma'am. Go ahead and  
4 talk into the microphone as much as you can.

5 THE WITNESS: Okay.

6

7 DIRECT EXAMINATION

8 BY MR. ROBERTS:

9 Q. Hi. Good afternoon, Emilia.

10 A. Good afternoon.

11 Q. Let's start out by telling the jury a little  
12 bit about yourself.

13 First of all, do you have any children?

14 A. I do.

15 Q. Okay. What are their names?

16 A. Emily, Lennay, and Sophia.

17 Q. And how old are they now?

18 A. Emily is 19, Sophia is 13, and my Lennay is  
19 11.

20 Q. Where are you from?

21 A. I was born in Phoenix, Arizona.

22 Q. Okay. And do you live in Vegas now?

23 A. I have been a Vegas transfer for 15 years  
24 now.

25 Q. And how old are you now, as you sit here

1 today?

2 A. Me?

3 Q. Yes, ma'am.

4 A. I'm 37.

5 Q. Thank you. And I know that the -- the jury  
6 has seen or may see some video of you which shows some  
7 tattoos on your wrist.

8 A. Yeah.

9 Q. Can you explain what those are for the jury?

10 A. Well, my first one was for my daughters.  
11 It's -- it says "mis tres reynas," m-i-s; tres, three;  
12 reynas, r-e-y-n-a-s. And that means "my three queens."

13 And above, it says "te amo mami," t-e, a-m-o,  
14 m-a-m-i, for "I love you, Mom."

15 And my only one in English is this one. And  
16 it says "a brother's love is forever." And that's for  
17 my brothers. So it's just my family on my wrist.

18 Q. Thank you, Emilia.

19 A. You're welcome.

20 Q. Let's talk about the day of the collision,  
21 January 2nd, 2011.

22 A. Okay.

23 Q. Okay. So you just told the jury about your  
24 children.

25 Do you remember their ages on that day,

1 January 2nd, 2011?

2 A. My Emily was 14. My Sophie was 8. And  
3 Lennay had just turned 6.

4 Q. Do you remember what day of the week that  
5 was, January 2nd, 2011?

6 A. A Sunday.

7 Q. And where did the collision occur?

8 A. I was going southbound on Rainbow, going  
9 home.

10 Q. Okay. Where -- you were going home.  
11 Where were you coming from?

12 A. I had just left the Wal-Mart shopping center  
13 on Cheyenne and Rainbow.

14 Q. And do you recall how many lanes of traffic  
15 there were on Rainbow?

16 A. There's five. There's the south -- the two  
17 southbound, the two northbound, and the median.

18 Q. Do you recall which travel lane you were in  
19 immediately prior to the crash?

20 A. I was on the left-hand side lane closest to  
21 the median, going south.

22 Q. Do you remember how fast you were going?

23 A. Between 30 and 35 miles per hour.

24 Q. Do you have a clear memory of that?

25 A. I -- I think I'm -- I'm -- I may be right,

1 you know, because I've traveled that road for so many  
2 times that I figured that's how fast I was going.

3 Q. What's the speed limit on the road at that  
4 time?

5 A. 35.

6 Q. 35 right at the section of the road where --  
7 where the crash occurred?

8 A. Correct.

9 Q. What time of day was it?

10 A. It was around 6:00 p.m.

11 Q. Was it dark already?

12 A. Yes, sir.

13 Q. And now that we've put this in context, tell  
14 the jury about how the crash occurred. You're driving  
15 down the road. Tell the jury what happened next.

16 A. I remember I'm going down Rainbow, and I  
17 could see a truck to my right and lights blinking. It  
18 was either a bus or a big truck.

19 And before I knew it, this -- out of the  
20 corner of my eye, I see this car coming at me. And I  
21 remember spinning. And I was holding on for dear life  
22 to my steering wheel. And I shifted, you know, from  
23 side to side. And then I ended up facing oncoming  
24 traffic.

25 Q. And you were facing oncoming traffic in the

1 same lane that you were in before the collision or in a  
2 different lane?

3 A. I was in the exact same lane that I was  
4 driving, except facing the opposite way.

5 Q. Okay. Once the car came to a rest, what did  
6 you do?

7 A. I -- you know, you first want to realize  
8 that -- you want -- you're asking yourself if you're  
9 still alive. And you're shaking. You know, I'm -- I  
10 remember just shaking. And that -- that was it.

11 Q. What did you do when you realized you were  
12 facing into oncoming traffic?

13 A. Hoping that they would stop, you know, as I  
14 was sitting there facing them, and then get out of the  
15 car.

16 Q. Did -- did anyone arrive shortly after you --  
17 your car came to a stop?

18 A. Well, I remember getting out and approaching  
19 Mr. Awerbach, asked him if he was okay. And I do  
20 remember a cruiser that was driving by who stopped by  
21 to see if we were okay.

22 Q. A police cruiser?

23 A. Correct.

24 Q. Okay. And did you have any trouble getting  
25 out of your car?

1           A.    Other than me shaking and being cold, no, not  
2 really.

3           Q.    So you said you saw Mr. Awerbach.  
4                That's who the other driver was; correct?

5           A.    Yes.

6           Q.    Okay. And I don't see him in here today.  
7                Did -- did you go talk to Mr. Awerbach?

8           A.    I did. I asked him if he was okay.

9           Q.    Okay. Did you say anything else?

10          A.    I don't remember him addressing me because he  
11 was on the phone, so I don't ...

12          Q.    Did you immediately call the police?

13          A.    After I realized that he wasn't on the phone  
14 with police, then I went back to my vehicle and -- to  
15 get my cell phone and call.

16          Q.    How did you realize he wasn't on the phone  
17 with the police?

18          A.    He was cursing, and what he was saying didn't  
19 sound like a conversation you would have with an  
20 operator to get help to you. So I figured I needed to  
21 get my phone to call.

22          Q.    And that's when you called the police?

23          A.    I called 311, yes.

24          Q.    Okay. Why did you call 311 instead of 911?

25          A.    I saw that it was just him in the other

1 vehicle. He was up and walking. I was up, and I was  
2 walking. And I didn't think it was a life-and-death  
3 situation. So I figured 311 would be the correct  
4 number to call.

5 Q. When you went to go talk to Mr. Awerbach, did  
6 you take a look at his vehicle?

7 A. Yeah.

8 Q. Describe to the jury what you saw. What was  
9 the appearance of the vehicle?

10 A. His front end was pushed in, and there was  
11 steam coming out of it. It didn't look good.

12 Q. Okay. Now, did you talk to the cruiser that  
13 drove up?

14 A. Yes.

15 Q. The first one?

16 A. Correct.

17 Q. Okay. And what did -- what did he tell you,  
18 if anything?

19 A. He just wanted to know that we were okay and  
20 had me move my vehicle over to the median. He said  
21 that we needed to wait for a traffic -- a traffic  
22 officer to come by and take the report.

23 He just wanted me out of harm's way because  
24 we still had vehicles swerving around us. And that's  
25 all he did.

1           Q.    Were you able to drive your car into the  
2 median?

3           A.    It was really shaky and noisy, because I know  
4 it had a flat tire. But I was able to move it that  
5 little distance over to the median, yes.

6           Q.    Would you have been comfortable driving it  
7 home in that condition?

8           A.    No, sir.

9           Q.    Okay. At some point in time, did another  
10 officer show up?

11          A.    Yes. I believe Officer Figueroa came by.

12          Q.    And did he ask you anything?

13          A.    Yeah. He wanted to know if I was okay.

14          Q.    And what did you tell him?

15          A.    I was fine.

16          Q.    Did he ask you if you were injured?

17          A.    He did.

18          Q.    And what did you tell him?

19          A.    I -- no. I told him no, I wasn't.

20          Q.    Did you think you were injured?

21          A.    Not at the time.

22          Q.    Did you observe Mr. Averbach interacting at  
23 all with Officer Figueroa?

24          A.    I did.

25          Q.    Tell -- tell the jury what you saw at that



1 time.

2 A. I -- the officer had me sit back in my car.  
3 It was really cold that night. And I could see in  
4 front of me that he had Mr. Awerbach do, like, a  
5 sobriety test, you know, the ones you see on TV where  
6 people are walking one foot in front of other and doing  
7 motions with their hands and touching his face. And  
8 so, yeah, I saw him do that.

9 Q. Did anyone else come to the scene of the  
10 collision on foot?

11 A. People that knew Mr. Awerbach approached the  
12 accident towards the end, asked me what had happened  
13 and why he was being arrested. And there was a --  
14 somebody that said to me, "He shouldn't have been  
15 smoking and" --

16 MR. TINDALL: Objection. Hearsay.

17 THE WITNESS: He shouldn't have been --

18 THE COURT: Hold on just a second. If  
19 there's an objection and I sustain, then you can't  
20 answer.

21 THE WITNESS: I'm sorry.

22 THE COURT: That sounded like it was hearsay,  
23 so it's sustained.

24 THE WITNESS: Okay.

25 BY MR. ROBERTS:

1           Q.    I'll ask you a new question when that  
2 happens.

3           A.    Okay.  Sorry.

4           Q.    Okay.  So you said you would have been  
5 uncomfortable driving your vehicle home.

6                   Did you drive it home?

7           A.    No.

8           Q.    Okay.  How did your vehicle leave the scene?

9           A.    A tow truck driver came by to -- to pick it  
10 up.

11          Q.    And how did you get home?

12          A.    I lived really close by, and the gentleman  
13 offered to take me home.

14          Q.    The tow truck driver?

15          A.    The tow truck driver, yes.

16          Q.    Okay.  And he did take you home?

17          A.    Yes, sir.

18          Q.    Did you ever drive the vehicle again, the  
19 Hyundai Santa Fe, that was involved in the collision?

20          A.    No.  It was totaled.

21          Q.    Okay.  And I'm not going to ask you for any  
22 specifics.

23                   But do you recall what the estimate was to  
24 repair the vehicle?

25          A.    The transcript was for 5,400.

1           Q.    Was that for labor and materials or just one  
2 or the other?

3           A.    It stated both -- both, that it would be for  
4 labor and parts and stuff.

5           Q.    As far as you know, did anyone offer you to  
6 repair your car for parts only?

7           A.    No, sir.

8           Q.    What -- what time of the night was it when  
9 you got home after the collision?

10          A.    It was around 8:00 o'clock.

11          Q.    And what did you do when you got home,  
12 8:00 o'clock at night?

13          A.    I hugged my kids and my mom and my brother,  
14 just thankful to be home.

15          Q.    What was your main concern that night? Were  
16 you worried about being hurt?

17          A.    No. I -- I needed a vehicle.

18          Q.    Okay. Why did you need a vehicle?

19          A.    My job was about 30 minutes away at the time.  
20 I have three kids to get to and from school. I have a  
21 mother who's ill and needs me to take her to doctors  
22 appointments. And I felt lost. I didn't know what I  
23 was going to do.

24          Q.    Did you make it to work the next day?

25          A.    I did. My brother was able to take me that

1 morning.

2 Q. Tell the jury, just for context, you -- you  
3 said the collision took place on the Sunday.

4 Do you work on Sundays normally?

5 A. Yes.

6 Q. Had you worked that day?

7 A. Yes.

8 Q. What was your normal work week at that time?

9 A. My days off were Tuesday and Wednesday. So I  
10 worked from Thursday through Monday. And my hours  
11 fluctuated from 9:00 to 5:00 or 7:00 in the morning to  
12 3:00 p.m.

13 Q. Okay. Did you have a name that you called  
14 your -- your Monday nights?

15 A. It's my Friday. So Mondays was my Friday,  
16 yeah.

17 Q. Okay. So going back, the Sunday night, the  
18 night of the crash, were you in any pain that you  
19 recall?

20 A. The night of the incident, no.

21 Q. Yes.

22 When you woke up the next day, how did you  
23 feel physically?

24 A. I was stiff. You know, it was uncomfortable.  
25 My neck was stiff, my shoulders, my -- my back. It

1 was -- I just felt stiff.

2 Q. And you -- you told the jury you normally  
3 work Mondays.

4 Did you find a ride to work that day?

5 A. Yes. My -- my brother was able to take me  
6 that day and take the kids to school.

7 Q. And did you work a full day?

8 A. Yes, I did.

9 Q. How were you feeling at work?

10 A. Just -- like I said, I was stiff. I -- my  
11 movement was a little more careful, you know, than --  
12 than normal. But I pulled it -- pulled it through.

13 Q. Let me ask you just for context. Not just  
14 for this day but over the next few weeks and even  
15 months, would it have been possible for you just to  
16 take a sick day if you were feeling tired or stiff  
17 after the accident? Was that -- did you consider that  
18 to be an option?

19 A. Not at all. I was --

20 Q. Why not?

21 A. I'm sorry. I was going through the 90 -- I  
22 was still in my 90-day period, still had no vacation  
23 time available to me.

24 Q. And 90-day period -- who was your employer at  
25 that time?

1           A.    Aliante.

2           Q.    And had you worked in a casino prior to

3 Aliante?

4           A.    Yes.

5           Q.    And what casino was that?

6           A.    Sam's Town.

7           Q.    How long had you worked at Sam's Town?

8           A.    Ten years.

9           Q.    In what position?

10          A.    I was a cage cashier, doing the same thing.

11          Q.    But you were still in your 90-day

12 probationary period with your new employer?

13          A.    Correct.

14          Q.    Did you have sick days?

15          A.    No.

16          Q.    Did you have vacation days?

17          A.    No.

18          Q.    Could you have just taken a day off without

19 pay?

20          A.    No.

21          Q.    Why not?

22          A.    I -- my paychecks that I would bring home

23 every two weeks were between 960, 940. My rent was

24 850. I had a car payment, had bills. So if I missed

25 one day, I could not pay my rent.

1           So there was no way physically for me to not  
2 be there. I had to be there.

3           Q.    So Monday, the day after the collision, did  
4 you think you were seriously hurt at that time?

5           A.    No.

6           Q.    What were you feeling while you were at work?

7           A.    I was -- I -- I was hoping that it was going  
8 to stop. You know, I was thinking, "It'll go away.  
9 It'll get better." I shouldn't -- I can't -- I  
10 couldn't even worry about it at the time.

11          Q.    So the next day is Tuesday. This is two days  
12 out, Sunday, Monday, Tuesday.

13          A.    My Saturday.

14          Q.    That's your Saturday?

15          A.    Yes.

16          Q.    Okay. So how were you feeling Tuesday  
17 morning when you woke up, your Saturday?

18          A.    I tried getting out of bed, and it was very  
19 painful. And I decided to -- to wait it out. I stayed  
20 in bed. And I was trying to be careful.

21          Q.    What parts -- when you say it bothered you,  
22 what parts of your body were bothering you that day?

23          A.    My neck became more stiff. You know, my  
24 shoulders felt heavy. And the pain in my back started  
25 to come -- you know, it was -- now it became pain other

1 than just stiffness. So my lower back and my mid back  
2 were just -- it was very painful and hard to move  
3 around.

4 Q. Did you do anything that Tuesday other than  
5 stay in bed?

6 A. Not at all.

7 Q. Did you get up to go eat?

8 A. No. I -- I remember my mom brought me my  
9 dinner in bed. And we did homework, me sitting in bed  
10 with my kids. So it wasn't -- I was trying to keep my  
11 body still and see if it would just put itself back  
12 together.

13 Q. Why didn't you go to the doctor on Tuesday?

14 A. I still was hopeful. And I was still hoping  
15 that it would -- it would just be a one-day thing and I  
16 would be back to my normal self the following day and  
17 back to work my Monday.

18 Q. Okay. And when you say "my Monday," you mean  
19 Thursday; right?

20 A. Thursday.

21 Q. Okay.

22 A. Yes. Vegas talk.

23 Q. So you woke up on Wednesday morning, which  
24 you call your Sunday.

25 A. Yes.



1 Q. And how were you feeling on Wednesday?

2 A. It was completely different from the --  
3 the -- the -- last day. It now became stabbing pain,  
4 and it became unbearable to try to do anything. I  
5 mean, going to the bathroom, sitting in the bathroom, I  
6 could not -- I was -- I was having a hard time  
7 breathing. So I couldn't handle it anymore. I -- I  
8 needed to see somebody.

9 Q. Then did you decide to go see a doctor?

10 A. I did.

11 Q. Where did you go?

12 A. I went to MountainView emergency room.

13 Q. Okay. Tell the jury about your visit to the  
14 hospital.

15 What -- what did you tell the -- the hospital  
16 when you went to the emergency room?

17 A. I recall telling him what happened, you know,  
18 the best I could remember. And --

19 Q. Is this a doctor or a nurse?

20 A. The doctor.

21 Q. Okay.

22 A. After he heard what I had said and, you know,  
23 my -- my symptoms, speaking to me, he -- you know, he  
24 was thinking that I may need some pictures, maybe  
25 X rays or, I don't know, scans of some sort. And he

1 left the room.

2 Q. And what happened after he left? Did someone  
3 else come see you?

4 A. Then the lady with the computer, the rolling  
5 computer. And they asked -- they wanted to know how  
6 you're going pay your bill, wanting to know, you know,  
7 what was my financial situation and how I was going to  
8 pay for their services.

9 Q. And what did you tell them?

10 A. I had no way. I -- I couldn't. I couldn't  
11 pay. And I figured if I went to the emergency room  
12 maybe they would help me.

13 Q. So -- so after the lady with the cart left  
14 and took your financial information, did the doctor  
15 come back to see you?

16 A. No. It was the nurse that came back with  
17 prescriptions, and no tests were done. I asked, and  
18 they brushed it off and sent me on my way.

19 Q. Did the medication that they gave you at the  
20 hospital help?

21 A. I was able to get around better when I took  
22 it. It was worrisome because as soon as the meds would  
23 wear off, I was back to my -- the pain. And it was  
24 back to, you know, just not being able to function the  
25 way that I would normally be able to.

1 Q. So -- so this was Wednesday at the hospital.  
2 Thursday is the first day at your work week;  
3 right?

4 A. Yes.

5 Q. And did you go back to work?

6 A. I did.

7 Q. And what was the pain like when you went back  
8 to work that Thursday?

9 A. It was there. It was hard to -- to do what I  
10 needed to do, but I had to be there.

11 Q. And did you continue to go for your entire  
12 five-day normal work week? Did you go to work?

13 A. I did.

14 Q. Were you taking during that time the  
15 medications prescribed to you by the emergency room?

16 A. Every four hours.

17 Q. And did the medication provide you relief as  
18 you worked?

19 A. I mean, I was able to function, you know  
20 without -- without crying, without, you know, having to  
21 stop. My breaks changed. You know, you get an hour.  
22 And depending on the bank that you're in, you can break  
23 them up. And so I found myself having to do that  
24 instead of taking my whole hour.

25 Q. Okay. Could you explain?

1           A.    It was harder to pull through the four hours  
2 and then your break and then the other four hours or  
3 the other three hours.  So, you know, I'd work two  
4 hours, sit down for 30 minutes, you know, change  
5 positions and stuff like that, then go back to work for  
6 another two or one hour and a half, and take 15 more  
7 minutes.  And so it changed.

8           Q.    During that first week back at work, what did  
9 you do when you got home in the evening?

10          A.    I don't know how to explain it.  But pain  
11 makes you tired.  It's hard to function when you're  
12 hurting.  And once I got home, it was like, I -- I  
13 could do nothing else.  I came home, straight to bed.  
14 Things had changed.

15          Q.    Now, at some point in time, did you decide  
16 you needed to see a doctor again?

17          A.    You know, the -- the thought of the -- the  
18 doctor telling me that I needed pictures done lingered.  
19 And seeing that the pain was getting worse, I knew that  
20 I needed help.

21          Q.    Okay.  Did you feel comfortable going back to  
22 the ER?

23          A.    No.

24          Q.    Why not?

25          A.    They didn't help me.  I still had no way to

1 pay them. So why would I -- you know, I wouldn't go  
2 back.

3 Q. Did you have a primary care physician you  
4 could go to?

5 A. No.

6 Q. Did you seek help at that point from anyone  
7 in trying to find a doctor?

8 A. I -- on my day -- my first day off, I called  
9 Mr. Awerbach's representatives to see if they could  
10 guide me or give me a name of a doctor or somebody that  
11 I could see. That's -- I figured maybe that would be a  
12 way out, to find some kind of help.

13 Q. Did they give you a name of a doctor you  
14 could see?

15 A. No.

16 Q. Did they offer any type of help to you for  
17 your medical condition?

18 A. Not at all.

19 Q. So what did you do next? Who -- did you ask  
20 anyone else for help?

21 A. My brother -- my brother's girlfriend. You  
22 know, we were good friends. And I had told her what  
23 had happened and how frustrated I was. You know, not  
24 only did the hospital turn me away, the person that hit  
25 me, their -- his representatives were not helping.

1           And so she said, "I think that the best thing  
2 you could do is call a lawyer." So she gave me a  
3 number to call. She knew somebody at an office, and  
4 she gave me the number to call.

5           Q.    And did you call the attorney that your  
6 brother's girlfriend suggested?

7           A.    I did.

8           Q.    Okay. Who was it?

9           A.    I didn't know what number she had given me.  
10 So when I called, they said Glen Lerner's office. And  
11 I had to take a second look at the number. And then I  
12 realized that it was that 877-1500 from the commercial.  
13 And -- but they were really helpful. And so I think it  
14 was fate.

15          Q.    So what did you tell the lawyers your primary  
16 concern was when you first called them about this  
17 collision?

18          A.    I needed to see a doctor.

19          Q.    Okay. And -- and did they help you find a  
20 doctor?

21          A.    They did.

22          Q.    Okay. And how did they go about recommending  
23 a doctor for you?

24          A.    I -- my concern was that it would be close to  
25 where I lived. I had no car. And so they gave me a

1 few names and numbers to call to see, you know, which  
2 one was closest or what could -- which one could  
3 accommodate my schedule. And so I -- I went from  
4 there.

5 Q. And -- and who did you end up seeing based on  
6 their recommendations?

7 A. Dr. Gulitz.

8 Q. Did they tell you to go specifically to  
9 Dr. Gulitz?

10 A. No.

11 Q. Do you know what kind of doctor Dr. Gulitz  
12 is?

13 A. He's a chiropractor.

14 Q. And the jury's heard that you went to see  
15 Dr. Cash.

16 A. Yes.

17 Q. Do you remember how you came to find  
18 Dr. Cash?

19 A. Dr. Gulitz referred me to him.

20 Q. Do you know what type of doctor Dr. Cash is?

21 A. He's a spine surgeon.

22 Q. Okay. How many times did you see him?

23 A. Once.

24 Q. Do you remember that visit?

25 A. Yes.

1 Q. What do you remember about it?

2 A. Lots of crying on my part and bad news.

3 Q. Why -- were you upset?

4 A. Of course.

5 Q. And why were you upset?

6 A. The thought of having surgery had never

7 crossed my mind. It was just something that hit me

8 like a ton of bricks. You know, looking back and

9 expecting to get better, then to hear that I needed to

10 have surgery in order to be fixed or to have a better

11 life was just devastating. I have three kids to take

12 care of, a job that I want to keep, and it wasn't -- it

13 wasn't good.

14 Q. So did -- did you immediately take Dr. Cash's

15 recommendation to undergo surgery?

16 A. No. I wanted a second opinion.

17 Q. And did you ultimately get a second opinion

18 from another spine surgeon?

19 A. I did.

20 Q. Who was the name of that surgeon?

21 A. Dr. Gross.

22 Q. Okay. And that's the same doctor who

23 ultimately performed the fusion surgery the jury's been

24 hearing about; correct?

25 A. Yes.



1 Q. Okay. Do you recall how much time it was in  
2 between your visit with Dr. Cash and when you saw  
3 Dr. Gross?

4 A. About three months.

5 Q. What were you doing in the meantime for  
6 medical treatment?

7 A. I was going to Dr. Lemper for pain  
8 management.

9 Q. Okay. And how did you come to find  
10 Dr. Lemper?

11 A. I don't recall if it was Gulitz or Gross.  
12 I'm not sure. I'm sorry.

13 Q. Okay. When you saw Dr. Gross, how long did  
14 it take him before he gave you a second opinion on your  
15 need for surgery?

16 A. The day I met him.

17 Q. Okay. Do you recall what he told you?

18 A. The same thing that Dr. Gulitz had said.

19 Q. And what were you feeling when he told you  
20 that?

21 A. The same devastation, the same worry.

22 Q. Did Dr. Gross tell you whether back surgery  
23 was certain to permanently fix your back and resolve  
24 your pain?

25 A. No.

1 Q. What do you recall about what he told you as  
2 far as the prospects of your life after the surgery?

3 A. That it would make life a little better. You  
4 know, it would -- it would be a way out of my meds, you  
5 know, to lower my meds. I -- which has been a major  
6 concern of mine is all this medication that I have been  
7 having to take.

8 Q. Well, let's stop there.

9 What type of -- of meds were you on at the  
10 time you saw Dr. Gross?

11 A. I was taking -- it's not what I'm on right  
12 now, so it's -- it's a narcotic. I'm so sorry.  
13 It's -- I can't remember.

14 Q. What -- okay. So -- it's okay.

15 The narcotic medication that you were on at  
16 that time, did you like being on it?

17 A. No.

18 Q. Why not?

19 A. It's a drug. It's -- it's something that  
20 ultimately will hurt your body. My mother suffers from  
21 liver disease, and it came from long-time -- being on  
22 medication for lupus. And so it scares you when you  
23 see it, you know, in front of you. I was scared.

24 I -- I wanted to -- I needed to change  
25 what -- what the outcome was -- was for me. And it

1 seemed like it was just getting worse. You know, your  
2 body becomes immune to the medication that you are  
3 taking, so you end up taking more in time. And so --

4 Q. And were you having to take more medication  
5 to get the same relief at that time?

6 A. Oh, yes.

7 Q. And did the medication completely resolve  
8 your pain, though?

9 A. No. No.

10 Q. Did it interfere with any of your activities  
11 either at home or at work?

12 A. It did. Of course.

13 Q. Tell me a little bit about that.

14 A. Feeling numb at times. Your thoughts are not  
15 clear. Scared to make a mistake either at home or at  
16 work. It -- it's not a -- it's not a good feeling to  
17 be on strong stuff. You know? It's not -- and it's  
18 scary and you have to think of, you know, the  
19 possibility of becoming addicted to these drugs, and  
20 not -- it's not okay.

21 Q. So you have now received a recommendation for  
22 surgery from Dr. Cash and from Dr. Gross. The jury's  
23 already heard the evidence about your timeline, and  
24 they know that you did not have the surgery at that  
25 time.

1           Was that your decision or the decision of one  
2 of the doctors?

3           A.    That was my decision.

4           Q.    And why did you decide not to have the  
5 surgery when you -- you -- you wanted to get off the  
6 drugs and you wanted to get better? Why did you still  
7 not have the surgery?

8           A.    Dr. Lemper had talked about some shots, you  
9 know, that were not as invasive. And I wanted to try  
10 other ways of controlling that pain, still hopeful that  
11 it would get better.

12          Q.    And did Dr. Lemper try these shots or  
13 injections?

14          A.    Yes. Epidural shots, yes.

15          Q.    Okay. And did they resolve your pain?

16          A.    No.

17          Q.    Did she provide some temporary relief?

18          A.    A few days.

19          Q.    All right. Did you end up seeing Dr. Gross  
20 again in late 2011 for a reevaluation?

21          A.    Yes.

22          Q.    And what did Dr. Gross tell you at that time?

23          A.    He knew I would be back.

24          Q.    Did he tell you you needed surgery again, or  
25 did he tell you to keep trying conservative treatment

1 with Dr. Lemper?

2 A. He said that it would be a good idea to start  
3 preparing myself for surgery. If I was not seeing  
4 results with, you know, the other procedures that I had  
5 had done.

6 Q. And did you opt to go forward with the  
7 surgery at that time?

8 A. No.

9 Q. What did you do instead?

10 A. Waited. Just --

11 Q. Did you continue seeking treatment from  
12 doctors?

13 A. Of course. Yeah.

14 Q. Okay. Who did you see?

15 A. I may have been seeing Dr. Kidwell at the  
16 time.

17 Q. Okay. Did -- at some point in time, you  
18 switched from Dr. Lemper to Dr. Kidwell for pain  
19 management; correct?

20 A. I did.

21 Q. Why did you change from Dr. Lemper to  
22 Dr. Kidwell?

23 A. Dr. Lemper was about 45 minutes from my  
24 house, and so I wanted somebody closer. You know, it  
25 was a strain financially, time-wise, physically. And

1 so I wanted to see if I could find somebody, because I  
2 my knew I had to see him regularly. So I wanted  
3 somebody closer.

4 Q. Did Dr. Kidwell attempt injections to resolve  
5 your pain?

6 A. I believe he did.

7 Q. What made you ultimately have the surgery?  
8 What made you decide to go forward with the surgery  
9 that Dr. Gross had recommended?

10 A. Nothing was helping. Things were not getting  
11 better like I was hoping and kept thinking that they  
12 would. So I -- I had to.

13 Q. Did Dr. Gross again explain to you both the  
14 risks and prospects that you should expect from this  
15 surgery prior to performing it in 2012?

16 A. Yes.

17 Q. What do you remember about that conversation?  
18 Let's talk first -- what did he tell you about the  
19 risks?

20 A. Well, you -- you have to be under -- you  
21 know, you have to be put under. There's always that  
22 possibility that you may not wake up. There's also the  
23 possibility of not being able to walk after surgery.  
24 So it was a risk.

25 Q. Okay. Where did you go for the surgery? Do

1 you recall?

2 A. Long Beach, California.

3 Q. And who suggested that you go to Long Beach  
4 for the surgery?

5 A. Well, Dr. Gross, at the time, only -- only  
6 did his procedures in California.

7 Q. What did you do with your kids when you went  
8 to California for the surgery?

9 A. I had to make arrangements. My brother came  
10 in from out of town to watch my kids. My mother came  
11 in from New Mexico to help with my girls also.

12 Q. Were you apprehensive at all about the need  
13 for surgery and having to go through with this finally?

14 A. Of course. It scared my brother because I  
15 had him sign a power of attorney to -- to take care of  
16 my girls in case -- in case I didn't come back.

17 Q. So after the surgery, how long did you stay  
18 in California?

19 A. I believe it was a week to nine days.

20 Q. Okay. How long were you in the hospital? Do  
21 you recall?

22 A. That time, I believe. Yes.

23 Q. Okay. Were you -- were you in pain after the  
24 surgery?

25 A. Oh, yeah. Yes.

1 Q. How severe was the pain?

2 A. You know, you imagine yourself cut open, and  
3 you feel after surgery that you're still open in the  
4 back. It's -- it's painful. It was -- I felt like it  
5 wasn't going to end.

6 Q. What did you think about the hardware? How  
7 did that affect you?

8 A. I felt really comfortable knowing that it was  
9 metal because then I'm thinking, well, maybe I won't  
10 break. So you -- you know, you think that would be the  
11 best thing. That's what our vehicles are made of. I  
12 figured that would be ...

13 Q. You -- you've told the jury why you couldn't  
14 afford to take time off early on, immediately after the  
15 accident. Were you able to take the time off from  
16 Aliante for the surgery?

17 A. This was already a couple of years, so, yeah,  
18 I had a -- vacation time. I -- you know, I had -- it  
19 was okay if I needed the time off.

20 Q. So you were able to -- to get paid time off  
21 to have the surgery?

22 A. At the time, yes, I was able to have  
23 disability benefits. And it was a lot easier.

24 Q. So how long was it from the surgery until you  
25 returned back to work?



1           A.     Four months.

2           Q.     So the -- the type of pain that you were in  
3 following the surgery while you were in the hospital,  
4 how long was it before that started to get better? Do  
5 you remember?

6           A.     About two weeks.

7           Q.     Okay. And during that two weeks, what were  
8 you able to do?

9           A.     Nothing other than eat and sleep.

10          Q.     Were you able to perform any of your normal  
11 duties around the household?

12          A.     No.

13          Q.     Were you able to shower without assistance?

14          A.     No.

15          Q.     And how did you eat during that period of  
16 time?

17          A.     My Emily did a lot of that, you know, the  
18 cooking and bringing it to me where I was at or the  
19 kids helping her.

20          Q.     So after a few weeks, tell us how you  
21 progressed from that time just up until time you were  
22 able to go back to work in about four months.

23          A.     It got better. It felt like a light at the  
24 of the tunnel was finally, you know, there. And I was  
25 looking forward to going back to work and being back to

1 somewhat normal. So it definitely got a lot better.

2 Q. What were some of the fears or anxieties that  
3 were going through your mind at that time related to  
4 your medical condition?

5 A. Again, you still -- it still goes through  
6 your mind that you were put back together in some way,  
7 and so you're just a lot more careful about everything  
8 that you do, scared to be hit by somebody else. Yeah.

9 Q. Okay. Did you immediately get back your --  
10 your old range of motion and ability to -- to do  
11 activities without pain?

12 A. No.

13 Q. So when you returned to work, how were you  
14 feeling? What made you decide you were ready to go  
15 back to work?

16 A. I -- I had to. You know? And I felt I  
17 needed to -- you know, to get back to my normal,  
18 something that you would want to do, you know, get  
19 back.

20 Q. Now, when you returned to work at that time,  
21 after your surgery --

22 A. Uh-huh.

23 Q. -- did you return to work full time?

24 A. I did.

25 Q. You have any problem making it through a full

1 day?

2 A. It was hard, but I -- I did it.

3 Q. Were you able to help out around the house  
4 when you got home from work during that period?

5 A. No. It was still -- it was still difficult.

6 Q. There's been some testimony about reasonable  
7 accommodations. Do you know what reasonable  
8 accommodations are?

9 A. Somewhat.

10 Q. Okay. Did you ask Aliante for reasonable  
11 accommodations as a result of -- of your -- your pain  
12 and your medical condition?

13 A. No.

14 Q. Why not?

15 A. To ask for -- it's called light duty --  
16 you -- you have to do a different position, meaning  
17 your pay goes to minimum wage, you lose your tips that  
18 you get in the position that you are working. So it  
19 would be devastating for me to have to do that, to have  
20 to get, you know, less money than I was making at the  
21 time. And it wasn't an option for me.

22 Q. As a cage cashier, do you receive tips?

23 A. Yes.

24 Q. And what portion of your income were -- were  
25 tips at that time?

1           A.    We made about \$60 a week.  You know, gas  
2 money.

3           Q.    Did -- would it have been tough to get by  
4 without that 60 bucks extra a week?

5           A.    Well, it wasn't just that.  It was going from  
6 14.50 to 8.50, 8.75.  So it would hurt.

7           Q.    What did your doctors tell you at that time  
8 about reasonable accommodations?  Did any of them  
9 suggest that?

10          A.    Oh.  Dr. Gross talked about that, and I  
11 begged him not to -- not to make me do that.  It was  
12 scary, you know, because I -- he felt strongly about  
13 it, but I told him I was able -- I would be able to do  
14 it.

15          Q.    Did you have to carry boxes of coins for your  
16 job?

17          A.    I did.

18          Q.    How heavy were they?

19          A.    I believe a box of quarters, which is 500, is  
20 about 25 pounds.  But I never carried the five -- the  
21 whole \$500 in quarters.  They were able to cut the box,  
22 you know, get -- squat down where they're at and put  
23 them in a smaller container, which is 250, and you  
24 carry that -- you know, you lift that up and put it on  
25 the counter.  So it -- there's ways around it.

1 Q. So before the crash, were you able to carry a  
2 25-pound bag of coins?

3 A. Yes.

4 Q. And after the crash, how did you do it?

5 A. I -- I had to split them. You know, it  
6 was -- it was different. You know, you -- you have to  
7 be careful not to hurt yourself any more than you are  
8 or not to make yourself hurt.

9 Q. Did you ever have -- have -- have to ask for  
10 help your from coworkers?

11 A. They were pretty amazing. And they knew to  
12 help me. They were wonderful to me. So if I needed --  
13 if I needed the help, they were there. And if I asked  
14 for it, they were definitely willing to help.

15 Q. During this period of time after your surgery  
16 when you went back to work full-time, did you ever have  
17 to ask for days off because of your pain?

18 A. I did.

19 Q. And was that paid time off?

20 A. Yeah. I had vacation time at the time or I  
21 had benefits for holiday pay. So if I knew that I was  
22 going to have an extra day on my paycheck, I would, you  
23 know, ask for an extra day off so that I could take a  
24 break.

25 Q. So let's go to something more positive for a

1 little while.

2 A. Okay.

3 Q. You okay with that?

4 Let's talk about before the accident. Tell  
5 the jury about the types of things that you used to  
6 like to do with your kids before the crash, some of  
7 your favorite activities.

8 A. Amusement parks. You know, here in town  
9 you've got Circus Circus. You've got New York New York  
10 and their roller coasters. Swimming, the movies, going  
11 to the park and enjoying activities with them at the  
12 park, walking on a daily basis after work. You know,  
13 trying to stay healthy and ...

14 Q. Were you trying to lose weight and get in  
15 shape before the crash?

16 A. I was doing pretty good, yes.

17 Q. What type of things were you doing to try to  
18 lose weight?

19 A. Running after work, you know, activities with  
20 the kids after work at the park, just a lot more  
21 physical stuff. Then it ended up being --

22 Q. How often were you able to find time to get  
23 out of the house with the kids before the crash?

24 A. Pretty much on a daily basis. Summertime  
25 was, you know, the pool after work every day and

1 weekends. Do as much we could with how -- how much  
2 money we -- we had available to us. So we stayed  
3 pretty active.

4 Q. In between the crash and your fusion surgery,  
5 were you able to continue doing those types of  
6 activities?

7 A. No. No. I may go and be on the sidelines  
8 and watch them other than -- instead of being with --  
9 right with them, right along with them. So it's been a  
10 big change.

11 Q. What about after the fusion surgery? Did  
12 things improve?

13 A. It has gotten -- it has gotten a little  
14 better.

15 Q. What types of things are you able to do now,  
16 now that you've had the fusion surgery and the  
17 rhizotomy? How has that improved the quality of your  
18 life?

19 A. I take a lot more responsibility in the  
20 house, you know, from my Emily. And going to the  
21 movies, you know, now and being able to enjoy the show  
22 and less of me having to get up and walk around and  
23 stuff like that. The walks are short, you know, but we  
24 try to do that as much as we can.

25 Q. Are you back to where you were before the

1 crash?

2 A. No.

3 Q. About what percentage of your activities with  
4 your girls have you been able to return to?

5 A. I want to say 70 percent.

6 Q. Looking back to your life before the crash,  
7 tell the jury the things that you were most proud of as  
8 a person. I know that's a tough question.

9 A. The connection with my children is very  
10 important. My job, my relations with other people, but  
11 helping -- you know, helping my mother, helping my  
12 brother. Those are the things that are most dear to  
13 me, so ...

14 Q. Prior to the crash, how often were you  
15 dependent on others to make your way through life?

16 A. Never. Never.

17 Q. Did you -- before the crash, did you take  
18 pride in being able to take care of your family?

19 A. Of course.

20 Q. Tell the jury.

21 A. You know, it's -- I've been a single parent,  
22 and it's a good feeling to know that what you give your  
23 kids comes from you and that everything that you do  
24 reflects on them. You know, setting good examples for  
25 them, raising respectful human beings was very



1 important. And it still is.

2 Q. Thank you, Emilia.

3 Let's talk about smoking.

4 A. Okay.

5 Q. At any point prior to the crash, did you  
6 smoke cigarettes?

7 A. Yeah. I was a social smoker.

8 Q. Okay. Tell me what that means.

9 A. You know, if I went out, I -- I'd have one of  
10 my friends give me a cigarette. If I were to buy a  
11 pack, it would last me a month. So -- never in the  
12 house, never at home, never in the car. So --  
13 socially.

14 Q. Were you consistent in the amount you smoked  
15 when you chose to smoke?

16 A. No.

17 Q. It varied over time or it stayed the same?

18 A. Depending on, you know, how I felt. Like I  
19 said, if -- if it -- if it came down to me buying a  
20 pack of cigarettes, it would have been, you know, a  
21 stressful situation and felt like I wanted to calm my  
22 nerves and I needed a cigarette.

23 Q. Do you smoke now?

24 A. No.

25 Q. And how long has it been since you've had

1 your last cigarette?

2 A. I couldn't tell you.

3 Q. Can you --

4 A. It's been so long.

5 Q. Can you estimate? A week? A month? More?

6 A. Oh, longer than a year.

7 Q. Okay. And at what point did you decide that

8 you were going to try to quit smoking?

9 A. Dr. Gross had told me that it would help me

10 to stop -- I think, he -- it was, like, a month before

11 surgery.

12 Q. And did you --

13 A. Oh, of course.

14 Q. Did you try to stop immediately after that

15 conversation, or at some time prior to your fusion

16 surgery or after your fusion surgery?

17 A. No, it was easy to stop then.

18 Q. Did you ever have relapses?

19 A. I did. I ended up having a few cigarettes in

20 the summer after surgery -- that summer after surgery.

21 Q. Had you had any conversations with regard to

22 how your bones had fused before you had your first

23 cigarette after the surgery?

24 A. Dr. Gross had told me that it was very

25 crucial within the first four months. And so that was,

1 you know, a very important time not to do any of that.

2 Q. Did you smoke during the first four months  
3 after your fusion surgery?

4 A. No. That June or July would have been six,  
5 seven months after surgery.

6 THE COURT: You at a good breaking point,  
7 Mr. Roberts?

8 MR. ROBERTS: Yes. This would be fine, Your  
9 Honor.

10 THE COURT: Let's go ahead and take a quick  
11 break. During our break, you're instructed not to talk  
12 with each other or with anyone else, about any subject  
13 or issue connected with this trial. You are not to  
14 read, watch, or listen to any report of or commentary  
15 on the trial by any person connected with this case or  
16 by any medium of information, including, without  
17 limitation, newspapers, television, the Internet, or  
18 radio. You are not to conduct any research on your  
19 own, which means you cannot talk with others, Tweet  
20 others, text others, Google issues, or conduct any  
21 other kind of book or computer research with regard to  
22 any issue, party, witness, or attorney, involved in  
23 this case. You're not to form or express any opinion  
24 on any subject connected with this trial until the case  
25 is finally submitted to you.

1           Let's take ten minutes.

2                   (The following proceedings were held  
3                   outside the presence of the jury.)

4           THE COURT:  Sorry to interrupt.  One of  
5 the -- one of the jurors notified the marshal that they  
6 need a break.

7           MR. ROBERTS:  No problem, Your Honor.  It was  
8 a good time.

9           THE COURT:  Do we need to do anything outside  
10 the presence, guys?

11          MR. MAZZEO:  Judge, no.

12          THE COURT:  Okay.  We'll go off --

13          MR. MAZZEO:  Well, actually, Judge, we had  
14 the one issue that I wanted to raise earlier with  
15 regard to the Aliante records.

16          THE COURT:  Okay.

17          MR. MAZZEO:  And so those records are part of  
18 Andrea Awerbach's trial exhibits.  And after speaking  
19 with plaintiff's counsel, Mr. Smith indicated that  
20 they're not objecting to the authenticity of those  
21 records, which means I don't have to call the COR from  
22 Aliante, who's actually appearing tomorrow morning, to  
23 lay the foundation.

24                 So -- but -- however, they're contesting the  
25 relatedness -- or the relatedness of those records to

1 the issues in this case.

2 So -- and I guess that's --

3 THE COURT: So they're not agreeing to the  
4 admission, but you don't have to bring the COR to lay  
5 the foundation?

6 MR. MAZZEO: Correct.

7 THE COURT: You just have to establish the  
8 relevance of it?

9 MR. MAZZEO: Yeah. Exactly. So that's an  
10 issue I need to -- I need to address with the Court so  
11 I can -- so the Court can make a decision as to the  
12 admissibility of these records.

13 THE COURT: Okay.

14 MR. SMITH: Before he gets into the  
15 admissibility part, there is an exception to what  
16 Mr. Mazzeo said.

17 We do not stipulate to the authenticity of  
18 the last five pages because the most important column  
19 is blacked out and it's not the authentic original  
20 record and does not provide any information without  
21 this one column blacked out.

22 MR. MAZZEO: Well --

23 MR. SMITH: There's other reasons why we  
24 would object to that exhibit. But on the authenticity  
25 basis, that's the only one we would object to on

1 authenticity, Your Honor.

2 MR. MAZZEO: And, Judge, in response to  
3 the -- I guess, two things. One is we have deposed the  
4 risk manager, Heidi Heath, with regard to these  
5 reasonable accommodation documents. And she has  
6 testified that the names that are -- would be in this  
7 column that are blacked out, none of the names include  
8 the name of Emilia Garcia, the plaintiff in this case.  
9 It just refers to other employees who have submitted  
10 reasonable accommodations for various reasons not  
11 related to this case.

12 So based on Heidi Heath's testimony -- and  
13 she's no longer available. We had subpoenaed her to  
14 come testify. She's no longer working at Aliante. We  
15 do have her deposition testimony. So if need be, we  
16 can use the testimony to establish that these last five  
17 records which pertain to a reasonable accommodation law  
18 are business records of Aliante and that none of the  
19 names that would otherwise appear, except for the  
20 blacked-out line in the left-hand column, reference  
21 Emilia Garcia.

22 THE COURT: Who crossed out the information?

23 MR. MAZZEO: That would have come from --  
24 that would have been blacked out by Aliante when they  
25 served the documents responsive to the subpoena duces

1 tecum.

2 THE COURT: And the lady testified that it  
3 was the names of the individuals who had requested  
4 accommodations?

5 MR. MAZZEO: Of -- of other people other  
6 than -- it's established that Ms. Garcia's not one of  
7 those names -- individuals that requested an  
8 accommodation.

9 MR. SMITH: Well, we objected to it at the  
10 time because we'd never been provided with a complete  
11 record. But, in addition, this record isn't going to  
12 provide any assistance to the jury. We've already just  
13 heard Ms. Garcia testify that she didn't request a  
14 reasonable accommodation.

15 And providing a confusing form that has other  
16 information on it with a blacked-out column and no  
17 information about Ms. Garcia, according to what  
18 Mr. Mazzeo said, is not going to assist the jury here.

19 She's given the testimony that she didn't ask  
20 for an accommodation. If they want to use this to  
21 prove she didn't ask for an accommodation, there's no  
22 relevance to it and no need for it.

23 MR. MAZZEO: And that's -- yeah, that's  
24 correct. We're not using it to prove that she didn't  
25 request an accommodation. We're using this just to

1 show that -- that this is a -- an option that's  
2 available for the employees at Aliante and that  
3 Ms. Garcia didn't take advantage of this option. She  
4 had the opportunity to.

5 THE COURT: You want to ask the questions  
6 without using the document?

7 MR. MAZZEO: Yeah, Judge. I'm not overly  
8 concerned with this document.

9 THE COURT: Let's keep it out and just ask  
10 the questions without the -- using the document.

11 MR. MAZZEO: Yeah. And that's fine. And  
12 just for the record, that would be Andrea Awerbach's  
13 trial Exhibit H35 through 39. So it's five pages at  
14 the very end.

15 THE COURT: Okay.

16 MR. MAZZEO: So, now, with respect --

17 THE COURT: How about the rest of it?

18 MR. MAZZEO: Yeah, with respect to the rest  
19 of it, AAH1 through --

20 MR. SMITH: We agree to the first page.  
21 That's actually included in some of the medical  
22 records. So AAH1, that's already in evidence.

23 (Clarification by the reporter.)

24 MR. MAZZEO: So with respect to H1 through  
25 H34, we believe that it's relevant and related based on



1 rulings that this court has made throughout the trial  
2 at this point with regard to the functionality of  
3 Ms. Garcia at her place of employment at Aliante  
4 following the subject accident.

5 MR. SMITH: So that provided you a total of  
6 no context for what's in those records.

7 What's in the records is various among the  
8 different records. The next page, AAH2, is one time  
9 sheet for her for one pay period. And there's one  
10 other time sheet for a different pay period in here.  
11 That's AAH4.

12 There's no relevance to those records. And  
13 to the extent they wanted to question her about, for  
14 example, working the day after the accident, she just  
15 testified that she worked the day after the accident.  
16 And her testimony's consistent with those documents,  
17 which are not relevant to prove or disprove any issue  
18 in the trial.

19 Well, the next page, AAH3, is a 2012  
20 history -- attendance history card that does nothing  
21 more than show she took off a bunch of days for FMLA.  
22 That doesn't prove or disprove any fact, keeping in  
23 mind that we don't have a wage loss claim.

24 The next section of records, and basically  
25 the rest of it, are her -- essentially her history at

1 work at Aliante. So any times that she was late or  
2 didn't go to work and any times that she got  
3 reprimanded. For example, there's a couple of times  
4 that Ms. Garcia gave a customer a receipt for a  
5 transaction that was supposed to go in her drawer. So  
6 at the end of the day, it looked like her drawer was  
7 short. But, of course, that was reconciled and it was  
8 just found that she didn't give -- or didn't put that  
9 receipt in the drawer.

10 And what they're really trying to do here is  
11 paint her out as a bad person and a bad employee by  
12 introducing these records that are irrelevant.

13 We dropped the wage loss claim. And when we  
14 don't have a wage loss claim, her employment records --  
15 and an incomplete set of her employment records -- are  
16 not relevant to prove or disprove any fact of whether  
17 she was injured and whether her injuries were caused by  
18 the accident, which is what we're here to talk about.

19 In addition, these records can't impeach her.  
20 One, they're extrinsic evidence; but, two, nothing that  
21 she's testified about at any point in this case is  
22 inconsistent with what's in the records. And the  
23 defense shouldn't be allowed to come in and attack her  
24 character with irrelevant employment records, which is  
25 the intent of introducing the rest of them.

1           MR. MAZZEO: And, actually, Your Honor, so  
2 this is an incomplete set, as it should be because of a  
3 prior ruling from the Court.

4           Precluding the reference of inadmissibility  
5 of the incident, that would be the -- certain incident  
6 records pertaining to her termination from Aliante and  
7 the -- and her violating the antiharassment policy  
8 twice. So that's a different section. So it has to be  
9 an incomplete set.

10           As far as Mr. Smith's belief as to the  
11 intent, well, I'm not going to disclose trial strategy  
12 as far as the intent and purpose for using these  
13 records except to say that the records do reflect  
14 attendance. They do reflect records of counseling. It  
15 reflects performance. It reflects self-appraisals with  
16 regard to work, recognition, coaching, and counseling.

17           So I'm not going cherry-pick through these,  
18 and I'm not going to tell the plaintiff how I'm going  
19 to use these on cross-examination of the plaintiff.

20           But these -- these are in Andrea Awerbach's  
21 trial exhibit binder. And with the exception of those  
22 five records that have been taken out, I ask the Court  
23 to find that I'm allowed to use these for any purpose  
24 related to anything that has not been excluded by the  
25 Court.

1 THE COURT: Which exhibit letter is this?

2 MR. MAZZEO: This is H.

3 MR. TINDALL: We'd like to be heard on this  
4 as well, Your Honor.

5 THE COURT: Go ahead.

6 MR. TINDALL: In addition to what Mr. Mazzeo  
7 believes they're relevant for, they're also now  
8 relevant because, on direct, Mr. Roberts has elicited  
9 from the plaintiff that, you know, her job was her  
10 second-most proudest thing that she had before the  
11 accident.

12 And, of course, the reason this is coming out  
13 is because the implication is, well, because of the  
14 accident, she -- she no longer can take pride in that.  
15 So if there was a door closed, it's been opened in that  
16 regard with that testimony.

17 Additionally, what else has been opened is  
18 when Mr. Roberts elicited information from her about  
19 what her main concern was when she went to Lerner's  
20 office to talk about the accident was where could she  
21 get treatment. And then there was even additional  
22 comments after that.

23 So we're allowed to get into everything that  
24 got discussed with her and her attorney, at least with  
25 that specific bit of information about the referral

1 process. That's become relevant now.

2 MR. MAZZEO: And just -- oh, I'm sorry,  
3 Judge.

4 MR. SMITH: There's nothing in her employment  
5 records about going to a doctor after seeing her  
6 attorney. And once we make the objection to the -- to  
7 the relevance -- and, you know, we are obviously  
8 claiming that the introduction of these records is more  
9 prejudicial than probative -- then the onus is on the  
10 defense to provide some reason why these records are  
11 relevant and to explain to the Court why they should be  
12 admitted into evidence.

13 And Mr. Mazzeo hasn't given you one reason.  
14 All he's said is "Oh, I'll show you at the time."  
15 Well, now's the time.

16 MR. MAZZEO: Well, I did say -- it goes to  
17 functionality, Judge, as you have deemed to be  
18 relevant. And it is relevant to plaintiff's claim of  
19 injuries and -- and reduction in activities of daily  
20 living, her testimony on direct examination with regard  
21 to her alleged impairment at work and how she alleged  
22 she suffered from pain and -- and limitations with  
23 performing her work.

24 And then, I agree with Randy -- yeah, I agree  
25 with Mr. Tindall, Randy, about -- this opens the door

1 with -- with what Ms. Garcia said on direct  
2 examination. And she made a specific -- a couple of  
3 references with regard to working there and referring  
4 to the workers as -- the workers are wonderful, they  
5 helped her out, they accommodated her. And that flies  
6 in the face of evidence in this case.

7           Not only that, it now opens the door up to  
8 this -- the ruling by the Court which precluded  
9 references to this incident, the antiharassment and her  
10 violating the antiharassment policy when we've had  
11 situations where -- where she had engaged in combative  
12 behavior verbally with -- and sexually inappropriate  
13 comments to -- to a worker and then combative arguments  
14 with another coworker.

15           So I think she opened the door up now to --  
16 for us to explore this with regard to the basis for her  
17 termination from Aliante. And -- and the exhibits that  
18 I have attached that would -- we're seeking to  
19 introduce now would be Aliante Casino incident records,  
20 Exhibit I.

21           MR. SMITH: Counsel's been trying to unring  
22 that bell from the day the Court entered the order.  
23 And that's not the first time since we started trial  
24 that he's sought to introduce that evidence and, in  
25 fact, introduced it himself before the Court made him

1 reverse his testimony on opening.

2           The point that they're making is that she's  
3 not a perfect person. But saying that she's not a  
4 perfect person or a perfect employee doesn't mean she  
5 didn't care about her job.

6           And, again, this is just character evidence  
7 that they're trying to use to impeach her testimony, I  
8 guess, now that she cared about her job. And the fact  
9 that she was late a few times or she didn't do it  
10 perfectly, like everyone doesn't do their job  
11 perfectly, doesn't mean she didn't care about it, which  
12 is the only testimony that she gave.

13           And -- and they're just trying to smear her  
14 in front of jury and make her look like a bad person.  
15 That's been the trial strategy from day one. That's  
16 the trial strategy for introducing these records.

17           And what you haven't heard is any argument  
18 that these records tend to prove or disprove any fact  
19 that is material to the jury's determination.

20           MR. MAZZEO: Judge, Ms. -- I'm sorry --  
21 Ms. Garcia had stated that -- and she creates the  
22 impression, based on her direct examination, that the  
23 second -- she lost the second-most important thing to  
24 her because of this injury. That was her job. And she  
25 said that a few minutes ago on the direct examination.

1           And -- and if, in fact, her job was  
2 everything to her and it was very important and  
3 everyone was wonderful there, then she wouldn't  
4 jeopardize it by being late or having a short drop --  
5 or a short drawer at her job. And she said she didn't  
6 call off because she couldn't, but she -- but because  
7 she -- she never did.

8           So these records are relevant. And I know we  
9 have two things before the Court right now. They're  
10 the Exhibit H, the -- the employment records, and then  
11 Exhibit I, the incident records.

12           MR. SMITH: Well, Exhibit I is not before the  
13 Court. That wasn't requested to be introduced.  
14 There's no opening the door. It's been excluded by the  
15 Court.

16           MR. MAZZEO: Actually, I just did request it  
17 a few minutes ago.

18           THE COURT: You just requested it as part of  
19 this argument to get Exhibit H in.

20           MR. SMITH: Would you like me to address  
21 Exhibit I, then?

22           THE COURT: No. Because I don't think  
23 anything that you've said has convinced me that I comes  
24 in now contrary to the Court's prior order. I don't  
25 think that there's any door open there.



1           As far as Exhibit H is concerned, the first  
2 page is the only one that I see that talks about  
3 physical, mental, and environmental demands, and  
4 essential job functions. I'm trying to find anything  
5 in any of these other documents that talks about job  
6 functionality.

7           Now, in the team member self-appraisals, I --  
8 I guess there's arguably the -- the plaintiff's  
9 self-evaluation about her ability to do certain things  
10 that are part of the job functions.

11           MR. MAZZEO: That's correct.

12           THE COURT: But, I mean, even the whole  
13 self-appraisals aren't --

14           MR. ROBERTS: And I don't know if  
15 Mr. Mazzeo's got realtime yet, but I'd like him to give  
16 us a citation to page and line if he does where  
17 Ms. Garcia said she lost her job because of this  
18 collision. Because we're doing a word search. That  
19 word "job" doesn't even come up, and I don't recall her  
20 saying that.

21           MR. MAZZEO: I never said she lost her job.

22           MR. TINDALL: Yeah, we didn't claim that that  
23 was said.

24           MR. MAZZEO: No, I wasn't saying that she'd  
25 lost her job.

1           MR. TINDALL: What I was saying was you had  
2 elicited her testimony that her job was her  
3 second-proudest thing before the accident, with the  
4 implication being that because of the accident, she's  
5 lost that -- that sense of pride. And that's not why  
6 she --

7           MR. ROBERTS: So what -- what we didn't say  
8 opened the door. I understand.

9           MR. MAZZEO: So, Judge, you were -- you were  
10 referring to the team member appraisal and the  
11 self-appraisals. And I would agree with the Court that  
12 those are -- those would be things that are relevant.

13          THE COURT: I don't know that they are. I  
14 mean, her self-appraisal of whether or not she keeps  
15 her work area neat and clean, if she has eye contact  
16 with people, her interaction with team members, I mean  
17 how does that have anything to do with the issues in  
18 the case?

19          MR. MAZZEO: Judge, we're not going to finish  
20 with Ms. Garcia today. So I'm going to revisit this  
21 after they're done with direct exam with Ms. Garcia.

22          THE COURT: Okay.

23          MR. MAZZEO: Thank you.

24          THE COURT: I'm not seeing it at this point.

25          MR. MAZZEO: No, that's fine. And -- and

1 I'd -- and I would --

2 THE COURT: Yeah, I've just sat here and  
3 flipped through each page trying to find something that  
4 talks about her functionality or her ability or  
5 inability to do certain things at work.

6 MR. MAZZEO: Certainly.

7 THE COURT: And I'm not seeing that.

8 MR. MAZZEO: Right. And that's -- I'll  
9 reserve my right to continue this -- I'm going to --  
10 I'm going to -- I'll -- I will address this, though --  
11 I don't know if they're going to finish with direct  
12 examination today or not. But ...

13 THE COURT: If you find some specific things  
14 that you want me to consider, that's fine.

15 MR. MAZZEO: And I will. Thank you, Judge.

16 THE COURT: Are we ready to go?

17 MR. ROBERTS: Yes, Your Honor.

18 MR. SMITH: I'd like a one-minute break.

19 THE COURT: Nobody took a break, though.  
20 Off the record.

21 (Whereupon a short recess was taken.).

22 THE MARSHAL: All rise for the presence of  
23 the jury.

24 (The following proceedings were held in  
25 the presence of the jury.)

1 THE COURT: Go ahead and be seated. Welcome  
2 back. We're back on the record, Case No. A637772.

3 Do the parties stipulate to the presence the  
4 jury?

5 MR. ROBERTS: Yes, Your Honor.

6 MR. MAZZEO: Yes, Judge.

7 THE COURT: So I -- I reminded you earlier  
8 how I told you to come back at a certain time. You  
9 came back, and we were ready right at that time. I  
10 acknowledge we didn't do that this time. Sorry.

11 All right. Ma'am, just be reminded you're  
12 still under oath.

13 Go ahead, Mr. Roberts.

14 MR. ROBERTS: Thank you, Your Honor.

15 BY MR. ROBERTS:

16 Q. Before we start talking about the future  
17 treatment, I want to go back to Dr. Cash.

18 Do you remember the visit with Dr. Cash? We  
19 talked about that a little bit before.

20 A. Yes.

21 Q. And at the visit with Dr. Cash, did he  
22 perform flexion-extension tests on you where he asked  
23 you to lean back as far as you could and lean forward  
24 as far as you could?

25 A. Yes.

1 Q. Do you remember that test, as you sit here?

2 A. Yes.

3 Q. Tell the jury at what point did you stop when  
4 you were leaning forward and leaning back in that test.

5 A. I went -- I did it as far as it started to  
6 hurt and then went back up. Then he had me go back,  
7 and it was the same thing. I, you know, would stretch  
8 myself back as soon as it hurt, and then I would stop  
9 and come back up.

10 Q. Well, if -- if you couldn't move more than  
11 20 percent forward -- does that sound about right? --  
12 and 10 percent back without pain, how were you able to  
13 perform any activities of daily living at that time?

14 MR. MAZZEO: Objection. Foundation.  
15 Speculation. About the percentages.

16 MR. TINDALL: Objection. Leading.

17 THE WITNESS: Medication.

18 THE COURT: It was leading. So try again.

19 BY MR. ROBERTS:

20 Q. Okay. Do you remember about how far forward  
21 you were able to go before you felt pain backwards?

22 MR. TINDALL: Now we move to strike her  
23 answer because he's clearly told her, in the previous  
24 leading question, what he wanted her to say.

25 THE COURT: Denied.

1 BY MR. ROBERTS:

2 Q. Rather than give me numbers, could you stand  
3 up and demonstrate to the jury about how far forward  
4 you could lean before you felt pain that day with  
5 Dr. Cash?

6 And I apologize for making you do that,  
7 ma'am.

8 A. That's okay. So you want me to go forward --

9 Q. Yes.

10 A. -- as far as I could go and then it would  
11 hurt?

12 Q. Right.

13 A. So there.

14 Q. Sorry.

15 A. And back. (Witness indicating.)

16 Q. Okay. Did you go back that far that day with  
17 Dr. Cash?

18 A. Uh-huh.

19 Q. And if that was as far as you could go  
20 forward without pain, how did you do your activities of  
21 daily living?

22 A. I was on medication to be able to, you know,  
23 do my tasks or do things differently to avoid, you  
24 know, hurting.

25 Q. You can sit back down.

1           A.    Thank you.

2           Q.    Thank you, Emilia.  I appreciate that.

3                   From the date of the crash until today, can  
4 you recall a single day that you have not had pain?

5           A.    No.

6           Q.    And have -- what have your doctors told you  
7 about your prospects for pain into the future?

8           A.    Well, I know that the rhizotomies have been,  
9 you know, the one thing that have helped -- that has  
10 helped after surgery the most.

11          Q.    Well, how much has it helped?  What are your  
12 pain levels following your rhizotomies over the last  
13 five months?

14          A.    I mean, my -- the -- my numbers have gone  
15 down to where it's not as bad as it used to be.  You  
16 know, I'm normally a 4, you know, and that's on a -- on  
17 a regular, good day.  If -- there's times that I could  
18 be a 2, and it's amazing.  And so it's -- it's been  
19 good.  But I know that I need -- I'm going to need  
20 them, you know, at least once or twice a year.

21                   MR. MAZZEO:  Objection, Judge.  Foundation.  
22 Speculation.

23                   THE COURT:  Overruled.  She can tell what she  
24 knows.

25    /////

1 BY MR. ROBERTS:

2 Q. So what have your doctors told you about the  
3 rhizotomies into the future?

4 A. Well, because they burned nerves that come  
5 back, the pain starts to come back, and I have  
6 experienced the -- I have experienced it in the last  
7 couple of weeks where certain sensations are coming  
8 back and pain has returned, so I know that they're all  
9 going to grow back. So the pain will come back the  
10 same or stronger than it was before.

11 Q. And is it as painful as it was before the  
12 rhizotomy back last fall?

13 A. The -- the places where I'm starting to feel  
14 it, yes.

15 Q. What about the fusion surgery? Have your  
16 doctors told you anything about a need for other  
17 surgeries into the future?

18 A. Unfortunately, yes.

19 Q. What have they told you?

20 A. I'm looking at another surgery in -- I think  
21 he said 15 to 25 years, something like that. Because  
22 of the disks above and below the -- the fusion.

23 Q. What -- what thoughts go through your head  
24 when you think about the need for another fusion?

25 A. It's -- it's hard to think about myself in



1 that situation again. And so I think, well, it will be  
2 better because the kids will be older. And then you  
3 think of yourself as a grandmother in 25 years,  
4 hopefully, and that your grandchildren are going to  
5 need you. And so that's another hard blow to think  
6 about, that I would have to go through it all over  
7 again.

8 Q. Have the doctors told you anything about  
9 the -- the return of your symptoms or different  
10 symptoms prior to the -- the need for future fusion?

11 A. I'm sorry?

12 Q. Have they told you anything about the -- the  
13 pain? What's going to require the future fusion as far  
14 as your understanding of what you have been told?

15 MR. MAZZEO: Objection. Hearsay.  
16 Foundation. Speculation.

17 THE COURT: Not the way it was asked.  
18 Overruled.

19 THE WITNESS: I'm still looking at  
20 rhizotomies yearly. I'm still looking at taking pain  
21 medication, which I -- you know, it's been happening  
22 still. So nothing really stops. You know, there's  
23 still care that needs to be done in order for me to  
24 keep going and -- and be able to function. So it's  
25 still devastating.

1 BY MR. ROBERTS:

2 Q. The surgery that you had, you've told the  
3 jury how painful it was. Did it take away all your  
4 pain?

5 A. No.

6 Q. Did it improve your pain?

7 A. Yes.

8 Q. Did it improve it enough that you'd be  
9 willing to go through all that again if the doctors  
10 recommended it in the future?

11 A. Yes.

12 Q. Talk about household services. And this is  
13 something that Dr. Smith came in and talked to us  
14 about.

15 At some point, did Dr. Smith or a member of  
16 his staff call you and ask you about the things you did  
17 around the house before and after the crash?

18 A. I don't recall.

19 Q. Prior to the crash, did you do things around  
20 the house?

21 A. Yes.

22 Q. What sort of things did you do?

23 A. Everything that the household needs. The  
24 cleaning, the cooking, the laundry, the kids, the --  
25 everything.

1           Q.    Did -- did you do everything, or did other  
2 members of the household help out some before the  
3 crash?

4           A.    The kids were old enough to help do certain  
5 things, more Emily, unfortunately, than the little  
6 ones, but very minimal. You know, responsibilities  
7 that a normal teenager would have around the house and  
8 helping with her siblings. So it was normal.

9           Q.    Have you thought about it and tried to  
10 estimate the amount of hours on average you would spend  
11 doing chores around the house before the crash?

12          A.    So we're talking about everything? Cooking,  
13 everything, everything?

14          Q.    Yes.

15          A.    On a weekly basis?

16          Q.    Yes.

17          A.    About 25 hours.

18          Q.    Okay. And during the time period from the  
19 crash to the fusion, how did that change?

20          A.    That doubled. And not only did it double, it  
21 made me have to ask of more help.

22          Q.    Explain to -- to me what you mean when you  
23 said "it doubled." What doubled?

24          A.    The time that needed -- that I needed to take  
25 to -- you know, to do all of this around the house.

1 You know, something that would take me 30 minutes would  
2 take an hour, you know, so it was a lot more difficult.

3 Q. And what about now? Following the -- the  
4 fusion and the rhizotomy, how -- how much time do you  
5 spend doing your household chores?

6 A. Could be -- I'm -- I'm not good with numbers.  
7 So, you know, I could -- it could be 40 hours instead  
8 of, you know, my 50. So it's gotten better. Things,  
9 you know, have gotten a little better.

10 Q. So at this point have you tried to go back to  
11 do everything that you did before the -- the crash?

12 A. Yeah. You always try to push yourself. You  
13 know, you always want to try to get back to your normal  
14 and the things that you have always been able to do  
15 without having to watch yourself or take breaks and  
16 stuff like that. So yeah.

17 Q. It just takes you longer to do the same  
18 things?

19 A. The same things. Yeah.

20 Q. Prior to the crash, did you ever have to ask  
21 your daughters to help you do something because you  
22 were physically unable to do it? Can you recall that  
23 ever happening?

24 A. No.

25 Q. And what about after the crash? Did that

1 happen?

2 A. Oh, yeah.

3 Q. What sorts of things did you have to ask for  
4 help with?

5 A. Simple as cleaning toilets. You know, that  
6 position that you take to -- to clean your toilet. The  
7 bathtubs, getting laundry out of the dryer, mopping.  
8 It's painful. Sweeping. So, you know, things like  
9 that that were okay for me to do were a lot harder, and  
10 so the kids would help. Emily, pretty much.

11 Q. And one of the tough things that the jury's  
12 going to have to do, if they reach the issue, is to  
13 determine what a fair and reasonable value would be for  
14 the loss of enjoyment of life caused by the collision.

15 A. Right.

16 Q. And I know that's something that's hard to do  
17 and -- but if you had to put a percentage now -- and  
18 we're talking about after the fusion, today -- to what  
19 extent or percentage would you say that you have lost  
20 some of the enjoyment of life that you had before the  
21 crash?

22 MR. MAZZEO: Speculation. Foundation, Judge.

23 MR. STRASSBURG: Join.

24 THE COURT: I don't know who else we're going  
25 to ask. Overruled.

1           THE WITNESS: I want to say I have lost about  
2 50 percent of how well we were before.

3 BY MR. ROBERTS:

4           Q.    Okay. Could you explain your -- your  
5 reasons? How do you get to that number?

6           A.    It's been pretty much impossible to do the  
7 things that I love to do with my kids. As simple as  
8 being of help in the classroom for them. You know, I  
9 would be a volunteer on my days off for my kids.  
10 That's something that -- that I stopped.

11                You know, the kids' desks are lower, and you  
12 would have to, you know, get to their level to help  
13 them and stuff like that. That, I no longer do.  
14 Lennay was in first grade, and so it's been drastic,  
15 and it's been sad because she knows that I helped.  
16 There's pictures that we have with other -- the other  
17 kids' teachers, and that's something that was, you  
18 know, huge to me and -- and to them.

19                Not being able to -- to hold her hand if  
20 they're on a ride that they're scared and walk around  
21 with them and run around with them when -- when they're  
22 at a birthday party and stuff like that. That -- that  
23 was so -- it seemed like so minimal at one point. And  
24 now you take that, and you look at it, and you think  
25 you took it for granted when you could do it.

1           It's -- everything has changed. So, of  
2 course, there's -- there's a huge amount to add that I  
3 can't do anymore with them.

4           Q.    Has your quality of life gotten better,  
5 worse, or stayed the same after the rhizotomy that  
6 Dr. Kidwell performed?

7           A.    It got better. Yeah.

8           Q.    Was the rhizotomy painful?

9           A.    It was.

10          Q.    And how long did it take you after the  
11 rhizotomy to -- to start feeling significant  
12 improvement, have the pain from the procedure go away?

13          A.    Four -- four or five days. It wasn't very  
14 long. It was better than I expected. So it was -- it  
15 was good.

16          Q.    Would you do the rhizotomy again? Did it  
17 give you enough relief that you'd go through that pain  
18 again in order to get the relief the rhizotomy  
19 provided?

20          A.    Oh, yeah.

21          Q.    Do you rely on your kids to do things more  
22 now than you did before?

23          A.    Not as much.

24          Q.    Okay. Since the rhizotomy, it's gotten  
25 better?

1           A.    Yes.

2           Q.    Do you rely on your kids more now than you  
3 did before the crash?

4           A.    Oh, yeah.

5           Q.    Is that something you enjoy?

6           A.    No.  It's -- it's not a good feeling to have  
7 to have your kids help you.

8           Q.    Do you have more fear of the future now than  
9 you did before the crash?

10          A.    Of course.

11          Q.    Fear of what?

12          A.    My pain, the medication that I'm on, more  
13 surgery.

14          Q.    Has the crash affected your mobility, your  
15 ability to get around, do the -- I know you've talked a  
16 little bit about the activities, but is that something  
17 constant every day, or do you have good days and bad  
18 days?

19          A.    I have good days and bad days.  You know,  
20 there's really bad days, and there's really, really  
21 good days.

22          Q.    And it comes and goes in cycles?

23          A.    Yes.

24          Q.    Has there been anything about the crash  
25 that -- that's changed your life as far as your



1 socializing and your interactions?

2 A. I'm sorry.

3 Q. Okay.

4 A. I lost you completely.

5 Q. So I don't want to just talk about certain  
6 time periods and give the jury a false impression.

7 Let's just look at the whole time period from the crash  
8 until today.

9 A. Okay.

10 MR. MAZZEO: Objection to the preamble on the  
11 statement about giving the jury a false impression,  
12 Judge.

13 THE COURT: I don't think so, but I don't  
14 know what the question is yet.

15 BY MR. ROBERTS:

16 Q. Are you telling the jury that you never went  
17 out, had a beer with your friends during the five-year  
18 period?

19 A. No.

20 Q. Okay. Did you still try to get out?

21 A. Of course.

22 Q. How often would you go out?

23 A. Maybe twice a month. If that.

24 Q. Okay. Did you go out more than that before?

25 A. Yeah.

1           Q.    Do you remember when you had your deposition  
2 taken?

3           A.    Yes.

4           Q.    Okay. Do you remember them videotaping you?

5           A.    Yes.

6           Q.    Okay. And did they show you a video when  
7 they were videotaping your deposition?

8           A.    Yes.

9           Q.    Okay. What did they show you a video of?

10          A.    My Sophia and I leaving a grocery store.

11          Q.    How did they get that videotape? Do you  
12 know?

13          A.    I -- I want to say a -- like a private  
14 investigator or somebody like that. Somebody that I  
15 didn't know.

16          Q.    And how did it make you feel to know that  
17 people had been hired to follow you around and take  
18 videos of you?

19          A.    I mean, as much as it bothered me, it was  
20 fine. You know, I -- it's -- it's still a really bad  
21 feeling, but to know that they didn't -- it didn't stop  
22 them that my kids were with me was kind of creepy. And  
23 it's not -- you know, you kind of become introverted  
24 because you don't know who is out there watching you  
25 and your kids. If it would have been just me, then I

1 would have not been as -- as worried as I became since  
2 then.

3 Q. When you say "introverted," what do you mean?

4 A. You just don't want to go anywhere. You  
5 know, you're -- what if, to try to get something -- a  
6 picture or something, they're -- I don't -- I --

7 Q. So you -- you did even less things with your  
8 kids when you found this out?

9 MR. MAZZEO: Objection. Leading.

10 THE COURT: Sustained.

11 BY MR. ROBERTS:

12 Q. Could you explain what you meant by  
13 "introverted" a little bit more?

14 A. You become less social. You know, you're  
15 scared that your kids are out there with you and  
16 they're going to take pictures of you and the kids. So  
17 I have done a lot of having to ask Emily to go out with  
18 them instead of me. And so I'm -- I'm in a shell, I  
19 feel like, because I don't know if they're around the  
20 corner watching me. So it's -- it's terrible.

21 Q. Have you felt like your character was under  
22 attack by the defendants in this litigation?

23 MR. MAZZEO: Objection. Leading.

24 THE WITNESS: Of course.

25 THE COURT: Overruled.

1 BY MR. ROBERTS:

2 Q. One of the things that Mr. Jason Awerbach's  
3 attorney told the jury when we started this trial  
4 almost four weeks ago was that Mr. Awerbach is very  
5 sorry for causing the collision. He's very sorry for  
6 what happened.

7 Prior to this trial, had Mr. Awerbach ever  
8 told you he was sorry?

9 A. Not at all.

10 Q. Had you ever heard anything about that, any  
11 of those words came out of Mr. Strassburg's mouth?

12 A. Not at all.

13 MR. ROBERTS: That's all I have, Your Honor.

14 THE COURT: Why don't we just go ahead and  
15 stop for today and pick it back up tomorrow.

16 MR. ROBERTS: Thank you, Your Honor.

17 MR. MAZZEO: Okay, Judge.

18 THE COURT: We only got eight minutes left.

19 MR. MAZZEO: Sure.

20 THE COURT: Go ahead and take our break for  
21 the evening, folks. I got a calendar in the morning.  
22 I'm hoping that we can be done by 10:00 o'clock, so I'm  
23 going to have you guys show up at 10:00 o'clock.  
24 Hopefully we'll be ready then.

25 During the break this evening, you're

1 instructed not to talk with each other or with anyone  
2 else about any subject or issue connected with this  
3 trial. You are not to read, watch, or listen to any  
4 report of or commentary on the trial by any person  
5 connected with this case or by any medium of  
6 information, including, without limitation, newspapers,  
7 television, the Internet, or radio.

8           You are not to conduct any research on your  
9 own, which means you cannot talk with others, Tweet  
10 others, text others, Google issues, or conduct any  
11 other kind of book or computer research with regard to  
12 any issue, party, witness, or attorney involved in this  
13 case.

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

17           See you tomorrow at 10:00.

18                   (The following proceedings were held  
19                   outside the presence of the jury.)

20           THE COURT: All right. We're outside the  
21 presence of the jury. Anything we need to put on the  
22 record, guys?

23           MR. ROBERTS: No.

24           MR. MAZZEO: Yes, Judge. I just want to  
25 revisit the -- that issue regarding the -- Andrea

1 Awerbach's request to -- regarding the Aliante Casino  
2 employment records. Exhibit H.

3 THE COURT: Okay.

4 MR. MAZZEO: And so -- all right. So with  
5 regard to the records pertaining to the team member  
6 self-appraisal and -- and the team member appraisals, I  
7 think those are relevant. And you pointed out a couple  
8 of things, but actually there's a whole list of things  
9 under performance characteristics, championship,  
10 service characteristics, teamwork characteristics that  
11 I think are relevant to -- with regard to Ms. Garcia's  
12 ability to perform and function at her job postaccident  
13 as well as preaccident.

14 So -- and the fact that it shows that there's  
15 been a -- an increase in ability to perform at her job  
16 postaccident I think is very relevant, and it goes to  
17 her functionality. I don't want to have to disclose my  
18 whole cross-examination with regard to these records,  
19 but I think I have showed a good-faith basis for why  
20 these records are relevant.

21 And it's -- I think the Court has already  
22 indicated that her ability to perform on her job is --  
23 is relevant. It's relevant in terms of functionality  
24 regardless of whether plaintiff dismissed their claim  
25 for lost wages and lost earning capacity.

1 THE COURT: Having a hard time seeing what in  
2 this goes to functionality.

3 MR. MAZZEO: Okay. So --

4 THE COURT: I -- I don't want to make you  
5 disclose anything --

6 MR. MAZZEO: Well --

7 THE COURT: -- specific that you are going to  
8 use, but you may have to in order to convince me that  
9 it's relevant.

10 MR. MAZZEO: Well -- fair enough. I mean, I  
11 can -- I can take it a step further. So here we have a  
12 plaintiff who's now testified on direct examination and  
13 deposition testimony, indicating how her ability to  
14 meet those job duties has -- has suffered and how it's  
15 not the same after the accident as it was before.

16 And so part of that is -- that -- that --  
17 that would be reflected, I think, in her inability or  
18 her decreased ability to satisfy her job duties would  
19 be reflected in her ability to meet expectations --  
20 whether she needs improvement or exceeds expectations.

21 And so I'm looking at these team member  
22 self-appraisals and team member appraisals by  
23 supervisors, I guess. What we see and what it shows is  
24 that there has been an improvement from November of  
25 2010 till -- to May of 2011 and May of 2012.

1           So, I mean, do I need to say more? I think  
2 it is relevant and -- and it doesn't go to  
3 admissibility; it goes to weight.

4           So I understand why plaintiff is objecting to  
5 this and they don't want me to question her on her  
6 ability to -- or meeting or exceeding expectations  
7 after the accident, but it's certainly relevant to her  
8 functionality and certainly to her testimony about the  
9 mental and physical difficulties she had in performing  
10 her job after the accident.

11           I think that says it all.

12           THE COURT: When was the day of the accident?

13           MR. MAZZEO: 1/2 of 2011. So we have a team  
14 member appraisal and a self-appraisal November of 2010,  
15 and then we have the postaccident appraisals in May and  
16 November. They were every six months, so May and  
17 November of 2010 and I think one in May of 2012.

18           MR. SMITH: Judge, I will only address that  
19 if you want me to.

20           THE COURT: Go ahead.

21           MR. SMITH: She did not testify that she  
22 couldn't meet her job duties after the accident or that  
23 she didn't do her job after the accident because of the  
24 accident. And, in fact, we dropped that claim.

25           What she testified is that it was more



1 difficult for her to do her job, that she was in pain  
2 when she was doing her job, that she had to break  
3 things up, but she was still able to do it. These  
4 documents don't ask, "Even though you're still  
5 performing your job, does it hurt or is it more  
6 difficult?"

7           These don't say anything different than what  
8 she said on the stand. And -- and, again -- and, you  
9 know, I hope I'm not saying this too many times. But  
10 when you talk about the prejudicial value, what they're  
11 trying to do is put her character in evidence and talk  
12 about the things that maybe she thought she didn't do  
13 very well at work or the things that her employer  
14 didn't think she did very well at work. And that is  
15 not relevant to her ability to perform the job  
16 functions, and it's certainly not relevant to any fact  
17 that's material to this case. It's just a character  
18 attack on her as has been done since day one of this  
19 trial.

20           MR. MAZZEO: And that's simply not true.  
21 It's not -- has nothing to do with a character attack.  
22 It has to do with her -- her functionality and the fact  
23 that she is indicating not only an improvement in  
24 functioning at her job but also -- and a good  
25 attitude -- but there's also nothing in these records

1 postaccident that indicates in any way that she is  
2 suffering from any physical disability. And that  
3 certainly is contrary to what Ms. Garcia testified  
4 today when she said that -- and intimated to the jury  
5 in her testimony that she had -- that her employment --  
6 the employees at her job -- sorry.

7           One second, Judge.

8           That they would pitch in and help out --  
9 well, there's no evidence of that. And there's  
10 certainly no indication that the -- the people at her  
11 job knew that she was compromised as a result of any  
12 physical disability. So now it's even more relevant.

13           And -- and there's -- and the fact that  
14 there's no reference in these team member appraisals  
15 is -- is fair game for me to question her about them.

16           THE COURT: As it relates to functionality,  
17 her ability to do her job, whether or not she and her  
18 employer thought that her abilities and functionality  
19 remained the same or improved or got worse over time, I  
20 think, is -- is probably relevant as -- at least as it  
21 relates to the pain and suffering claim, loss of  
22 enjoyment of life claim.

23           So I'm going to find that those -- those  
24 records are relevant for that. But the records that I  
25 think are relevant are Exhibit AAH1, which you said is

1 already in some other record somewhere.

2 MR. MAZZEO: Sure.

3 THE COURT: And then we have AAH19 through  
4 33.

5 MR. MAZZEO: 34, Judge.

6 THE COURT: I don't know that 34 matters.  
7 But if you want to include 34, fine. That looks like a  
8 self-appraisal. 19 through 34 --

9 MR. MAZZEO: Yeah, I'm fine with that.

10 THE COURT: Now, with the understanding that,  
11 if a question is raised with one of these exhibits  
12 to -- as a -- as an attack on character, they're going  
13 to object. And I'm probably going to sustain it  
14 because I'm not allowing it for character  
15 assassination.

16 MR. MAZZEO: Absolutely.

17 THE COURT: I don't see anything in here that  
18 is negative about character, but ...

19 MR. MAZZEO: Correct. There is nothing.  
20 That's not my intent. And you'll see that from my  
21 cross-examination. I just want to be clear --

22 THE COURT: Okay.

23 MR. MAZZEO: I want to be clear that the  
24 Court is not limiting me to those questions about what  
25 other employees thought of her.

1 THE COURT: No.

2 MR. MAZZEO: That's not the -- okay. Good.  
3 That's not the purpose.

4 THE COURT: No. I'm going to allow you to  
5 use it for functionality, and that's what we -- that's  
6 what I've said all along I thought was relevant.  
7 So ...

8 MR. MAZZEO: Thank you, Judge.

9 MR. SMITH: And I do want to make a record  
10 that counsel made a statement that he knows is  
11 inaccurate.

12 Ms. Garcia's direct supervisor was deposed in  
13 this case. She did testify that she knew about the  
14 crash, that the coworkers knew about the crash, that  
15 Ms. Garcia did get help at work with lifting things.  
16 That's not something that there's no evidence of.  
17 There is evidence of that in addition to what  
18 Ms. Garcia said. And it's not like her coworkers  
19 didn't know what was going on. They all knew what was  
20 going on.

21 MR. MAZZEO: And, actually, Judge, I don't  
22 know that a direct supervisor -- oh, there may have  
23 been. I don't know if he was her --

24 MR. ROBERTS: Her name is Dylan Norvel.  
25 D-y-l-o-n, N-o-r-v-e-l. I'm happy to present the Court

1 with her --

2 (Clarification by the reporter.)

3 MR. ROBERTS: D-y-l-o-n, N-o-r-v-e-l.

4 I'm happy to present the Court with her  
5 deposition testimony. She's listed as a trial witness  
6 if we need her.

7 THE COURT: Don't know that it's necessary.  
8 You good?

9 MR. MAZZEO: We are, Judge.

10 MR. TINDALL: Your Honor, I'd like to make a  
11 little more of a record about my previous request about  
12 the door being open.

13 THE COURT: Okay.

14 MR. TINDALL: So for probably the 40th time  
15 in this trial, Mr. Smith has indicated "but we dropped  
16 the wage loss claim."

17 And so they figure that is their key, but  
18 none of the information about the true nature of her  
19 termination comes into play. But that isn't the  
20 be-all, end-all of it.

21 They have offered evidence now that part of  
22 her loss of enjoyment of life is focused on her not  
23 being able to do her job. Because she was proud of  
24 that before and now, because of the accident, she can't  
25 take pride in that anymore. It has opened the door.

1           If they want to use it for that purpose, and  
2 they did -- maybe not intentionally, but that's  
3 certainly the way it came out -- we get to explore the  
4 true nature of her termination and get into that pride  
5 that she claims now she doesn't have, can't have  
6 anymore because of the accident.

7           MR. ROBERTS: I'd like a citation to the  
8 record. She never said that. Maybe you can give me  
9 that in the morning. We'll have the transcript by  
10 then.

11           MR. TINDALL: Here's the citation, not from  
12 the record but from what is going on.

13           When you ask her that, that's what is being  
14 conveyed to the jury. The words coming out of  
15 somebody's mouth aren't always the true meaning of the  
16 words.

17           Here it is. "I took pride before, but  
18 because of the accident, now I can't anymore."

19           MR. ROBERTS: But he's just making that up.  
20 She never said that last half, never.

21           THE COURT: I'm not convinced. Sorry, guys.

22           MR. ROBERTS: And we can do it in the morning  
23 Judge. But he also said he thinks the door has been  
24 open to attorney-client privilege. I don't know that  
25 we need to address it now but probably before

1 Mr. Tindall does his cross.

2 MR. TINDALL: I think now would be good.

3 MR. STRASSBURG: His cross?

4 MR. TINDALL: I mean, it's really a simple  
5 call. The Court heard what was asked about the  
6 communications between the attorney and the client  
7 about where to go to get medical treatment and what her  
8 main concern was and what they told her to do.

9 So they've offered that. We get to explore  
10 what else got said in that regard for that limited  
11 purpose.

12 MR. ROBERTS: What they told her to do has  
13 never been kept privileged or secret. The referral is  
14 on the medical records, and it's been before this jury.  
15 So nothing has been waived.

16 And she -- she said what was her concern.  
17 And they can certainly question her about what her  
18 other concerns are, but she never revealed  
19 attorney-client privileged communications which had not  
20 previously been disclosed to a third party.

21 THE COURT: Yeah. I mean, I'm not going to  
22 let you ask her what else she asked her attorneys  
23 about.

24 MR. TINDALL: About the referral process?  
25 Just that limited issue?

1 THE COURT: If -- if you want to ask was  
2 there any other discussion about the referral to  
3 Dr. Gulitz, sure, you can ask that question.

4 MR. TINDALL: Okay. That's all I'm asking  
5 for.

6 THE COURT: That's the only question you can  
7 ask is about the referral.

8 MR. TINDALL: Understood.

9 MR. STRASSBURG: And I'll be the crossing the  
10 plaintiff, and I'm pretty clear on your ruling.

11 THE COURT: Okay.

12 MR. TINDALL: Better be.

13 MR. STRASSBURG: That's right. Or I'm in a  
14 lot of trouble.

15 THE COURT: All right. We're off the record.

16 (Thereupon, the proceedings  
17 concluded at 5:04 p.m.)  
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CERTIFICATE OF REPORTER

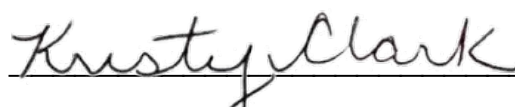
STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

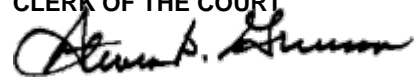
I, Kristy L. Clark, a duly commissioned  
Notary Public, Clark County, State of Nevada, do hereby  
certify: That I reported the proceedings commencing on  
Wednesday, March 2, 2016, at 9:05 o'clock a.m.

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  
2nd day of March, 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 JURY TRIAL

20 BEFORE THE HONORABLE JERRY A. WIESE, II

21 DEPARTMENT XXX

22 DATED THURSDAY, MARCH 3, 2016

23  
24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,  
25 CA CSR #13529

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23

24 \* \* \* \* \*

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I N D E X

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1 LAS VEGAS, NEVADA, THURSDAY, MARCH 3, 2016;

2 10:10 A.M.

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

5 \* \* \* \* \*

6  
7 THE COURT: All right. We're on the record,  
8 Case No. 637772. We're outside the presence.

9 What do you got?

10 MR. MAZZEO: Okay. The first one -- first  
11 matter I want to address to the Court is I want to  
12 request that the defendant be entitled to question  
13 Ms. Garcia about her nuclear family setup because --  
14 and we talked about this briefly when I was  
15 cross-examining Emily. We had a -- a sidebar where it  
16 was discussed.

17 You didn't -- Plaintiff didn't want me  
18 discussing the -- the relationship between the  
19 stepsisters -- or half sisters that she had. And --  
20 and I think that's now relevant. And I think  
21 Ms. Garcia opened a door on her direct examination when  
22 she said various things, including she's not dependent  
23 on others and she was -- or she wasn't dependent on  
24 others prior to the accident. She took pride in taking  
25 care of her family. She was a single parent. And that

1 was a good feeling, setting a good example for the  
2 kids, raising respectful human beings. So these are  
3 all things that she said on direct examination.

4 And I would argue that the lifestyle that she  
5 had with her kids was not an exemplar-type lifestyle  
6 for someone who's setting a good example necessarily  
7 where each of her daughters is -- was fathered by a  
8 different man and that she's still married and  
9 committed adultery when she was having relations with  
10 other men. So I think that's relevant now.

11 THE COURT: Not a chance.

12 MR. MAZZEO: No?

13 THE COURT: No.

14 MR. MAZZEO: Okay.

15 THE COURT: Sorry.

16 MR. MAZZEO: I'm not sure why, but okay. All  
17 right, Judge.

18 Then the other thing is we -- I think I'm  
19 going to take a -- this morning, cross-examining the  
20 plaintiff, we might be done earlier today. And I was  
21 wondering if we could settle jury instructions with you  
22 rather than waiting until tomorrow, maybe at  
23 4:00 o'clock today, and use that last hour to settle  
24 the instructions, even if we're not done with all of  
25 the witnesses.

1           Because I know Plaintiff is still going to  
2 call Andrea and Jared after Roger and I are done  
3 cross-examining the plaintiff. We still think that  
4 we'll be done, and we're going to call Andrea on our  
5 case as well. Roger may call Jared on their case.

6           But I don't anticipate those to be long  
7 testimonies since Plaintiff is already calling them on  
8 their case.

9           So if we finish up -- I think we might finish  
10 up -- maybe start tomorrow at 9:00 o'clock. We might  
11 finish with our defendant's case by 10:30,  
12 11:00 o'clock. And then we can go right into closing  
13 arguments if we have jury instructions that are  
14 settled.

15           THE COURT: Okay. Any comments on that?

16           MR. ROBERTS: I'll preface by saying that  
17 we'll do whatever the Court requests, and I can't  
18 really plead not ready because the Court's warned me  
19 that I needed to be ready. So if we have time and you  
20 want to do that, that's -- that's okay with us.

21           As far as finishing up, there's several  
22 complications that might make what Mr. Mazzeo is  
23 suggesting unworkable.

24           One is we're calling Jared. And his  
25 examination is not going to be that long, but it's my

1 understanding through counsel that he's not available  
2 until 3:00 p.m. today. So that may, with redirect or  
3 with cross -- whatever it is at that point, redirect  
4 probably, it may run past 4:00, and we may not have  
5 time, as a practical matter, to settle.

6 If they close their case tomorrow at 10:30,  
7 we're at least keeping open the possibility of having  
8 one or more rebuttal doctors come in to rebut the  
9 testimony of Poindexter and Klein.

10 So if we decide to do that, there just seems  
11 to be very little chance we'd able to complete closings  
12 on Friday. And if we can't complete closing, it would  
13 be our preference to start them on Monday morning.

14 THE COURT: We've got one juror that has  
15 asked -- they have something going on tomorrow  
16 afternoon, and they wanted to end at 3:30 tomorrow.

17 MR. MAZZEO: And another concern, Judge, is  
18 that we had told the jurors that the case would --  
19 trial would take three to four weeks, and we're at the  
20 end of the four weeks come tomorrow.

21 So is the Court going to inquire as to  
22 whether these jurors are still available next week?

23 THE COURT: We're just going to assume that  
24 they are available.

25 MR. MAZZEO: Okay. We won't say anything.



1 Fair enough.

2 THE COURT: I would love to be done by  
3 tomorrow. But based on what I'm hearing, it doesn't  
4 sound like it's going to happen.

5 MR. MAZZEO: And your inclination is to stop  
6 at 3:30 tomorrow, regardless? I mean, we're --

7 THE COURT: I think so.

8 MR. MAZZEO: Yeah, I think we're ...

9 THE COURT: We got to try to accommodate  
10 these people as much as we can especially since we're  
11 at the end of week 4.

12 MR. MAZZEO: So as far as settling  
13 instructions, you want to just see later today maybe?

14 THE COURT: Let's see where we get today.  
15 And, I mean, if we're not going to have a full day of  
16 testimony tomorrow, maybe we bring the jurors in late  
17 tomorrow to settle jury instructions during the  
18 morning, or we can bring the jury in in the morning and  
19 settle instructions at the end of the day if it doesn't  
20 look like we're going to get to closings tomorrow based  
21 on where we are today.

22 MR. MAZZEO: Okay.

23 THE COURT: Let's see where we get by the  
24 afternoon.

25 MR. MAZZEO: Sure.

1 THE COURT: Anything else we need to do  
2 outside the presence?

3 MR. ROBERTS: There -- there was one matter  
4 that I wanted to bring to the Court's attention.

5 Ms. Garcia's going to be on cross-examination  
6 this morning. Her mother is in the hospital. She's in  
7 critical condition. She's lost consciousness. And the  
8 hospital has asked her to be on call.

9 Marisa has her phone. But if the hospital  
10 calls -- she has the medical power of attorney, which  
11 is why they might need to speak to her if she needs a  
12 procedure or a decision has to be made.

13 THE COURT: Just tell us if you need a break.

14 MR. ROBERTS: Okay. Thank you.

15 MR. MAZZEO: And also, Judge, I would just  
16 ask that that fact not be made known to the jury.

17 THE COURT: That's fair. It's not relevant  
18 to this case.

19 MR. MAZZEO: Okay. Thank you, Judge.

20 MR. ROBERTS: Well, it's decreased her  
21 enjoyment of life, Your Honor. They might want to  
22 cross-examine her on it.

23 MR. STRASSBURG: We'll promise we won't.

24 MR. MAZZEO: Not related to this case,  
25 though; right?

1           MR. ROBERTS: And for the record, that was  
2 stated with sarcasm.

3           MR. MAZZEO: Okay. All right, then. Okay.  
4 Right.

5           MR. ROBERTS: In light of some of the other  
6 issues they've gotten into ...

7           MR. MAZZEO: You know, I think it would also  
8 be -- well, I think it would be appropriate to bring  
9 this up as well.

10           We plan, during our examination of  
11 Ms. Garcia, to introduce a number of photographs to lay  
12 a foundation through Ms. Garcia, photographs that she  
13 had posted on Facebook. And I just wanted to know if  
14 Plaintiff will stipulate to the admissibility of -- of  
15 these photographs that are listed in Jared Awerbach's  
16 Exhibit 3.

17           MR. ROBERTS: I thought the Court had already  
18 excluded Facebook photos before the trial started.

19           MR. STRASSBURG: Not a chance.

20           THE COURT: I think they were Jared  
21 Awerbach's Facebook photos that we addressed before,  
22 weren't they?

23           MR. STRASSBURG: That's right.

24           MR. MAZZEO: That's correct.

25           MR. ROBERTS: Goose-gander.

1 THE COURT: The goose-gander rule.

2 MR. MAZZEO: So -- and they're also -- and  
3 then I have photographs in Andrea Awerbach's Exhibit K.  
4 And so --

5 THE COURT: There's a whole bunch of pictures  
6 of her.

7 MR. MAZZEO: Yeah. We're not looking to  
8 introduce -- well, I shouldn't say that. There are a  
9 whole bunch of pictures, and I don't think I need all  
10 of them. But I just thought it might be wise to bring  
11 it up now since we gave the Court and Plaintiff's  
12 counsel advance notice that this is what we're going to  
13 do. And if they'll just stipulate to the admissibility  
14 of these based on the fact --

15 THE COURT: You going to stipulate?

16 MR. ROBERTS: If they'll stipulate to the  
17 admissibility of all of Mr. Awerbach's photos from his  
18 Facebook page, we'll stipulate. We're happy to make  
19 that deal.

20 THE COURT: Well --

21 MR. ROBERTS: If not, I think they need to  
22 make a showing.

23 MR. MAZZEO: Well, there's a difference  
24 between the claim against Mr. Awerbach and -- and the  
25 claim being brought by the plaintiff. So I don't think

1 that's -- we're on equal footing there.

2 THE COURT: Doesn't sound like a stipulation.

3 MR. MAZZEO: No. Okay. All right. That's  
4 fine.

5 THE COURT: We ready, Curt?

6 THE MARSHAL: Yes, Judge.

7 MR. MAZZEO: Also, Judge, I'll be playing the  
8 311 tape. And I guess, from when I've played it in the  
9 past, I'll just play it at my table next to the  
10 speaker. That should work.

11 THE COURT: Sure. Yeah. Let's see if it  
12 works. That's fine.

13 MR. MAZZEO: Okay.

14 THE MARSHAL: All rise for the presence of  
15 the jury.

16 (The following proceedings were held in  
17 the presence of the jury.)

18 THE COURT: Go ahead and be seated. Welcome  
19 back, folks. We're back on the record, Case  
20 No. A637772.

21 Do the parties stipulate to the presence the  
22 jury?

23 MR. ROBERTS: Yes, Your Honor.

24 MR. MAZZEO: Yes, Your Honor.

25 THE COURT: All right. We are, I believe, in

1 Ms. Garcia's testimony.

2 Ma'am, if you want to go ahead and retake the  
3 stand.

4 THE WITNESS: Okay.

5 THE COURT: Just be reminded you're still  
6 under oath.

7 THE WITNESS: Okay.

8 THE COURT: And I believe Mr. Roberts  
9 finished with her yesterday. So we're to  
10 cross-examination.

11 Mr. Mazzeo?

12 MR. MAZZEO: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. MAZZEO:

15 Q. Ms. Garcia, good morning.

16 A. Good morning.

17 Q. Now, yesterday, on direct examination, you  
18 had indicated that, from what I wrote down, that when  
19 the private investigator took video of you, you felt  
20 like your character was under attack for your video  
21 taken -- being taken of you.

22 MR. ROBERTS: Objection. Mischaracterizes  
23 her testimony.

24 THE WITNESS: I don't think that's exactly  
25 what I said.

1 BY MR. MAZZEO:

2 Q. Okay.

3 THE COURT: I guess she took care of the  
4 objection. So ...

5 MR. ROBERTS: Thank you, Your Honor.

6 BY MR. MAZZEO:

7 Q. Thank you, Ms. Garcia.

8 A. Sorry.

9 Q. You did indicate that you became introverted  
10 and you didn't like the video being taken of you;  
11 right?

12 A. I don't think anybody would, no.

13 Q. Okay. And now you know that your attorney,  
14 in opening statement, is making a claim for  
15 \$16.2 million for your alleged damages, right, on your  
16 behalf.

17 A. Okay. Yeah.

18 Q. Did you know that?

19 A. Yes.

20 Q. Okay. And do you agree that you have a  
21 significant interest in this trial?

22 A. Yes.

23 Q. And is it also correct that you were here for  
24 the first day of trial for half a day?

25 A. Correct.

1 Q. And then you were here for a half a day when  
2 Emily testified?

3 A. Yes.

4 Q. And then you were here yesterday for a half a  
5 day?

6 A. Correct.

7 Q. And you were here in court for three half  
8 days since the trial started?

9 A. Correct.

10 Q. Now, you didn't come into the courtroom with  
11 a back brace, did you?

12 A. No.

13 Q. You didn't come with a cane?

14 A. No.

15 Q. You had no assistance walking into the  
16 courtroom?

17 A. No, sir.

18 Q. And you know that Defendants are contesting  
19 that you're entitled to \$16.2 million; right?

20 A. Yes.

21 Q. Do you agree that the defendant has a right  
22 to hire experts to verify the nature and extent of your  
23 damages?

24 A. Yes.

25 Q. And you're not saying the defense did



1 something wrong by videotaping you, did you?

2 A. I'm -- I'm standing up for my kids. And I  
3 believe that was wrong, yes.

4 Q. Okay. Let's talk about the accident,  
5 Ms. Garcia.

6 Now, as you testified yesterday, the accident  
7 occurred on January 2nd of 2011; correct?

8 A. Yes.

9 Q. And I think you said it was around 6:00 p.m.?

10 A. Yes.

11 Q. It was dark outside at the time of the  
12 accident?

13 A. Yes.

14 Q. You were driving your 2001 Hyundai Santa Fe;  
15 correct?

16 A. Yes.

17 Q. And at the time of the accident, that Hyundai  
18 Santa Fe would have been ten years old; correct?

19 A. Yes.

20 Q. I think on direct examination you indicated  
21 that you understand the market value -- or actually the  
22 estimate for the damages that occurred to your vehicle  
23 was about 5,400, did you say?

24 A. Correct.

25 Q. And at the time of the accident, you were

1 going about 30 miles per hour down -- southbound on  
2 Rainbow?

3 A. About that.

4 Q. And yesterday you said that, as you were  
5 going down but prior to the impact, that you saw to the  
6 right there was a bus or a truck to the side of the  
7 road; is that correct?

8 A. Yes.

9 Q. Okay. And was this bus or truck blocking  
10 your vision of where Jared's car would have come out  
11 from the private drive prior to the impact?

12 A. No. That's just the last thing I remember  
13 seeing.

14 Q. And then Jared came out from the -- from --  
15 into the roadway from the right side of your vehicle;  
16 correct?

17 A. Correct.

18 Q. Okay. And when he came out, he struck the  
19 rear passenger side of your vehicle?

20 A. I believe so, yes.

21 Q. And then, as a result of that impact, your  
22 car spun around; right?

23 A. It did.

24 Q. 180 degrees?

25 A. Yeah.

1 Q. And then -- and then you were facing  
2 northbound now on Rainbow; correct?

3 A. Yes.

4 Q. And is it correct to say that you couldn't  
5 estimate the speed of Jared's car at any moment prior  
6 to impact?

7 A. No.

8 Q. And at the time of the impact, you were  
9 holding the steering wheel; correct?

10 A. Yeah.

11 Q. And you didn't hit your head during the  
12 impact; correct?

13 A. No.

14 Q. You didn't hit the legs -- your legs didn't  
15 hit any part of the interior of the vehicle at the time  
16 of impact, did they?

17 A. Just my side.

18 Q. Okay.

19 A. The door. That was it.

20 Q. No -- no part of your body came in contact  
21 with the interior of your car except for your side  
22 coming in contact with the door?

23 A. Correct.

24 Q. Okay. Now, you didn't suffer any bruises or  
25 lacerations as a result of this motor vehicle accident,

1 did you?

2 A. No.

3 Q. You didn't lose consciousness as a result of  
4 this accident, did you?

5 A. No, sir.

6 Q. And you had no pain following this motor  
7 vehicle accident while -- immediately following the  
8 accident?

9 A. No.

10 Q. Okay. So, yes, you did not have any pain;  
11 correct?

12 A. You just said following the accident. So the  
13 day of the accident, no.

14 Q. No, you did not have pain?

15 A. No, sir.

16 Q. Okay. And then after the accident, you  
17 had -- after the accident, is it correct to say you  
18 were at the scene for approximately two hours?

19 A. Yes.

20 Q. And -- and following the impact, your car  
21 came to a stop; right?

22 A. Yes.

23 Q. You got out of your car?

24 A. Correct.

25 Q. You got out of your car without any

1 assistance; correct?

2 A. Yeah.

3 Q. And -- and then you got back into your car  
4 and you called 311; right?

5 A. Yes, sir.

6 Q. Now, you know that 311 are calls for non --  
7 they're nonemergency calls; right?

8 A. Correct.

9 Q. And -- and a 311 -- a 311 call is to report  
10 an accident without any injuries; right?

11 A. Yes.

12 Q. And you called 311 because you didn't believe  
13 you sustained any injuries as a result of this  
14 accident; correct?

15 A. Correct.

16 Q. And when you called 311, I believe they  
17 transferred you to the 911 operator?

18 A. They did.

19 Q. Okay. And then the 911 operator took the  
20 call; right?

21 A. Yes.

22 Q. And when you spoke to the 911 operator, you  
23 reported that you were in a motor vehicle accident.

24 You gave them the location of the accident;  
25 right?

1           A.    Yeah.

2           Q.    And in reference to -- the location being on  
3 Rainbow; right?

4           A.    Yes, sir.

5           Q.    In reference to Peak Drive, right, the side  
6 street?

7           A.    I don't remember the name of the street on  
8 the side, no, sir.

9           Q.    Okay. And then after -- after you called  
10 311, you called your brother Rogelio at the scene  
11 and -- and then he came to the scene and you both  
12 waited for the police to arrive?

13          A.    No.

14          Q.    Did you call your brother Rogelio?

15          A.    I did.

16          Q.    Did he come to the scene at all?

17          A.    No, sir.

18          Q.    Okay.

19               MR. MAZZEO: Your Honor, at this time, I'm  
20 going to play the 311 call that's been stipulated into  
21 evidence.

22               THE COURT: Just make sure a copy of it's  
23 part of the record.

24               MR. MAZZEO: Yes, Judge.

25               MR. ROBERTS: For the record, I think it's

1 the 911. Because by the time it was recorded, it was  
2 the 911 operator.

3 MR. MAZZEO: That is correct, Judge.

4 THE COURT: That's fine.

5 MR. MAZZEO: Yep.

6 (Whereupon audio tape was played for the  
7 record.)

8 BY MR. MAZZEO:

9 Q. So, Ms. Garcia, was that your voice on the  
10 311 or the 911 call?

11 A. Yes.

12 Q. And so there was a -- there were two calls  
13 that were made to 311; is that correct?

14 A. I don't recall.

15 Q. Okay. Did you call back, though? You called  
16 initially, and then what happened was a cruiser was  
17 coming by; right?

18 A. Okay. Yeah.

19 Q. And -- do you recall?

20 A. Yes.

21 Q. And then -- so a cruiser was coming by, and  
22 then you got off the phone and spoke to the officer on  
23 the cruiser or a bike or whoever it was, and then you  
24 called them back; right?

25 A. Okay.

1 Q. Do you recall that?

2 A. Not exactly. I thought it was one phone  
3 call.

4 Q. Okay. Fair enough. Now -- now, as you  
5 testified yesterday, you had moved your -- you had  
6 moved your car to the median; correct?

7 A. Yes.

8 Q. And you had no help moving your car to the  
9 median, did you?

10 A. No.

11 Q. And then afterwards you had asked Jared if he  
12 was okay; is that right?

13 A. Prior to moving the vehicle, I asked him if  
14 he was okay.

15 Q. Okay. And -- and -- and Jared had asked you  
16 if you were okay; is that right?

17 A. I don't recall him asking me anything.

18 Q. Did you tell Jared, though, that you were  
19 okay, just shaken up?

20 A. I don't remember that.

21 Q. Okay. And do you have any recollection as to  
22 Jared expressing concern for you after the impact?

23 A. No.

24 Q. And so -- and then you called -- you asked  
25 Jared if he was okay as well; right?



1           A.    I did, yeah.

2           Q.    He said he was?

3           A.    Yes.

4           Q.    And then the police came to the scene?

5           A.    Yes, after.

6           Q.    And you spoke to the police about the motor

7 vehicle accident; right?

8           A.    Yes, sir.

9           Q.    And as you testified yesterday, the police --

10 Officer Figueroa asked you if you were injured; yes?

11          A.    Yes, he did.

12          Q.    You told him no?

13          A.    Correct.

14          Q.    And then also -- is it correct that

15 Officer Figueroa asked you if you needed medical

16 assistance?

17          A.    He did.

18          Q.    And you said no?

19          A.    Correct.

20          Q.    And then, after the officer's investigation,

21 the tow truck driver drove you home?

22          A.    Yes, sir.

23          Q.    You got home around 8:00 p.m.?

24          A.    Yeah.

25          Q.    Accident was at 6:00; you got home at 8:00.

1 Right?

2 A. Yes.

3 Q. And your -- your home was approximately how  
4 far from the accident scene timewise in a car?

5 A. Five minutes.

6 Q. Sure. Okay. Now, yesterday, on direct  
7 examination, you had told us and the jurors that you  
8 had -- I guess, after you went to the emergency room at  
9 MountainView, you had called Jared Awerbach's  
10 representative?

11 A. I did.

12 Q. Okay. And when you called them, you had  
13 asked them for a referral to -- to a doctor, and you  
14 asked if -- to see if they could offer you help for  
15 your medical condition?

16 A. Correct.

17 Q. Okay. And yesterday I believe you testified  
18 that they -- they didn't -- they said they couldn't  
19 help you. Was that what you said yesterday?

20 A. They didn't help me.

21 Q. They didn't. What was their response when  
22 you asked them for -- for -- to help you with getting a  
23 referral for a medical doctor?

24 A. There was really no response to that.

25 Q. Did they just ignore the question, or did

1 they say, no, we can't help you? What did they say?

2 A. I -- I don't recall exactly what was said. I  
3 just know that I -- I didn't get any numbers from them.  
4 I didn't get -- I didn't get anywhere with them.

5 Q. Oh, okay. And -- and because they -- and  
6 then yesterday, as you testified, because they didn't  
7 offer you any assistance or referral for a doctor for  
8 your medical condition, you suggested on the stand that  
9 that's why you -- a friend gave you a number for  
10 Glen Lerner's office; right?

11 A. Correct.

12 Q. Okay. And -- and the reason why you called  
13 Glen Lerner's office wasn't -- you were indicating, I  
14 guess, that your primary concern wasn't to make a  
15 claim, but it was to get medical help for yourself?

16 A. Correct.

17 Q. Okay. And do you recall when you spoke to  
18 the representative for Jared?

19 A. That Monday -- that -- I'm sorry. Could have  
20 been Tuesday after my work week that I tried to seek  
21 help.

22 Q. Okay. Would it refresh your recollection if  
23 I told you that you -- you called, you spoke with a  
24 representative the day after you went to UMC on  
25 January 5th?

1           A.     MountainView Hospital?

2           Q.     Yes.   I'm sorry.   MountainView Hospital.  
3 Apologize.

4           A.     I don't recall an exact date.   I just know  
5 that I -- I -- because I have seeked to help myself and  
6 couldn't get it, I figured they would be able to guide  
7 me.

8           Q.     And when you spoke to the representative of  
9 Jared, that was telephone -- by telephone; correct?

10          A.     Correct.

11          Q.     And do you recall telling the representative  
12 that you went to the emergency room the day before?

13          A.     I'm -- I'm not sure.   I don't recall exactly  
14 what I could have said to them.

15          Q.     Fair enough.   Do you recall telling the  
16 representative -- was the representative a male or  
17 female?

18          A.     I believe it was a female.

19          Q.     Sure.   And do you recall telling her that,  
20 when you were at the emergency room, that the doctor  
21 felt your spine and told you he didn't think that you  
22 had broken bones?

23          A.     I -- I may have said that.

24          Q.     Okay.   And then you also -- did you -- do you  
25 recall also telling the representative that "and excuse

1 me for being a smart-ass, but it's not like I didn't  
2 know that already"?

3 Do you recall saying that to the  
4 representative?

5 A. I could have.

6 Q. Okay. Did the representative during this  
7 call actually ask you if you planned on seeking any  
8 follow-up treatment?

9 A. I -- I don't remember that.

10 Q. Okay. Do you recall -- okay.

11 MR. MAZZEO: Your Honor, can I have  
12 Andrea Awerbach's Exhibit C shown to the witness? The  
13 exhibit binder is right behind --

14 THE COURT: That's fine.

15 MR. MAZZEO: Yeah. That's fine. May I get  
16 it?

17 THE COURT: Sure.

18 MR. ROBERTS: Is this admitted, Mr. Mazzeo?

19 MR. MAZZEO: No. It's not going to be  
20 displayed.

21 BY MR. MAZZEO:

22 Q. And if you would, Ms. Garcia, would you turn  
23 to Exhibit C.

24 A. (Witness complies.)

25 Q. And more specifically -- more specifically,

1 if you would turn to page 6.

2 A. Okay.

3 Q. And directing your attention -- just give me  
4 one moment, please.

5 Okay. Page 6.

6 A. Okay.

7 Q. And directing your attention to the middle of  
8 the page.

9 A. Okay.

10 Q. Okay. And do you recall -- and do you  
11 recall -- if you read the -- if you read the middle of  
12 the page to yourself. And let me know when you're  
13 done. There's a conversation between yourself and the  
14 representative.

15 A. (Witness reviewing document.)

16 Q. And it's -- let me direct your attention even  
17 more specifically. I think you're in the right place.  
18 I see your finger in the page.

19 And does that refresh your recollection as to  
20 you telling the representative, Teresa, that you went  
21 to the ER the day before?

22 A. This is not -- I'm where it says, "noticed,  
23 of course, that I wasn't wearing my jacket."

24 Q. Okay.

25 MR. ROBERTS: You provided her something from

1 the 6th, the week earlier. I don't know if that was  
2 your intention.

3 MR. MAZZEO: Sorry. Maybe I'm on the wrong  
4 page. Oh, here we go. Page 7. I apologize.

5 THE WITNESS: Okay.

6 BY MR. MAZZEO:

7 Q. Yep. And direct -- starting at this line.  
8 Take a moment to read that.

9 A. (Witness reviewing document.)

10 Q. Page 7. And let us know when you're done  
11 reading that paragraph.

12 A. Okay.

13 Q. Okay. Does that refresh your recollection as  
14 to conversation you had with the representative --

15 A. Yeah.

16 Q. -- with regard to telling the representative,  
17 Teresa, that you went to the ER the day before?

18 A. Yeah.

19 Q. And does that refresh your recollection as to  
20 you telling Teresa that -- you told her the doctor felt  
21 your spine, and you -- and he told you he didn't think  
22 you had any broken bones?

23 A. Correct.

24 Q. Does that refresh your recollection as to you  
25 saying, "And excuse me for being a smart-ass, but it's

1 not like I didn't know that already"?

2 A. Correct.

3 Q. Okay. And does that refresh your  
4 recollection as to the representative, Teresa, asking  
5 you if you plan on seeking any follow-up treatment?

6 A. Okay. I -- I lost you. I'm sorry.

7 Q. Oh, sure. Does that refresh your  
8 recollection with respect to Teresa asking you if you  
9 plan on seeking any follow-up treatment?

10 A. I -- I'm trying to remember it, but --

11 Q. Okay.

12 A. -- if you're saying that I said that, then  
13 that's probably what happened.

14 Q. No. I don't want you to guess. I want you  
15 to look at the statement --

16 A. Okay.

17 Q. -- and -- and so what you can do now -- and  
18 if I may, Judge, I just want to simplify it. I can  
19 just direct your attention -- oh, sorry. That would be  
20 at the bottom. These two parts.

21 So did -- did the adjustor ask you how you  
22 feel now?

23 MR. ROBERTS: Your Honor, I object. I think  
24 we've moved past recollection refreshed. We're into  
25 recollection recorded, so why don't we just admit the



1 document. It's undisputed. It's her statement.

2 MR. MAZZEO: Prior to -- I don't need to  
3 admit the document, Judge. I'm just asking about this  
4 one reference.

5 MR. ROBERTS: Well, then, he can't --

6 THE COURT: Come on up for a second.

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

9 THE COURT: I'm not going to admit the  
10 document now, but you can ask questions.

11 MR. MAZZEO: Thank you, Judge.

12 BY MR. MAZZEO:

13 Q. So, Ms. Garcia, did -- did the representative  
14 for Jared ask you how you were feeling at the time she  
15 was speaking with you?

16 A. Yeah.

17 Q. And then -- and also, after reading the  
18 bottom of the page, did -- does that refresh your  
19 recollection as to the adjustor -- I'm sorry -- the  
20 representative asking you if you plan on seeking any  
21 follow-up treatment?

22 A. That's what it says. Yeah.

23 Q. Okay. And do you recall what your response  
24 was?

25 A. No, sir.

1 Q. Okay. Do you recall telling the -- and you  
2 can turn to the top of the next page.

3 Do you recall telling the -- the rep that  
4 you -- you're hoping it stops hurting and, if anything,  
5 you would go back to either the hospital or clinic?

6 A. Okay.

7 Q. Do you recall making that statement to the  
8 representative?

9 A. I -- I must have. Yeah.

10 Q. That's indicated there --

11 A. Right.

12 Q. -- in your statement; right?

13 A. Yes. So if that's what it says, that's what  
14 I said to her.

15 Q. Okay. And would you agree that there's  
16 nothing on those two pages -- and if you want to take  
17 time to read it further, take your time. But do you  
18 agree there's nothing on those two pages where you had  
19 asked the representative for a referral for medical  
20 treatment?

21 If you want time, you can certainly take time  
22 to look at both those pages.

23 A. What do you mean, "both pages"?

24 Q. Page 7 and then 8 --

25 A. Okay.

1 Q. -- where there was a discussion concerning  
2 how you're feeling and -- and her asking you if you  
3 plan on seeking follow-up treatment.

4 A. Okay.

5 Q. Okay --

6 MR. ROBERTS: I'm going to object to  
7 incomplete. He hasn't provided her all the records.  
8 The implication is that, if it's not there, she didn't  
9 say it, and he hasn't provided her all the records.

10 THE COURT: Why don't you give her the whole  
11 statement if you want.

12 MR. MAZZEO: She can -- the whole statement  
13 is there in the exhibit. So she can certainly -- you  
14 can take your time to peruse through the entire  
15 recorded statement of your conversation that you had  
16 with Teresa on January 6th of 2011.

17 BY MR. MAZZEO:

18 Q. Okay, Ms. Garcia? Do you understand?

19 Ms. Garcia? Do you understand?

20 A. I'm sorry.

21 Q. Oh. Feel free to look at the entire recorded  
22 statement.

23 A. And how -- it's a whole binder, so ...

24 Q. No. No. It's just in that exhibit.

25 Exhibit C.

1           A.     Uh-huh.

2           Q.     And so you can turn back to the beginning.

3           A.     Uh-huh.

4           Q.     And -- and then, when you're done, what I  
5 want to know is whether you -- whether it's indicated  
6 in that recorded statement whether you had ever asked  
7 the representative for a referral or help for medical  
8 treatment.

9           A.     That was the reason for my phone call, so ...

10          Q.     Thank you. So is -- can you point out in  
11 that recorded statement anywhere where you had asked  
12 the representative that you were seeking medical  
13 treatment and you wanted them to give you a referral?

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

15          THE COURT: Sure.

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

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

19          THE COURT: Go ahead, Mr. Mazzeo.

20          MR. MAZZEO: Thank you, Judge.

21 BY MR. MAZZEO:

22          Q.     Okay. So, Ms. Garcia, did you have more than  
23 one conversation with Jared Awerbach's rep?

24          A.     I don't recall.

25          Q.     Okay. And yesterday, just so that the record

1 is clear, did you indicate that you had -- you believe  
2 you had the conversation about a week after your  
3 emergency room visit?

4 A. Yeah.

5 Q. And do you have any recollection, as you sit  
6 here today, of having this conversation that's  
7 indicated in the recorded statement, which was one day  
8 after your treatment at the emergency room?

9 A. No. I -- I -- I have no idea.

10 Q. Now -- but after seeing the recorded  
11 statement -- and you -- by the way, Ms. Garcia, you  
12 knew this recorded statement existed throughout the  
13 course of this litigation; is that correct?

14 A. I couldn't remember, no. I mean, everything  
15 has been recorded, so I -- I -- you know, I figured  
16 whatever I don't remember, you would show me.

17 Q. Okay. And did you review this in preparation  
18 for trial?

19 A. No, sir.

20 Q. Okay. Did you review your deposition  
21 testimony?

22 A. I did. I went through it.

23 Q. Okay. All three transcripts?

24 A. Yes.

25 Q. Okay. And did you review your interrogatory

1 answers?

2 A. What is that? I'm sorry.

3 Q. Do you recall giving answers to interrogatory  
4 questions during the course of this litigation?

5 A. When was that? When would that be?

6 Q. Not when. During the course of litigation,  
7 do you recall -- I'm talking about -- do you know what  
8 interrogatories are?

9 A. No.

10 Q. In addition to your deposition transcripts,  
11 did you review any other documents, photographs of any  
12 sort?

13 A. No.

14 Q. And -- but, you know, as a party in this  
15 case, that that statement had been disclosed way back  
16 when, during the early part of this litigation; is that  
17 correct?

18 A. Yeah.

19 Q. Okay. So you knew that this statement  
20 existed?

21 A. I -- like I said, I don't -- I don't even  
22 remember what I said. I know that I called. So, yeah,  
23 if you have -- you know, if you have it here, then it's  
24 here.

25 Q. Sure. And -- and after reviewing those

1 sections on pages 7 and 8, you're not denying that --  
2 that you're the person who's making those statements to  
3 the representative --

4 A. Correct.

5 Q. -- in that statement; correct?

6 A. Uh-huh. Yes.

7 Q. As a matter of fact, if you look at the first  
8 page of that exhibit, it actually references your name,  
9 Emilia Garcia.

10 A. Okay.

11 Q. You can take a look at it. Turn to the first  
12 page.

13 MR. ROBERTS: Objection. Cumulative. She  
14 said she doesn't dispute it's her statement.

15 THE WITNESS: Okay.

16 THE COURT: That's fine. She can verify her  
17 name is on the front page.

18 BY MR. MAZZEO:

19 Q. Was your name on the front page?

20 A. Yes.

21 Q. Okay. And the references -- the references  
22 to -- they have abbreviations for the -- the two  
23 individuals that are a party to this conversation;  
24 right?

25 A. Yes.

1 Q. They have TM, the representative; right?

2 A. Yes.

3 Q. And they have your initials, EG; right?

4 A. Yes.

5 Q. Okay. And -- and in any event -- so you --

6 you also testified that you recalled having a

7 conversation about a week after your visit to the

8 emergency room. And during that phone call, do you

9 recall the representative offering to pay for your

10 prescriptions?

11 A. No.

12 Q. Okay. And let me ask you this: Did Jared

13 Awerbach's representative ever offer to pay for your

14 medication prescriptions?

15 A. No. Not that -- not that I can remember.

16 Q. Not -- okay. But in any event, it's correct

17 that when you spoke with Jared Awerbach's

18 representative, based on the recorded statement, the

19 rep did ask you how you were feeling; right?

20 A. Yes.

21 Q. And the rep did ask you if you were seeking

22 follow-up treatment; right?

23 A. Yeah.

24 Q. And in -- and in -- in that statement,

25 specifically, there's nothing about you asking the



1 representative for a referral, is that correct, on  
2 January 6th?

3 A. I may not have said -- I may not have said  
4 "referral," you know, but I was seeking help when I  
5 called them.

6 Q. Well, actually, when the representative asked  
7 you if you plan on seeking any follow-up treatment,  
8 your response -- and your only response to them was,  
9 you're hoping it stops hurting and, if anything, I  
10 would go back to either the hospital or clinic.

11 Isn't that what you said?

12 A. If that's what it says on there, yeah.

13 Q. Well, why don't you take a look at it on top  
14 of page 8?

15 A. Okay.

16 Q. Do you see that?

17 A. Uh-huh.

18 Q. Does it say that? That you're hoping it  
19 stops hurting and, if anything, you would go back or  
20 I'd go back to either the hospital or clinic?

21 A. Okay.

22 Q. Do you see that?

23 A. Correct.

24 Q. And it says it?

25 A. Yes.

1 Q. Okay. Now, following this accident --  
2 Ms. Garcia, we're done with that statement.

3 A. Okay.

4 Q. Okay. So following the accident, you had no  
5 pain the night of the accident; correct?

6 A. No.

7 Q. And the next day you worked the entire day?

8 A. I did.

9 Q. And you had no pain at work on Monday;  
10 correct?

11 A. Just stiffness.

12 Q. Okay. No pain. And you were off Tuesday and  
13 Wednesday?

14 A. Correct.

15 Q. And then on Tuesday, I believe you claim you  
16 had head, shoulders, and low back pain come Tuesday;  
17 right?

18 A. Yes.

19 Q. And you weren't taking any over-the-counter  
20 medications at that time; right?

21 A. I want to say I tried Advil at some point  
22 before going to the hospital, but I'm not -- I'm not  
23 exactly sure.

24 Q. And then sometime on Tuesday you decided, oh,  
25 I'm going to see a doctor?

1           A.    On Tuesday the pain became unbearable, yes.

2           Q.    And that's why you decided, oh, I'm going to  
3 see a doctor; right?

4           A.    I needed to go to the emergency room, yes.

5           Q.    Okay. But you didn't go because you waited  
6 until your kids got home from school?

7           A.    I don't remember if they were home from  
8 school or not.

9           Q.    And the pain wasn't so bad that you had to go  
10 that day; right?

11          A.    I'm sorry?

12          Q.    The pain wasn't so unbearable that you had to  
13 seek immediate medical treatment that day, Tuesday?

14          A.    I went Tuesday; correct.

15          Q.    You went -- you went Wednesday, the 5th. You  
16 didn't -- Tuesday was the 4th --

17          A.    Okay. I'm sorry.

18          Q.    -- right? So the pain on Tuesday wasn't so  
19 unbearable that you needed to go get immediate medical  
20 treatment that day; correct?

21          A.    I was waiting for it to get better.

22          Q.    Okay. So the answer is, you didn't seek  
23 medical treatment on that Tuesday.

24          A.    No.

25          Q.    And then you drove yourself to MountainView

1 Hospital the next day, on January 5th; right?

2 A. I don't recall driving myself, but I went to  
3 the hospital that following day.

4 Q. When you went to the hospital, it was in the  
5 afternoon; correct?

6 A. Yes.

7 Q. You were examined to the emergency room?

8 A. Yes.

9 Q. Other than an examination, you weren't  
10 actually treated in the emergency room; right?

11 A. What do you mean by that? I'm sorry.

12 Q. Well, they didn't -- other than performing a  
13 physical examination on you, they did not provide you  
14 with any sort of treatment except when they --  
15 without -- except for a prescription medication when  
16 they released you?

17 A. Correct.

18 Q. Okay. And you weren't admitted to the  
19 hospital; right?

20 A. No, sir.

21 Q. And at the time, you advised the staff of --  
22 regarding the accident and your injuries; right?

23 A. Yes.

24 Q. And you told the emergency room that -- you  
25 reported -- or that you -- you told -- when you went to

1 the emergency room, you were -- gave a report of the  
2 accident; right?

3 A. Yes.

4 Q. And you told them that you did not strike  
5 your head; correct?

6 A. Correct.

7 Q. And do you recall telling them that the pain  
8 started earlier that morning?

9 A. I may have.

10 Q. Okay. And you never told them that the pain  
11 started Monday night; right?

12 A. No. Because I wasn't hurting Monday night  
13 that I --

14 Q. You never told them that the pain started on  
15 Tuesday, did you?

16 A. I may -- I may have made a mistake and not  
17 tell them that I was hurting on Tuesday. And that's  
18 the reason why I went Wednesday.

19 Q. You never told them that you were in bed all  
20 day Tuesday, did you?

21 A. I don't -- I don't recall.

22 Q. And when you were examined, you reported  
23 there was no muscle spasm in your neck; right?

24 A. Yeah. There was -- I don't remember being --  
25 my -- my neck hurting that much.

1 Q. Okay. And when -- before them releasing you,  
2 they told you that they believed you had a low back  
3 strain; right?

4 A. I believe it was like a pinched nerve or  
5 something like that, yeah.

6 Q. And then when they released you, you walked  
7 out of the hospital of your own volition; correct?

8 A. Yeah, I was released.

9 Q. You were released, but then you also walked  
10 out by yourself; right?

11 A. Yeah.

12 Q. You didn't need any assistance in exiting the  
13 hospital?

14 A. No.

15 Q. And you were not given instructions to -- for  
16 follow-up with any doctor; correct?

17 A. No. I had -- I had no medical means to be  
18 covered or be seen again.

19 Q. That wasn't my question.

20 My question was, you weren't given any  
21 instructions by the hospital to follow up with any  
22 doctor?

23 A. If I was still in pain, then I should come  
24 back.

25 Q. Okay. And then you went to work the next

1 day, Thursday --

2 A. Yes.

3 Q. -- January 6th; correct?

4 A. Yes.

5 Q. Then you went to work on Friday, January 7th?

6 A. Yes.

7 Q. And you went to work on Saturday,

8 January 8th?

9 A. I did.

10 Q. You went to work on Sunday, January 9th?

11 A. Yes.

12 Q. And then you were off for two days?

13 A. No. I was -- I also went to work on Monday.

14 Q. Oh, you did?

15 A. Yes.

16 Q. Monday was a -- Monday was a workday. Sorry.

17 And then you went to work on Monday?

18 A. Yes.

19 Q. Okay. You worked your five regular workdays

20 after going to the hospital on January 5th; correct?

21 A. Yes.

22 Q. And you worked full days; correct?

23 A. Yes.

24 Q. Now, you had -- you had retained counsel

25 after going to the emergency room but before going to

1 see Dr. Gulitz?

2 A. Yes.

3 Q. And your counsel, Glen Lerner's office, had  
4 referred you to the neck and back clinic where  
5 Dr. Gulitz worked as a chiropractor; correct?

6 A. They didn't refer me exactly to him. They  
7 gave me different numbers to call in the area, and I  
8 picked myself.

9 Q. And then after you went for your initial  
10 examination at -- you went for an initial examination  
11 on January 12th of 2011; correct?

12 A. That could be right, yes.

13 Q. And -- and then they gave you a schedule at  
14 that initial visit for your repeated treatment to come  
15 back so many times per week; right?

16 A. Correct.

17 Q. And did they tell you at the first -- the  
18 first consultation that they wanted you coming back --  
19 what? -- three to four times per week initially?

20 A. Yeah, I -- I -- it sounds about right. Maybe  
21 three times.

22 Q. And then you scheduled your appointments  
23 around your work hours when you would see Dr. Gulitz?

24 A. Yes.

25 Q. Now, at the time of the accident, you were



1 working at Aliante Casino; correct?

2 A. Yes, sir.

3 Q. As a cage cashier?

4 A. Yes.

5 Q. And you were working there since February of

6 2010; correct?

7 A. Yes.

8 Q. So you were working there for approximately

9 10 to 11 months at the time of this accident?

10 A. Yes, sir.

11 Q. And your duties as a cage cashier included

12 lifting, carrying, pushing up to 50 pounds?

13 A. Yeah. Around that.

14 Q. And also being able to stand for long periods

15 of time?

16 A. Yes.

17 Q. And your duties included being able to stoop,

18 kneel, bend, grip objects, and have good finger

19 movements; right?

20 A. Yes.

21 Q. Now, from the time of -- oh.

22 Another duty included racking and stacking

23 chips; correct?

24 A. Yes, the plastic chips.

25 MR. MAZZEO: Court's indulgence.

1 BY MR. MAZZEO:

2 Q. When you were at Aliante, Ms. Garcia, is it  
3 correct that you were given six-month performance  
4 reviews both before and after the accident?

5 A. Yeah.

6 Q. Okay. And, generally, the performance  
7 reviews were in May and November; right?

8 A. Okay. They could have been, yeah.

9 Q. Okay. And is it correct that your last  
10 performance review prior to the accident was November  
11 of 2010?

12 A. It could have been, yeah.

13 Q. Okay.

14 MR. MAZZEO: Judge, can we approach for a  
15 minute?

16 THE COURT: Come on up.

17 MR. MAZZEO: Thank you.

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

20 MR. MAZZEO: All right.

21 BY MR. MAZZEO:

22 Q. All right. So, Ms. Garcia, we're going to  
23 come back to this area of the performance reviews.

24 Now, you had also previously worked at Sam's  
25 Town; is that correct?

1           A.    Yes.

2           Q.    You worked there for more than ten years;  
3 right?

4           A.    No.   Close to ten years.

5           Q.    Okay.  And is it a fact that you were fired  
6 for overpaying a customer \$200?

7           A.    Yes.

8           Q.    And -- and that -- I believe you were  
9 terminated from Sam's Town in October of 2009?

10          A.    Correct.

11          Q.    And the grounds for your termination from  
12 Sam's Town was you were -- you had failed to live up to  
13 an -- acceptable work performance standards at Sam's  
14 Town?

15          A.    If that's what it says.  I mean, I was out of  
16 balance, but that's what it says.

17          Q.    Well -- and it wasn't just one incident.  
18                There were multiple disciplinary actions;  
19 right?

20          A.    Right.  Regulation 6A.

21          Q.    And you were given a number of written  
22 warnings regarding poor job performance; right?

23          A.    Yes.

24          Q.    Okay.  And you had a number of counseling  
25 notices for unsatisfactory job performance; right?

1           A.    For making mistakes, correct.

2           Q.    Okay.  And -- and then -- you left Aliante in  
3 April of 2014; right?

4           A.    Yes.

5           Q.    By the way, you continued working at Aliante  
6 from the time of the accident until April 14th; right?

7           A.    Yes.

8           Q.    With the exception of some time you took off  
9 for FMLA leave and the four months after your fusion  
10 surgery?

11          A.    Yes.

12                THE COURT:  Counsel, come on up.

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

15                THE COURT:  Go ahead.

16 BY MR. MAZZEO:

17          Q.    Ms. Garcia, so then -- and then in the fall  
18 of 2014, you got a job at Fiesta Rancho Casino;  
19 correct?

20          A.    I did.

21          Q.    And that was as an assistant cage cashier  
22 supervisor?

23          A.    Yes, sir.

24          Q.    And -- and then, within 90 days, you were --  
25 less than 90 days, I believe, you were terminated from

1 Fiesta Rancho for poor work performance?

2 A. No.

3 Q. Well, you were let go from Fiesta Rancho;

4 right?

5 A. He -- he -- like, he laid me off.

6 Q. But for reasons not related to your physical

7 condition; right?

8 A. He -- they didn't specify any reasons at all.

9 They didn't have to give me a reason.

10 Q. Really?

11 A. Correct.

12 Q. Well, they didn't have to give you a reason,

13 but they did give you a reason; right?

14 A. No, sir.

15 Q. No?

16 And you know that Jonathan Davis -- Jonathan

17 Davis was your supervisor; right?

18 A. Correct.

19 Q. And you know that he had testified at a

20 deposition in this case?

21 A. No.

22 Q. You did not know? Okay.

23 Now --

24 MR. MAZZEO: Judge, we may need a preliminary

25 ruling on this one topic that I'm going to go into.

1 THE COURT: Come on up.

2 (A discussion was held at the bench,  
3 not reported.)

4 BY MR. MAZZEO:

5 Q. Now, Ms. Garcia, you had testified about the  
6 doctors that you saw beginning in January -- I'm  
7 sorry -- beginning in 2011.

8 After the emergency room, you went to see  
9 Dr. Gulitz, Dr. Cash, Dr. Gross, Dr. Kidwell --  
10 Dr. Lemper; the next year, in 2012, Dr. Kidwell.  
11 Right?

12 A. Yes.

13 Q. And -- and you continued to see Dr. Kidwell  
14 throughout the entire -- since 2012, right, to the  
15 present time?

16 A. Yes.

17 Q. Okay. And -- and isn't it correct to say  
18 that you continued working during the time that you saw  
19 these doctors in 2011, 2012, 2013, up until April of  
20 2014; right?

21 A. Yes, sir.

22 Q. And isn't it a -- correct that none of the  
23 doctors restricted you from working during this time  
24 period?

25 A. No.

1 Q. "No," meaning yes, they did not restrict you?  
2 A. They did not restrict me, no.  
3 Q. Okay. And -- and none of them restricted  
4 your work duties; correct?  
5 A. No.  
6 Q. Yes, they didn't restrict your work duties?  
7 A. They did not restrict my work duties.  
8 Q. Okay. And you had submitted -- during this  
9 time that you were with Aliante, you had submitted FMLA  
10 paperwork; right?  
11 A. Yes, sir.  
12 Q. And the employer, Aliante, was accommodating  
13 in accepting this; right?  
14 A. Yes, sir.  
15 Q. And they didn't give you a hard time for  
16 taking time off; right?  
17 A. No, not at all.  
18 Q. Okay. And there were no negative  
19 consequences from submitting this FMLA request; right?  
20 A. No.  
21 Q. And when did you first submit the FMLA  
22 paperwork? Was it in 2012 or 2013 or some other year?  
23 A. I couldn't tell you. It must have been right  
24 after -- could have been after my probationary period  
25 was over, around that time, something like that. I'm

1 not sure.

2 Q. Okay. Which would have been in 2011?

3 A. It could have been, yes.

4 Q. Okay. And you took approximately two weeks'  
5 unpaid leave from work during that year; right?

6 A. Oh, my gosh, I -- I don't recall. But it  
7 could have -- it could have happened.

8 Q. Okay. And, now, the surgery, you testified  
9 that was -- as you recall, that was performed on  
10 December 26th of 2012?

11 A. Yes, sir.

12 Q. And is -- is it correct to say that you don't  
13 recall Drs. Gross or Kidwell ever discussing with you  
14 that you had a preexisting condition in your low back  
15 where the surgery was to be performed?

16 A. I don't remember them ever saying, you know,  
17 that it was something that was there.

18 Q. Right. And -- and it's also correct to say  
19 that no doctors ever talked to you about this condition  
20 of the slipped vertebrae; right?

21 A. The spondyl- --

22 Q. Spondylolisthesis.

23 A. Dr. Gross, I believe, is the one that told me  
24 that.

25 Q. You're saying Dr. Gross told you this at what



1 point in time?

2 A. I'm not sure. Probably my first visit with  
3 him.

4 Q. And did any doctors talk to you about how  
5 long the condition might have existed prior to your  
6 surgery?

7 A. No.

8 Q. And in November of 2012, I believe that was  
9 when Dr. Gross first advised you that his surgery was  
10 going to straighten your spine to give you more of a  
11 natural curve; right?

12 A. Yes.

13 Q. Had he informed you at that point that the  
14 curve was due to a slippage of the disk?

15 A. Something like that.

16 Q. Okay. And isn't it a fact that no doctor  
17 that you saw ever told you that the curve was made  
18 worse by the motor vehicle accident?

19 A. Dr. Gross had -- had said that it had to have  
20 been, like, a -- some traumatic -- something traumatic  
21 that happened, and that's why it started to -- to hurt  
22 the way that it did.

23 Q. And maybe I should have been more specific.

24 Are you saying that Dr. Gross told you that  
25 prior to the surgery or after the surgery?

1           A.     Before the surgery.

2           Q.     Now, the day prior to your surgery, I believe  
3 you had rated the pain as a 9 over 10.

4                   Do you recall that?

5           A.     I'm sorry. The day before the surgery?

6           Q.     Yeah, the day prior to your surgery,  
7 January 25th -- I'm sorry -- December 25th of 2012.

8           A.     Christmas Day, I was with my children.

9           Q.     Okay. And had you ever rated the pain as a 9  
10 over 10 the day prior to your surgery?

11          A.     That was my number on a regular basis before  
12 surgery.

13          Q.     Okay. And -- and you agree that pain at 10  
14 over 10 is totally unbearable, debilitating pain;  
15 that's the highest level on the scale?

16          A.     Yes.

17          Q.     So 9 over 10 is just one level down from  
18 the -- the most excruciating, worst pain imaginable;  
19 right?

20          A.     Yes.

21          Q.     Okay. So you had traveled to California --  
22 to Pacific Hospital in California for the surgery;  
23 right?

24          A.     Yes.

25          Q.     And what day did you travel to California?

1           A.    The day before.

2           Q.    Which would have been December 25th of 2012;  
3 correct?

4           A.    Correct.

5           Q.    Okay. And you had no problems traveling to  
6 California; correct?

7           A.    It was uncomfortable, but I did it.

8           Q.    Okay. Well, I -- do you recall previously  
9 testifying that you had no problems traveling to  
10 California?

11          A.    If that's what I said, then, yeah, that's --

12          Q.    I'm just asking if you recall that.

13          A.    I don't recall it.

14          Q.    I'm sorry?

15          A.    I don't.

16          Q.    You don't recall it?

17          A.    No, sir.

18               MR. MAZZEO: Okay. If we can publish  
19 Ms. Garcia's -- we can publish all three because I may  
20 be referencing them.

21               THE COURT: That's fine. They'll be  
22 published.

23               MR. MAZZEO: Thank you, Judge.

24 BY MR. MAZZEO:

25           Q.    And, Ms. Garcia, I'm going to follow up that

1 question.

2 In reference to or at the time that you were  
3 deposed in July 10th -- on July 10th of 2013, you had  
4 indicated that it wasn't too hard -- I guess that --  
5 those were your words -- "it wasn't too hard" in  
6 traveling from Las Vegas to California --

7 A. Okay.

8 Q. -- right?

9 Do you recall that?

10 A. No.

11 Q. Okay.

12 MR. MAZZEO: This is Volume III.

13 Judge, may I present this to the witness?

14 THE COURT: You may.

15 MR. MAZZEO: Okay.

16 BY MR. MAZZEO:

17 Q. Ms. Garcia, if you would just look --

18 MR. ROBERTS: Your Honor, I'm going to  
19 request that the entire answer -- question and answer  
20 be read for completeness. He just read -- he said, "it  
21 wasn't too hard." That was just part of her answer,  
22 and he didn't read the question to put it in context.

23 MR. MAZZEO: I can do that.

24 THE COURT: Okay.

25 MR. MAZZEO: I can certainly do that.

1 BY MR. MAZZEO:

2 Q. Ms. Garcia, if you'll turn to page 75.

3 A. (Witness complies.)

4 Q. And starting at line 3, do you recall being  
5 asked this question and giving this answer?

6 I'll wait till you get there.

7 "QUESTION: What arrangements did you have  
8 to make to travel to California for your  
9 surgery?

10 "ANSWER: It wasn't too hard. My brother  
11 came in from Texas to take care of my kids. My  
12 kids were on winter vacation for Christmas.  
13 And my mother also came in from New Mexico to  
14 spend time with her granddaughters while I was  
15 out."

16 Do you recall being asked that question and  
17 giving that answer?

18 A. Yeah. And I wasn't speaking of how  
19 physically it was on me. So, you know, it wasn't hard  
20 because I had my family's support in doing that. So --

21 Q. Oh.

22 A. -- that wasn't referring to my physical --  
23 you know, how I was feeling physically.

24 Q. Fair enough. Thank you.

25 Now, you spent ten days at the hospital;

1 correct?

2 A. Around that time, yes.

3 Q. And then after you were released from Pacific  
4 Hospital, you went to the airport and flew home; right?

5 A. Yes, sir.

6 Q. And then you took four months off from work  
7 after the surgery?

8 A. Yeah.

9 Q. And no doctor told you you needed to take  
10 four months off from work?

11 A. Three months was what Dr. Gross told me.

12 Q. And, by the way, since the surgery on  
13 December 26 of 2012, you didn't -- you didn't need a  
14 wheelchair or crutches; right?

15 A. I'm sorry. Ask again.

16 Q. Yeah. Since the surgery -- since you had the  
17 surgery on December 26th of 2012, you had not used  
18 any -- a wheelchair or crutches?

19 A. I used -- after surgery, I had to have a  
20 walker and then a cane with my brace. So no wheelchair  
21 and no crutches.

22 Q. And had you indicated that you had not  
23 used -- never used a cane after the surgery? Have you  
24 ever testified to that previously?

25 A. No. I don't -- I don't remember.

1           Q.    Okay.  Okay.  You recall testifying at -- I  
2 asked you already earlier --

3                    You had three depositions; correct?

4           A.    Yes, sir.

5           Q.    Okay.  And that's with respect to the claim  
6 you're making with respect to this case; right?

7           A.    Yes, sir.

8           Q.    And at the time of your deposition, you took  
9 an oath to tell the truth; right?

10          A.    Yes, sir.

11          Q.    And -- and after your deposition, you were  
12 given an opportunity to review your transcripts;  
13 correct?

14          A.    Yes, sir.

15          Q.    And you did, in fact, review your transcripts  
16 after your deposition and prior to testifying today --

17          A.    Yes, sir.

18          Q.    -- right?  Okay.

19                   And you had an opportunity to make changes to  
20 any of your deposition testimony if you felt that any  
21 of the testimony, the responses you gave, were  
22 inaccurate; right?

23          A.    No.  I mean, it's -- if that's what it says  
24 what I said at the time, you know, that's -- it has to  
25 be accurate, I'm thinking.

1 Q. Okay. No. But -- no. My question was --  
2 was that you were given an opportunity after your  
3 deposition to review your testimony, and you had an --  
4 you had an opportunity to make any changes to your  
5 testimony that you deemed to be appropriate.

6 A. I wasn't aware of that.

7 Q. Okay. Directing your attention to page 118  
8 of Volume II, so it would be the transcript on 4/16 of  
9 2014.

10 A. What page? I'm sorry.

11 Q. 118.

12 A. Okay.

13 Q. Starting at line 22, do you recall being  
14 asked the following questions and giving the following  
15 responses?

16 "QUESTION: Have you ever used --  
17 following your surgery, have you ever used a  
18 cane?

19 "ANSWER: Not a cane.

20 "QUESTION: Crutches?

21 "ANSWER: No.

22 "QUESTION: Wheelchair?

23 "ANSWER: No."

24 A. Okay.

25 Q. And then -- I didn't ask you about a lumbar



1 orthotic device, but the next question would be:

2 "QUESTION: How about a lumbar orthotic  
3 device?

4 "ANSWER: It was the belt that looks like  
5 a wheel, like a steering wheel on the back, and  
6 it stimulates bone growth and stuff. That was  
7 after surgery, yes.

8 Do you recall giving those -- being asked  
9 those questions and giving those answers?

10 A. Yeah.

11 Q. Okay. Now, as a result of this accident, is  
12 it correct to say that you've claimed that you've had  
13 difficulty sitting for long periods of time due to back  
14 pain?

15 A. Yes, sir.

16 Q. Okay. And about three months after your  
17 surgery, you traveled to Texas to take care of your  
18 mom; right?

19 A. My mother was dying. Yes, I traveled for  
20 that.

21 Q. Well, that was -- it's in 2013; correct?

22 A. Yes, sir.

23 Q. Okay. And your mom is still alive today,  
24 yes?

25 A. She's in critical condition today, yes.

1 Q. Okay. And -- but you drove to your -- to see  
2 your mom in Dumas, Texas, in March of 2013?

3 A. Yes.

4 Q. And that drive was a 13-hour trip?

5 A. Yes, it was.

6 Q. And the drive required you sitting for long  
7 periods of time; right?

8 A. Yes, sir.

9 Q. And I know you had testified that your mom  
10 had cirrhosis of the liver from taking meds on a daily  
11 basis?

12 A. Yes, sir.

13 Q. And you also took -- then you also took a  
14 trip to -- from Las Vegas to Texas to visit your  
15 brother?

16 A. Yes, sir.

17 Q. And that was a separate trip from the time  
18 that you saw your mom; right?

19 A. Yes, sir.

20 Q. And you stayed there for nine days?

21 A. Yes.

22 Q. Okay. And do you recall what year that was  
23 in?

24 A. Maybe the year before surgery. It could have  
25 been. I'm not sure. I just remember we flew.

1 Q. Okay. And you had driven?  
2 A. I'm sorry?  
3 Q. You had driven to see your brother?  
4 A. No.  
5 Q. That time you had flown?  
6 A. Yes, sir.  
7 Q. Okay. No problems flying; correct?  
8 A. It was uncomfortable. But, you know, it  
9 wasn't as long as driving.  
10 Q. And then there came a time in -- correct me  
11 if I'm wrong -- I think it was 2013 that you took a  
12 trip to California to the beach with your, at the time,  
13 boyfriend, Christopher?  
14 A. Yes.  
15 Q. Let's -- Ms. Garcia, you have -- we're going  
16 to go back now to the -- I was asking you a half hour  
17 ago or so about your performance work reviews at  
18 Aliante.  
19 Do you recall that?  
20 A. Yeah.  
21 Q. Okay. And what I'm going to show you --  
22 MR. MAZZEO: If I can have the ELMO, Judge?  
23 BY MR. MAZZEO:  
24 Q. Okay. So what I'm going to show you is  
25 Andrea Awerbach's Exhibit H31, 32, and 33.

1           And do you recognize this document?

2           A.    Yeah.

3           Q.    You've seen this before; right?

4           A.    Yeah.

5           Q.    And this is one of those -- this is what's

6 referred to as a team member appraisal that's done

7 November and May, every six months, at Aliante?

8           A.    Okay.

9           Q.    And do you see the date on this?

10          A.    November 30th, 2010.

11          Q.    2010.

12               And so this appraisal would have been done

13 about two months prior to the accident; right?

14               Well, probably a month -- less -- a little

15 over a month, I should say.

16          A.    Okay.

17          Q.    Okay. And at the time of this appraisal, you

18 had a work on -- if you see the rating scale on top.

19          A.    Uh-huh.

20          Q.    4 is "exceeds expectations"; 3, "meets

21 expectations"; 2, "needs improvement"; 1 is

22 "unsatisfactory."

23               You had no unsatisfactory marks for

24 performance; right?

25          A.    Well, I rated myself. So yeah.

1 Q. Well, I think this was -- there's a  
2 self-appraisal, and then this is a team member  
3 appraisal, Ms. Garcia.

4 A. Oh, okay.

5 Q. Okay. The self-appraisal is Exhibit H33.

6 A. Oh, okay.

7 Q. And it's a different one, but it's for the  
8 same date.

9 A. Okay.

10 Q. But this is -- "team member self-appraisal"  
11 refers to something that you --

12 A. Oh, okay.

13 Q. -- did a self-rating on; right?

14 A. I'm sorry. I --

15 Q. No, that's fine. Okay.

16 And so -- but with -- at the time the team  
17 member -- team member would have been a supervisor  
18 or --

19 A. Management position.

20 Q. Management. Okay. Thank you.

21 And so they had just indicated that you  
22 needed improvement for quality of work, completing work  
23 assignments and projects, and keeping your work area  
24 neat and clean; right?

25 Do you see that?

1 THE WITNESS: Yeah.

2 MR. ROBERTS: Objection. Relevance.

3 THE COURT: I'm going to allow it. We'll see  
4 if it goes somewhere.

5 BY MR. MAZZEO:

6 Q. And then, if we look at the second sheet,  
7 H32, Ms. Garcia -- let me just see if I can get the  
8 whole thing in there.

9 So under "technical performance," they have  
10 two boxes here, "technical performance goals" and  
11 "relationship management goals."

12 Do you see that?

13 A. Okay.

14 Q. Do you see that?

15 A. Yeah.

16 Q. Yes? Okay.

17 And -- and that's where they indicated -- and  
18 this is still November 30th performance of 2010.

19 A. Okay.

20 Q. And do you recall having a performance review  
21 about a little over a month prior to this accident?

22 A. Yeah. I was still fairly new to the company  
23 and how they did everything. So yeah.

24 Q. And you were fairly new, meaning you started  
25 in February of -- in 2010; right?

1           A.    Yeah.

2           Q.    Okay.  And so that had indicated that --  
3 referring to you as "Unorganized.  Doesn't complete a  
4 task in its entirety.  At the beginning of a shift, she  
5 seems as though she can't go -- get her time frame set  
6 into a pattern and ends up being behind all the time,  
7 even right at the end, and is sometimes late leaving."

8                   Do you see that?

9           A.    Yes, sir.

10          Q.    And under "Relationship management goals," it  
11 states, "Needs help in getting her time -- her timing  
12 established.  The main bank and the fill bank is not a  
13 place to fall behind.  Her job knowledge is not as big  
14 a problem as organization."

15                   Do you see that?

16          A.    Correct.

17                   MR. ROBERTS:  Objection, Your Honor.  
18 Improper character impeachment.

19                   THE COURT:  Seems to be so far.

20                   Come on up.

21                               (A discussion was held at the bench,  
22                               not reported.)

23                   THE COURT:  I guess I'm going to overrule the  
24 objection for now pending where it goes.

25                   MR. MAZZEO:  Thank you, Judge.

1 BY MR. MAZZEO:

2 Q. Now, Ms. Garcia -- now, I'm going to direct  
3 your attention to -- this is Andrea Awerbach's H27 and  
4 28. There's no date on the -- on the front of this  
5 page, but the second page is dated 5/27 of 2011.

6 And at the time of this appraisal,  
7 Ms. Garcia, would you agree that your performance and  
8 quality of work in completing assignments improved from  
9 "needing improvement" to "meeting expectations"?

10 A. Yes, sir.

11 Q. And -- and if we look at the technical  
12 performance goal, the -- the supervisor or manager  
13 indicated that you've improved in all areas.

14 Do you see that?

15 A. Yeah. I had been completely trained in the  
16 windows that I needed help in.

17 Q. Okay. Then, if we look at a team member  
18 appraisal, H23 and H24, we have -- we also have a --  
19 continued improvement from the prior May 2011  
20 appraisal.

21 Do you see that?

22 A. Okay.

23 Q. And this is November 27th of 2011. So this  
24 is a year after that first appraisal that I showed to  
25 you.



1           A.     Okay.

2           Q.     And if we looked at -- look at the technical  
3 performance goal, "continue to improve on the timing of  
4 her tasks, and has shown improvement since her last  
5 appraisal in all areas."

6                     Do you see that?

7           A.     No.  You have it too --

8           Q.     I'm sorry?  Oh, I'm sorry.  I'm cutting --  
9 sorry.  It was cut off.

10          A.     But what I read was good, so that's -- we're  
11 still good.

12          Q.     Okay.  And would you agree that these team  
13 member appraisals are reflective of your ability to  
14 perform in your job classification as an assistant cage  
15 cashier?

16          A.     I wasn't an assistant.

17          Q.     Or as cage cashier -- I'm sorry -- at  
18 Aliante.

19          A.     Yeah.  I had learned what I needed to learn,  
20 and I was growing within myself.

21          Q.     Now, Ms. Garcia, prior to -- prior to the  
22 motor vehicle accident, I believe you had testified  
23 that you were -- you had cooked, right, prior to the  
24 accident?

25          A.     Yes.

1 Q. Cooked in your home. How many times a week?

2 A. About four or five times a week.

3 Q. Okay. And I believe you had previously  
4 testified to cooking four -- four nights a week; right?

5 A. Okay.

6 Q. And -- and your daughter Emily would cook  
7 three or four times a week as well; right?

8 A. Emily would work -- she would cook, you know,  
9 maybe two or three times a week, yes. She was in a  
10 class in school that was teaching her how to bake and  
11 cook.

12 Q. Okay. And after the motor vehicle accident,  
13 you were able to cook three times a week?

14 A. Yes.

15 Q. And before the motor vehicle accident, you  
16 indicated that you would swim; right? You were going  
17 swimming?

18 A. Yes, sir.

19 Q. Okay. And generally all summer; right?

20 A. Yeah.

21 Q. Okay. And -- but you never identified the  
22 frequency with which you would swim, whether it was one  
23 time a week, twice a week, seven nights -- seven days a  
24 week; right?

25 A. Correct.

1 Q. Okay. And, by the way, your statement with  
2 regard to swimming prior to the accident, that's a  
3 subjective statement that can't be verified; right?

4 A. Okay.

5 Q. Well, do you agree it can't be verified?

6 A. I mean, would you like pictures? I mean ...

7 Q. No -- can it be --

8 A. Because I do have pictures.

9 Q. We'll get to the pictures in a few minutes.

10 A. Okay.

11 Q. But no. Can it be verified with a log where  
12 you had to sign in and a log every time you went  
13 swimming?

14 A. We had a key to the pool, so we had access.

15 Q. You had access to it. You didn't have to  
16 sign anything every time you went in?

17 A. No.

18 Q. Right. So you -- other than your subjective  
19 self-statement, you can't verify how many times you  
20 went swimming prior to the accident; right?

21 A. I can tell you, you know, what days I -- you  
22 know, how many times I thought we were going, so ...

23 Q. And what you're telling us is you're  
24 subjective statement; right?

25 A. Okay.

1 Q. Do you understand that?

2 A. I don't understand the legal term. I'm

3 sorry.

4 Q. No. Not a legal term.

5 A. Okay.

6 Q. Do you understand what's "subjective" versus

7 "objective"?

8 A. No. I'm sorry.

9 Q. Subjective is something that can't be

10 measured or quantified?

11 A. Okay.

12 Q. Okay?

13 A. Okay.

14 Q. You telling us that, we can't then confirm

15 that with anything --

16 A. Okay.

17 Q. -- other than you just telling us?

18 A. Correct.

19 Q. Okay. Now, you -- by the way, when you went

20 swimming, you didn't swim laps, did you?

21 A. No.

22 Q. Okay. And you never used the pool for

23 exercise; right?

24 A. Yeah, at times.

25 Q. At times. Now, "exercise," meaning you just

1 went in and splashed around with your daughters?

2 A. Yeah. Meaning, we -- we raced each other,  
3 and we swam, you know, under water and with each other.  
4 Lifting them up and throwing them around the pool --

5 Q. Sure.

6 A. -- and anything that you would do when you're  
7 okay. Yes.

8 Q. When you're okay.

9 You think there's something funny about these  
10 questions? We're in a case where you're asking for  
11 \$16.1 -- or 2 million.

12 A. No. I'm sorry. Just --

13 Q. Oh, you don't have to apologize.

14 A. I'm picturing you -- I'm just picturing you  
15 in shorts myself. So I thought that was funny. I'm  
16 sorry.

17 Q. Okay. Well it may be funny.

18 A. Okay. It is, actually. If you were sitting  
19 here, it would be funny.

20 Q. It would be.

21 A. Yeah.

22 Q. You having a pretty good time --

23 A. It is.

24 Q. -- pretty good time at trial?

25 A. The polka dots are really cute. I'm sorry.

1 Q. No, that's fine. Feel free, Ms. Garcia.  
2 A. I'm sorry.  
3 Q. It's pretty funny, right, this trial?  
4 A. No. I mean, like I --  
5 Q. Pretty --  
6 A. -- said, I just -- I have to make a light of,  
7 you know, what I'm going through.  
8 Q. Sure.  
9 A. It's my way of coping with it. So I  
10 apologize.  
11 Q. It's a pretty serious trial, isn't it?  
12 A. It is.  
13 Q. It's a pretty serious claim against my  
14 client, Andrea; right?  
15 A. It is.  
16 Q. Pretty serious claim against Andrea's son,  
17 Jared, isn't it?  
18 A. It is.  
19 Q. It's not a laughing matter, is it?  
20 A. I wasn't laughing at them.  
21 Q. I didn't say you were --  
22 A. Okay.  
23 Q. -- but it's not a laughing matter, is it?  
24 A. It might not be to you.  
25 Q. No.

1           A.    No.

2           Q.    You will be laughing a lot if you get the  
3 16.2 million from the jury after this trial; right?

4           MR. ROBERTS:  Objection.  Improper.

5           THE COURT:  Sustained.

6 BY MR. MAZZEO:

7           Q.    By the way, before this accident -- and you  
8 can laugh all you want, but I still have to ask you  
9 questions.

10          A.    Okay.

11          Q.    Okay.  So before this accident, the pool that  
12 you swam in was in an apartment complex; right?

13          A.    Yes.

14          Q.    And -- and then after your surgery in 2013,  
15 you moved from the apartment complex to a house; right?

16          A.    Yes, sir.

17          Q.    And the house didn't have a pool?

18          A.    No.

19          Q.    Yes, it did not have a pool?

20          A.    No, it did not have a pool.

21          Q.    And is that -- I mean, that could be a reason  
22 why you didn't swim after the accident -- after --  
23 after moving from the apartment complex into the house;  
24 right?

25          A.    No.  We -- management had let me have a key

1 to the pool where we used to live, and we had friends  
2 there that the kids knew, so I would still be able to  
3 bring them by any time I wanted to.

4 Q. Okay. And you had testified that you would  
5 do running in the park before the motor vehicle  
6 accident?

7 A. Yes, sir.

8 Q. And -- but you didn't have any exercise  
9 regimen with respect to running, did you?

10 A. Walking every day, running to the park to get  
11 there. It was -- it was a regimen. You could say  
12 that.

13 Q. And I think you testified yesterday that your  
14 running was to -- you were running before the accident  
15 to lose weight?

16 A. Yes, sir.

17 Q. And -- but you never stated the frequency to  
18 the jury as to how -- how often you would run prior to  
19 the accident, did you?

20 A. What do you mean by "frequency"?

21 Q. Well, you never told them you ran once a  
22 week, twice a week, seven nights -- seven days a week  
23 or something else.

24 A. I'm sorry. It wasn't asked specifically.

25 Q. Okay. And by this -- by the way, your



1 testimony with respect to you running prior to the  
2 motor vehicle accident, that's also a subjective  
3 statement that we can't verify; right?

4 A. Correct.

5 Q. Now, before -- you also testified that before  
6 the motor vehicle accident you went to amusement parks  
7 and Circus Circus; right?

8 A. Yes.

9 Q. You would take your kids there; right?

10 A. Yes, sir.

11 Q. And -- but you never told the jury how often  
12 you would go to amusement parks or the Circus Circus  
13 prior to the accident; right?

14 A. No.

15 Q. Because your counsel didn't ask you?

16 A. I -- I answered -- I mean, that's -- I was  
17 asked of a statement. I wasn't asked to say exactly  
18 how many times. So I gave a statement.

19 Q. Correct. Right. Just a general statement  
20 that you had -- you liked taking your kids to amusement  
21 parks and Circus Circus before the accident.

22 A. Riding the rides with them; correct.

23 Q. Riding the rides with them. But we didn't  
24 know, when you said that, whether you went every month,  
25 several times a year, or something else; right?

1           A.     Okay.   Yes.

2           Q.     Okay.   And -- now, you didn't take your kids  
3 on weekends during the school year because you worked  
4 on weekends; right?

5           A.     I got off at 5:00, so we -- we could still do  
6 a lot of things on the weekends.   That didn't matter.

7           Q.     And your kids were in school during the week,  
8 so you couldn't take them during the week when they  
9 were in school; right?

10          A.     If they had vacation, I had Tuesdays and  
11 Wednesdays off with them, so I could do that.   Or if  
12 they were in school, I could take them during the  
13 weekdays because I would get off early enough to take  
14 them.

15          Q.     And, again, your testimony yesterday about  
16 you liking to go -- you like going to amusement parks  
17 with your kids and Circus Circus, that's just based on  
18 your subjective self-statements; right?

19          A.     Yes.

20          Q.     We can't verify that; right?

21          A.     No.

22          Q.     And then you testified after -- that after  
23 the accident you couldn't do those activities as much;  
24 right?

25          A.     No, sir.

1 Q. You could still do them, but not as much?

2 A. Correct.

3 Q. Again, we don't know the change in which you  
4 were able to do them, whether you did them so many  
5 times before the accident and then it was reduced to a  
6 certain number. You never told us any of that; right?

7 A. I wasn't asked, no.

8 Q. You weren't asked by your counsel; right?

9 A. Correct.

10 Q. And then you also told us with regard to the  
11 activities that you used to like doing before the  
12 accident, you said that you would also like to go to  
13 the movies, and you would have activities -- do  
14 activities in the park with your kids --

15 A. Yes.

16 Q. -- right?

17 And, again, you never stated the frequency  
18 with which you did those activities beforehand; right?

19 A. No.

20 Q. And, again, that -- that testimony is based  
21 on your subjective self-statements and can't be  
22 verified by us; right?

23 A. Correct.

24 Q. And then you also testified that, before the  
25 accident, you would do walking after work; right?

1           A.    Yes.

2           Q.    You didn't say whether it was one day a week  
3 after work, three days a week after work, five days, or  
4 something else; right?

5           A.    Correct.

6           Q.    You never told us the frequency with which  
7 you did those activities after work before the  
8 accident; right?

9           A.    Correct.

10          Q.    You never told us afterwards the frequency  
11 with which those activity were diminished; correct?  
12 After the accident.

13          A.    Correct.

14          Q.    And, again, those statements about your  
15 engaging in walking after work prior to the accident,  
16 just subjective statements by you. Can't be verified  
17 by us; right?

18          A.    True.

19          Q.    And, by the way, before the motor vehicle  
20 accident, you -- you didn't belong to a gym, did you?

21          A.    No.

22          Q.    And you didn't have any regular, routine  
23 exercise regimen other than what you told us about  
24 walking and running; right?

25          A.    That's a regimen, but yes.

1 Q. Okay. Now, also, you testified yesterday  
2 with regard to household duties that you did before the  
3 accident and after the accident; right?

4 A. Yes, sir.

5 Q. Now, before the accident, you testified that  
6 you would clean the house, you would do laundry, you do  
7 sweeping, do dishes, things of that nature; right?

8 A. Yes, sir.

9 Q. And then, isn't it a fact that, after the  
10 accident, you still cleaned the house?

11 A. Yes.

12 Q. You still sweep the house?

13 A. Yes, sir.

14 Q. Still did laundry?

15 A. Yes, sir.

16 Q. Still clean dishes?

17 A. Yes, sir.

18 Q. And I know you said that it just takes you  
19 longer to do those activities now; is that correct?

20 A. Yes, sir.

21 Q. So what would take you, you believed, was 25  
22 hours a week before the accident, now I believe you  
23 said it's 40 hours a week?

24 A. Yes, sir.

25 Q. You are not working currently, Ms. Garcia?

1           A.    No, sir.

2           Q.    Okay.  So you have more free time on your  
3 hands to do these household activities at home?

4           A.    Yes.

5           Q.    And, in addition, you're also -- in addition,  
6 you're also taking care of your mother?

7           A.    Not at this moment.  It's been like five  
8 months, unfortunately.

9           Q.    Okay.  And in addition to those cleaning,  
10 laundry, sweeping, and dishes, you also -- before the  
11 accident, you would also go grocery shopping; correct?

12          A.    Yes, sir.

13          Q.    After the accident, you would also go grocery  
14 shopping; correct?

15          A.    Needing help, yes.

16          Q.    Okay.  And before the accident, you were able  
17 to drive your car to work; right?

18          A.    Yes.

19          Q.    You were able to drive your car to the park  
20 if you weren't -- didn't walk there or run?

21          A.    Correct.

22          Q.    And you were able to drive your car to the  
23 store prior to the accident?

24          A.    Yes.

25          Q.    After the accident, is it correct that you

1 were able to drive your car to work?

2 A. Yes.

3 Q. You were able to drive your car to the park?

4 A. Yes.

5 Q. You were able to drive your car to the store?

6 A. Yes, sir.

7 Q. And any limitations with respect to these

8 activities of driving your car and going grocery

9 shopping is based on subjective statements by yourself;

10 correct?

11 A. Yes.

12 Q. Which can't be verified by us?

13 A. Correct.

14 Q. Okay. Now, do you recall that after this

15 accident, between 2011 and 2014, that you had -- you

16 had a Facebook account; right?

17 A. Yes, sir.

18 Q. And you had posted pictures on your Facebook

19 account; correct?

20 A. Yes, sir.

21 Q. And what I'm going to show you at this time

22 is -- and you have -- you have two binders ...

23 MR. MAZZEO: Your Honor, can I get eight

24 trial binders for Ms. Garcia?

25 THE COURT: That's fine. We may be at a good

1 stopping point.

2 MR. MAZZEO: I think so, Judge.

3 THE COURT: Is this a new area?

4 MR. MAZZEO: Yeah, it's a new area.

5 THE COURT: Let's go ahead and take our  
6 break, folks, for lunch.

7 During our break, you're instructed not to  
8 talk with each other or with anyone else about any  
9 subject or issue connected with this trial. You are  
10 not to read, watch, or listen to any report of or  
11 commentary on the trial by any person connected with  
12 this case or by any medium of information, including,  
13 without limitation, newspapers, television, the  
14 Internet, or radio.

15 You are not to conduct any research on your  
16 own, which means you cannot talk with others, Tweet  
17 others, text others, Google issues, or conduct any  
18 other kind of book or computer research with regard to  
19 any issue, party, witness, or attorney involved in this  
20 case.

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

24 See you back at 1:15.

25 THE MARSHAL: All rise.



1                   (The following proceedings were held  
2                   outside the presence of the jury.)

3           THE COURT:  We're outside the presence of the  
4 jury.  Anything we need to put on the record, Counsel?

5           MR. MAZZEO:  No, Judge.

6           MR. ROBERTS:  Couple of things involving the  
7 bench conference and this afternoon.  I'm happy to come  
8 back at 1:00 and do it then, or we can proceed now.

9           THE COURT:  Let's do it at 1:00.

10          MR. ROBERTS:  Okay.  Thank you, Your Honor.

11          THE COURT:  Come back at 1:00.  Off the  
12 record.

13                   (Whereupon a short recess was taken.)

14          THE COURT:  Back on the record.  We're  
15 outside the presence.  What do we need to talk about?

16          MR. ROBERTS:  Just wanted to a make a brief  
17 record of the bench conference that we had after  
18 Mr. Mazzeo had displayed Ms. Garcia's performance  
19 reviews to the jury and read from two of them regarding  
20 her need for improvement and poor performance in  
21 several categories.

22                 We objected that it was -- that at first that  
23 it was irrelevant.  And the second one, we objected on  
24 the basis of improper character evidence.  And the  
25 Court accepted Mr. Mazzeo's representation at the bench

1 that he -- he was going to show that those records  
2 proved that her functionality had improved as time went  
3 on. And then he did go back up and show some later  
4 records which showed improvement.

5 But, in fact, he never tied together any of  
6 those records and any of those problems with any  
7 functionality related to her physical condition. It  
8 was nothing but the fact that she had gotten poor  
9 reviews before her training was completed, and after  
10 her training was completed, she had improved in those  
11 areas. Neither the poor performance reviews or the  
12 improvement would be related to functionality.

13 He didn't establish it, and we believe that  
14 all that was was a pretext for showing the records he'd  
15 been trying since before trial to get in that she's a  
16 poor employee. That's all he wanted to do, and that's  
17 what he got away with. And I don't want to bring  
18 any -- highlight it any more to the jury than it  
19 already is, but I just wanted to make a record of what  
20 our objection was because I think it was an improper  
21 use of those documents with no good-faith belief that  
22 he would be able to tie it to functionality.

23 MR. MAZZEO: And, Judge, that's -- that's  
24 totally inaccurate. That's -- that's a wrong  
25 assessment of what the intent was and what I was

1 showing with these records.

2           So let me start with -- first, I had waiting  
3 in the wings for today a custodian of records. I had  
4 subpoenaed her from Aliante to introduce -- to lay the  
5 foundation for the admissibility of these business  
6 records. And -- and then we reached a stipulation with  
7 plaintiff's counsel that they were not contesting the  
8 authenticity of the records and -- and I could dispense  
9 with calling a custodian of records to lay the  
10 foundation for the admissibility.

11           THE COURT: You already did all of this on  
12 the record.

13           MR. MAZZEO: We did. We did. So -- so as  
14 far as displaying them to the jury, for all intents and  
15 purposes, these are admitted into evidence at this  
16 point. And so --

17           THE COURT: They were admitted yesterday  
18 based on your representation that you were going to  
19 talk to -- you were going to use them for  
20 functionality. And that's why I specifically told you  
21 which ones I was going to allow and which ones I  
22 wasn't.

23           MR. MAZZEO: Right. And, as you saw, I  
24 actually used fewer records than you allowed me to use,  
25 and -- and I used records from November 30th of 2010,

1 from May 27th of 2011, and 11/27 of 2011.

2           So what these records show -- in this case we  
3 have Plaintiff, who's alleging that she had an  
4 impairment of her functionality as a result of the  
5 injuries she alleges she sustained from this accident  
6 and that it affected her ability, as she testified to  
7 on direct examination, her ability to perform her  
8 work-related duties. And she didn't feel the same.  
9 She couldn't perform to the same extent.

10           So what these records show from the team  
11 member appraisal, these evaluations that are done every  
12 six months, it shows that had her functionality -- and  
13 this is really the gist and the purpose for these  
14 records. Had her functionality been compromised as a  
15 result of her alleged injuries and as a result -- and  
16 based on her testimony on direct examination, then she  
17 wouldn't have -- she -- the argument is and the -- and  
18 the connection is that she wouldn't be able to meet the  
19 expectations of her -- of her job duties when, in fact,  
20 what these performance records show is that she's --  
21 she went up from needing improvement prior to this  
22 accident to meeting the expectations and then exceeding  
23 expectations.

24           So I have -- there's my offer of proof. That  
25 has nothing do with a character assassination. I never

1 alleged that she wasn't a good employee.

2           It was purely to show the difference in her  
3 increased ability to perform her work-related duties  
4 from before the accident to after the accident. And  
5 that's the offer of proof, and that's the whole purpose  
6 of my examination. My -- in my cross-examination of  
7 Ms. Garcia. I didn't suggest or insinuate otherwise.

8           MR. ROBERTS: Nothing further, Your Honor. I  
9 still don't think he's made a showing as to how it's  
10 related in any way to her pain or her functionality.

11           THE COURT: Yeah, it came in.

12           MR. ROBERTS: The -- the other thing I just  
13 wanted to make a record of -- and I did not object at  
14 the time because I didn't want to draw any more  
15 attention to it than necessary.

16           But Mr. Mazzeo violated yet another motion in  
17 limine in his cross-examination. Plaintiff's Motion In  
18 Limine No. 40 was granted in part and denied in part.

19           And from the order, the Court -- regarding  
20 Emilia's trip to California following her surgery, the  
21 Court said:

22           "The Court may allow limited  
23 cross-examination on this subject matter depending on  
24 the scope of Emilia's direct testimony. Prior to any  
25 questions or mention of the trip to California, the

1 questioning party or party who intends to mention the  
2 trip must approach the bench to notify the Court and  
3 all parties regarding the scope will be of the  
4 questioning because the scope of cross-examination  
5 cannot be determined until the Court knows what the  
6 direct testimony is."

7           And, of course, I elicited no information  
8 from Ms. Garcia about the trip to California. I didn't  
9 elicit general statements that she was unable to  
10 travel.

11           And in violation of the motion in limine,  
12 Mr. Mazzeo asked her about the trip to California.  
13 And, just for topping, just for the cherry on top and  
14 the whipped cream, he throws in "with your boyfriend,  
15 Christopher," once again, now, trying to get in her  
16 lifestyle to the jury.

17           Christopher's presence on that trip has  
18 nothing do with her functionality. He violated the  
19 motion. He threw in a gratuitous comment to the fact  
20 that she went on a trip with a boyfriend.

21           And I just want to make a record of it  
22 because there's -- I just -- don't want the Court to  
23 instruct the jury. It's just going to draw further  
24 attention to the fact. But it shouldn't keep  
25 happening.

1           MR. MAZZEO: Well, and -- and if -- let me  
2 respond to that. Regarding the -- request a sidebar  
3 for the scope of the inquiry.

4           So I didn't think that there was any  
5 restriction from asking Ms. Garcia about her activities  
6 that she engaged in postaccident which would reflect  
7 upon her functionality and her ability -- her  
8 ambulatory nature. And I purposely -- and I understand  
9 that there were some things that occurred during this  
10 trip that I specifically did not get into.

11           And so I didn't think that was inappropriate  
12 to ask her about just the fact that she traveled to  
13 California. In my notes, it had indicated that she  
14 went to the beach and she went there with her  
15 boyfriend.

16           So it wasn't to suggest any impropriety.  
17 I -- I -- actually, I -- I -- earlier this morning, as  
18 the judge -- the Court knows, I had asked the Court to  
19 reconsider allowing the defense to inquire of  
20 Ms. Garcia about the nature of her marital -- and  
21 relationships with -- with -- with various suitors.  
22 And the Court said no, and I stayed away from that. I  
23 didn't get into that.

24           There was something that happened on this  
25 trip to California that was -- I didn't think, that was

1 relevant to this case. So I purposefully didn't bring  
2 it up.

3 But, actually, now that Mr. Roberts brings it  
4 up, I think it's a proper inquiry for me to go -- delve  
5 further into this, and I'll tell the Court why.

6 Ms. -- Dr. Gross had testified on direct  
7 examination that he had testified to the fact that  
8 Ms. Garcia is depressed and -- and that was one of  
9 his -- his findings on her impression or diagnosis.

10 And I don't want the jury to assume that that  
11 depression is related to this accident when, in fact,  
12 the reason for her depression is this trip to  
13 California when -- when her ex-boyfriend, Christopher,  
14 went into the bedroom while her daughter Lennay or one  
15 of her daughters was changing and he refused to leave.  
16 And after that, she went into this deep depression with  
17 the actions of what Christopher did. And then she  
18 later contemplated -- advertised on Facebook or with a  
19 coworker that she was contemplating suicide. Well --  
20 so --

21 THE COURT: I think we addressed all this  
22 stuff in pretrial motions.

23 MR. MAZZEO: Well, the fact -- Dr. Gross  
24 brought it up on his direct examination, this  
25 depression. And I don't want the jury to think that



1 they're going to be awarding her -- that some of her  
2 damages include depression and that we're now going to  
3 find -- we have to include that in our awarding of  
4 compensation for her injuries postaccident that are  
5 allegedly related to this case.

6           So I think -- and I know that Ms. Garcia  
7 testified that her depression was not related to this,  
8 that it was related to this incident in California. So  
9 now I'm seeking permission from the Court to go into  
10 this area of inquiry.

11           And -- and before we move on, before  
12 Mr. Roberts responds, there was a motion in limine  
13 brought by Jared Awerbach to exclude statements  
14 overheard by the plaintiff at the scene of the  
15 accident. And that decision was reserved to the time  
16 of trial, which necessitated a sidebar by Plaintiff's  
17 counsel before eliciting testimony from -- from Emilia  
18 Garcia about statements she overheard -- that she  
19 overheard at the scene of the accident with respect to  
20 Jared and the officer speaking. But she went and  
21 testified to that.

22           They never sought a preliminary ruling from  
23 the Court, notwithstanding the fact that that ruling  
24 was reserved until the time of trial. So I didn't make  
25 a big deal about it. I wasn't going to. And I just

1 needed to bring that to the Court's attention because  
2 that was --

3           There's a lot of motions in this case, Judge.  
4 And I understand we make mistakes. And I -- that's why  
5 I didn't want to call them out on it, but they're  
6 calling me out on this issue and -- for the same reason  
7 they did something and didn't seek a preliminary ruling  
8 yesterday.

9           THE COURT: You know what, guys? You -- you  
10 guys are much more familiar with the pretrial rulings  
11 than I am. Just live by them, please.

12           What else?

13           MR. MAZZEO: Well, I -- I would like a ruling  
14 on the -- on allowing us to -- to pursue an inquiry  
15 into the incident that occurred in California --

16           THE COURT: No.

17           MR. MAZZEO: -- or a stipulation from  
18 Plaintiff's counsel that she did not sustain -- suffer  
19 any depression as a result of this accident.

20           THE COURT: I don't think she's testified  
21 that she suffered depression as a result of the  
22 accident.

23           MR. MAZZEO: Well, Dr. Gross is under a  
24 different conception because he testified that he  
25 believed that the depression -- he was unclear when I

1 cross-examined him, and he thought that it would be  
2 related or might be related to this accident.

3           So we have -- we have it hanging out there  
4 right now, Judge.

5           THE COURT: I don't remember what Dr. Gross  
6 specifically said about it, but I'm not going to let  
7 you get into it unless you can prove there's something  
8 that opened the door. And I'm not hearing it or seeing  
9 it right now.

10           MR. MAZZEO: Okay.

11           MR. ROBERTS: Thank you, Your Honor. And I  
12 won't continue to address that one since the Court's  
13 ruled.

14           But as far as the statements overheard at the  
15 scene, Ms. Garcia, one, was talking first about the  
16 friends talking to her. She wasn't talking about the  
17 statements that she overheard. She was talking about  
18 questions being asked of her about what was going on.

19           And to the extent that she did say she  
20 overheard a conversation, I don't remember her saying  
21 that. My memory's not perfect. But if she did,  
22 Defendant Jared Awerbach's Motion in Limine No. 17 to  
23 exclude plaintiff's future wage loss is denied without  
24 prejudice; therefore, there's no -- nothing in the  
25 order like in the other issue that says you can't

1 mention it.

2 Did I read the wrong one?

3 MR. MAZZEO: Yeah, there's too many.

4 MR. ROBERTS: Number 16 is reserved to the  
5 time of trial. Same ruling, just different one.

6 And, therefore, they had a duty to object.  
7 They didn't. And there's no specific statement saying  
8 that I can't go into it without approaching the bench  
9 like the judge did when that was her intent.

10 THE COURT: Just try to follow the pretrial  
11 rulings, guys.

12 Good to go?

13 MR. MAZZEO: Yes.

14 THE COURT: Let's bring them back.

15 THE MARSHAL: All rise for the presence of  
16 the jury.

17 (The following proceedings were held in  
18 the presence of the jury.)

19 THE COURT: Go ahead and be seated. Welcome  
20 back, folks. We're back on the record, Case  
21 No. A637772.

22 Do the parties stipulate to the presence of  
23 the jury?

24 MR. ROBERTS: Yes, Your Honor.

25 MR. MAZZEO: Yes, Judge.

1 MR. STRASSBURG: Yes.

2 THE COURT: Ms. Garcia, just be reminded  
3 you're still under oath.

4 THE WITNESS: Okay.

5 THE COURT: Mr. Mazzeo, you can proceed.

6 MR. MAZZEO: Thank you, Judge.

7 BY MR. MAZZEO:

8 Q. Ms. Garcia, I was asking you before lunch  
9 questions about your Facebook -- your Facebook account  
10 that you have -- that you had, I should say.

11 A. Yeah.

12 Q. Do you still have that account?

13 A. No. I lost access to it.

14 Q. When was that?

15 A. Around January when I switched phones.

16 Q. Okay. And -- and prior to lunch I had asked  
17 you -- just to bring us back to that place that we were  
18 at prior to lunch, I had asked you if you had posted --  
19 you had that Facebook account and posted entries and  
20 photographs on that Facebook account after the accident  
21 in 2011 up through, I believe, 2014; is that correct?

22 A. Yes.

23 Q. All right. And -- and you're familiar with  
24 the -- strike that.

25 And you were the one -- because it was your

1 account, you were the one that actually posted the  
2 photographs that appeared on your Facebook account;  
3 right?

4 A. Yes.

5 Q. Okay. And -- and you agree that the photos  
6 that you posted on your Facebook account during that  
7 time period between 2011 and 2014 were pictures that  
8 you had taken of your -- of yourself, either selfies or  
9 pictures that someone else had taken of you, at around  
10 the time that you posted them; fair enough?

11 A. Yes.

12 Q. Okay. So what I want to do is I just want  
13 to -- and I think you have the binder, Ms. Garcia. You  
14 have Andrea Awerbach's trial exhibit binder.

15 A. Okay.

16 Q. And, if you would, let's open it up. And --  
17 and let's turn to Exhibit K.

18 A. (Witness complies.) Okay.

19 Q. And so I'm going to go through some of these  
20 photographs and -- and just ask you about the content  
21 of the photograph.

22 A. Okay.

23 Q. Okay. And this first photograph -- and, for  
24 the record -- and, now, the jurors can't see these  
25 photographs because these photographs are not currently

1 in evidence.

2 So you and I are just going to discuss them  
3 based on what we see in the exhibit binder.

4 A. Okay.

5 Q. Okay. Now, the first one is, for the record,  
6 Exhibit AAK1, and you'll see that in the lower  
7 right-hand corner.

8 A. Okay.

9 Q. Yes?

10 And so do you recognize this photograph?

11 A. Yes.

12 Q. And there's a -- if you look at it, there's a  
13 stamp in red -- a date stamp on it in the lower  
14 right-hand corner.

15 A. Yes.

16 Q. And based on the content of the information  
17 or content of what appears in the photograph, would you  
18 agree that this was taken at or around the time of the  
19 date that's stamped in the lower right-hand corner?

20 A. Yes.

21 MR. ROBERTS: Objection. Foundation.

22 THE COURT: Overruled.

23 BY MR. MAZZEO:

24 Q. And does this reasonably and accurately  
25 portray your -- you and the person who appears in the

1 photograph with you as you appeared at around that time  
2 in January of 2014?

3 MR. ROBERTS: Objection. Relevance.

4 THE WITNESS: Yes.

5 THE COURT: Overruled for now.

6 BY MR. MAZZEO:

7 Q. Okay. And who is the individual with you in  
8 the photograph?

9 MR. ROBERTS: Objection. Relevance.  
10 Privacy.

11 THE COURT: Come on up.

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

14 THE COURT: Objection sustained.

15 MR. MAZZEO: Judge, was that K13?

16 THE COURT: Yes.

17 MR. MAZZEO: Thank you.

18 BY MR. MAZZEO:

19 Q. Ms. Garcia, would you please turn to K13.

20 A. (Witness complies.) Okay.

21 Q. Do you have that photo in front of you?

22 A. Yes, sir.

23 Q. Okay. And do you -- and you yourself -- an  
24 image of yourself appears in that photo?

25 A. Yes.



1 Q. And was this photo taken around the time of  
2 the date that's stamped on the bottom right-hand corner  
3 of the photo?

4 A. Yeah.

5 Q. And who's there in the photo with you?

6 A. My daughter Lennay.

7 Q. Okay. And so that would -- the date on the  
8 photo is -- would be July 15th of 2011?

9 A. Correct.

10 Q. And -- and this photograph reasonably and  
11 accurately depicts your -- you and your daughter at the  
12 time that it was taken?

13 A. Yeah.

14 MR. MAZZEO: Okay. Your Honor, at this time  
15 I move to admit Andrea Awerbach's Exhibit K13 into  
16 evidence.

17 MR. ROBERTS: No objection to that one, Your  
18 Honor.

19 THE COURT: It will be admitted.

20 (Whereupon, Defendant's Exhibit K13 was  
21 admitted into evidence.)

22 MR. MAZZEO: Okay. Judge, oh, I'm sorry, the  
23 ELMO is on. Okay. So I guess the light doesn't work  
24 with photographs. See if I can zoom out.

25 /////

1 BY MR. MAZZEO:

2 Q. So -- and just -- just for the record,  
3 Ms. Garcia, Exhibit AAK13 is -- is the photograph that  
4 we just talked about; correct?

5 A. Yes.

6 Q. Okay. And this is -- as you -- as you  
7 testified to a moment ago, this is both yourself and  
8 your daughter Lennay at around the date of July 15th of  
9 2011; is that correct?

10 MR. ROBERTS: Objection. Foundation as to  
11 the date.

12 If Mr. Mazzeo can clarify how the stamp got  
13 there for the witness.

14 MR. MAZZEO: She's already testified.

15 THE COURT: She already agreed to it.  
16 Overruled.

17 MR. MAZZEO: Thank you, Judge.

18 BY MR. MAZZEO:

19 Q. I'm not sure if I got an answer.  
20 Is that correct?

21 A. I'm sorry. Can you ask again?

22 Q. Sure. I may not have completed the question,  
23 so let me -- let me restate it.

24 So as you -- as you stated a moment ago, this  
25 photograph depicts both yourself and your daughter

1 Lennay as you both appeared at or around the date of  
2 July 15th of 2011; is that correct?

3 A. Yes.

4 Q. Okay. Thank you.

5 MR. MAZZEO: Your Honor, at this time I'm  
6 going to pass the witness.

7 THE COURT: Mr. Strassburg?

8 MR. STRASSBURG: Thank you, Judge.

9 THE COURT: While he's getting set up, let me  
10 just talk to you folks.

11 It's Thursday afternoon on week 4 of our  
12 trial. I know we told you at the beginning the of  
13 trial the case was going to last three to four weeks.  
14 I'm sure that most of you have probably guessed by now  
15 that we're at the end of week 4 and it doesn't look  
16 like we're done yet. We're not done yet. So it's --  
17 it's likely that you're going to be here for probably  
18 another day or two next week.

19 Is that a big problem for anybody? Raise  
20 your hand and let me know. Good. I'm seeing a little  
21 bit of a hand.

22 JUROR NO. 3: Well, as long as we're not here  
23 through next Friday.

24 THE COURT: We won't be here through next  
25 Friday.

1 JUROR NO. 3: Okay.

2 THE COURT: Just wanted to give you a little  
3 bit of a heads-up. I figured everybody kind of figured  
4 that out already by now.

5 CROSS-EXAMINATION

6 BY MR. STRASSBURG:

7 Q. All right. Let me direct your attention --  
8 oh, I'm -- are we on?

9 THE COURT: Go.

10 BY MR. STRASSBURG:

11 Q. I'm Roger Strassburg. I'm a lawyer for Jared  
12 Awerbach, and I have a couple of questions. Well,  
13 maybe more than a couple, but I'll try to be quick.

14 I want to be entirely fair to you. If I ask  
15 a question you don't understand or you don't hear, just  
16 say so, and we'll clear it up on the spot.

17 Is that fair?

18 A. Sure.

19 Q. Thank you. Let me return to this last  
20 photograph from your Facebook, and this is AAK13 that  
21 Mr. Mazzeo was just showing you. And I'll get it up on  
22 the screen. My system has to convert to the  
23 presentation mode.

24 Okay. Do you see that?

25 A. Yes.

1 Q. Now, do you recollect where that picture was  
2 taken?

3 A. An ice cream shop.

4 Q. In Las Vegas?

5 A. Yes, sir.

6 Q. And the date the picture was taken was  
7 July 15th of 2011?

8 A. That's what the stamp says.

9 Q. All right. So -- and who took the picture?

10 A. It could have been one of my daughters, maybe  
11 Emily.

12 Q. Where were you?

13 A. At an ice cream shop.

14 Q. This is the ice cream shop that you're inside  
15 of, or are you outside of it?

16 A. Inside of it.

17 Q. Okay. And is there a counter to the right of  
18 the picture?

19 A. Yeah.

20 Q. And is this -- is -- this is the young one,  
21 Lennay?

22 A. Yes.

23 Q. And did you boost Lennay up on the counter,  
24 or did she get up there on her own?

25 A. No. There are, like, barstools by -- right

1 in front of that -- the bar that you see. And so she  
2 was up on there.

3 Q. So how did she get to where she's sitting  
4 with your arm around her?

5 A. She jumped from the barstool to the -- the  
6 counter.

7 Q. And you're steadying her to keep her from  
8 falling off?

9 A. Yeah.

10 Q. All right. And you have your right arm  
11 clasped to her left leg.

12 Do you see that?

13 A. Yes.

14 Q. And it appears from the picture that you're  
15 pulling with your right arm to support her. True?

16 A. Yeah. To get her in the picture, yes.

17 Q. And were -- were you able to support your  
18 daughter in -- in this position without experiencing an  
19 increase in pain in your lower back and legs?

20 A. I -- I don't remember hurting. So I must  
21 have been -- it must have been a good day for me.

22 Q. All right. And that would have been  
23 July 15th of 2011.

24 So you would have already seen Dr. Gross for  
25 the second opinion on May 25th of 2011; right?

1           A.     Correct.

2           Q.     And you had already then gone to see  
3 Dr. Lemper, who you had seen on June 29th of 2011, and  
4 you also saw him on July 14th of 2011; right?

5           A.     Yeah.

6           Q.     And on July 14th of 2011, you were  
7 complaining to Dr. Lemper of low back pain and  
8 bilateral leg numbness. Recall?

9           A.     Yeah.

10          Q.     And this would have been about two months  
11 after you -- you first appeared -- presented to  
12 Dr. Gross where you -- you said you did not -- you were  
13 not experiencing any significant leg pain. Recall?

14          A.     Not -- not really, but -- I don't know. I  
15 don't remember what I could have said to him.

16          Q.     All right. And it would have been just  
17 before you began your physical therapy at Select  
18 Physical Therapy; right?

19                 The records indicate that you started that on  
20 October -- August 17th of 2011. So this would have  
21 been about a month before you started physical therapy.

22          A.     Okay.

23          Q.     Recollect?

24          A.     If you're saying that that's what the records  
25 show, then yeah.

1 Q. Fair enough. Now, how old was Lennay in this  
2 picture?

3 A. Six.

4 Q. And how much did she weigh?

5 A. I couldn't tell you. Forty pounds maybe. I  
6 mean, 40, 60 pounds maybe.

7 Q. All right. And with your left arm, you are  
8 cradling her back side?

9 A. Yeah.

10 Q. All right. And you're supporting her with  
11 your left arm to keep her from squirming around; right?

12 A. Yeah.

13 Q. Your kids do that too, huh?

14 A. They all do.

15 Q. Now, how did you get to the ice cream store?

16 A. We drove there.

17 Q. Okay. Who exactly drove?

18 A. I did.

19 Q. And what vehicle did you drive?

20 A. Mine.

21 Q. Which is?

22 A. My Trailblazer.

23 Q. All right. And that's a -- a species of  
24 truck? SUV?

25 A. SUV, right.



1 Q. Okay. And you were able to get out of the  
2 SUV; right?

3 A. Yeah my SUV has a step stool.

4 Q. Okay. And then you were able to walk to the  
5 ice cream store; right?

6 A. Yes.

7 Q. Did you eat the ice cream there, or did you  
8 take out?

9 A. We had it there.

10 Q. Okay. And then you were able to corral the  
11 kids and go back to the car and drive home?

12 A. Yes.

13 Q. And do you recollect how often before your  
14 surgery you had occasion to take the family to -- out  
15 for ice cream?

16 A. No. Not -- not -- not right off the top of  
17 my head.

18 Q. More than once?

19 A. More than once, how often?

20 Q. Well, was this ice cream store you went to,  
21 was this the first time you had been there, or is this  
22 your regular place?

23 A. I have taken them there a few times.

24 Q. And about how often would you typically go to  
25 the ice cream store before your surgery?

1           A.     Maybe once a week.

2           Q.     Okay.  And after the accident, before the  
3 surgery, once a week, the kids to the ice cream store;  
4 true?

5           A.     Yes.

6           Q.     And -- now, in the summer of 2011, six months  
7 postaccident, you were still working?

8           A.     Yes, sir.

9           Q.     And was it difficult to -- to do your job the  
10 way you were feeling, or were you able to be relaxed  
11 and get along with your compatriots on the job?

12          A.     I was more tired than I -- you know, than I  
13 was before the accident.  My -- the way that I did  
14 things around the job were different so that, you know,  
15 I didn't hurt.  So ...

16          Q.     Well, the -- what you experienced in the  
17 accident, that didn't impact your relationship with  
18 your coworkers on the job, did it?

19          A.     It was different because they were --

20                 MR. ROBERTS:  Objection, Your Honor.  
21 Relevance.

22                 THE COURT:  I'm going to allow it.  
23 Overruled.

24                 MR. ROBERTS:  Judge, there's already an order  
25 on this.  May we approach?

1 THE COURT: Come on up.  
2 (A discussion was held at the bench,  
3 not reported.)  
4 THE COURT: Objection's overruled.  
5 Want me just read the question back?  
6 MR. STRASSBURG: Yes. If you don't mind.  
7 THE COURT: It says, "Well, the -- what you  
8 experienced in the accident, that didn't impact your  
9 relationship with your coworkers on the job, did it?"  
10 THE WITNESS: Yes, it did.  
11 BY MR. STRASSBURG:  
12 Q. In what way?  
13 A. They were, you know, more attentive. They  
14 knew I was in pain. They would help me if they knew  
15 that I was hurting and having a rough day.  
16 Q. Did they resent you for that?  
17 A. No.  
18 Q. So they didn't view it as a negative, that  
19 you were a burden; true?  
20 A. I mean, they knew that it was hard for me.  
21 So ...  
22 Q. But they didn't view you as a burden; true?  
23 A. No.  
24 MR. ROBERTS: I got a phone call I told the  
25 Court I might get earlier. Sorry.

1           THE COURT: We're going to have to take a  
2 quick break, folks.

3           During our break, you're instructed not to  
4 talk with each other or with anyone else about any  
5 subject or issue connected with this trial. You are  
6 not to read, watch, or listen to any report of or  
7 commentary on the trial by any person connected with  
8 this case or by any medium of information, including,  
9 without limitation, newspapers, television, the  
10 Internet, or radio.

11           You are not to conduct any research on your  
12 own, which means you cannot talk with others, Tweet  
13 others, text others, Google issues, or conduct any  
14 other kind of book or computer research with regard to  
15 any issue, party, witness, or attorney involved in this  
16 case.

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

20           Probably going to be 15 minutes.

21                   (The following proceedings were held  
22                   outside the presence of the jury.)

23           THE COURT: You guys want to make a record  
24 now?

25           MR. MAZZEO: Yes, Judge. And I have other

1 photographs. I didn't want to interrupt before, that's  
2 why --

3 MR. ROBERTS: It was the hospital calling for  
4 Ms. Garcia. I thought you --

5 MR. MAZZEO: Oh. Oh, okay.

6 MR. ROBERTS: That's why I --

7 MR. MAZZEO: Thanks. Thank you. Yeah.

8 MR. ROBERTS: The phone call.

9 THE COURT: That's why I quickly gave you a  
10 break. But you can -- you can go forward making any  
11 record you want. Go ahead.

12 MR. MAZZEO: So, Judge, if -- if we can look  
13 at the binder, this would be Andrea Awerbach's binder.

14 THE COURT: I'm looking at it.

15 MR. MAZZEO: So if you -- let's turn to K2.  
16 K2 is a photograph of Ms. Garcia at work, dated January  
17 19th of 2013 -- 2013 -- January 19th, 2013, and at a  
18 point when she was on sick leave and out of work for  
19 four months. This was about three weeks after the  
20 accident. And this shows -- she's testified as to her  
21 ambulatory condition within weeks after the accident,  
22 and here she is standing, posing for a photograph with  
23 a nice smile on her face next to a coworker with this  
24 hazard vest on that appears to be at her workplace.

25 So I think that should come in. And I can --

1           MR. ROBERTS: If you could stop there before  
2 you move to the next picture.

3           MR. MAZZEO: Sure.

4           MR. ROBERTS: Just want to make a record of  
5 why I have been objecting to foundation on the dates  
6 and object to Mr. Mazzeo's representations to the Court  
7 as to the dates because it's misleading.

8           If you look up on your screen right now  
9 Mr. Strassburg put up, he's displayed the original  
10 photograph, which has no date stamp. The date stamp on  
11 there is not the date of the photograph. It's the date  
12 defense counsel downloaded the photograph from -- or,  
13 rather, the date shown on the Facebook post.

14           So there's a difference between a post --  
15 date a photograph was taken and when it was posted. I  
16 could post a photograph taken 15 years ago today, and  
17 it would show today's date on it.

18           So that -- certainly, the witness agreed that  
19 this was taken around July, so it is what it is. But I  
20 just don't want there to be any misunderstanding as to  
21 what those dates are and who put them there.

22           MR. MAZZEO: Well, Judge -- and I agree with  
23 Mr. Roberts, and that's why I prefaced my questions to  
24 Ms. Garcia about -- one with the two photographs I was  
25 allowed to ask her about as to does this photograph

1 that was posted -- this indicates that it was posted on  
2 or around -- or on this date with -- was the photograph  
3 also taken on or about this date? And she indicated  
4 "yes" with those two other photographs.

5 THE COURT: She did.

6 MR. MAZZEO: So I think this is relevant. If  
7 she says, no, I don't remember, that's fine.

8 And then we can move on to -- K10 would be  
9 the next one. K10 is a photograph taken in -- well,  
10 it's posted on December 12th -- December 2nd of 2011  
11 and -- so this is about 11 months after the accident.  
12 And -- while she's getting treatment with Dr. Lemper  
13 and monthly treatment with him, medications. So I  
14 think this is relevant to show her condition. That's  
15 K10.

16 K11 is another one. K11 is party time,  
17 Las Vegas, Mini Gran Prix. She's there at the Gran  
18 Prix, which she testified on direct that she couldn't  
19 take her kids to the -- to the amusement park and  
20 activities, Circus Circus. And here she's standing  
21 upright with her -- with what appears to be her kids  
22 and her mother. And they're at the Mini Grand Prix.

23 I think that's relevant to show that she's  
24 in -- out and about and engaging in activities.

25 Regardless of whether she's going to say, well, I

1 didn't ride in a racecar that day, that's fine. But  
2 she's out and about and taking her kids around.

3 And then K -- K7. And then -- and, also,  
4 with K11, Judge, Emily testified, as you know, that  
5 she's the one that takes the kids out to do activities,  
6 not her mom, and then she started crying on the stand.  
7 So this -- this flies in the face of -- and seemingly  
8 contradicts both Emily and Ms. Garcia's testimony.

9 And then we have K7. And here she is having  
10 a grand old time at the beach, squatting down, doesn't  
11 look like a beach that I recognize in Las Vegas.  
12 And -- and it depicts --

13 THE COURT: We don't have a lot of beaches in  
14 Las Vegas.

15 MR. MAZZEO: That's true. And there's waves,  
16 so it's not -- again, it's not one that's probably in  
17 this town. And -- but she is squatting down. It shows  
18 her physical agility and ability and movement. So  
19 that -- that, I think, is relevant as well.

20 Those are the ones that I wanted to point out  
21 from my -- from Andrea Awerbach's exhibit binder.

22 MR. TINDALL: For us, Your Honor, we believe  
23 every photograph in there is relevant because, when a  
24 plaintiff makes a hedonic damages claim, a loss of  
25 enjoyment of life claim, there's a whole lot of



1 information in this world that becomes relevant. And  
2 photographs that show whatever they show, automatically  
3 are relevant.

4 Now, I know the Court, at the bench, said it  
5 wasn't relevant because pain is subjective and there's  
6 no way for the jury to determine if there's any pain  
7 involved in these photographs.

8 I submit the Court was respectfully in error  
9 about that because the jurors have their common sense  
10 and life experiences that they get to bring into the  
11 courtroom. And it is they and they alone who get to  
12 decide if these photographs show that maybe her life  
13 wasn't -- she wasn't losing enjoyment in her life. Or  
14 if she looks like she's really in pain -- and  
15 Mr. Strassburg, if allowed, is going to correlate these  
16 photographs to dates that match up with complaints of  
17 pain to care providers; yet on the same dates, we have  
18 these photographs.

19 Pursuant to NRS 48.015, relevant evidence is  
20 any evidence that has a tendency to make the existence  
21 of any fact in issue more or less probable. These  
22 photographs do exactly that. We don't know what they  
23 do. Do they make it less or more probable? But they  
24 certainly do one or the other, and it's for the jurors  
25 to determine that. And since they're relevant, they

1 are admissible, submitted --

2 MR. MAZZEO: And, Judge -- I'm sorry,  
3 Mr. Roberts.

4 But that was another -- we're making a  
5 record, and at the bench I did bring that up, the fact  
6 that these -- all of these photographs are related to  
7 Ms. Garcia's loss of enjoyment of life for which she's  
8 claiming significant damages and for which she has told  
9 her economist, Dr. Smith, that she has suffered  
10 reduction in about 70 percent of her enjoyment of life  
11 prior to the accident. I know currently that figure  
12 has changed somewhat, but at the time that these  
13 photographs were taken, the 70 percent figure was still  
14 in -- in contention there by Ms. Garcia.

15 So I -- I agree with Mr. Tindall. All of  
16 these photographs are relevant, especially the ones  
17 that I highlighted, but I think all of them should come  
18 in, specifically for the fact that she's making this  
19 loss of enjoyment of life and -- as well as it reflects  
20 upon her alleged pain and suffering.

21 So I think they're all related.

22 MR. ROBERTS: Your Honor, going first to K11,  
23 the Mini Gran Prix, that's not impeachment of anything  
24 that Ms. Garcia said on direct. What she said is:

25 "QUESTION: In between the crash and the

1 fusion surgery, were you able to continue doing  
2 those types of activities?

3 "ANSWER: No, no. I may go and be on the  
4 sidelines and watch them other than being with  
5 them, right with them, right along with them.  
6 It's been a big change."

7 So she's admitted that she still goes, she  
8 just doesn't get in the cars and do the activities  
9 anymore. She's on the sidelines. This shows her being  
10 there, which is consistent with her testimony, and the  
11 arguments they want to make from it are improper and  
12 baseless.

13 And, as the Court acknowledged, photographs  
14 can't show pain and suffering. You can't tell from  
15 someone smiling that they're not in pain. And they  
16 admitted at the bench, they want to show these  
17 arguments and argue, look at the pictures; she's not in  
18 pain. And that's not a proper argument to make, and  
19 it's speculation. It's without foundation.

20 And as to the reduction in the enjoyment of  
21 life, if she said, I lost 100 percent of the enjoyment  
22 of life, I stopped going out, I stopped smiling, I  
23 stopped having fun totally, 100 percent of the time,  
24 these would be proper impeachment. As it is, with her  
25 testimony that during the time she -- she lost

1 30 percent of the enjoyment, but I still went out  
2 drinking, I still tried to have fun, I went out a  
3 couple of times a month, it's -- it doesn't prove  
4 anything that she said is less -- is more likely untrue  
5 than not true. It doesn't show anything, and they want  
6 to take these arguments -- improper arguments and use  
7 these pictures to make them.

8 MR. MAZZEO: We wouldn't be making this  
9 argument if she had 100 percent loss of enjoyment of  
10 life because, as Dr. Smith said, that's death. So ...

11 THE COURT: Okay. K11, Mini Gran Prix. She  
12 has talked about her ability to do activities like Mini  
13 Gran Prix and things like that, so I think that's  
14 relevant. I'm going to allow K11.

15 K7 talks -- is the one that shows her  
16 squatting down at the beach, which obviously shows that  
17 she can travel, shows that she can squat down at the  
18 beach. Those are functionality questions which I've  
19 consistently said all along I'm going to allow as it  
20 relates to the loss of enjoyment of life.

21 MR. ROBERTS: Okay. Your Honor, before you  
22 move on, that's the California trip, and I hope this  
23 isn't opening the door to them expanding into other  
24 aspects of the trip.

25 THE COURT: It's not -- no.

1 K11 and K7 are -- will be admitted if the  
2 proper foundation is laid, and she can lay the  
3 foundation for the pictures, which I'm assuming she  
4 will, but I don't know that yet. So she's got to say  
5 that they accurately depict --

6 MR. MAZZEO: Sure.

7 THE COURT: -- her on or about a certain date  
8 or something like that.

9 MR. MAZZEO: And K2?

10 THE COURT: K2, I don't see any relevance.  
11 It's just a picture of her standing next to another  
12 person.

13 MR. MAZZEO: Well, also, she's standing next  
14 to the other person on January 19th of 2013, about  
15 three weeks -- when it was posted were -- was four  
16 weeks after this accident -- after the surgery and at a  
17 time when she said she wasn't working, and here she has  
18 a hazard vest on. So I would -- I -- I -- I certainly  
19 ask you to give me permission to inquire about it.  
20 Whether or not it's admissible, we can find out based  
21 on Ms. Garcia's responses.

22 THE COURT: She says that because the picture  
23 shows her in the vest, that she was working that day,  
24 then -- then you can establish that this was taken at a  
25 time period that she said she wasn't working, then it

1 becomes relevant.

2 MR. MAZZEO: Okay.

3 THE COURT: Right now, I'm not seeing it.

4 MR. ROBERTS: Well, he doesn't have a  
5 good-faith basis. He's got her work records. He's  
6 pored over them. He knows she wasn't working on that  
7 date. And this goes back to this being the date the  
8 picture was posted.

9 THE COURT: Well, that's a question that  
10 he's -- I'm going to let him ask those questions.

11 MR. SMITH: He shouldn't be allowed to put up  
12 the pictures with the dates on it that they added. If  
13 they want to put -- if they want to show her the  
14 picture, then they have to show her the original  
15 picture. They can't put up a picture that has a date  
16 that was added by defense counsel.

17 MR. MAZZEO: That's not true.

18 MR. SMITH: That's not the actual picture.  
19 That's not exactly what she posted.

20 MR. MAZZEO: That's not true. I can post --  
21 I can put up -- show the party any picture, any  
22 photograph and ask her if it portrays something that's  
23 related to the case and if it's an accurate depiction.

24 MR. ROBERTS: He can, but he can't post an  
25 altered photograph.

1 MR. MAZZEO: Well, it's --

2 MR. ROBERTS: This is altered. He's taken  
3 the photograph and he's altered it by adding a date  
4 added by counsel. Ask him. He put the date on there.  
5 It's not on the picture, it's not on the Facebook post.  
6 He put it there.

7 MR. MAZZEO: Judge. Judge, these dates that  
8 appear on the photograph are dates that correspond to  
9 her Facebook entries on this date, which we have in  
10 Jared Awerbach's -- and that's the reason why you have  
11 two sets of Facebook photos because you have Jared  
12 Awerbach's Facebook photo entries. And these are the  
13 pictures that correspond to each and every one -- they  
14 actually have many more in Jared Awerbach's trial  
15 exhibit binder. So they do correspond.

16 I'm electing not to use that. I'm electing  
17 to use this to ask Ms. Garcia about her recollection  
18 and -- and what's contained in the subject matter of  
19 the photograph.

20 THE COURT: When you ask her the question,  
21 just -- you can't represent that the date that's on the  
22 picture is the date that the photograph was taken.

23 MR. MAZZEO: Absolutely. And I never did  
24 that. I didn't do that previously either.

25 THE COURT: If --

1           MR. MAZZEO: And I actually asked it in an  
2 open-ended question, does -- is this -- is this a  
3 photograph that was taken at or around the time of the  
4 date that's stamped on the picture?

5           THE COURT: I think that's a fair question  
6 that she's going to have to be able to answer yes or no  
7 and deal with what she says.

8           MR. ROBERTS: I would agree if he altered  
9 that slightly and said "as of the date I stamped on the  
10 picture," because he's trying to -- I just think he's  
11 misleading the witness.

12          THE COURT: If it's the date that it was  
13 posted and -- I mean, he could even represent that it's  
14 the date that it was posted. I don't think there's any  
15 dispute about that. So then he asks her if the picture  
16 was taken on or about that date and she's either going  
17 to say yes or no.

18          MR. ROBERTS: Well, we haven't gone back to  
19 verify the date, that that's a correct date.

20          THE COURT: I understand that. But --

21          MR. MAZZEO: They've had these trial exhibit  
22 binders way before trial started, so they knew that  
23 this issue was coming up.

24          THE COURT: Let's see what she says.

25          MR. MAZZEO: Okay. So even though I -- just



1 so that the trial can keep moving, I reserve my right  
2 to address this off the record, the additional  
3 photographs. So I only wanted to address one at that  
4 time. So when I passed the witness, I was reserving my  
5 right to question her about --

6 THE COURT: I will let you ask about them  
7 when you get back up there.

8 MR. MAZZEO: And that's all. Thank you,  
9 Judge.

10 MR. ROBERTS: And he can do that before I  
11 start my redirect. I'm fine with that. That way we  
12 don't have to do two redirects.

13 THE COURT: That's fine. Let's go off the  
14 record.

15 (Whereupon a short recess was taken.)

16 THE MARSHAL: All rise for the presence of  
17 the jury.

18 (The following proceedings were held in  
19 the presence of the jury.)

20 THE COURT: Go ahead and be seated. Welcome  
21 back, folks. We are back on the record, Case No.  
22 A637772. Do the parties stipulate to the presence of  
23 the jury?

24 MR. ROBERTS: Yes, Your Honor.

25 MR. MAZZEO: Yes, Judge.

1 MR. STRASSBURG: Yes, Judge.

2 THE COURT: Just be reminded, Ms. Garcia,  
3 you're still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: Go ahead, Mr. Strassburg.

6 MR. STRASSBURG: Thank you, Judge.

7 BY MR. STRASSBURG:

8 Q. Ms. Garcia, on August 15th, 2012, you went to  
9 see Dr. Kidwell; right?

10 A. I don't recall the --

11 Q. Sounds right? That was your first visit to  
12 him; right?

13 A. I don't know that.

14 Q. Would have been the summer of 2011?

15 THE COURT: You just said August of 2012 a  
16 minute ago.

17 MR. STRASSBURG: Boy, that was a mistake.  
18 Thanks for correcting me, Judge.

19 BY MR. STRASSBURG:

20 Q. Let me show you this. You started with  
21 Kidwell August 15th of 2012, just after you -- you  
22 decided not to see Dr. Lemper anymore.

23 A. Okay.

24 Q. Does that refresh your recollection as to the  
25 time frame involved?

1           A.     Somewhat.   So -- 'cause you just said 2011,  
2 and now you said 2012.   So was it --

3           Q.     Okay.   But, see, the first time I was wrong.  
4 I was really wrong.   Okay?   So erase that.   Okay?

5           A.     Okay.

6           Q.     And go back to 2012 because the judge was  
7 right.

8           A.     Okay.

9           Q.     Okay?

10          A.     Got it.

11          Q.     Got it?

12          A.     Yes.

13          Q.     Okay.   So Kidwell, August 15th, 2012.  
14 Recall?

15          A.     Okay.

16          Q.     Thank you.   And when you went to Kidwell, he  
17 had you fill out some documents.   Remember that?

18          A.     Yes.

19          Q.     And one of them was a patient registration  
20 form.   Recall that?

21          A.     Patient registration form?

22          Q.     Yeah.

23          A.     You mean when I first went to see him?

24          Q.     Yeah.

25          A.     Okay.

1 Q. Okay. And he -- the form asked you some  
2 questions. Recall that?

3 A. Yes.

4 Q. And one of the questions was about your  
5 social life. Remember?

6 A. (Witness nods head.)

7 Q. And you answered that you hardly had any  
8 social life because of the pain.

9 A. Correct.

10 Q. And let me direct your attention to  
11 Exhibit 26, which has been Bates-numbered GJL709.

12 Do you see that on the screen?

13 A. Yes.

14 Q. Okay. And that's the question that you  
15 answered, and you circled it along with some other  
16 ones; right?

17 A. Yeah.

18 Q. Okay. And you had five options to  
19 characterize how the pain affected your social life,  
20 and you picked the most severe impact on your social  
21 life, true?

22 A. Correct.

23 Q. And was that an accurate summary of your  
24 social life -- the impact on your social life from the  
25 pain before you went to see Lemper?

1 MR. ROBERTS: Objection. Form.

2 BY MR. STRASSBURG:

3 Q. I'm sorry. Kidwell.

4 A. Before I went to see Kidwell?

5 Q. Yeah.

6 A. Okay.

7 Q. So that was an accurate assessment of the  
8 impact on your social life from the pain between the  
9 time you started treating and the time you -- you came  
10 to Dr. Lemper's office. True?

11 A. Correct.

12 MR. ROBERTS: Objection to form.

13 THE COURT: I'm a little bit confused about  
14 what you're asking too. So maybe you can rephrase it  
15 again.

16 MR. STRASSBURG: All right.

17 BY MR. STRASSBURG:

18 Q. You characterized that the -- when you -- on  
19 August 15th, 2012, that the pain impacted your social  
20 life such that you hardly had any social life because  
21 of the pain; right?

22 A. Correct.

23 Q. And is that an accurate description pretty  
24 much of the impact on your social life that the pain  
25 had from the time you started treating just after the

1 accident until the time that you filled out this form  
2 on August 15th, 2012?

3 A. Yes.

4 Q. And is it an accurate description of the  
5 impact the pain's had on your social life pretty much  
6 ever since?

7 A. Yes.

8 Q. All right. Can you turn to Awerbach --  
9 Awerbach Exhibit C, Bates number -- let me get this --  
10 Bates No. 35?

11 Do you have that book in front of you, ma'am?

12 Let me see. Do you mind?

13 A. Go ahead.

14 Q. You need to be looking at his. Ah, okay.  
15 Let's see if you got the -- do you mind if I show this  
16 to you?

17 A. Go ahead.

18 Q. Okay. And do you see where the -- the pages  
19 are -- this is where the page number is.

20 A. Okay.

21 Q. So you can refer to it.

22 A. Okay.

23 Q. Can you see that?

24 A. Yeah.

25 Q. Okay. Let me direct your attention to this.

1           Can you identify Exhibit C, page 35, as a  
2 true and accurate depiction of a page from your  
3 Facebook site?

4           A.    Yeah.

5           Q.    And was this picture taken on or about the  
6 date that you posted it on July 18th, 2011?

7           A.    I -- I don't remember if it was taken around  
8 that date. I don't remember.

9           Q.    Would it be your practice, when -- when  
10 posting pictures on your Facebook site, to post a  
11 picture shortly after you take it?

12          A.    No. I have a lot of albums, and so -- and,  
13 by looking at that, my hair color is different than it  
14 had been. So this picture was posted from the -- from  
15 an album. So it wasn't something that was taken and  
16 posted on Facebook. It was something that, by the look  
17 of my hair color, was way before that.

18          Q.    How far -- how long before that?

19          A.    It could have been two or three years before  
20 that.

21          Q.    So it could have been -- you could have been  
22 posting -- for all you can remember, you could have  
23 been posting this picture that was taken actually  
24 before the accident -- you could have been posting  
25 afterwards?

1           A.     Correct.

2           Q.     Why would you be doing that?

3           A.     Because I opened my Facebook, I want to say,  
4 right around the year 2011. And I had a lot of  
5 pictures that I would post from my -- from my albums.

6                     And, like I said, my -- my hair hasn't been  
7 blonde like that, the streaks that you see in there,  
8 for a long time.

9           Q.     Okay. Fair enough. You would know; right?

10          A.     Yes.

11          Q.     All right. All right. Could you turn to  
12 page 72?

13          A.     Okay.

14          Q.     And let me just make sure we're -- we really  
15 are on the same page. Ah.

16                     Can you identify page 72 from Exhibit C as a  
17 true and correct copy of your Facebook page?

18          A.     Yeah.

19          Q.     And can you tell us whether the picture on  
20 this page was taken on or about the date of July 22nd,  
21 2011, when it was posted?

22          A.     Yeah.

23          Q.     All right. And does the picture -- is it an  
24 accurate depiction of the activity that you're  
25 performing that's shown in the picture?



1           A.    Yeah.

2           Q.    And can you identify what activity that is?

3           A.    I'm -- I'm in the parking lot in my car.

4           Q.    All right.  And do you -- can you identify  
5 the vehicle you're in?

6           A.    It's my Trailblazer.

7           Q.    Can you identify the parking lot you're in?

8           A.    Could be a store close to where I lived at  
9 the time.

10          Q.    And do you recollect whether you drove to the  
11 parking lot or whether you were taken?

12          A.    I drove.

13          Q.    Okay.

14               MR. STRASSBURG:  Judge, I request to admit  
15 72.

16               MR. ROBERTS:  Objection.  Hearsay all over  
17 the page.  Relevance also.

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

20               THE COURT:  All right.  I'll admit this page.  
21 So this is Exhibit -- Awerbach Exhibit C, page 72.

22                       (Whereupon, Defendant's Exhibit C was  
23                       admitted into evidence.)

24 BY MR. STRASSBURG:

25          Q.    Any blonde highlights visible in your hair in

1 this picture?

2 A. No. They're light brown.

3 Q. Okay. So if we put this picture in time, in  
4 2001, it indicates here that this photograph was taken  
5 during the period of time that you were seeing  
6 Dr. Lemper. True?

7 A. I'm sorry. Could you tell me the date again?

8 Q. Yeah. It's July -- let me make sure I'm  
9 right here. July 22, 2011.

10 A. Okay. So that would be --

11 Q. And at that time you were seeing Dr. Lemper,  
12 right, in July of 2011; true?

13 A. Yes.

14 Q. All right. And you had not yet had your  
15 first injection; true?

16 A. I don't recall.

17 Q. The first injection was August 30th of 2011?

18 A. It could have been.

19 Q. So this picture, then, would have been taken  
20 two weeks before your first injection by Dr. Lemper;  
21 true?

22 A. True.

23 Q. All right. Thirty-three. All right. Do you  
24 have that in front of you?

25 And let me just check to make sure we're on

1 the same page 33. Perfect. Thank you.

2 Can you identify page 33, Exhibit C, true and  
3 correct copy of your Facebook page?

4 A. Yeah.

5 Q. Was this picture taken on or about the date  
6 posted of December 2, 2011?

7 A. I don't remember.

8 Q. All right. Let me show you -- I'm going to  
9 have to shut this off. All right. Let me show you and  
10 the judge.

11 Do you remember answering interrogatories  
12 about this picture?

13 A. Do I remember what? I'm sorry.

14 Q. Do you remember your lawyer showing you  
15 interrogatories that my office sent to you about this  
16 picture?

17 A. Yeah.

18 Q. Okay. And let me just see if I can show  
19 you -- all right.

20 Do you see -- with respect to Emilia 7, you  
21 were asked to identify when it was taken, and you said  
22 December 2, 2011.

23 Do you see that?

24 MR. ROBERTS: Objection to form.

25 Mischaracterizes the evidence.

1           THE COURT: I don't know if it does. Do you  
2 have the document?

3           MR. STRASSBURG: Okay. Well, let me do it  
4 this way. Let me show you the page of the answer that  
5 she gave. I'll blow it up a little.

6 BY MR. STRASSBURG:

7           Q. And do you see that Emilia 67, you answer  
8 approximately December 2, 2011, and that was JAROGG13.  
9 That was the document you were talking about.

10           Do you recollect?

11           MR. ROBERTS: Objection. Incomplete.

12           He's not showing her the title at the top,  
13 which shows what the answer's answering, at the top of  
14 the column.

15           MR. STRASSBURG: Okay.

16           THE COURT: Okay. I'm not seeing it either.

17 BY MR. STRASSBURG:

18           Q. It's on the previous page, which I can show  
19 you. There you go. Does that help?

20           A. Yeah.

21           Q. Okay. And then let me just show you 11 --  
22 13 -- let me just show you that document, 13.

23           Do you see that?

24           A. Yeah.

25           Q. All right. Does that refresh your