

*In the*  
**Supreme Court**  
*for the*  
**State of Nevada**

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WYNN LAS VEGAS, LLC d/b/a WYNN LAS VEGAS,  
*Appellant and Cross-Respondent,*

v.

YVONNE O'CONNELL,

*Respondent and Cross-Appellant.*

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*Appeal from Judgment on Jury Verdict,  
Eighth Judicial District Court, State of Nevada in and for the County of Clark  
District Court Case No. A-12-671221-C · Honorable Jennifer P. Togliatti*

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**APPELLANT'S APPENDIX**  
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1 THE COURT: And it's based only on her -- so, if she  
2 lied to you about whether she was symptomatic before, then of  
3 course if you knew that, that would change your opinion. So,  
4 it's really based upon how credible the patient is, because  
5 you -- you have no way of knowing?

6 THE WITNESS: That's correct.

7 THE COURT: And you know that degenerative disc  
8 disease doesn't -- doesn't happen -- I mean, she had this  
9 degenerative disc disease; she's just saying that she was fine  
10 until this happened?

11 THE WITNESS: Correct.

12 THE COURT: Okay.

13 THE WITNESS: We all do at 58.

14 THE COURT: All right.

15 BY MR. SEMENZA:

16 Q But what I want to understand is she had the  
17 condition prior to February 8th, 2010, but your issue is she  
18 was asymptomatic until that fall; is that what you're  
19 basically saying?

20 THE COURT: By history. That's what you're saying,  
21 by history?

22 THE WITNESS: That is my understanding, yes. I  
23 mean, this action occurred with this patient when she was 58  
24 years of age. That's the sixth decade of life. We all  
25 unfortunately deteriorate with time, and that deterioration is

1 what we refer to as degeneration in the medical -- in the  
2 musculoskeletal system, or arthritis is another synonym.

3           It is not significantly symptomatic in most  
4 patients, and so just the presence of radiographic  
5 abnormalities is not necessarily clinically relevant. We  
6 really have to see and talk to the patient. And there will be  
7 many times where I see some horrible MRIs and radiographs, and  
8 talk to the patient, and they're going, really, I don't have  
9 that much pain. I did six weeks ago when I got these studies,  
10 but I'm actually doing fine. So, we don't operate on x-rays,  
11 we operate on people. And I can see normal looking -- well,  
12 relatively normal looking films in which patients are very  
13 symptomatic.

14           So, it's all part of the diagnostic jigsaw puzzle,  
15 but causation comes by talking to the patient and getting a  
16 history. So, the radiographic findings that I see here, which  
17 really didn't change much in the years between the two studies  
18 that I ordered, are simply reflective of her condition that  
19 existed prior to this accident. Whether it was symptomatic or  
20 not, we have to turn to the patient for that information,  
21 unless there's medical records which I didn't review.

22           MR. SEMENZA: Okay.

23 BY MR. SEMENZA:

24           Q I just want to be clear though in my understanding  
25 that the condition that Ms. O'Connell had that you've

1 identified in your medical records, the degenerative disc  
2 disease, preexisted February 8th of 2010; is that correct?

3 A I would answer it this way. The radiographic  
4 findings that I see on these films more likely than not  
5 existed the day before she was injured, yes.

6 Q Okay. And your causation analysis is based upon the  
7 symptomology and the expression of pain that Ms. O'Connell has  
8 indicated to you during your appointments?

9 A Yes, that's the history of the patient.

10 Q And you had testified earlier that fibromyalgia  
11 might in fact impact that expression of pain that Ms.  
12 O'Connell was having?

13 A Yes, it can. I mean, they're distinct issues from  
14 discogenic pain to fibromyalgia, but patients with chronic  
15 fibromyalgia will have pain issues that can affect the whole  
16 person. I'm not just saying that -- I've -- I mean, I have  
17 treated patients that have fibromyalgia, and have neck and  
18 back injuries, and they're distinct and different, but it  
19 complicates the issue.

20 I think the important thing that I've expressed to  
21 this patient is, even with surgery, she will continue to have  
22 pain. The issue is, if we take 50 percent or 60 percent of  
23 that pain away, is that sufficient and satisfactory to improve  
24 her quality of life. And many patients who are appropriately  
25 set up to the surgery are at a wits end where they would

1 welcome a 50 percent improvement, but it's not curative in  
2 which we're going to say you're going to be pain free, and  
3 part of that reason could be also her fibromyalgia --

4 Q Okay.

5 A -- if she indeed has it.

6 Q Do you know what percentage of her pain might be  
7 attributable to fibromyalgia, if she has it, versus the  
8 degenerative back issues that she has?

9 A I think with her back, it can be confusing, and I  
10 would want further diagnostic studies to help sort that out.  
11 As far as her neck's concerned, I don't believe the  
12 fibromyalgia confuses that picture, in my opinion.

13 Q But the lumbar, it could?

14 A Yes.

15 Q Just a couple quick follow ups to move on.

16 THE COURT: Okay. Well, I mean, I think you need to  
17 do this on cross.

18 MR. SEMENZA: Okay.

19 THE COURT: Because I'm not seeing that there's  
20 something that he can't testify to that he has here. I mean,  
21 your argument is, well, it's not enough for a doctor to rely  
22 on the patient -- the patient history, but the bottom line is,  
23 they do rely on the patient history.

24 And if you want to get the doctor to explain how it  
25 can be affected if she has other issues, psychological issues,

1 other things like that, then that's part of cross-examination,  
2 to get him to explain to the jury, if he didn't know about  
3 these things, it might change his opinion, et cetera. But I  
4 don't see that it's going to prevent him from testifying, from  
5 what I've heard today. I mean, there's just --

6 MR. SEMENZA: And further --

7 THE COURT: I disagree with your -- your brief is,  
8 well, no doctor should be able to testify based upon the  
9 patient history, but the cases that you cited are -- are  
10 different, you know, where there was a lot of medical records  
11 that were available to the doctor, and we don't have that in  
12 this case. In other words, we have --

13 MR. SEMENZA: But there were -- there were a lot of  
14 medical records that were potentially available to this  
15 particular doctor.

16 THE COURT: Do you have them?

17 MR. SEMENZA: I mean, her entire history, as far as  
18 the fibromyalgia, as far as seeing pain doctors, as far as all  
19 of those sorts of things, I mean, those documents exist and  
20 have been produced in this case. Whether they're used at  
21 trial, I don't know. But that's the issue I've got, is  
22 there's this whole cornucopia of other stuff out there that  
23 obviously Dr. Dunn has not had an opportunity to review.

24 And he testified that his entire basis for the  
25 conclusion of causation was based upon what the plaintiff was

1 telling him. That in and of itself I don't believe is  
2 sufficient to link the causation in this particular case. He  
3 was told X; it may or may not be true. Again, that's coming  
4 from the plaintiff herself.

5 And what he did say is that there are essentially  
6 objective findings that she had the physical condition prior  
7 to the fall. And so, it's a function of symptomology, again,  
8 which is even further back, which is subjective in nature as  
9 far as what she's experiencing and what she isn't. And so, I  
10 don't think it's appropriate that doctors --

11 THE COURT: Pain -- but reports of pain are always  
12 subjective. They're -- you can't visualize pain.

13 MR. SEMENZA: Exactly. So --

14 THE COURT: All right, so but doctors have to --

15 MR. SEMENZA: So, that's the point.

16 THE COURT: Doctors do rely on reports. And if you  
17 can show him other things, that's cross-examination. I mean,  
18 if he wasn't given the proper tools to come up with a proper  
19 causal diagnosis of her, you can show that, then do that, but  
20 I don't think at this point he is kept from testifying.

21 MR. SEMENZA: But that's -- and Your Honor, I  
22 understand your position on --

23 THE COURT: Okay, I've ruled. Let's go. Get this  
24 jury back in here. What's your schedule look like for the  
25 rest of the week?



1 THE WITNESS: Well, tomorrow, I'm in surgery, but  
2 any other day of the week, I'm open.

3 MR. SEMENZA: And I can tell you I'm not going to be  
4 done, Your Honor.

5 THE COURT: Well, okay, but he can come back  
6 Thursday, he just told me.

7 MR. SEMENZA: Okay.

8 THE WITNESS: Or Wednesday. Whatever's easy.

9 THE COURT: Wednesday the --

10 THE WITNESS: But Tuesday is --

11 THE COURT: -- the courthouse is closed --

12 THE WITNESS: Oh, okay.

13 THE COURT: -- because of Veteran's Day.

14 THE WITNESS: No problem.

15 THE COURT: We can only go until 6:00.

16 THE MARSHAL: All rise for the jury, please.

17 (In the presence of the jury)

18 THE MARSHAL: Jury's all present, Your Honor.

19 THE COURT: Please be seated. And we have called  
20 Dr. Thomas Dunn, who has already taken the stand. I'm going  
21 to have the clerk swear you in again.

22 THE CLERK: Doctor, can you please stand again?

23 THE WITNESS: Oh, yes.

24 //

25 //

1 THOMAS DUNN, PLAINTIFF'S WITNESS, RESWORN

2 THE CLERK: Thank you. Would you please state your  
3 name for the record?

4 THE WITNESS: Thomas --

5 THE CLERK: Please be seated.

6 THE WITNESS: Thomas Dunn.

7 THE COURT: Thank you. Proceed.

8 DIRECT EXAMINATION

9 BY MS. MORRIS:

10 Q Dr. Dunn, can you tell us where you currently work?

11 A I am a partner with Desert Orthopedic Center, and  
12 been here since 1995 with that group.

13 Q Tell us, what do you do for work?

14 A I am a board certified orthopedic spine surgeon,  
15 which means I limit my care and treatment of patients with  
16 neck and back problems.

17 Q Do you have a certain specialty?

18 A Yes. Again, that speciality is orthopedic surgery,  
19 and orthopedic surgery is the surgical disorders of the  
20 musculoskeletal system, so injuries to the joints and the  
21 bones of the body from the neck to the toes. But it -- there  
22 are many sub-specialties of orthopedics. For instance, in my  
23 group, there are 22 orthopedic surgeons, and we all have our  
24 sub-specialities. I'm the senior spine surgeon. There are  
25 four spine surgeons. Hand surgeons, sports medicine

1 specialists, total joint specialists. So, my specialty would  
2 be spine.

3 Q How long have you worked at Desert Orthopedic?

4 A I came to Las Vegas from San Diego in 1995 at their  
5 invitation, and they've been here since 1969.

6 Q Thank you. Do you have any privileges at any  
7 hospitals in the Las Vegas area?

8 A Over the years, I've been at most of the hospitals,  
9 but as I -- at this stage in my career, I limit my practice to  
10 either Spring Valley Hospital or Southern Hills Hospital, and  
11 also, I'll go to Valley Hospital.

12 Q Can you give us a little background about your  
13 education?

14 A Sure. I went to undergraduate studies college at  
15 the University of California, San Diego, and received a degree  
16 in biology, which is a typical pre-med major, and I was  
17 accepted into the University of California, Irvine Medical  
18 School, and graduated in 1985 with a medical doctor degree.

19 Upon receiving that degree, one then does an  
20 internship and a residency. I did two years of general  
21 surgery, and then was accepted into the orthopedic surgery  
22 program at the University of California, Irvine. The medical  
23 center is actually in Anaheim or Orange.

24 And then I did -- after four years of orthopedic  
25 surgery, that's the completion of the residency, I then did an

1 extra year of sub-specialty surgery training in spine, and  
2 that's called a fellowship year, and that was done at Rancho  
3 Los Amigos Hospital in Downey, California, and that completed  
4 my formal training.

5 And then there was board certification, which  
6 requires both a written and an oral exam, which I passed. And  
7 then, every ten years, we take a written examination for  
8 re-certification, and I've done that twice successfully when  
9 required.

10 Q What kind of training do you need to become board  
11 certified?

12 A Board certified, you have to complete an accredited  
13 residency program in this country, and then one has to take a  
14 written examination upon completion of that residency  
15 training. And then, after two years of clinical practice, one  
16 is then eligible to sit for the oral board examinations. All  
17 of this takes place in Chicago. And then, upon passing both  
18 of those tests, you're then board certified.

19 Q Have you ever testified in court as an expert in the  
20 field of orthopedic medicine?

21 A Yes.

22 Q How many times?

23 A I'll say roughly 20 times.

24 MS. MORRIS: Your Honor, I ask that Dr. Dunn be  
25 qualified as an expert in the field of orthopedic medicine.

1 THE COURT: The Court doesn't qualify experts. The  
2 Court just rules on whether they'll be allowed to testify.  
3 But you haven't asked him any -- his opinions, and there's  
4 been no objection, so that's how it works.

5 BY MS. MORRIS:

6 Q Dr. Dunn, can you tell us how you came to treat  
7 Yvonne O'Connell?

8 A Yvonne O'Connell was referred to me by Dr. Andrew  
9 Cash on June 16, 2014.

10 Q And what was the reason that Yvonne came to see you?

11 A I was evaluating her for neck and low back pain.

12 Q And when's the first date you saw Yvonne?

13 A That was June 16, 2014.

14 Q And at that time, did you have any imaging studies  
15 of Yvonne O'Connell?

16 A Yes. I had MRIs that were taken in 2010 of both her  
17 neck and lumbar spine, and we also -- we -- my office also  
18 took radiographs, x-rays of her neck and low back.

19 Q Can you tell me how the x-rays of her neck and low  
20 back were done?

21 A We have x-ray machines, radiograph machines in the  
22 office, and we have three, soon to have four offices in town,  
23 and we all have x-rays. So, the patient will just go in the  
24 x-ray suite with a tech, and then they will take x-rays of the  
25 neck while she's standing; a front view, side view, a flexion

1 extension view from the side of both her neck and back.

2 Q Why did you order those studies be done?

3 A Those are important diagnostic studies. Radiographs  
4 allow me to see the condition of the joints and the bones in  
5 her neck and back, and provide additional diagnostic  
6 information.

7 Q During that first visit with Yvonne, did she tell  
8 you the reason why she was having pain?

9 A She related that her neck and low back pain began  
10 with a slip and fall injury on February 8th, 2010.

11 Q Did you receive any history as to what treatment she  
12 had received prior to coming to you?

13 A She states that, two days later, she went to UMC  
14 Quick Care. She had a primary care physician, she'd seen a  
15 neurologist, a spine surgeon, a pain management physician, and  
16 she had previously had x-rays, a CAT scan, and MRI studies.

17 Q Did she tell you about any conservative care that  
18 she'd undergone?

19 A I'm sure she did, but I didn't list it here.

20 Q During that first visit with Yvonne, had you  
21 reviewed her prior imaging before seeing the patient?

22 A No. Typically, I'll just look at the films with the  
23 patient and review it with them.

24 Q When's the next time you saw Yvonne?

25 A Well, at that visit, I had recommended updated MRI

1 studies, since it had been four years since she had had the  
2 original studies. And she obtained those studies and returned  
3 to see me approximately a month later on July 14, 2014.

4 Q When Yvonne came and saw you on that first visit,  
5 did she tell you specifically what was hurting?

6 A Well, principally, it was her neck, but it was low  
7 back and neck, and she had radiating symptoms into her  
8 extremities; numbness, and tingling, and pain.

9 Q Tell me about that second visit you had with Yvonne.

10 A At that point, I reviewed the MRIs with her. Her  
11 symptoms persisted, which isn't surprising, since they have  
12 been going on, according to her, since 2010. And again, I  
13 just reviewed the MRIs, and in my opinion, there were no  
14 significant changes.

15 Q What did you see in her cervical MRI?

16 A Again, I saw changes that we would typically see in  
17 a patient of her age. At this time, we are now at a woman  
18 who's in her seventh decade of age, early 60s, and she had  
19 some typical changes of degenerative -- of degeneration. That  
20 would involve her discs, her facet joints, and she had a  
21 component of neural foraminal stenosis in her mid-lower neck.

22 The foramen represents the hole through which the  
23 nerve travels to go to the upper extremities, and we commonly  
24 see a tightness about that anatomy or that foramen, which in  
25 Latin means doorway. So, it gets a little tight, and that may

1 give patients some of these upper extremity symptoms that she  
2 was having. And the lumbar spine, nothing there that I  
3 thought was significant other than some mild neural foraminal  
4 stenosis at one level in her back.

5 Q During that second visit on July 14th, you reviewed  
6 the MRIs, you said; is that correct?

7 A Yes.

8 Q And did anything else occur on that visit?

9 A I examined the patient, and I let her know that  
10 there was -- the main -- I would say the most important  
11 information that is obtained from the MRI is to make sure that  
12 there's nothing dangerous. Sometimes we'll find a tumor, a  
13 cancer that we didn't expect, an infection, something that  
14 poses a threat to neurologic status, and I really didn't see  
15 that, so the most important information says, hey, let's  
16 celebrate, there's nothing dangerous.

17 Therefore, this is about your pain. If you can live  
18 with your pain, so be it. If not, we'll look at other  
19 options. I suggested she try fish oil. Fish oil at 4,000  
20 milligrams a day can serve as a great anti-inflammatory agent.  
21 And I instructed her at that time then with that information,  
22 just come back as needed.

23 Q Did you see Yvonne again?

24 A I saw her one last time. Her third visit was on  
25 October 13, 2014, where she was expressing increasing



1 difficulty enduring symptoms, principally of her neck pain,  
2 and she wanted to discuss options of surgery. So, I discussed  
3 that with her and told her, hey, there's nothing dangerous.  
4 If you can live with this, live with it. If not, then you  
5 have the option of surgery as your last resort, and instructed  
6 her to return if that was her choice.

7 Q What did you recommend for surgery?

8 A For her, to help improve her neck pain and to  
9 improve the symptoms into her arms to open up that foramen or  
10 hole. The typical procedure is an anterior, a little incision  
11 through the neck, and we would remove three discs, we would  
12 open up that space, and fuse it in that proper position. So,  
13 that's titled an anterior cervical neck discectomy; removing  
14 the disc, and interbody fusion with placement of a plate and  
15 screws. The quarterback for the Denver Broncos, Peyton  
16 Manning, had that surgery.

17 Q Now, you said that it would -- that type of surgery  
18 would help her neck pain; is that correct?

19 A Yes. It's not curative for her problem, but it can  
20 take 50 to 60 percent of the pain away. And for people who  
21 are having a significant problem dealing with that pain, and  
22 it's affecting their quality of life, then it's an option they  
23 can choose.

24 Q Is there physical therapy required after a surgery  
25 such as the three-level fusion?

1           A     It's -- it varies from individual to individual, but  
2 typically, anywhere from a month to two months of therapy can  
3 be ordered.

4           Q     Where would that surgery be conducted? Would it be  
5 in your surgery center; in a hospital?

6           A     A three-level would be in a hospital.

7           Q     Now, did you discuss with Yvonne her lumbar spine on  
8 that last visit?

9           A     Well, yes. Basically, again, I'm the surgeon. I  
10 didn't feel that there was any surgical treatment for her low  
11 back, so you basically do your best to live with it.

12          Q     When Yvonne came to see you, did she report any  
13 preexisting medical conditions to you?

14          A     She noted that she had a history of depression.

15          Q     Does that have any significance to you?

16          A     Well, certainly, it can. Psychological issues like  
17 depression can affect one's perception of pain, and can affect  
18 one's result from surgery or outcome of surgery. So,  
19 typically, if I see that, it's not necessarily unusual, but I  
20 may require a psychological evaluation and clearance prior to  
21 surgery.

22          Q     Did you come to an opinion as to the cause of  
23 Yvonne's need for the three-level fusion?

24          A     Well, I think, as I share with every patient who  
25 comes to see me on their initial visit, as I did today, on

1 many occasions, that there are three things the patients want  
2 to know when they see a specialist, or any physician, for that  
3 matter.

4           You want to know the cause of your symptoms; that's  
5 the diagnosis. We want to make sure that that particular  
6 problem is not dangerous, as it involves your neurologic  
7 system or life, and then we want to discuss treatment options.  
8 So, those are the three things we cover. So, establishing the  
9 cause of her symptoms is an important part of her visit. Was  
10 that your question, or?

11           Q     Yeah. Did you come to a determination as to the  
12 cause of Yvonne's need to have the three-level fusion?

13           A     Well, the need is based on a number of factors. Her  
14 complaints, number one. Establishing that there was nothing  
15 dangerous. In other words, I didn't believe that there was  
16 any threat to her neurologic status, so again, this becomes an  
17 elective option at her choosing; an option of last resort.  
18 And then the radiographic findings and physical exam findings.  
19 So, all of those lead me to my recommendation of surgery being  
20 an option for her. And based on her history, she said it  
21 began with this slip and fall accident, so that's how I would  
22 relate it to the accident.

23           Q     So, is it your opinion to a reasonable degree of  
24 medical probability that she's in need of this three-level  
25 cervical fusion due to the fall that she had on February 8th,

1 2010?

2 MR. SEMENZA: Objection, Your Honor.

3 THE COURT: State your legal grounds.

4 MR. SEMENZA: That I don't think he can provide that  
5 opinion to a reasonable degree of medical certainty.

6 THE COURT: Well, it's an opinion to a reasonable  
7 degree of medical probability, but I guess it more seems like  
8 you skipped -- you skipped a step. I mean --

9 MR. SEMENZA: May we approach, Your Honor?

10 THE COURT: Yeah.

11 (Off-record bench conference)

12 THE COURT: I'm going to sustain the objection and  
13 let you clarify.

14 BY MS. MORRIS:

15 Q Dr. Dunn, we're going to back up a little bit. The  
16 findings in Yvonne O'Connell's MRI, those are degenerative, is  
17 that correct, in her cervical and lumbar spine?

18 A That's correct.

19 Q And can you describe to us what degenerative means?

20 A Degenerative is what you see before you -- as we  
21 age, things wear out. In the musculoskeletal system, we call  
22 it arthritis or degenerative disc disease. There are changes  
23 in our spine, just like we can have in the rest of the -- the  
24 other joints of our body.

25 //

1           The clinical relevance of those changes though is  
2 based on your symptomatology as a patient, because we all  
3 develop degenerative changes, typically by our third and  
4 fourth decade of life. And as we age, we can develop a lot of  
5 degenerative changes, but we don't see significant symptoms in  
6 the majority of people with degenerative arthritis. And  
7 remember, there are different types of arthritis. I'm just  
8 talking about the typical wear and tear that we all get.

9           And what I mean by relevant, I mean enough symptoms  
10 where you're going to see a doctor and get treatment. Most  
11 people can take some Advil, over the counter medications, and  
12 they feel fine and they can live with it. So, an x-ray that  
13 shows degenerative changes in a 58-year-old -- 62-year-old  
14 patient is not necessarily relevant. In other words, I can  
15 see a lot of, quote, "abnormalities," but until I speak to the  
16 patient, get a thorough history, and do an examination, many  
17 of those changes may be irrelevant and don't require  
18 treatment.

19           And on the other side of the coin, I can see x-rays  
20 and MRIs that are fairly normal looking without much  
21 degeneration, and yet patients can have severe pain. And  
22 through further diagnostic evaluation, we find the source of  
23 that pain that may merit surgical treatment.

24           So, in Ms. O'Connell's case, at the time that I  
25 evaluated her, she was 62 years of age and she had radiographs

1 taken after her accident in 2010 that showed typical changes  
2 that I would see in a 58-year-old patient. So, the main  
3 changes that we look for are fractures, disc herniations,  
4 tumors, infection, but I know from doing this for many years  
5 that we can see normal changes on MRI and x-rays that don't  
6 reflect the injury.

7           So, I think the films that we saw here demonstrated  
8 changes that I can attribute to her pain, and yes, those  
9 changes were there before she slipped and fell. But her  
10 history is that when she slipped and fell, that was when this  
11 pain began. And understanding that the mechanism is one of a  
12 slip and fall in a 58-year-old, that is not unusual, because  
13 we are more frail at 58 than we are at 48, or 38, or 28, and  
14 that fall is perilous in the sense that we can sustain  
15 injuries to the musculoskeletal system that become chronic.

16           So, the degeneration that I see in her, I would see  
17 in everybody that's 58, but all that tells me as an orthopedic  
18 specialist is she is more frail because of those changes, and  
19 a slip and fall can result in changes that we can't always  
20 measure on radiographic films, so her history is critical.

21           Q     So, the history is critical because that's when she  
22 reported she started feeling pain; is that correct?

23           A     Well, I -- well, at the time that I'm seeing her,  
24 she has chronic pain. And I define chronic -- and the  
25 textbooks define it as at least three months; I define it as

1 six months. So, at 2014 when I saw her, she states that she's  
2 had chronic pain that dates back to 2010, and her history is  
3 that she had this slip and fall, and that's the reasonable  
4 mechanism of injury that can cause a previously asymptomatic  
5 condition, degeneration, to become symptomatic.

6 Q Now, in your treatment of Yvonne, did you notice --  
7 or did you see any indication of Yvonne malingering or having  
8 issues of secondary gain to you?

9 A No.

10 Q Do you know what malingering means?

11 A Yes.

12 Q Can you tell us?

13 A Malingering is a form of what we call secondary  
14 gain. In medicine, primary gain is the motive that, hey, I  
15 have a problem medically, and I want to be cured or I want to  
16 be treated for that condition, so the gain is to become cured  
17 or have clinical improvement of the condition. Secondary gain  
18 means that, I basically -- this issue of wanting to get better  
19 is affected by a motive outside of getting better. I want to  
20 get out of work, for instance. That's malingering. Or --

21 MR. SEMENZA: I'm sorry, I'd like to object. I  
22 think this is outside the scope of his treating of Ms.  
23 O'Connell.

24 THE COURT: All right, that's sustained. There's  
25 been -- there's nothing that addresses it in his medical

1 records, and it was not his -- his testimony has been limited  
2 previously to his chart. That was the disclosure. So, the  
3 jury will disregard the testimony concerning malingerer.

4 MS. MORRIS: Let me lay a little foundation.

5 BY MS. MORRIS:

6 Q Do you look for those symptoms when you treat  
7 patients?

8 A Yes.

9 Q And if you do note that, would you put it in your  
10 medical record?

11 A Yes.

12 Q And did you note anything like that in Yvonne's  
13 medical record?

14 A No.

15 Q Do you in your treatment of patients ever perform  
16 the Waddell factors?

17 A Yes.

18 Q What is that?

19 A Well, the Waddell factors -- one has to be very  
20 careful. I think it's used by too many doctors, and it should  
21 only be limited to surgeons. And Waddell signs -- the word  
22 "Waddell" is named after --

23 MR. SEMENZA: I'm going to object again, Your Honor.  
24 I think he's going far field of his medical chart in this  
25 particular case.



1 THE COURT: Well, I think -- did you do that -- you  
2 did that test?

3 THE WITNESS: Yes, we do it routinely.

4 THE COURT: Okay. So, he did the test and that's in  
5 the chart, so he can explain it to the jury.

6 THE WITNESS: It's -- Gordon Waddell was a Scottish  
7 orthopedic surgeon who wrote a paper in 1980 that described  
8 these tests that may help surgeons delineate organic sources  
9 of pain. Say, a person comes in and says they have arm pain.  
10 An organic source would be a fracture, or a contusion, a  
11 problem with that arm, referred pain from a pinched nerve,  
12 versus say a psychological issue that may be affecting that  
13 patient's cause of pain.

14 And so, he developed these certain tests. There's  
15 five different tests you do that can be done within a minute,  
16 and that may give the surgeon some idea that there may be a  
17 psychological contribution to the pain. It doesn't exclude  
18 the patient could have that fracture or contusion; it just  
19 gives the surgeon information to help them better treat this  
20 patient.

21 I think too often that is used erroneously to  
22 implicate a patient is not being forthright or honest, and  
23 that's the improper use of that test.

24 BY MS. MORRIS:

25 Q Why do you think it should be limited to orthopedic

1 surgeons?

2       A     Because the information is predominantly for us  
3 offering the patient a surgery that potentially has a major  
4 complication and may affect the outcome of that surgery, and  
5 we want to optimize the patient's success, and psychological  
6 factors can affect that success.

7             So, if we have those tests that may suggest that may  
8 be a complicating factor, we would then send the patient for  
9 preoperative psychological clearance. And we don't do that  
10 for every patient, but those type of tests help the surgeon  
11 make that determination.

12       Q     How do you perform a Waddell test?

13       A     Well, it's just part of the physical examination,  
14 and there's five different categories, one of them -- and  
15 again, distraction. In other words, I may ask the patient to  
16 lay on the table and raise their leg, and they may say, I  
17 really can't do it. But if I distract them by examining  
18 something else and then have them raise the other leg, they  
19 may raise it so I can observe that and say, hey, the patient  
20 really can raise it when they're distracted, as opposed to  
21 when they're told to do that.

22             Patients who may have symptoms that aren't  
23 necessarily -- I forget the category, but numbness and  
24 tingling, paresthesias, or deficits that cannot be explained  
25 by what we see on radiographic findings, and sometimes, those

1 symptoms then indicate that their sensory examination is off,  
2 and that might be a positive Waddell sign. But there are so  
3 many disorders that give those type of findings, other than  
4 like say a pinched nerve. Inflammation of a nerve can give to  
5 those patients. So that's why the Waddell signs are now --  
6 have been refuted.

7           There are tests where we can do physical findings  
8 that shouldn't create a particular sign. For instance,  
9 pushing down on the head shouldn't necessarily cause back  
10 pain, but we know that it can, but that could be a potential  
11 Waddell sign. Like, if I push down on your head, it shouldn't  
12 cause low back pain. If you say it causes low back pain, that  
13 potentially could be a positive Waddell sign. And I think  
14 there's -- there's five total, but that kind of summarizes.

15           And basically, it's not going black or white. It's  
16 me examining, establishing a rapport with a patient, speaking  
17 with a patient, understanding that there's trust, do I believe  
18 this patient is being forthright, and part of that exam may  
19 help me with that assessment.

20           Q     And in this case, did you perform the Waddell  
21 signs --

22           A     It's part of my evaluation of every patient, and I  
23 would only note it if I felt that the patient had  
24 psychological factors that would affect my diagnosis and  
25 treatment.

1           Q     Is it possible to perform the Waddell sign test  
2 without ever touching the patient?

3           A     No, you have to touch the patient. It's part of the  
4 physical examination.

5           Q     In your treatment of Yvonne, did you ever diagnose  
6 her with symptom magnification disorder?

7           A     No.

8           Q     What is that?

9           MR. SEMENZA: Objection, Your Honor.

10          THE COURT: Over -- I mean, sustained. He didn't  
11 diagnose her with it, so it's not relevant.

12          MS. MORRIS: Let me back up.

13 BY MS. MORRIS:

14          Q     Is that something that you look for when you see a  
15 patient?

16          A     Well, I think a lot of those things that we use  
17 loosely like symptom magnification can be interpreted a  
18 different way. So, what you're asking me, is a patient saying  
19 they hurt when they really don't hurt, or are they magnifying  
20 their symptoms, you just barely touch them and they're  
21 jumping, the interpretation of that has to be very careful and  
22 can be prejudicial against patients who have a very low pain  
23 tolerance, for example. And everyone has a different pain  
24 tolerance, and I see it in all my patients from all walks of  
25 life.

1           And -- and so, I don't know about a syndrome or a  
2 disorder. It's not. It can be interpreted as a potential  
3 psychological problem, or it could be potentially a patient  
4 who is feigning illness; faking.

5           Q     In this case, do you recall what Yvonne told you her  
6 pain levels were in her neck?

7           A     Well, again, my recollection is only my medical  
8 record. And depending on what day -- for instance, the first  
9 day that I saw her, she said her pain -- on a zero to ten  
10 scale, zero being no pain and ten being the worst, her pain on  
11 that day was a nine, but at times it will be down to a two out  
12 of ten, and at worst, it can be a ten, but she feels her  
13 average is somewhere around an eight.

14          Q     So, she described varying levels of pain to you --

15          A     Yes.

16          Q     -- would that be fair?

17          A     Yes.

18          Q     Do you have concerns when a patient comes to you and  
19 they claim a pain scale of a ten?

20               MR. SEMENZA: Objection, Your Honor. Again, I think  
21 this goes outside the scope of the chart.

22               THE COURT: I'm sorry, state the question again.

23 BY MS. MORRIS:

24          Q     Do you have concerns when a patient comes to you and  
25 they report a pain scale of a ten, such as was indicated in

1 Yvonne's chart?

2 THE COURT: All right, I'll allow that. Overruled.

3 THE WITNESS: No, because it's so common, and I'm  
4 not a big fan of the numeric pain scale. I mean, even myself  
5 with injuries, I find it hard to put a number on it, and  
6 patients sometimes become fearful that they're not taken  
7 seriously unless they give a high number.

8 So, I prefer mild, moderate, and severe. I don't  
9 like the number scale so much. But it's so common that  
10 patients come in and say they have a ten out of ten pain that,  
11 often, it's not realistic, so I don't -- it doesn't concern  
12 me. It's the patient's interpretation of that pain and how it  
13 affects their quality of life that's important to me.

14 Q Did she tell you the pain that she was feeling in  
15 her spine -- her lumbar spine?

16 A Yeah, she complained of ongoing severe back pain,  
17 but again, after reviewing her MRIs and studies, I'm the  
18 surgeon; I informed her that there's nothing I can do for her  
19 regarding her low back.

20 And remember, I'm seeing her four years after this  
21 began, so sending her to physical therapy, or chiropractic, or  
22 injections, and all these other things are not going to  
23 substantially correct anything. Not that she can't do those  
24 things to help control the pain, but it would simply be  
25 palliative in alleviating some of the pain, but it's not going

1 to correct the underlying problem. So, at this point, she's  
2 pretty much seeing the last resort; that's me as the surgeon.

3 Q And you didn't recommend that she have surgery to  
4 her lumbar spine; is that correct?

5 A That's correct, no.

6 Q Why not?

7 A Because I don't believe that there was any  
8 indications for surgery there that would correct her problem.  
9 In fact, it would probably make her worse.

10 Q What indications do you see in her cervical spine  
11 that lead you to recommend surgery?

12 A Well, the quality and severity of her neck pain is  
13 commonly what I see with patients who have a frail spine that  
14 have the degeneration that she does, and also has the degree  
15 of foraminal stenosis, and that has symptoms.

16 So, I think her quality of symptoms is very  
17 consistent with the problems I see in the lower three discs in  
18 her neck. And having done this for 23 years in private  
19 practice and having good success with it, I think that I could  
20 get her to an appropriate, acceptable success, and that would  
21 be defined as taking 50 percent of her neck pain away and  
22 preventing any progression of her upper extremity symptoms.

23 Q Where do you get that approximation that it will  
24 alleviate her pain approximately 50 percent?

25 A Well, through my own experience of treating these

1 kind of conditions over 23 years in private practice. So, I  
2 mean, if I told everyone I could make them 90 percent better,  
3 there would be a line from here to Tijuana, but that's not  
4 realistic.

5           So, we have to realize that there's surgery for two  
6 purposes in the spine. There are the neural compressive  
7 lesions where you have a pinched nerve, and that creates  
8 severe pain down the extremity. If it's the neck, it's the  
9 arm; if it's the back and the leg, but the predominant problem  
10 is that arm or leg pain, and those surgeries have great  
11 success. We simply take the pressure off the nerve, and  
12 patients have 9,900 percent improvement, and those are simple  
13 procedures.

14           The problems that deal with what we call axial  
15 mechanical spine pain, neck or back pain, those are much more  
16 difficult to treat and correct, require much bigger surgeries.  
17 But the clinical result realistically is patients can  
18 experience 50 to 60 percent improvement, and for those people  
19 who are truly desperate, it's a welcome option once they  
20 failed other treatments. And given that she's four years out,  
21 according to her history, she would be an appropriate  
22 candidate for surgery in her neck.

23           Q     Now, Yvonne hasn't come back to see you since  
24 October; is that correct --

25           A     That's correct.



1 Q -- of 2014?

2 A That's correct.

3 Q And does that cause any concern for you?

4 A No, not at all. As part of her last visit, I  
5 informed her that -- what our surgical plan would be. And at  
6 this point, I informed her that there was nothing dangerous  
7 here; nothing that was going to kill her or paralyze her.  
8 This was about her pain. If she could learn to endure that  
9 pain, then she wouldn't have to consider surgery. There's no  
10 guarantees with surgery, and there are major -- potential  
11 major complications with surgery, so it's to be avoided. But  
12 if you're at wits end and can't live with it, come back and  
13 see me and we'll pursue surgical treatment.

14 Q Now, you recommended a three-level cervical fusion;  
15 is that correct?

16 A I did.

17 Q Do you do any surgeries that are more extensive than  
18 that, such as a four-level or five-level?

19 A Extremely rare.

20 MR. SEMENZA: Objection, Your Honor, outside the  
21 scope.

22 THE COURT: Sustained. And how much longer -- it's  
23 6:00 o'clock. How much longer do you have on direct?

24 MS. MORRIS: I think I'll have a bit more, and then  
25 he'll have cross, so.

1 THE COURT: Okay. All right, let's just call it a  
2 day. And you're able to return on Thursday? Is there --

3 THE WITNESS: Yes.

4 THE COURT: -- a time? All right.

5 THE WITNESS: Whatever the preference is here.

6 THE COURT: Okay, so you'll discuss that with, you  
7 know, the subpoenaing lawyers, and about -- you're going to  
8 come back on Thursday?

9 THE WITNESS: Yes.

10 THE COURT: Okay. All right. Ladies and gentlemen,  
11 we're going to take an overnight recess. I'm going to see you  
12 tomorrow at 8:30.

13 And during this recess, it's your duty not to  
14 converse among yourselves or with anyone else on any subject  
15 connected with the trial, or to read, watch, or listen to any  
16 report of or commentary on the trial by any person connected  
17 with the trial, or by any medium of information, including,  
18 without limitation, newspaper, television, radio, or internet,  
19 and you are not to form or express an opinion on any subject  
20 connected with this case until it's finally submitted to you.

21 See you tomorrow morning at 8:30.

22 THE MARSHAL: All rise for the jury, please.

23 (Outside the presence of the jury)

24 THE COURT: All right, thank you. Jury has departed  
25 the courtroom. And I think you need to get with Dr. Dunn

1 about when he will come back on Thursday, and let's try and  
2 make sure it's not so late that we can't get done. I mean, we  
3 need to give him plenty of time for cross. And thank you very  
4 much for your testimony. So, you're excused. Anything  
5 outside the presence at this point today?

6 MS. MORRIS: No.

7 MR. SEMENZA: No, I don't think so, Your Honor.

8 THE COURT: Okay. All right. 8:30 tomorrow, you  
9 have a witness lined up for that?

10 MS. MORRIS: Yes.

11 THE COURT: Okay.

12 MS. MORRIS: Corey, correct?

13 MR. SEMENZA: Yes.

14 MS. MORRIS: Yes, we do.

15 THE COURT: Okay. I will see you tomorrow at 8:30.

16 MS. MORRIS: Thank you.

17 MR. SEMENZA: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. KIRCHER: Thank you.

20 (Court recessed at 6:03 p.m. until Tuesday,

21 November 10, 2015, at 8:29 a.m.)

22 \* \* \* \* \*

23

24

25

CERTIFICATION

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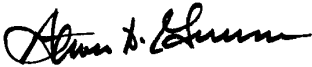
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## **Exhibit “2”**



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

YVONNE O'CONNELL,	.	CASE NO. A-12-655992-C
	.	
Plaintiff,	.	DEPT. V
	.	
vs.	.	
	.	
WYNN RESORTS LIMITED, et al.,	.	<b>TRANSCRIPT OF</b>
	.	<b>PROCEEDINGS</b>
	.	
Defendants.	.	
. . . . .	.	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 4**

TUESDAY, NOVEMBER 10, 2015

APPEARANCES:

FOR THE PLAINTIFF:	CHRISTIAN M. MORRIS, ESQ. EDWARD J. WYNDER, ESQ.
FOR THE DEFENDANTS:	LAWRENCE J. SEMENZA, III. ESQ. CHRISTOPHER D. KIRCHER, ESQ.

COURT RECORDER:

LARA CORCORAN  
District Court

TRANSCRIPTION BY:

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Englewood, CO 80110  
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

INDEXWITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>PLAINTIFF'S WITNESSES:</u>				
Corey Prowell	4	17	35/41	40
Yvonne O'Connell	44	85	194/213	204
Craig Tingey (Voir Dire by Mr. Semenza)	215*			
Craig Tingey (Direct by Ms. Morris)	230	242	250/254	253/--

***\*Testimony outside the presence of the jury.***

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
<u>DEFENSE EXHIBITS:</u>	
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Exhibit B-1.. . . . .	115
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Exhibit E-1.. . . . .	126
Exhibits I. . . . .	141
Exhibits G-1. . . . .	151

1 LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 10, 2015, 8:29 A.M.

2 (In the presence of the jury)

3 THE MARSHAL: Jury's all present, Your Honor.

4 THE COURT: Thank you. Please be seated. All  
5 right. And this is a continuation of case number A-12-655992,  
6 Yvonne O'Connell vs. Wynn Resorts Limited. The record will  
7 reflect the presence of the jury, the two alternates, all the  
8 parties are here with their respective counsel, and all  
9 officers of the court. Good morning, ladies and gentlemen.  
10 Thank you for --

11 UNKNOWN JUROR: Good morning.

12 THE COURT: -- being so prompt. And it's a good  
13 thing we're all under cover since the wind's really kicking up  
14 out there. And we're going to get started, and be done -- I'm  
15 planning on recessing for lunch about noon, depending on where  
16 we are with the witnesses, and being out of here by 5:00  
17 o'clock today, so.

18 THE CLERK: No, today --

19 THE COURT: No, Thursday is our -- Thursday.

20 THE CLERK: No, today we have another doctor  
21 (inaudible).

22 THE COURT: Thursday, I thought, was our doctor.

23 MS. MORRIS: No.

24 THE COURT: Today?

25 MS. MORRIS: Dr. Dunn's coming back on Thursday



1 morning.

2 THE COURT: Oh. Okay, I made my schedule wrong  
3 then. All right, so it's possible that we'll go late then  
4 today, like 6:30 or so. All right. Which means, if we do  
5 that, I'm going to give you a longer lunch, because you'll  
6 need to get your strength up. All right, let's call the next  
7 witness.

8 MS. MORRIS: We call Corey Prowell.

9 THE MARSHAL: Follow me up to the witness stand,  
10 please. Watch your step. Remain standing, face the court  
11 clerk, raise your right hand, please.

12 COREY PROWELL, PLAINTIFF'S WITNESS, SWORN

13 THE CLERK: You may be seated. And could you please  
14 state and spell your first and last name?

15 THE WITNESS: Yes. Corey, C-o-r-e-y. Prowell, P  
16 like Paul, r-o-w-e-l-l.

17 THE CLERK: Thank you.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MS. MORRIS:

21 Q Good morning, Mr. Prowell. How are you?

22 A Good morning.

23 Q I took your deposition earlier this year; do you  
24 recall that?

25 A Yes.

1 Q And can you tell us what you do currently at Wynn?

2 A As of right now, I'm the assistant security manager.

3 Q And you've worked at Wynn since approximately 2006;  
4 isn't that correct?

5 A Yes.

6 Q And can you tell us what you -- your position --  
7 what position you held back in 2010?

8 A Security report writer.

9 Q And you were trained how to create reports by a  
10 senior report officer prior to becoming a report officer; is  
11 that correct?

12 A That's correct.

13 Q And is it important that you are thorough and  
14 accurate in your report writing?

15 A Yes, it is.

16 Q Is it important that you gather all the information  
17 that would be helpful to the claims department in analyzing  
18 each guest injury that you respond to?

19 A Yes.

20 Q Is it your job to investigate and gather the  
21 information as to the cause and reason for a guest injury?

22 A Yes.

23 Q In this case, you responded to a guest incident  
24 involving Yvonne O'Connell; is that correct?

25 A Yes.

1 Q I'd like you to take a look at -- and it's in your  
2 black binder in front of you. And if you would turn to the  
3 first page of it, which would be your Incident Report.

4 A Okay.

5 Q Are you -- are you with me?

6 A Yes.

7 Q Okay. And you've seen this Incident Report before;  
8 isn't that correct?

9 A Yes.

10 Q And this is an Incident Report that you created as a  
11 result of your response to Ms. O'Connell's fall at the Wynn;  
12 is that correct?

13 A That's correct.

14 Q You -- you respond to calls of guests injury, and  
15 you bring certain things with you when you respond to those  
16 calls; isn't that correct?

17 A Yes, that's correct.

18 Q What do you bring with you?

19 A Normally, a camera. Documents that's in relation to  
20 the incident; in this case, a slip and fall. So, a Guest  
21 Accident Report, along with cameras, pens, things like that.

22 Q Do you also bring with you a Guest Waiver of Medical  
23 Care?

24 A Yes.

25 Q Okay, and is that a form that you standardly bring

1 with you to a report of a guest injury?

2 A Yes.

3 Q And is it your job to get that form signed by the  
4 guest if they refuse medical care?

5 A Yes.

6 Q And is that a form that was provided to you by Wynn  
7 as part of a way to do your job?

8 A Yes.

9 Q Now, this Incident Report here involving Yvonne, you  
10 created it after you responded to the scene and gathered all  
11 the relevant information; is that correct?

12 A That's correct.

13 Q And the area where Ms. O'Connell fell, do you  
14 remember where she fell?

15 A Vaguely, yes. Yes.

16 Q Was it in the atrium area?

17 A It was in the atrium area.

18 Q And is that the south entrance to the casino?

19 A Yes, it's closest to the south entrance.

20 Q And is that one of the entry points to the casino?

21 A Yes.

22 Q Would you consider that to be a high traffic area?

23 A Yes.

24 Q Isn't it true that the flooring in the casino area  
25 of the south entrance is a marble flooring?

1           A     Yes.

2           Q     Isn't it true that the policy at Wynn is to  
3 immediately clean up spills in the atrium area, the high  
4 traffic south entrance area, in order to prevent posing risks  
5 to other guests?

6           MR. SEMENZA:  Objection, foundation.

7           THE COURT:  Overruled.

8           MR. SEMENZA:  I'm not aware of any policies with the  
9 -- with the cleaning department -- public area department.

10 BY MS. MORRIS:

11          Q     Your job is to respond to incidents and gather  
12 information; is that right?

13          A     Yes.

14          Q     Okay.  And it's the public areas department that's  
15 responsible for cleaning up spills; is that accurate?

16          A     That's correct.

17          Q     You took a statement from a Terry Ruby; isn't that  
18 correct?

19          A     Yes.

20          Q     Okay.  And I want to put Mr. Ruby's statement up in  
21 front of you, but I'll direct it to you.  It's in front of you  
22 on page 5 in your binder.  Are you with me?

23          A     Yes, I'm there.

24          Q     You took this statement from a Terry Ruby when you  
25 responded to the scene of Ms. O'Connell's fall; isn't that

1 correct?

2 A Yes.

3 Q And in his report, he stated that four guests were  
4 helping Yvonne up after she fell; isn't that correct?

5 A Yes.

6 Q And it also says that he apologized to the guest for  
7 her mishap. Do you see that in the -- in his statement?

8 A Yes.

9 Q And to your knowledge, he was just reporting what he  
10 had seen; isn't that right?

11 A That's correct.

12 Q You didn't have any reason to disbelieve what Terry  
13 Ruby had written down, did you?

14 A No.

15 Q It's also part of your policy and procedures to take  
16 photographs of any substance that's on the floor that may have  
17 caused the guest fall; isn't that accurate?

18 MR. SEMENZA: Objection --

19 THE WITNESS: Yes -- oh.

20 MR. SEMENZA: -- foundation.

21 THE COURT: Overruled.

22 THE WITNESS: There's no written policy -- written  
23 policy that I'm aware of. This is what we're instructed when  
24 we went through our training, to take pictures of everything  
25 within the accident scene.

1 BY MS. MORRIS:

2 Q Okay, so there's nothing written down at Wynn, but  
3 you're trained that's how to do your job; is that correct?

4 A Yes.

5 Q And isn't it part of that training to not clean up  
6 any substance until security has gotten there and had an  
7 opportunity to take photographs of the -- of the substance?

8 MR. SEMENZA: Objection --

9 THE WITNESS: Again, I'm -- yeah. I'm sorry.

10 MR. SEMENZA: I'm sorry.

11 THE COURT: What's the objection?

12 MR. SEMENZA: Objection as to foundation.

13 THE COURT: All right. So, sustained. Lay a little  
14 better foundation about his training.

15 BY MS. MORRIS:

16 Q In your training, isn't it true that you -- you take  
17 photographs of the substance that caused or may have caused  
18 the guest to fall; isn't that correct?

19 A Yes.

20 Q And that's one of the reasons why you bring your  
21 camera with you when you respond to an incident; isn't that  
22 correct?

23 A Yes.

24 Q And the goal is to be able to take photographs of  
25 the substance in the area where she fell at a far distance, a

1 mid-distance, and a small distance; isn't that correct?

2 A That's correct.

3 Q And you're also instructed to take photographs of  
4 the guest; isn't that correct?

5 A Yes.

6 Q And that's only if the guest is -- gives you  
7 permission to take photographs; isn't that correct?

8 A That's correct.

9 Q And you take photographs of the guest for multiple  
10 purposes; isn't that right?

11 A Yes.

12 Q And one of those is so that the claims department  
13 has a photograph of the guest and can potentially identify  
14 them later in video surveillance; isn't that accurate?

15 A Yes.

16 Q And in this case, Yvonne O'Connell didn't refuse to  
17 allow you to take her photograph, did she?

18 A No, she did not.

19 Q But you did take photographs of Yvonne, correct?

20 A Yes.

21 Q But you only took photographs of her feet; isn't  
22 that right?

23 A That's correct.

24 Q Now, in this case, you didn't take any photographs  
25 of the substance that was on the floor that Yvonne fell on;



1 isn't that right?

2 A That's correct.

3 Q And the reason you didn't is because when you got to  
4 the scene, it had already been cleaned up; is that correct?

5 A That's correct.

6 Q When you got to the scene though, you spoke with  
7 Yanet Elias, a manager in the public areas department; isn't  
8 that right?

9 A Yes.

10 Q Now, I want to go back to your report that you  
11 created here, which is on -- which is Exhibit 1 again. All  
12 right. It states here that you spoke with Ms. Elias as soon  
13 as you -- when you responded to the area where Yvonne fell;  
14 isn't that correct?

15 A Yes.

16 Q Okay. And you reported that Ms. Elias had told you  
17 that the liquid had been cleaned up before you got there;  
18 isn't that right?

19 A That's correct.

20 Q And you documented that conversation with Ms. Elias  
21 in your report; isn't that correct?

22 A Yes.

23 Q And you had no reason to disbelieve any of the  
24 statements that Ms. Elias made to you on that day, correct?

25 A No.

1           Q     And you reported the information because you  
2 believed it to be accurate; is that correct?

3           A     Yes.

4           Q     And you trusted the information that Ms. Elias gave  
5 you?

6           A     Ms. Elias? Yes.

7           Q     Now, Yvonne also told you that she had -- when she  
8 recovered from the fall, she saw a green liquid on the floor;  
9 isn't that correct?

10          A     Yes.

11          Q     And you didn't have any reason to disbelieve Ms.  
12 O'Connell, did you?

13          A     No.

14          Q     You didn't knowingly put anything inaccurate in your  
15 report, did you?

16          A     No.

17          Q     I mean, it's basically your job to go to a scene,  
18 gather all the information, submit it to the claims  
19 department, and keep going onto any other incidents that  
20 occur; isn't that right?

21          A     That's correct.

22          Q     It's not your job to analyze the information, it's  
23 simply to gather it; isn't that correct?

24          A     That's correct.

25          Q     You're also trained to document any injuries that

1 are reported; isn't that correct?

2 A Yes.

3 Q And you document those injuries on -- on forms;  
4 isn't that right?

5 A Yes.

6 Q And in this case, you documented certain injuries  
7 that Ms. O'Connell was claiming; isn't that correct?

8 A Yes.

9 Q And do you recall in this incident that you actually  
10 wrote the Guest Incident Report for Yvonne?

11 A The Guest Accident Report, yes.

12 Q But you did obtain her signature on it; isn't that  
13 right?

14 A Yes.

15 Q So, Yvonne wasn't able to fill out the Incident  
16 Report, but she was able to sign it; isn't that right?

17 A That's correct.

18 Q Now, there are video surveillance cameras in the  
19 atrium area where Yvonne fell, correct?

20 A I don't -- I don't work in the dispatch, but  
21 vaguely. I'm assuming there is cameras in that area.

22 Q Now you checked with video surveillance -- the video  
23 surveillance department, didn't you?

24 A Yes.

25 Q And you were informed that there were no -- there

1 was no video surveillance of Yvonne's fall; isn't that  
2 correct?

3 A That's correct.

4 Q And there was no video surveillance of Yvonne in the  
5 casino; isn't that correct?

6 A In the casino, I'm not aware. When we contacted our  
7 dispatch, we concentrated on the accident area.

8 Q And did you request to get video surveillance of the  
9 area prior to Yvonne's fall?

10 A No.

11 Q Did you request to get any video surveillance of the  
12 area as it was being cleaned up?

13 A No.

14 Q So, the only thing you requested from video  
15 surveillance was the actual fall; is that accurate?

16 A Yes.

17 Q Now, you didn't speak with the porter who was  
18 assigned to that area on the day of -- on the day she fell;  
19 isn't that correct?

20 A No, I did not.

21 Q You didn't take any kind of report from the person  
22 who was responsible for that area in the -- in the atrium;  
23 isn't that correct?

24 A No.

25 Q So, the only statements that you took were from

1 Terry Ruby, and Yanet Elias, and Ms. O'Connell; is that  
2 accurate?

3 A That's correct.

4 Q Have you ever worked in the video surveillance  
5 department at Wynn?

6 A No.

7 Q So, you've always worked in the security department;  
8 is that correct?

9 A Yes.

10 Q So, you really just rely on Wynn to tell you whether  
11 or not there's video surveillance; is that correct?

12 A Yes.

13 Q Did you actually go to the video surveillance area  
14 and look to see if there's coverage yourself?

15 A No.

16 Q So, you were just told there was no coverage?

17 A That is correct.

18 Q Now, we've been hearing that Ms. O'Connell allegedly  
19 fell. Do you have any reason to disbelieve that Ms. O'Connell  
20 fell at the Wynn?

21 A No.

22 Q Now, you took photographs of Yvonne's feet; is that  
23 correct?

24 A That's correct.

25 Q And is it part of your training to take photographs

1 of the guests' feet?

2 A Yes.

3 Q And that's to determine what their footwear is; is  
4 that accurate?

5 A That's correct.

6 Q So, the one thing that Wynn was able to document  
7 here is the shoes that Yvonne was wearing; is that correct?

8 A Yes.

9 MS. MORRIS: I don't have any other questions.

10 THE COURT: Cross?

11 MR. SEMENZA: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SEMENZA:

14 Q Good morning, Mr. Prowell.

15 A Good morning.

16 Q Going back briefly to your employment history,  
17 you've been employed at Wynn for how long?

18 A As of now, nine-and-a-half years.

19 Q And how long of that nine-and-a-half years have you  
20 been an assistant -- a security assistant manager?

21 A About one-and-a-half.

22 Q And what are your duties generally as a security  
23 assistant manager?

24 A As of now, training, motivating the security  
25 officers under my staff, respond to calls, of course, and

1 follow up with the report writers on any incidents, any events  
2 that occur on the property.

3 Q How many security officers, if any, do you  
4 supervise?

5 A Normally, between 55 and 60.

6 Q And how do you come up with that number?

7 A That's with our scheduling; with our compendium; our  
8 set amount of officers that we have for our shift.

9 Q And that's 55 or 60 officers per shift?

10 A Total officers.

11 Q Total --

12 A Total officers.

13 Q And what shift do you currently work?

14 A Day shift.

15 Q And what are the hours for day shift?

16 A 6:00 A.M. to 2:00 P.M.

17 Q And on day shift, how many officers are generally  
18 present that you oversee?

19 A About 45.

20 Q Now, what were you originally hired as when you  
21 became employed by the Wynn?

22 A A security officer.

23 Q And then, at some point in time, did you become a  
24 report writer?

25 A That's correct.

1           Q     Do you recall how many -- or when you become a  
2 report writer after you began your employment at the Wynn?

3           A     About a month-and-a-half after I started at Wynn.

4           Q     And as a report writer, do you also have the  
5 traditional duties as a security officer?

6           A     Yes.

7           Q     Do you currently train any security officers?

8           A     No.

9           Q     Who's responsible for training security officers at  
10 Wynn?

11          A     We have a training department that oversees the  
12 training and development of security officers.

13          Q     And is that something that you're part of, or not  
14 part of at all?

15          A     No, I'm not part of that.

16          Q     Tell us generally what training you received to  
17 become a report writer.

18          A     The initial training just comprised of meeting with  
19 a -- a senior report writer; somebody who's been writing  
20 reports for an extended amount of time. We meet with that  
21 person. They'll give you the basics of the system that we  
22 use, the forms that we use, equipment that we use for any --  
23 for any incidents.

24                 After that, that trainee goes with that senior  
25 report writer on certain calls and learns the basics of report



1 writing, how to gather information, collecting evidence.  
2 After that, the trainee will actually go on some -- some of  
3 the reports and gets active in some of the investigation while  
4 the senior report writer observes. After that training on how  
5 to put the information into the report, document the  
6 information in the report, and get everything archived and  
7 prepared for approval.

8 Q And how long generally does that training take?

9 A Normally, about two weeks.

10 Q And are there circumstances where that training  
11 takes longer than that?

12 A Yes.

13 Q What might those circumstances be?

14 A If they don't grasp certain areas of the training,  
15 sometimes they'll go through like a little bit of a remedial  
16 training, maybe extended for about a week.

17 Q And is the training to become a report writer  
18 different than the training given by Wynn, if any, to become a  
19 security officer?

20 A Yes.

21 Q And to become a security officer, or as a security  
22 officer at Wynn, what kind of training does Wynn provide?

23 A As a security officer?

24 Q Yes.

25 A Prior history. Military, police force experience is

1 always helpful.

2 Q But as far as when that employee begins their  
3 employment at Wynn, what kind of training do they receive as a  
4 security officer? Do you know?

5 A They'll go through an initial academy for  
6 approximately two weeks.

7 Q And did you go through that academy?

8 A Yes.

9 Q And what did it entail?

10 A General knowledge of the property, all its  
11 amenities, guest services, five-star service, some of which  
12 had to do what you would do at an accident scene, or how to  
13 report to your supervision on certain things.

14 Q Okay. When you first encountered Ms. O'Connell, do  
15 you recall what you did?

16 A Vaguely, yes.

17 Q What do you recall?

18 A I recall responding to the scene and speaking with  
19 Ms. O'Connell, and she told me that she had slipped and fell  
20 in the landscape area of the atrium. She said when she was --  
21 when she recovered from her fall, she noticed a green type  
22 substance on the floor, and she -- and then she indicated  
23 where her injuries were.

24 Q Did you make any effort to make sure that she was  
25 okay?

1           A     Yes.

2           Q     Do you recall any of the specifics of what you might  
3 have asked her?

4           A     I offered her medical assistance with paramedics,  
5 and she initially declined. And while speaking with her, I  
6 offered her a wheelchair, just in case she wasn't able to move  
7 on her own power, and she declined that as well.

8           Q     Did she ever accept medical care or attention from  
9 Wynn?

10          A     To my knowledge, no.

11          Q     I'm showing you Joint Stipulated Exhibit 5. So, go  
12 ahead and turn to tab 5 in your booklet.

13               MR. SEMENZA: I apologize, I think that is Joint  
14 Exhibit 3, not -- it's identified at the bottom as Joint  
15 Stipulated Exhibit 5, but it is in fact Exhibit 3.

16 BY MR. SEMENZA:

17          Q     Do you recognize this document, Mr. Prowell?

18          A     Yes.

19          Q     And what is it?

20          A     It's a Guest Refusal of Medical Assistance Form.

21          Q     And did you have occasion to present this to Ms.  
22 O'Connell?

23          A     Yes.

24          Q     And did she refuse medical assistance?

25          A     Yes.

1 Q Did she sign this document?

2 A No.

3 Q Okay. Is that your handwritten handwriting at the  
4 top of the document?

5 A Yes.

6 Q Okay. What is the -- what are the words that were  
7 handwritten?

8 A "Declined by guest."

9 Q And did that indicate that Ms. O'Connell was  
10 refusing any medical care or treatment?

11 A That's correct.

12 Q Okay. And you had this form on you prior to  
13 arriving on the scene?

14 A That's correct.

15 Q Are there instances where guests that have been  
16 involved in incidents or have been injured on property do in  
17 fact accept medical care from the Wynn?

18 A Yes.

19 Q Have you had occasion to contact emergency services  
20 or paramedics to arrive at the Wynn?

21 A Through our security dispatch, yes.

22 Q If Ms. O'Connell had indicated that she wanted a  
23 wheelchair, what would you have done?

24 A I would have either -- I would have either gotten  
25 one myself, or probably called through radio dispatch to have

1 an officer go and retrieve one and bring it to the scene to  
2 assist the guest out, either to a vehicle or to a cab.

3 Q Okay. And does the Wynn have wheelchairs on-site?

4 A Yes.

5 Q And at times, those are provided to guests that  
6 might have been injured?

7 A Yes.

8 MR. SEMENZA: Pardon me a moment.

9 (Pause in the proceedings)

10 MR. SEMENZA: I'm just trying to get a better copy.

11 (Pause in the proceedings)

12 MR. SEMENZA: Your Honor, I'm going to show Mr.  
13 Prowell a copy -- a better copy of Stipulated Exhibit 2 so  
14 that it's easier for everyone to see.

15 THE COURT: Okay.

16 BY MR. SEMENZA:

17 Q Mr. Prowell, do you recognize what I've shown on the  
18 screen?

19 A Yes.

20 Q And what is this?

21 A It's what we refer to as our Guest Accident or  
22 Illness Report.

23 Q And did you have this document in your possession  
24 prior to interacting with Ms. O'Connell?

25 A Yes.

1           Q     And is the handwriting on this document yours or  
2 someone else's?

3           A     That is mine.

4           Q     And why did you fill out the document?

5           A     Ms. O'Connell stated that she was in too much pain  
6 to complete the form herself.

7           Q     And so, you went ahead and did it for her?

8           A     Yes.

9           Q     And did you ask her questions in order to complete  
10 the form?

11          A     Yes.

12          Q     And did you, to the best of your ability, accurately  
13 complete the form as per her information that she was  
14 providing?

15          A     That's correct.

16          Q     At the top of the document, does it identify her  
17 name?

18          A     Yes.

19          Q     Does -- somewhere on the form, does it identify the  
20 date of the accident?

21          A     Yes.

22          Q     And what date is that on?

23          A     2/8/2010.

24          Q     Does the document also identify the time of the  
25 accident?

1 A Yes.

2 Q What -- what time does it identify?

3 A 2:00 P.M.

4 Q And does it identify the location of the accident?

5 A Yes.

6 Q What is that?

7 A The atrium area by one of the venues, Christian  
8 Dior.

9 Q Okay. In response to the statement, "Please state  
10 in your own words what you were doing at the time of your  
11 accident," what was written there?

12 A "Rounding corner, passing directional sign. Slipped  
13 and fell. Noticed a green liquid substance."

14 Q And going down, Ms. O'Connell identified that she  
15 had not consumed any alcoholic beverages?

16 A That's correct.

17 Q And you checked a box "Yes" relating to the  
18 question, "Did you examine the premises in the area of your  
19 accident"?

20 A Yes.

21 Q And did you understand that Ms. O'Connell did  
22 examine the area?

23 A Yes.

24 Q And moving down, "If yes, what did you find that  
25 would be a contributing factor in your account?" And what was

1 written here?

2 A "Lots of green liquid."

3 Q And this sentence -- or this question asked, "Whom  
4 do you consider the blame for the accident?" And what is  
5 written there?

6 A It says, "The green liquid."

7 Q Okay, and is that the information that Ms. O'Connell  
8 provided to you?

9 A Yes.

10 Q And moving down, it says, "What if any injuries did  
11 you sustain?" Do you see that?

12 A Yes.

13 Q And what is written there?

14 A "Right shoulder, right ankle, and buttocks."

15 Q Okay. And is that the information that Ms.  
16 O'Connell related to you concerning her injuries?

17 A Yes.

18 Q If there had been additional injuries she had  
19 identified, would you have listed them here on this form?

20 A That is correct.

21 Q Is it your understanding that Ms. O'Connell  
22 exclusively and only identified that she had injured her right  
23 shoulder, right ankle, and buttocks?

24 A That's correct.

25 Q And lastly, moving down, it says, "What if any



1 property damage did you sustain?" And it's identified as  
2 what?

3 A No.

4 Q At the bottom of the form, there's a signature on  
5 the lefthand side. Whose signature is that?

6 A That's my signature.

7 Q And to the right, there's another box with another  
8 signature. Whose signature is that?

9 A That would be Ms. O'Connell's signature.

10 Q And did you witness Ms. O'Connell sign this  
11 document?

12 A Yes.

13 Q And did she date the document, or did she date to  
14 the right of her signature?

15 A Yes.

16 Q What -- can you identify what date that is?

17 A It appears to be a "2" and "8."

18 Q Mr. Prowell, did you give Ms. O'Connell any type of  
19 card prior to you two leaving the scene?

20 A Yes.

21 Q What card did you give her?

22 A It's called a Guest Claims Card.

23 Q And what is on that Guest Claims Card?

24 A It normally has their case number relative to that  
25 incident, and a number to contact guest claims department for

1 any follow up.

2 Q Do you know specifically where that telephone --  
3 well, strike that. Was there a telephone number listed on  
4 that Guest Claims Card?

5 A Yes.

6 Q And do you know where that telephone number goes to;  
7 what department?

8 A It goes to our guest claims department.

9 Q Do you know who in guest claims answers that  
10 telephone number?

11 A It's not specific to any person. Normally, it just  
12 goes to the department as a -- as a whole.

13 Q And would there have been someone to answer that  
14 phone to the best of your knowledge at around 2:00 P.M. to  
15 4:00 P.M. on February 8th of 2010?

16 A To the best of my knowledge, yes.

17 Q And if Ms. O'Connell needed additional assistance,  
18 would she have been able to use that number to call?

19 A Yes.

20 MR. SEMENZA: I'll show the witness Stipulated  
21 Exhibit 6.

22 BY MR. SEMENZA:

23 Q Go ahead and turn to tab 6 in your booklet. Are you  
24 at tab 6?

25 A Yes.

1 Q Okay. And do you recognize this document?

2 A Yes.

3 Q What is it?

4 A This was the photo of the accident scene, indicated  
5 by Ms. O'Connell.

6 Q And was this a photograph that you took of the  
7 scene?

8 A Yes.

9 Q And to your knowledge, was the sign -- the gold sign  
10 there present when you arrived on the scene?

11 A Yes.

12 Q Did you take just one photograph of the scene, or a  
13 whole host of photographs?

14 A I took multiple photos of the area.

15 Q And were -- did you include those photographs in  
16 your report?

17 A Yes.

18 Q Can I have you turn to tab 10? This is Exhibit --  
19 Joint Stipulated Exhibit 10.

20 A Okay.

21 Q Do you recognize this document?

22 A Yes.

23 Q And what is it?

24 A This was a photo of Ms. O'Connell's footwear.

25 Q And did you take this photograph?

1           A     Yes.

2           Q     And do you recall noting any liquid substance on any  
3 of her clothing while you were interacting with her?

4           A     To my knowledge, no.

5           Q     Do you know what's between her legs or feet?

6           A     I believe that was her purse.

7           Q     And to the best of your knowledge, was the liquid  
8 substance that we've been talking about -- that was cleaned up  
9 before your arrival on the scene?

10          A     Yes.

11          Q     And had that substance been present at the scene  
12 when you arrived, do you have a belief as to what you would  
13 have done? Would you have photographed it?

14          A     I would have photographed the substance.

15          Q     Did you feel that Ms. O'Connell had recovered  
16 sufficiently from her fall so that it was safe for her to  
17 leave the scene?

18          A     Yes.

19          Q     When you arrived on the scene, do you recall whether  
20 there was some sort of sweeper machine present?

21          A     No.

22          Q     Do you have any understanding of what this liquid  
23 substance may have been?

24          A     No.

25          Q     Do you have any understanding as to how this liquid

1 substance may have gotten on the floor?

2 A No.

3 Q Now, we had talked earlier. Ms. Morris had asked  
4 you about a report you had written; do you recall that?

5 A Yes.

6 Q And do you recall when you prepared that report in  
7 relation to when the incident took place?

8 A After I collected all the information and gathered  
9 the photos. After that, went downstairs to our report desk to  
10 complete the report.

11 Q Do you recall whether you completed the report on  
12 February 8th, 2010, or sometime later?

13 A It was on that day.

14 Q Can you estimate for me how many reports you've  
15 written during your career at Wynn?

16 A Probably over 4,000.

17 Q And can you estimate for me in February of 2010 how  
18 many reports you had written?

19 A No.

20 Q You believe generally as you sit here today that  
21 about 4,000 reports?

22 A Yes.

23 MR. SEMENZA: Showing the witness Joint Stipulated  
24 Exhibit 1. It's under tab 1.

25 BY MR. SEMENZA:

1 Q Is there any reference in your report relating to  
2 whether there was video surveillance coverage of the incident?

3 A Yes, there was a reference.

4 Q Okay. Would you read that reference?

5 A "Due to the position of the cameras during the  
6 incident, a video review was met with negative results."

7 Q So, there was an attempt to retrieve, to the best of  
8 your knowledge, any video surveillance footage of what took  
9 place?

10 A Yes.

11 Q Was the Wynn your first security officer job?

12 A No.

13 Q Did you work as a security officer somewhere prior  
14 to Wynn?

15 A Yes.

16 Q And where did you work?

17 A Hard Rock Hotel and Casino.

18 Q And how long did you do that for?

19 A Seven years.

20 Q Do you know approximately what year that was that  
21 you began your employment as a security officer at Hard Rock?

22 A 1999.

23 Q Starting with 1999, how long have you been involved  
24 in the security -- "business" is a poor word, I guess, but as  
25 a security officer, or providing security at the hotels and

1 casinos?

2 A In casinos total, almost 20 years.

3 Q In drafting your report, did you attempt to be as  
4 accurate as you could?

5 A Yes.

6 Q The 4,000 reports you've taken, have some of them  
7 related to slip and falls?

8 A Yes.

9 Q What other types of reports have you taken during  
10 your career?

11 A Criminal reports. Missing property reports.  
12 Informational reports whenever we assist an outside agency,  
13 either Metro Police or paramedics. Counterfeit note reports,  
14 if they ever come to us, which would probably go into criminal  
15 report category.

16 Q Reporting on all sorts of events that take place at  
17 the Wynn?

18 A All sorts of events, yes.

19 MR. SEMENZA: One more moment, Your Honor.

20 (Pause in the proceedings)

21 BY MR. SEMENZA:

22 Q To your knowledge, Mr. Prowell, prior to Ms.  
23 O'Connell reporting that she had fallen, to your knowledge,  
24 were there any other reports relating to this spill?

25 A To my knowledge, no.

1 MR. SEMENZA: Thank you.

2 THE COURT: Redirect?

3 MS. MORRIS: Yes, just briefly.

4 REDIRECT EXAMINATION

5 BY MS. MORRIS:

6 Q So, Corey, you said that you've done approximately  
7 4,000 reports; is that right?

8 A Yes.

9 Q And it's been a variety of things that you've  
10 responded to; is that right?

11 A Yes.

12 Q Now, you mentioned some of them are criminal; is  
13 that correct?

14 A Yes.

15 Q And in each of these incidents that you respond to,  
16 do you always check to see if there's video surveillance of  
17 anything involving that incident?

18 A Yes.

19 Q And isn't it true that the video surveillance  
20 cameras in the casino can actually follow people through the  
21 casino?

22 A That's correct.

23 Q And it's important in security to maintain the  
24 entrances to the casino in a safe fashion; is that right?  
25 Would that be fair?



1           A     Yes.

2           Q     Because that's the exit and entry point to this  
3 casino; is that right?

4           A     Yes.

5           Q     So, it's important to make sure that there is  
6 security and surveillance in those areas; is that right?

7           A     Yes.

8           Q     Now, in this case, you just asked to see if there  
9 was any surveillance of the -- of Ms. O'Connell's fall; is  
10 that right?

11          A     Yes.

12          Q     And due to the position of the camera, it was met  
13 with negative results. That's what you were told; is that  
14 right?

15          A     Yes.

16          Q     But isn't it true that you didn't ask to see any  
17 other surveillance of the area, like the mopping up of the  
18 liquid, or the sweeper machine being put over it, or anything  
19 like that?

20          A     No.

21          Q     Did you ask to see any of the surveillance of Yvonne  
22 in the casino after the fall?

23          A     No.

24          Q     So, Ms. O'Connell didn't sign the Guest Waiver  
25 Report -- the Waiver of Medical Treatment; is that correct?

1 A That's correct.

2 Q She declined; is that -- is that accurate?

3 A Yes.

4 Q Now, you have had in the past, I'm assuming, other  
5 guests who have claimed injury, but also declined medical  
6 assistance; is that right?

7 A Yes.

8 Q And just because they decline the medical assistance  
9 doesn't mean they're not injured; is that right?

10 A That's -- that's correct, yeah.

11 Q And in this case, Ms. O'Connell told you she was  
12 injured; isn't that right?

13 A Yes.

14 Q And she reported to you that it was her arm, her  
15 ankle, and her buttocks. That's what you wrote down; is that  
16 right?

17 MR. SEMENZA: Objection, misstates testimony.

18 THE COURT: Sustained.

19 BY MS. MORRIS:

20 Q Do you recall what she told you was hurting?

21 A Yes.

22 Q Okay, what was that?

23 A She indicated -- well, I know she indicated her  
24 buttocks and her right ankle and shoulder --

25 Q Do you --

1           A     -- to my recollection.

2           Q     Do you recall that she told you that she was having  
3 limited mobility?

4           A     Yes.

5           Q     Okay. So, you didn't write that down, but you do  
6 recall that she also told you she had limited mobility?

7           A     Yes.

8           Q     Now, the -- the Incident Report that you created,  
9 we'll turn again -- it's Exhibit 1, if you're not already  
10 there.

11          A     Yeah.

12          Q     Now, on that report, it states that it was  
13 approximately 14:35, or 2:35 when you received a call to go to  
14 the front atrium; is that correct?

15          A     Yes.

16          Q     And Ms. O'Connell fell at approximately 2:00; is  
17 that right?

18          A     Yes.

19          Q     Now, at the bottom of the report, there is a -- it's  
20 called a synopsis, and in that synopsis, it says that,  
21 "Officer Prowell, en route to the south entrance, reported the  
22 guest that slipped and fell. Officer on scene at 14:24."  
23 That's 2:00 -- 2:24; is that right?

24          A     Yes.

25          Q     But that's different from what you said up here.

1 Why is that?

2 A The synopsis is what the security dispatch -- that's  
3 their log entry. That's their daily log.

4 Q But the 2:35, that's yours; isn't that correct?

5 A 2:35 is the time that -- the approximate time that I  
6 responded.

7 Q So, that's the time that you trust, the time that  
8 you put down; is that right?

9 A Yes.

10 Q I want to look one last time at the -- the guest  
11 refusal of medical assistance, which is number 3. Now, it's  
12 your training that if a guest refuses medical treatment, you  
13 get them to sign this form; is that right?

14 A Yes.

15 Q And the form says that, if they refuse to accept  
16 medical treatment, then they release Wynn Resorts and all  
17 personnel directly or indirectly involved in their care from  
18 any liability resulting from their refusal; is that correct?

19 A Yes, that's what the report indicates.

20 Q And at the bottom of it, there is a place where  
21 there's a refusal to sign; is that right?

22 A That's correct.

23 Q Now, if the guest refuses to sign, do you sign that  
24 line, or does the guest sign that line?

25 A That would be the guest.

1           Q     But in this case, Ms. O'Connell didn't sign  
2 anything; is that right?

3           A     No, she did not sign.

4           Q     The only thing she signed was her Incident Report;  
5 is that right?

6           A     That's correct.

7           MS. MORRIS: I don't have any other questions for  
8 you.

9           MR. SEMENZA: Just briefly, Your Honor.

10          THE COURT: Recross.

11                         RE CROSS-EXAMINATION

12 BY MR. SEMENZA:

13          Q     Mr. Prowell, do you have an understanding as to  
14 whether there are fixed cameras at the Wynn?

15          A     Yes.

16          Q     Do you have an understanding as to whether there are  
17 pan/tilt/zoom cameras -- video cameras at the Wynn?

18          A     Yes.

19          Q     Okay. Do you know where each particular camera is?

20          A     No.

21          Q     Do you know where those cameras might be in the  
22 atrium?

23          A     No.

24          Q     Do you have any understanding or reason to doubt  
25 that there was no video coverage of this particular incident?

1 A No.

2 Q Would it have been your expectation that if Ms.  
3 O'Connell had needed medical attention, that she would have  
4 accepted it at the time that it was offered?

5 A Yes.

6 MR. SEMENZA: No further questions.

7 THE COURT: Any questions from the jury?

8 MS. MORRIS: Just -- just on that last question.

9 FURTHER REDIRECT EXAMINATION

10 BY MS. MORRIS:

11 Q Ms. O'Connell told you she was hurt; is that  
12 correct?

13 A Yes.

14 Q And she told you all the parts that were hurting,  
15 and she also told you she had limited mobility; is that  
16 correct?

17 A Yes.

18 Q And it's your job just to gather that information;  
19 is that right?

20 A That's correct.

21 Q It's not your job to determine whether they do in  
22 fact need immediate medical attention; is that correct?

23 A No.

24 MS. MORRIS: Thank you.

25 THE WITNESS: Okay.

1 THE COURT: Any questions of the jury? All right,  
2 do you have it written down yet? Counsel approach.

3 (Off-record bench conference)

4 THE COURT: So, Officer, do you recall what the --  
5 what Ms. O'Connell's demeanor was after -- when you were  
6 interacting with her?

7 THE WITNESS: No, Your Honor, I don't.

8 THE COURT: Do you recall observing her reading the  
9 Incident Report she signed?

10 THE WITNESS: Yes.

11 THE COURT: How about do you recall her reading the  
12 Waiver of Medical Attention Report?

13 THE WITNESS: Yes.

14 THE COURT: Any questions as a follow up of the jury  
15 question?

16 MR. SEMENZA: No, Your Honor.

17 MS. MORRIS: I have none.

18 THE COURT: Thank you. And we'll give this to the  
19 clerk to mark as a court exhibit.

20 THE MARSHAL: I think we have one more question.

21 THE COURT: A what?

22 THE CLERK: One more question.

23 THE MARSHAL: We have one more question.

24 THE COURT: Okay, are there any other questions?  
25 Because this is your last opportunity. We don't, you know,

1 keep going. Okay. All right, thank you. Counsel approach.

2 (Off-record bench conference)

3 THE COURT: Oops, sorry. So, the next question was  
4 already asked and answered, so it won't be asked again, and  
5 they'll be marked as a court exhibit. All right. And may  
6 this witness now be excused?

7 MS. MORRIS: Yes.

8 MR. SEMENZA: Yes, Your Honor, with the caveat that  
9 I reserve to recall him in my case.

10 THE COURT: All right. And so, the defense may  
11 recall you in their case, but you're excused.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Thank you. You may call your next  
14 witness.

15 MS. MORRIS: We call Yvonne O'Connell.

16 THE COURT: Thank you.

17 THE CLERK: Please remain standing. Raise your  
18 right hand.

19 YVONNE O'CONNELL, PLAINTIFF'S WITNESS, SWORN

20 THE CLERK: You may be seated. And please state and  
21 spell your first and last name.

22 THE WITNESS: My name is Yvonne O'Connell.

23 THE CLERK: Please spell it.

24 THE WITNESS: Y-v-o-n-n-e, O., apostrophe,  
25 C-o-n-n-e-l-l.



1 THE COURT: You may proceed.

2 MS. MORRIS: Thank you.

3 DIRECT EXAMINATION

4 BY MS. MORRIS:

5 Q Yvonne, how old are you?

6 A I'm 64.

7 Q Can you tell us how long you've lived in Las Vegas?

8 A Since 1996.

9 Q Can you tell us a little bit about yourself; your  
10 background? Where did you grow up?

11 A Yes. I -- I'm from Tehachapi, California. It's a  
12 small town in -- up in the mountains. When I lived there,  
13 there were about 4,000 people. And I had four brothers. My  
14 dad worked in the cement plant as a mechanic, and at the same  
15 time, he was the Mayor of Tehachapi for 15 years, and my mom  
16 took care of our -- her five children and our home. And when  
17 I was 13, my dad passed away. He had had cancer for three  
18 years.

19 Q Did you go to high school?

20 A I went to Tehachapi High School, and I had to work.  
21 I worked in the prison for -- as a clerk typist, and I worked  
22 at the drive-in, and I worked at the Tehachapi News, and then  
23 I -- I graduated from high school.

24 Q Did you get any education after high school?

25 A Then I went to Bakersfield Junior College and got a

1 job, and I worked in a dental office while I worked my way  
2 through school.

3 Q And did you get any other education aside from the  
4 junior college?

5 A Yes. Then I was lucky to get in at UC San  
6 Francisco, and I got several jobs and worked myself through  
7 school. And then I graduated in 1974 with a bachelor's degree  
8 in dental hygiene, and -- yeah.

9 Q Did you start working after you graduated?

10 A Yes. I worked for a periodontist first; they're  
11 oral -- or gum surgeons. And then I got -- took another  
12 course so I could be licensed to do more and do deep  
13 cleanings.

14 Q So, what year was that that you started working  
15 after school?

16 A Around 1974, after I graduated, and -- and then I  
17 bought my first house in 1976, and then I rented out rooms to  
18 roommates.

19 Q Have you ever been married?

20 A I was married twice.

21 Q Okay. Who was your first husband?

22 A My first husband was a dental student, freshman, and  
23 his name is Barney Streit, and then -- we met in 1976. Then,  
24 we got married in 1979, he finished school, and then we moved  
25 to Upland, California.

1           Q     And when you were in Upland, California, did you  
2 work?

3           A     Well, not at first there. I -- I had one of the  
4 best jobs in San Francisco, and it was hard for me to leave.  
5 So I flew back and forth for about eight to nine months; one  
6 week on, one week off. And then, finally, I -- I stayed in  
7 Southern California and got a job in Claremont. And then, in  
8 1981, my husband Barney and I opened our dental practice  
9 together. We started that together, but then -- oh, yeah, so  
10 that was 1981.

11          Q     Why did you move to Upland?

12          A     Barney's family is from there, and I wanted a  
13 family, so I thought that he'd be happy there.

14          Q     And the dental practice you said started in 1981.  
15 How long did you work there?

16          A     In 1986 -- so from 1981 to 1986. 1986, I started  
17 having trouble holding my instruments while I was doing deep  
18 cleaning, because that's mainly what I did. I just cleaned  
19 underneath the gums, so it was -- it was hard on them. So, I  
20 started having trouble holding the instruments while I was  
21 doing the deep cleaning, so I stopped dental hygiene then.

22          Q     And do you know why you were having trouble holding  
23 the instruments?

24          A     Yeah. Something about my -- my fingers were bending  
25 backwards, bending too far. They were too limber, and I just

1 couldn't hold the instruments anymore, just when I was  
2 cleaning; just when I was doing the deep scaling.

3 Q And what kind of instruments would you be holding to  
4 do the scaling?

5 A Well, the dental instruments, they're -- you know,  
6 when you go under the gums and -- well, curettes. They're  
7 just the special ones that -- you know, you use the ultrasonic  
8 scaler and -- and anyway, you go under the gums, and you're  
9 just -- I'm sitting there, doing that all day long, so my  
10 fingers started -- I was having trouble holding them for that  
11 long.

12 Q Did you do any work after you stopped working as a  
13 dental hygienist?

14 A Well, after I stopped dental hygiene, I really  
15 wanted to start a family, and Barney just didn't want to. He  
16 didn't want a family. So I bought into a franchise bakery,  
17 and I opened my first store in the mall.

18 Q What was the name of the bakery?

19 A Oh. Well, that one was called Treats, but it didn't  
20 -- I had trouble getting people in there. It was in a bad  
21 location. So, then I started a wholesale bakery while I was  
22 there, and that took off. So, then we -- it grew so fast, so  
23 I went out of the mall and I opened up a wholesale bakery, and  
24 that was called Muffin Artistry, and then I had three trucks  
25 delivering my baked goods daily.

1 Q Did you like to bake?

2 A Oh, it was fun.

3 Q What year is this that you had Muffin Artistry?

4 A Well, I opened the business -- the bakery in the  
5 mall around 1986, and not -- and then Muffin Artistry, started  
6 there. And then, once I moved out -- I'm so sorry, did -- did  
7 you ask me when I -- I'm sorry.

8 Q That's okay. When did you own Muffin Artistry; do  
9 you remember?

10 A Yeah, it was -- I owned it in the mall, and then I  
11 moved it -- called it Muffin Artistry there, then I moved it,  
12 and then probably went full force in 1989.

13 Q Was Barney still working as a dentist?

14 A Yes. He still was working in the dentist's, and I  
15 had my business. But then things fell apart between us. We  
16 weren't working together anymore, and I really wanted a  
17 family, so we filed for divorce. And -- and it was really  
18 hard on both of us, so we ended up selling our businesses.

19 Q Did you get married again?

20 A Yes, I did.

21 Q Do you need any water?

22 A I think I do. I'm sorry.

23 Q Are you okay?

24 A I'm really sorry. Well, why do I need it?

25 THE COURT: Marshal, would you give her some water,

1 please?

2 MS. MORRIS: Just a little bit to sip on --

3 THE WITNESS: Okay.

4 MS. MORRIS: -- to help you with your mouth.

5 THE WITNESS: I'm sorry. Thank you so much.

6 THE MARSHAL: You're welcome.

7 THE COURT: Thank you, Marshal.

8 THE MARSHAL: You're welcome.

9 THE WITNESS: Excuse me.

10 BY MS. MORRIS:

11 Q All right, so you were telling us about -- well, I  
12 asked you, have you been married again?

13 A Yes. I married John O'Connell in 1993.

14 Q And had you known John O'Connell before you got  
15 married to him?

16 A Yeah, we -- we had met years before. He was  
17 actually a friend of my brother Arnold's. And then, later, we  
18 both went to a Thanksgiving dinner with my family, and he had  
19 lost his wife, and I had been -- gone through the divorce, and  
20 we were both alone, so we started going out and having a lot  
21 of fun. And it -- we just had so much fun together, and then  
22 we got married, and we actually got married here in Las Vegas.

23 Q And were you working at the time you married John?

24 A No, I had just -- we -- I'd already sold my  
25 business, and so, no.

1 Q Was John working when you guys got married?

2 A He -- okay. John was winding down as a law  
3 professor. And he -- he -- he was -- I was so proud to be  
4 with him. He was so -- he had so many stories. He had been  
5 in the Air Force, and he had been a law professor, and he  
6 wrote a book called, Remedies in a Nutshell, and every law  
7 student reads it. In fact, you were excited when I told you  
8 that he wrote that book.

9 Q I was, yes.

10 A And he -- he was just an amazing husband, and I was  
11 very proud of him. And he was Irish, and he was very funny.

12 Q Was he working though when you two got married?

13 A Yes. He was still -- well, he was winding down as a  
14 law professor, and he was still writing.

15 Q And you said you moved to Las Vegas in 1996; is that  
16 right?

17 A Yes.

18 Q Why?

19 A John wanted to retire, but -- but he actually  
20 didn't. He kept working in a court -- a law -- correspondence  
21 law school, and so I drove him back and forth to California to  
22 attend his conferences, and so he did -- did that for a few  
23 years.

24 Q And how long did you guys do this commuting back and  
25 forth to California?

1           A     Well, for several years, but in -- around 1998, we  
2 -- we kind of settled. He was still writing, but we settled  
3 in Las Vegas, and we bought a couple of dogs and a beautiful  
4 talking parrot named Sheena. And -- and we were just having a  
5 lot of fun.

6           Q     Do you still have Sheena?

7           A     Yes, I do, and we talk to each other every day.

8           Q     How old is Sheena?

9           A     She's a teenager. She's -- she's around -- got her  
10 1998, so.

11          Q     How long do parrots live?

12          A     They're like humans.

13          Q     So -- so, you settled here, you bought a house, and  
14 then were you essentially kind of retired out here?

15          A     I was kind of retired. I worked as John's  
16 assistant. I did his paperwork, and I drove him back and  
17 forth to California. I focused on John and his projects.

18          Q     And eventually, John passed away; is that correct?

19          A     Yes. He -- we were enjoying retirement, and -- and  
20 one day, we were -- we were at home getting ready to watch a  
21 movie, and he called -- called me, and called my name, and I  
22 was able to get to him to say goodbye. So, he passed away in  
23 2002.

24          Q     What did you do after John passed?

25          A     Well, I mourned for a year -- over a year, and then



1 I had to -- I knew I had to get back out to society. So, the  
2 Rampart sent me a flier for a buffet. I can't pass up food,  
3 so I went. And I was lucky. I met Sal Risco there, and he  
4 became my companion.

5 Q Did you and Sal start dating?

6 A We -- yes, we started dating, and we took swing  
7 dance lessons, we went on a lot of cruises. We had a lot of  
8 fun. We stayed on the Strip a lot, and we danced at the  
9 Rampart -- swing danced at the Rampart almost every weekend,  
10 and we also swing danced at the Suncoast. But after I fell,  
11 we broke up, and then we tried to get back together again a  
12 couple of times, but I can't keep up with him.

13 Q Before you met Sal, had you ever been swing dancing  
14 before?

15 A No.

16 Q How did you learn?

17 A Well, shortly after we met, we took the swing dance  
18 lessons together.

19 Q Do you remember the last time you went swing  
20 dancing?

21 A Yes. We went swing dancing a couple of days before  
22 -- before I fell, and in fact, we had gone swing dancing at  
23 least three times within that week.

24 Q Are you dating anyone now?

25 A No.

1           Q     When's the last time that you went to the Wynn  
2 Casino?

3           A     The day I fell. February 8th, 2010.

4           Q     But you had been to the Wynn before; isn't that  
5 right?

6           A     Oh, yes. When they first started opening, that's  
7 when we started going. We went many times. We stayed at --  
8 we stayed there a few times, and used to eat there often. And  
9 I -- we went to shows, we went to concerts there, and they --  
10 I had a red card, and they invited me to their slot  
11 tournaments. And I loved to go see their decorations, and so  
12 we went many times. I liked it.

13          Q     You -- when you went to the Wynn, would you gamble?

14          A     Of course.

15          Q     What do you -- what did you like to play?

16          A     I only like to play video poker.

17          Q     And do you gamble anywhere else besides -- or did  
18 you gamble anywhere else besides the Wynn in 2010?

19          A     At that time?

20          Q     Correct.

21          A     Well, I like the Rampart Casino.

22          Q     And what kind of promotions would you get with your  
23 red card?

24          A     Oh, the -- the shows, and the -- well, the food, and  
25 the -- you know, I get free play.

1 Q What's free play?

2 A They give you a certain amount of money to play  
3 with. They put it on -- well, they let -- they give you money  
4 to play with -- to gamble with.

5 Q Do they actually hand you money?

6 A No, they put it on -- on -- on your account -- on  
7 your card.

8 Q So, when you put your card in the machine, that  
9 shows your --

10 A Yes.

11 Q -- your play?

12 A Yes.

13 Q Now, you said the last time you went to the Wynn  
14 Casino was February 8th, right; the day you fell?

15 A Yes.

16 Q Why did you go to the Wynn Casino that day?

17 A Well, that day, I went to meet my cousins at the  
18 buffet. They're from Bakersfield, California, and originally  
19 from Tehachapi. So, they were in town, so I met them at the  
20 buffet. And we ate at the buffet, we visited, and we even had  
21 a picture taken of us.

22 Q And was Sal in town at the time?

23 A I had -- no. I had taken him to the airport the day  
24 before because he went on a cruise. He went to Florida.

25 Q When you went to Wynn, you ate at the buffet; is

1 that right?

2 A Yes.

3 Q What had you done before -- earlier that day?

4 A Oh, well, I -- I've gotten up, showered, done my  
5 hair, and then taken off in the late morning to meet my  
6 cousins.

7 Q And what was your plan for after you met with your  
8 cousins?

9 A Oh, then I was going to go walk on the Strip and go  
10 through my favorite stores.

11 Q And had you ever -- had you ever been to the atrium  
12 area in the south entrance of the Wynn before February 8th?

13 A Oh, I always -- I always went through there. That  
14 was one of the main things I liked about the Wynn. They  
15 decorate. There's a beautiful walkway through their gardens,  
16 and they decorate it on a regular basis. So, I always go and  
17 look -- or I always did go through there and look at that.

18 Q Now, I want to -- I want you to tell us what  
19 happened after you left the buffet.

20 A So, after we got the picture, we left, and we left  
21 each other there. I walked out to my car to get my coat,  
22 because I wanted to walk on the Strip first. But -- but  
23 before I -- well, I came back in, and I went to -- I headed to  
24 the indoor gardens first.

25 Q And did you walk down through the indoor gardens;

1 the atrium area?

2 A Oh, yes. I walked through there, and it's a  
3 beautiful walkway. I was looking at the decorated trees, and  
4 the plants, and the flowers.

5 Q And where were you headed?

6 A I -- I -- after I walked through there, I was going  
7 to go to the Strip and go to my favorite stores like Cache and  
8 Marshall-Rousso.

9 Q Now, I'm going to put up --

10 MS. MORRIS: And it should show on her screen. This  
11 is Joint Proposed Exhibit 7.

12 BY MS. MORRIS:

13 Q Now, can you see that on your screen in front of  
14 you?

15 A Yes.

16 MR. SEMENZA: Christian, what exhibit is it? I'm  
17 sorry.

18 MS. MORRIS: 7.

19 MR. SEMENZA: Thank you.

20 MS. MORRIS: All right.

21 BY MS. MORRIS:

22 Q This is a photograph of the -- what you call the  
23 garden area, but the atrium area at the Wynn; is that right?

24 A Yes.

25 Q And is this what it looked like on February 8th,

1 2010?

2 A Yes. Yes.

3 Q And this was after -- these photographs were taken,  
4 we understand, after you fell; is that right?

5 A Yes.

6 Q Is -- does this photograph show the area where you  
7 fell?

8 A Yes.

9 Q Now, if you touch the screen, it should make a mark.  
10 I want you to, if you can, make a circle around where you --  
11 where the green liquid substance was that you fell on. And  
12 you can actually touch the screen and it makes the mark.

13 A Well, after I came through the -- the walkway here,  
14 I was rounding this corner, and I believe the -- where I  
15 slipped and fell --

16 Q Yvonne, hold on, because the jury can't see what  
17 you're doing. Would it be easier if you used the screen over  
18 here?

19 A Sure, that's good.

20 MS. MORRIS: Your Honor, is it --

21 THE WITNESS: We can do that.

22 MS. MORRIS: -- all right if she points on the --

23 THE COURT: Well, I'd rather she mark on the screen,  
24 because then I can see, because I can't see that screen at all.

25 MS. MORRIS: Okay.

1 THE COURT: So, I'd like to be able to see.

2 MS. MORRIS: Can she mark where the liquid is, but  
3 then show --

4 THE COURT: Sure.

5 MS. MORRIS: -- her route of travel on the larger  
6 screen?

7 THE COURT: You can actually mark your route of  
8 travel, and then we'll clear it after she does that. So, use  
9 your finger on the screen and show us where you were coming  
10 from.

11 THE WITNESS: Okay. I started at the other end.

12 BY MS. MORRIS:

13 Q You actually have to touch it, Yvonne.

14 A Oh, okay. I started at this end by that bar, and I  
15 walked down this way, and I was rounding the corner like that,  
16 and then I suddenly slipped on this liquid around here.

17 THE COURT: Put an X where you -- where you said you  
18 slipped.

19 THE WITNESS: Oh, where the -- where I first slipped  
20 was around here, right on that green tile.

21 BY MS. MORRIS:

22 Q Okay, so you slipped on the -- a green substance on  
23 a green tile?

24 A Right.

25 Q Okay. Now, I'd like you to draw for us a circle

1 around where all the green liquid substance was that you saw.  
2 So, can we clear the screen and redo it? So, I'd like you to  
3 draw for us where you saw the green liquid after you got up,  
4 and all of it.

5 Q Well, after I got up, I was standing about here.  
6 They left me standing there. And to my -- this was to my  
7 right at the time. I was standing, facing this way. Around  
8 here, extending that way, there was at least three feet that  
9 side, but that was almost dry.

10 And then, the -- there was a sweeper placed over  
11 about here. So, that part here was drying, and then it  
12 extended over there somewhere. But when I was standing, I  
13 couldn't really see to my left, because it was on the green  
14 and colored tile. So, I couldn't see that, but I could see  
15 where he placed his sweeper machine was at least four feet  
16 away from me.

17 Q So, when you slipped, you slipped on the -- the wet  
18 part; is that correct?

19 A Yes. The spill was at least seven -- at least seven  
20 feet. So, this side over here, it was liquid -- still liquid.  
21 At least a four-foot part of it was still liquid. And then,  
22 this side over here, at least a three-foot part of it was  
23 almost dry and had footprints on it, and it was a little  
24 sticky.

25 Q And when you stood up, you were able to see this



1 green liquid; is that right?

2 A Right. When I stood up, they left me standing on  
3 it. I looked down and I was standing on it, but it wasn't  
4 slippery because that part of it was almost dry. And then I  
5 looked to my right, and I saw the footprints, and -- and then  
6 to the left it was still liquid. That's from the other side  
7 that I had already slipped on. It was still liquid.

8 Q Do you know what the liquid was?

9 A Well, I thought it was water, and it should be on  
10 their mops. I thought it was water from the plants.

11 Q Why did you think it was water if it was green?

12 A Oh, no, it was just a slight hint of green. I mean,  
13 it wasn't a solid green, just a hint of green, and it was  
14 right up against the planter. And so, I thought they were  
15 watering their plants.

16 Q So, when you slipped and you fell, describe how you  
17 fell.

18 A As I was approaching that right corner at the end of  
19 that walkway, I just suddenly slipped on liquid, and I  
20 couldn't see it, because it was on that green and colored  
21 tile. So, I slipped on the liquid, and I -- I think that I  
22 took at least one or two steps trying to get out of the  
23 liquid, but it happened suddenly. I fell back and twisted to  
24 the right, and then I landed on this -- this here right here  
25 is a -- a raised planter divider. Right here where the plants

1 are and the tile, that's raised like a curb.

2 Q I'm going to change the picture for you, okay?

3 A Oh, okay.

4 Q Thanks.

5 MS. MORRIS: And can you clear the screen? Thanks.

6 And I'm going to put up what is Joint Proposed 9.

7 MR. SEMENZA: It's stipulated.

8 MS. MORRIS: It's tab 9. It's 11, but it's under  
9 tab 9.

10 THE COURT: It's -- these are all admitted, because  
11 you've -- you stipulated to admit them, so they're admitted.

12 MR. SEMENZA: Right.

13 BY MS. MORRIS:

14 Q Now, Yvonne, this is another picture that Corey took  
15 on February 8th. Do you recognize this area?

16 A Yes.

17 Q Okay. Tell us what this is.

18 A Okay. This is a raised divider between the plants  
19 and the tile, and right here, this raised part, this  
20 triangular part, that's what my right buttocks hit, my right  
21 -- and my leg hit the planter -- the divider, and my -- the  
22 rest of my body hit it. I landed on that. And my shoulder  
23 was just partly in the plants here, and my head hit that. So,  
24 my body was on this -- hit that raised divider.

25 Q And were you actually in the garden, or were you on

1 the marble when you fell?

2 A Well, a large part of me was on that divider, and  
3 just my right shoulder -- part of my right shoulder was a  
4 little bit on the plants there.

5 Q And were you able to get up after you fell?

6 A No. In fact, people woke me up. They woke me up,  
7 asking me if I could get up. And I couldn't -- I couldn't get  
8 up, and I was in a lot of pain, so they had to pick me up.

9 Q And who picked you up; do you know?

10 A Some men.

11 Q Were they employees of Wynn; do you know?

12 A No, no, they were probably just tourists.

13 Q So, after they helped you up, what did you do?

14 A Well, I stood there. I was in pain, I was dazed, I  
15 was alone, embarrassed, and afraid. So, I'm standing there,  
16 and that's when I looked down and I saw that I was -- they  
17 left me standing on that -- the drying part of the liquid.  
18 And that's when I saw -- well, there were the footprints.  
19 They looked like, you know, they were -- they looked like mine  
20 that I was making, and I'm sure they were from the people that  
21 were standing around me and that helped me up.

22 Q Now, the part you were standing on, you said it was  
23 sticky; is that right?

24 A A little sticky, and it had that hint of greenish  
25 color and it had the footprints. Kind of like dirty

1 footprints that you leave after you've mopped your floor and  
2 you step on it, you walk on it, that's kind of how it looked.

3 Q Did anyone else come over to you while you were  
4 standing there?

5 A Well, I was standing there, so to my left --

6 Q Do you want another picture?

7 A Yeah. Would that be good? I think that's probably  
8 good.

9 Q Do you want a far away one?

10 A Sure.

11 Q Okay.

12 A The one that shows the -- or, I know it's --

13 Q How about this? It's number 7.

14 THE COURT: This is Exhibit --

15 MS. MORRIS: It's Exhibit 004, but it's under tab 7  
16 of the Joint Proposed Exhibits. Thank you.

17 THE COURT: So, they're

18 THE WITNESS: That's a good one.

19 THE COURT: -- not proposed. I just --

20 MS. MORRIS: Joint stipulated. I'm sorry about  
21 that.

22 THE COURT: It's Exhibit 7.

23 MS. MORRIS: Exhibit 7.

24 THE WITNESS: Okay.

25 BY MS. MORRIS:

1 Q Is that better?

2 A Yes.

3 Q Okay.

4 A That's very good.

5 Q Okay. So, they left me standing -- the people left  
6 me standing right here. And from this side over here, a Wynn  
7 employee came with a really large sweeper machine. And he  
8 came to me, and came over here where I was standing, and I  
9 told him I needed help. And so then he saw that there was  
10 liquid all over, so he went and placed his big sweeper machine  
11 around there. It was at -- well, it's hard to tell here, but  
12 it was at least four feet away from me that way.

13 Q Did anyone else come over to you?

14 A Yes. So, he's standing there, and then a short -- a  
15 little short lady came with a mop from about over here, and  
16 she started mopping the liquid between me and the sweeper  
17 machine. His -- I know his name is Terry. And so she started  
18 mopping.

19 And then, Ms. -- well -- well, these two people are  
20 there. Then, Ms. Elias came and talked to me, and she saw  
21 what I was standing on, and she saw the cleaning lady, because  
22 I told her, well, she's already been mopping up that liquid,  
23 and she saw Terry with the machine standing over here. So,  
24 she went and looked over here where they were, and --

25 Q How do you know it was -- how do you know it was Ms.

1 Elias?

2 A Well, I know that now. She was -- I know that now.

3 Q Just from seeing her testify?

4 A Yes, and I did see her report.

5 Q Now, did you take any photographs of the liquid on  
6 the floor?

7 A I wanted to take pictures, but I was in a lot of  
8 pain. My arms and hands hurt so much, I couldn't get my  
9 camera out of my purse. So, after Ms. Elias was over here  
10 with these two people, another employee who had the same type  
11 of uniform as she did, he -- I didn't get his name, but I can  
12 describe him.

13 And he came up to me, and I told him what had  
14 happened, and I said, and I want pictures, please, and, you  
15 know, because I wasn't able to do it. And he said, oh, don't  
16 worry, we have it all on camera, and then he pointed up above  
17 me over here. Up here somewhere, there was a camera, and he  
18 said, see, we have it all on camera. And I looked up, and I  
19 could see the camera from where I was standing.

20 Q Was that Corey Prowell that you're talking about?

21 A Oh, no, that -- no, no. He -- the man I'm talking  
22 about had the same type of uniform that Ms. Elias had. And he  
23 was stocky, dark-complected, and he had a big mustache.

24 Q Did anyone aside from those people come over to you  
25 while you were standing there?

1           A     No, those are the people who came to me while I was  
2 standing. Now --

3           Q     How long did -- I'm sorry. How long did you stand  
4 there; do you know?

5           A     Well, long enough for all of that to happen.

6           Q     Then what did you do?

7           A     Well, then I was standing there, and nobody was  
8 helping me, and so I couldn't stand any longer. So, I had to  
9 limp over here -- over here is the casino part, way over here.  
10 There's a machine, they start their -- you know, there are  
11 gambling machines over here. So, I had to limp over here and  
12 sit at the closest machine -- it's off the picture over there,  
13 you can't see it -- and waited.

14          Q     Okay. What were you waiting for?

15          A     Well, for help. And then, so that's when Security  
16 Officer Corey Prowell came to me. He came to me, and then Ms.  
17 Elias came, and then Terry came over with his report.

18          Q     And did Officer Prowell ask you what happened?

19          A     He asked me what happened, and he wanted me to fill  
20 out his report, and I told him I couldn't because my arms and  
21 hands were hurting. And also, I had hit -- I hit my head on  
22 that divider. I was dazed. And he said -- so he filled out  
23 the Incident Report for me because I couldn't do it. And he  
24 asked me to fill out that other form, which I didn't do.

25          Q     That was the Waiver of Medical Assistance; is that

1 what you're talking about?

2 A Yes. He asked me, you know, where I hurt, and he  
3 took the picture. And I told him that I was in pain, and he  
4 said -- well, he said, do you want assistance; do you want an  
5 ambulance or whatever? And I said, no. And he said, well,  
6 would you fill out this report, or sign this, refusing -- sign  
7 it that you're refusing the medical assistance? And I said --  
8 I said, no, I'm hurt. I hurt, I'm in pain, and I don't know  
9 why I'm in pain. I don't know how badly I'm hurt, so I can't  
10 sign that until I know why I'm in pain.

11 Q Why didn't you request medical assistance right  
12 there at the Wynn?

13 A Well, I was -- I was dazed. I was alone. I didn't  
14 know what to do, and I -- well, I didn't know what to do.

15 Q How long did -- did Officer Prowell spend with you  
16 taking that information down?

17 A Well, long enough for him to fill out his report,  
18 and for him to take the pictures of my foot, and for Ms. Elias  
19 to come and tell him what had happened. And then, Terry, the  
20 man with the sweeper, he came over and gave Corey the -- his  
21 report. So, all that took some time.

22 And then -- then Officer Prowell asked me if I  
23 wanted a wheelchair, and I said, well, no, because if I -- if  
24 you have to take me out in a wheelchair, if I can't get out by  
25 myself, then I'm not going to be able to drive. And -- and so



1 I said, well, if I can't get to my car and I can't drive, then  
2 I'm going to have to have help. And so he gave me his card,  
3 and with his number, and I said, well, I'll see if I can get  
4 out on my own, and if I can't, and I need help, then I'll call  
5 you. And --

6 Q What did you do after that?

7 A Well, okay, so then I left him, and there was a --  
8 there was a bathroom close by to that machine, so I limped  
9 over there. And I went in and I -- and I sat there for at  
10 least a half-hour because I didn't think I was going to be  
11 able to leave on my own. I was alone, and I was dazed, and I  
12 really -- I really didn't know what to do.

13 Q Why were you limping?

14 A Well, because I was in pain.

15 Q What was in pain?

16 A Well, I had -- my shoulder was hurting, my arm was  
17 hurting -- my arms and hands, and my -- it was hurting to sit;  
18 my buttocks was hurting. And it hurt all the way down to my  
19 foot, my right ankle, that's -- and so I was limping.

20 Q How long were you in the bathroom? You said a  
21 half-an-hour?

22 A Well, at least a half-hour.

23 Q Then what did you do?

24 A Well, finally, I limped over to the closest machine  
25 and I sat. And then I thought, well, I got this far. I'm

1 going to -- I'm going to see if I can get to my car. And so,  
2 I spent quite a while -- maybe an hour-and-a-half, two hours,  
3 I'm not sure. It probably took me about -- until about 4:30  
4 to get to my car.

5 But I sat at machine after machine in a row, just  
6 resting and trying to recover. And then finally I got to the  
7 other end. And so I limped to the wall, and I got -- made it  
8 that far, and so finally, I got out to my car. And I thought,  
9 well, I'm going to -- I'm just going to stick to my routine,  
10 and I didn't want to -- I didn't want to accept the fact that  
11 I was really hurt.

12 Q Did you gamble when you were sitting at those  
13 machines in the Wynn?

14 A Well, I gambled a little bit, because you have to.  
15 You can't sit on their machine, and you can't just sit there.  
16 So, they had given me some money on my -- on the card, some  
17 free play, so I put my card in and I -- they weren't the  
18 machines that I play. I play video poker. They were just the  
19 closest machines getting me to my car. So, I pressed the  
20 button on all the machines -- or most of them, because I  
21 needed to sit.

22 Q Did you actually pull money out of your wallet and  
23 put it in any machine?

24 A I don't think so.

25 Q What were you using -- you were using your card?

1           A     Yes. They had given me free play money.

2           Q     Do you remember what kind of machines you were  
3 sitting at?

4           A     Just the ones closest -- the most direct route to my  
5 car. They weren't the video poker machines, because -- I  
6 don't even know what kind of machines they were.

7           Q     Where had you parked?

8           A     Where I usually parked, it's in the parking -- in  
9 the south parking garage where the car -- I think it's  
10 Ferrari.

11          Q     Is that -- that's -- I think that's the north.

12          A     Okay. So then, yeah, I passed -- I always park  
13 there. That's the -- I'd always pass the -- the car -- the  
14 Ferrari, if it's Ferrari.

15          Q     Is it self-parking?

16          A     Self.

17          Q     Self.

18          A     Yeah.

19          Q     S-e-l-f.

20          A     Yes.

21          Q     Okay, sorry.

22          A     Yes.

23          Q     All right. So, after you got to your car, where did  
24 you go?

25          A     Well, I didn't want to go home because I was alone

1 and Sal was gone, and so I -- I went to the Rampart Casino  
2 because that -- people know me there and I feel safe there.  
3 And so, I went there and I thought, well, I'm just going to do  
4 what I usually do and just try to forget about this. So, I  
5 went in there, and I spent a long time there. I don't know  
6 how long. I didn't want to go home.

7 Q What did you do when you were at Rampart?

8 A I sat, and -- and of course I gambled, because, you  
9 know, sometimes that makes you feel better.

10 Q And you -- do you know how -- approximately how long  
11 you were there?

12 A I don't know. I just know that I didn't want to go  
13 home, but finally, I just thought, well, I have to go home.  
14 So, I don't know what time it was, but I had to go home, and I  
15 just went home and crawled into bed.

16 Q And then, what did you do the next day?

17 A Oh, I couldn't get up. I was in so much pain, and  
18 so I just stayed in bed.

19 Q And how about the day after that?

20 A Well, I was still in pain, so I had -- I had to go  
21 see why I was still in pain. So, I went -- I didn't have a  
22 doctor, and --

23 Q Do you mean a primary care physician?

24 A Yeah, any -- any doctor at that time, because I was  
25 -- I didn't need one. I was strong and healthy. And so I had

1 to go to UMC Quick Care because I didn't have anybody else to  
2 go see.

3 Q When you went to UMC Quick Care, do you remember the  
4 date?

5 A Yes. That was two days later, so February 10th,  
6 2010.

7 Q And when you went there, what did you tell them was  
8 hurting?

9 A Well, I told them I'd fallen, and I told them that I  
10 had pain right after I fell, and I still had the same pain.  
11 So, I had the pain in my shoulder, the back, and it was  
12 hurting to sit, the pain was going all the way down my foot,  
13 and also, my knees hurt, and you know, my arms and hands were  
14 still hurting.

15 Q Were you given any prescriptions at UMC?

16 A Yes. They gave me three prescriptions. They told  
17 me -- you know, and some other things. And they took a  
18 picture of my back.

19 Q You mean like an image of your back, or a  
20 photograph?

21 A An x-ray of my back.

22 Q Was Sal back from his trip at that point?

23 A No, he was gone. He didn't come back until the  
24 14th, so --

25 Q When Sal got back, when did you first see him?

1           A     I picked him up at the airport on -- I think it was  
2 Valentine's Day. It was around February 14th.

3           Q     And did you tell Sal that you were hurt?

4           A     Um-hum, yes. I was -- I was in a lot of pain.

5           Q     And did you go to a doctor after that first initial  
6 visit at UMC Quick Care?

7           A     Yes. Sal went with me. I didn't have a doctor, so  
8 I tried -- for the first time, I went to a Dr. Thompson and I  
9 told him, you know, that I'd fallen, and I still had all this  
10 pain, the same pain that I had that day. And Sal was with me,  
11 and I described the same pain.

12          Q     What did they do for you?

13          A     Well, oh, also, I had pain inside, and so he  
14 referred me for an ultrasound.

15          Q     For what?

16          A     Well, for the abdomen.

17          Q     And did he do anything else for you?

18          A     No.

19          Q     Did you see any other doctor aside from Dr.  
20 Thompson?

21          A     Yes. Then I went to another doctor, and his name is  
22 Dr. Prahbu. I saw him around March 8th and told him the same  
23 thing. I said, I fell, I had all this pain right after I  
24 fell, and I still hurt. And also, I think maybe I had a cold.

25          Q     And did -- when you saw Dr. Prahbu, did he refer you

1 anywhere?

2 A Well, I believe he sent me for a blood test.

3 Q Did you have any x-rays done of your body?

4 A Not with him.

5 Q Did you have any done in March of 2010?

6 A Oh, okay. Then, I still didn't have a primary care  
7 doctor, and I liked UMC, so I went back to UMC and got a good  
8 primary care doctor. His name's Dr. Subramanyam. I mean,  
9 he's still -- still my doctor.

10 And he -- I told him what had happened. I told him  
11 I fell and I still have this pain, and so he referred me to  
12 get several x-rays of my -- my neck, my -- the back, and my  
13 hip, and my knee. And eventually, he sent me for my hands,  
14 because my -- I still had problems with my arm and hands. And  
15 he sent me to Dr. Cash, an orthopedic surgeon, for my neck and  
16 back. And so, he's my primary doctor.

17 Q Did you go see Dr. Cash?

18 A Yes, I went to Dr. Cash I believe in March of 2010.  
19 And Dr. Cash sent me for MRIs, the neck and back, and then he  
20 sent me to a foot doctor, the foot doctor sent me to a nerve  
21 doctor, and Dr. Cash also sent me to the pain doctor.

22 Q What pain doctor?

23 A Dr. Erkulvr -- I'm sorry, Erkulvrawatr, something  
24 like that.

25 Q Did you get prescribed any pain medications by any

1 doctors?

2 A Well, they offered it, but I can't take pain  
3 medication. I want to, but I can't because I have a real bad  
4 problem with constipation, and especially then, and so I can't  
5 take it.

6 Q You have a walker with you today; is that right?

7 A Yes.

8 Q When did you start using that walker?

9 A Well, shortly after I fell, I went to Dr. Cash, and  
10 I was limping. I'd been limping all that time. And actually,  
11 Sal, my boyfriend then, he went with me. And so, Dr. Cash  
12 prescribed a cane. Sal and I went to look at the canes, and  
13 my arms and hands were hurting, couldn't use the cane, so he  
14 suggested, well, try the walker, and then Dr. Cash went ahead  
15 and prescribed the walker for me.

16 Q And have you ever had any physical therapy as a  
17 result?

18 A I've been to physical therapy at least 45 times.  
19 I've tried really hard. Dr. Cash referred me for physical  
20 therapy for my neck and for my back, and then my primary  
21 doctor sent me for my knees, and then to a Dr. Trainor, and  
22 then he sent me to a Kelly Hawkins for pool therapy, trying to  
23 strengthen my knees.

24 Q Did any of this physical therapy relieve your pain?

25 A Not -- no, it didn't. I still have the same pain



1 that I had the day that I fell there. I still have the neck  
2 and the back, it still hurts to sit, I still get that pain  
3 going down my foot, so I still have that same kind of pain.

4 Q Now, you've seen that the Incident Report at Wynn  
5 states that you had pain in your right arm, your right ankle,  
6 and your buttocks. Did you see that?

7 A Yes.

8 Q Okay. You didn't say anything about your neck or  
9 your back; is that correct?

10 A Well, specifically saying back, no.

11 Q Why not?

12 A Well, my -- you know, it was hurting to sit, so I  
13 had the pain in my right buttocks, and my back is there.

14 Q Now, you didn't say your neck either; is that right?

15 A Right.

16 Q Why not?

17 A Well, the pain was here at the shoulder where the  
18 chest and the neck are.

19 Q But you didn't specifically say, neck; is that  
20 right?

21 A Probably not.

22 Q Do you remember telling Corey Prowell that you felt  
23 you had limited mobility?

24 A Oh, yes. I couldn't fill out the report. He wanted  
25 me to fill it out, and I told him, I can't, my arms and my

1 hands are hurting.

2 Q Now, you eventually went and saw Dr. Dunn; is that  
3 correct?

4 A Oh, yes.

5 Q Why did you go see Dr. Dunn?

6 A Dr. Cash referred me to Dr. Dunn, and Dr. Dunn is  
7 great. And Dr. Cash had sent me for MRIs in 2010 after the  
8 accident happened. And when I went to Dr. Dunn -- well, Dr.  
9 Cash said I needed more MRIs, and then he referred me to Dr.  
10 Dunn. So, Dr. Dunn said, yes, so we'll send you for the  
11 follow up MRIs, and so he sent me for those for my neck and  
12 back. And -- and then he sent me to his partners, who  
13 specialize in the knees.

14 Q And who are those? Do you know the names of those  
15 doctors?

16 A Yes. Dr. Scott Martin and then Dr. Tingey.

17 Q Has any doctor recommended that you have surgery?

18 A Yes.

19 Q Who has?

20 A Well, I need neck surgery, and surgery on my knees.

21 Q Are -- the neck surgery, do you know what type of  
22 surgery it is?

23 A I should. Dr. Dunn explained it.

24 Q You heard him explain it, but --

25 A Yes.

1 Q -- he's told you about the surgery; is that correct?

2 A Yes.

3 Q Okay. And you haven't had the surgery yet; is that  
4 right?

5 A Not yet.

6 Q Why not?

7 A Well, I -- the specialist had sent me to four  
8 different physical therapists. They didn't rush to surgery.  
9 So, I saw Dr. Dunn -- I just saw Dr. Dunn last year, and I was  
10 ready for the surgeries then, because I really can't -- I  
11 can't take this anymore. And so he sent me to the MRIs, and I  
12 had problems with that, and I have to -- so now I'm dealing  
13 with other things before I can get the surgery.

14 Q Are you going to have the surgery to your neck?

15 A I have to -- I have to have the surgery to my neck.  
16 I -- I can't stand this anymore because the pain gets so bad,  
17 it actually goes up to my head, and that's unbearable. The  
18 pain just wore me down, and I can't take the drugs, so I have  
19 to try the surgery.

20 Q Do you do anything now to relieve the pain that you  
21 feel in your neck?

22 A Oh, all day long. Throughout the day.

23 Q What do you do?

24 A Do you want me to go through the whole -- all of  
25 that, or --

1 Q Well, I mean --

2 A -- everything I do for that? I --

3 Q What do you do for it?

4 A Well, you know, I wake up in pain. My neck hurts,  
5 and the pain will go down my arms and my hands, so I have to  
6 -- there's stretching exercises I do for it. And just to --  
7 until -- just to make the pain subside, it takes like at least  
8 half-hour to an hour. They're just stretching exercises.

9 Q And how about your back? Do you still have pain in  
10 your back?

11 A Yes. When I get up -- well, I can't get up -- stand  
12 up straight. I wake up with a back -- my back hurts, and my  
13 buttocks still hurts. I'll wake up with pain in my knees, and  
14 the pain will still get down to my foot. So I have to sit up  
15 in bed and do these stretching exercises for at least an hour  
16 before I can stand up straight. Otherwise, I can't even stand  
17 up straight.

18 Q What about your knees? Do you still have pain in  
19 your knees?

20 A Oh, I can -- it's so painful to walk, and I have  
21 stairs and I -- many days, I can't even get up and down my  
22 stairs because they hurt, and my leg and my knees will give  
23 out on me when I walk. So, yes, they're really bad. I have  
24 to get those done.

25 Q Now, I want to talk about doctors that you saw

1 before the fall.

2 THE COURT: May I just interrupt for a moment? How  
3 are we doing here? I mean, it's been almost two hours. Do we  
4 need a bathroom break? I do. Anybody else --

5 MS. MORRIS: Okay, I think we all do.

6 THE COURT: -- sign onto that? I tried to put it  
7 off on you, but all right. So, ladies and gentlemen, we're  
8 going to take a ten-minute recess until 10:30.

9 During this recess, it's your duty not to converse  
10 among yourselves or with anyone else on any subject connected  
11 with the trial, or read, watch, or listen to any report of or  
12 commentary on the trial by any person connected with the  
13 trial, or by any medium of information, including, without  
14 limitation, newspaper, television, radio, or internet. You  
15 are not to form or express an opinion on any subject connected  
16 with this case until it's finally submitted to you.

17 And Ms. O'Connell, you may not discuss your  
18 testimony with your lawyer during this ten-minute break.  
19 We're in recess.

20 THE MARSHAL: All rise for the jury, please.

21 (Court recessed at 10:22 A.M. until 10:33 A.M.)

22 (Outside the presence of the jury)

23 THE MARSHAL: All rise for the jury, please.

24 (In the presence of the jury)

25 THE MARSHAL: Jury's all present, Your Honor.

1           THE COURT: Thank you. Please be seated. And the  
2 record will reflect that we've been now rejoined by all  
3 members -- eight members of the jury, as well as the two  
4 alternates, and Ms. O'Connell is still on the stand, still  
5 under oath. Defense is present, all counsel are present, and  
6 all officers of the court. You may proceed.

7           MS. MORRIS: Thank you.

8 BY MS. MORRIS:

9           Q     Yvonne, I was asking you about doctors that you saw  
10 before the fall. Can you tell us the last time you went to  
11 see a doctor before you fell at the Wynn?

12          A     Oh, I was strong and healthy. I didn't see doctors.  
13 The last one I saw before my husband passed away, before 2002,  
14 I went to Nellis and I had a breast biopsy. That was normal.  
15 And then, sometime the year before, I had had an infection,  
16 like something like pink eye or something, and I needed  
17 antibiotics. I didn't have a doctor, so I went to the --  
18 Summerlin to get -- to get antibiotics. And then, other than,  
19 you know, female appointments years before that, that was it,  
20 but I didn't go to doctors.

21          Q     Had you ever in the past hurt your back?

22          A     In 1989, my husband at that time -- my ex-husband,  
23 he pushed me and my back got hurt. And I -- I went to a  
24 physical therapist a few times, and then, after that, the pain  
25 went away.

1           Q     How would you describe that injury to your back that  
2 happened in 1989?

3           A     Well, at that time, because I had been so healthy  
4 and strong, I hadn't really had any injuries before. So, at  
5 that time, to me, it seemed like it was severe, but now  
6 compared to this -- I mean, it was -- it was minor compared to  
7 this. And besides that, it cleared up and I didn't have any  
8 pain for 20-some years.

9           Q     Has a doctor ever diagnosed you with having  
10 fibromyalgia?

11          A     Well, at that time, because my back hurt, they said,  
12 well, maybe you just have fibromyalgia, because they didn't  
13 see a reason for it to hurt, and so they said I might have it  
14 then. But then, when I went to the physical therapist for a  
15 few times and my back stopped hurting, I had no pain at all,  
16 and that was 20-some years ago.

17          Q     So, when you keep saying "then," you're talking  
18 about in 1989?

19          A     1989, yeah. 20-some years ago.

20          Q     Have any of the doctors that you've seen after this  
21 fall told you you have fibromyalgia?

22          A     Oh. Some of them said, well, maybe you have that  
23 also, in addition to the other things, the -- you know, the  
24 discs, and the knees, and the hands.

25          Q     Have you ever been diagnosed with any type of

1 disease before you fell?

2 A Oh. Also, when I stopped cleaning teeth mid --  
3 around 1986, I stopped because I was having trouble holding  
4 the instruments while I was deep scaling; deep cleaning. I  
5 could do other things. I played tennis and everything, I just  
6 -- it was the holding the instruments while I was doing that.  
7 And they said, well, your fingers are long and they're extra  
8 limber, so sometimes it's Marfan, sometimes it's  
9 Ehlers-Danlos, and sometimes it's just some -- it's just  
10 you're extra limber, so they said, well, that could be that.

11 Q Did they give you any kind of medical treatment for  
12 it?

13 A Oh, no. It was just a matter of me not being able  
14 to do the deep cleanings anymore.

15 Q Did it cause you any kind of pain?

16 A No, not at all, it was just I couldn't hold the  
17 instruments.

18 Q Since you've fallen, have you and Sal ever gone  
19 swing dancing again?

20 A Oh, since I fell?

21 Q Correct.

22 A Oh, no.

23 Q So, the last time you were in swing dancing, you  
24 said it was before the fall?

25 A A couple of days before the fall.



1 Q You have this walker here with you; is that correct?

2 A Yes.

3 Q Is that the only walker you own?

4 A No, I have one by my door at the house, and I have  
5 another easier one to manage around my house inside my house.

6 Q Now, what do you use the walker for?

7 A When I walk, I hurt, and so I start limping. And  
8 so, the more I limp, the more I hurt, and then my leg and my  
9 knees give out on me.

10 Q So, what do you use the walker for?

11 A So I can walk so -- without falling, and without  
12 limping, and without -- and plus, I don't have as much pain  
13 when I have that extra support.

14 Q And do you keep that walker with you in your car?

15 A I keep one in my car, and I keep one at my house by  
16 my door in case I have to get out of there.

17 Q Can you give us an idea now what your days are like?

18 A Well, I stay at home most of the time with my  
19 parrot, Sheena. We -- we talk every morning; she makes me  
20 laugh. And I go out sometimes. I love to go out, but it's  
21 really -- really -- it's really a big effort for me to get  
22 out. And I'm really nervous when I drive because it's hard  
23 for me to turn my neck for me to see, so I don't like to  
24 drive. And so, I just -- I never thought that I would end up  
25 like this.

1           Q     Now, I'm done asking you questions at the moment,  
2 and Mr. Semenza's going to ask you some questions now, okay?

3           MS. MORRIS: Thank you.

4           MR. SEMENZA: Thank you.

5           THE COURT: Cross?

6                               CROSS-EXAMINATION

7 BY MR. SEMENZA:

8           Q     Good morning, Ms. O'Connell.

9           A     Good morning.

10          Q     Now, Ms. O'Connell, you don't dispute that you  
11 declined medical care and treatment at the Wynn on February  
12 8th, 2010, do you?

13          A     I declined their wheelchair and the -- what they  
14 were offering.

15          Q     Okay. So, is that a yes, that you did decline  
16 medical care and treatment from the Wynn?

17          A     I declined it from the Wynn.

18          Q     And the only injuries identified in the Guest  
19 Accident/Illness Report that you signed included injuries to  
20 your right shoulder, your buttocks, and your right ankle; is  
21 that correct?

22          A     That form, yes.

23          Q     You don't dispute that after your fall, you in fact  
24 did gamble at the Wynn, do you?

25          A     I gambled a little.

1 Q And by a little, what does that mean?

2 A Just -- I believe it was pretty much what they gave  
3 me on my card, and it was just so that I could sit at the  
4 machines along the way to my car.

5 Q And I want to make sure I understand your prior  
6 testimony. Your prior testimony as I understood it was that  
7 in order for you to sit in front of the gaming machines, you  
8 actually had to gamble; is that correct?

9 A Oh, of course. You can't sit there on their  
10 machines and not gamble.

11 Q Have you ever been asked to leave a particular slot  
12 machine because you weren't gambling at it?

13 A Of course.

14 Q That's happened to you?

15 A Absolutely.

16 Q Has anyone at Wynn ever told you that you can't sit  
17 in front of a slot machine if you aren't gambling?

18 A No, but I never did that. I mean, I know.

19 Q Do you recall whether you gambled on your red card,  
20 or whether you actually played with cash?

21 A I don't believe that I played with cash. I believe  
22 that I just used my red card.

23 Q And do you recall how many hours you gambled at the  
24 Wynn prior to leaving it on that particular day?

25 A Well, it took me until about 4:30 before I got to my

1 car.

2 Q You had mentioned that you then went to the Rampart  
3 Casino; is that correct?

4 A Yes.

5 Q And you were there for a long period of time?

6 A As long as I could stand it.

7 Q And you did gamble at the Rampart Casino on that  
8 particular day, correct?

9 A Yes.

10 Q Did you eat anything --

11 A No.

12 Q -- at the Rampart Casino?

13 A No.

14 Q Is it fair to say that while you were at the Rampart  
15 Casino, the only thing you did was sit and gamble?

16 A Well, I -- I sat a lot. I didn't gamble the whole  
17 time, but I sat there. I feel good there and I'm comfortable  
18 there. I felt safe there, so.

19 Q When you were sitting at the Rampart Casino and you  
20 weren't gambling, were you sitting in front of slot machines?

21 A Not necessarily.

22 Q Where were you sitting if it wasn't in front of a  
23 slot machine at the Rampart Casino when you weren't gambling?

24 A Well, they have a nice area for us to sit.

25 Q Okay. Were you sitting in that area for a portion

1 of your time on that particular day?

2 A Probably.

3 Q Do you recall?

4 A I don't recall. I don't recall because -- but it's  
5 just something I do there.

6 Q Do you know how much money you gambled at the  
7 Rampart Casino on that particular day?

8 A Oh, no, I don't.

9 Q Do you recall whether you won or lost?

10 A Well, I probably lost.

11 Q Do you have a recollection of whether you won or  
12 lost?

13 A No.

14 Q Do you recall whether you were playing with comps or  
15 free play, or whether you were playing with cash at the  
16 Rampart Casino on that particular day?

17 A Don't recall that.

18 Q Do you have any reason to dispute that you gambled  
19 approximately \$1,000 at the Wynn on February 8th of 2010 after  
20 your fall?

21 A I -- on that day, I don't believe that. I don't --  
22 I don't believe it.

23 Q If that \$1,000 represented coin in, the amount that  
24 you actually played, not necessarily put in, would that change  
25 your opinion?

1           A     I don't know how they figure it, but I know I didn't  
2 put in \$1,000.

3           Q     Now, you did drive home from the Wynn -- well,  
4 strike that. You did drive from the Wynn to the Rampart  
5 Casino unassisted; is that correct?

6           A     Yes, I did.

7           Q     And you did drive from the Rampart Casino to your  
8 home unassisted; is that correct?

9           A     Yes.

10          Q     And how far away is your home from the Rampart  
11 Casino?

12          A     Oh, it's not far. It's -- it's -- mileage, I don't  
13 know, but it's not far at all.

14          Q     If you were having difficulty driving and didn't  
15 want to drive either from the Rampart Casino to your home, or  
16 from the Wynn to the Rampart Casino, you could have taken a  
17 taxi cab; is that correct?

18          A     Yes.

19          Q     You did in fact feel well enough at that point in  
20 time to drive your vehicle; is that correct?

21          A     Well, I did. I did it.

22          Q     And the day following your fall at the Wynn on  
23 February 8th, 2010, you did not seek medical treatment, did  
24 you?

25          A     I was in bed. I didn't feel like getting up.

1           Q     It was only two days later from the date of the  
2 incident that you did in fact go to UMC Quick Care; is that  
3 correct?

4           A     Yes.

5           Q     Prior to your fall at the Wynn, you did have your  
6 cell phone with you; is that correct?

7           A     I'm so sorry.

8           Q     That's fine. When you arrived at the Wynn on  
9 February 8th of 2010, you had your cell phone with you?

10          A     Yes.

11          Q     And did you have your cell phone in your possession  
12 the entire day from when you got to the Wynn until you got  
13 home?

14          A     Yes.

15          Q     And you had previously testified that you had had  
16 lunch with your cousins at the Wynn buffet?

17          A     Yes.

18          Q     And could you remind me what their names were?

19          A     Helen and Allen Stroub.

20          Q     And did you have an enjoyable lunch with them?

21          A     Very much.

22          Q     And how long were they in town?

23          A     I'm not sure, but I'm pretty sure they were leaving  
24 me to go to the airport.

25          Q     Were they staying at the Wynn?

1           A     I think so.

2           Q     You don't know for sure?

3           A     I'm pretty sure they did.

4           Q     Did -- do you know if they were going immediately to  
5 the airport?

6           A     I wouldn't know that.

7           Q     After your fall at the Wynn, did you make any effort  
8 to contact either Helen or Allen Stroub by phone?

9           A     Oh no, that's not -- that's not something I would  
10 ever do.

11          Q     Do you think that they could have provided you with  
12 some care and comfort if you had called them after your fall?

13          A     Absolutely not. These are cousins from California  
14 that I -- if I'm lucky, I get to have lunch with them once a  
15 year. And then, after that day, I didn't see them for three  
16 years, so.

17          Q     Are you close with them?

18          A     No. I see them once a year, if I'm lucky. I mean,  
19 I love them, but we're not in each other's lives.

20          Q     Well, they were people that you knew previously and  
21 had a familial relationship with, correct?

22          A     Yeah, 40-some years ago.

23          Q     But you decided not to contact them after your fall?

24          A     I would never contact them.

25          Q     Do they know that you fell to this day?



1           A     No, they don't.

2           Q     Now, on the day that you had fallen, Mr. Risco was  
3 out of the country, I guess?

4           A     Well, he had gone on a cruise.

5           Q     Do you recall the specifics of that cruise?

6           A     Oh, no.

7           Q     Do you know where the cruise was going to?

8           A     Well, I'm pretty sure he -- he went to Florida, so  
9 it must have been the Caribbean.

10          Q     Do you recall when he left to go to Florida to go on  
11 the cruise?

12          A     Yes. I took him to the airport the day before I  
13 fell.

14          Q     So, am I correct that Mr. Risco flies from Las Vegas  
15 to Florida on the day before your fall?

16          A     I'm pretty sure.

17          Q     Okay. Do you know what time he arrived in Florida  
18 on that particular day?

19          A     I wouldn't know that.

20          Q     Do you know what time his cruise left Florida --  
21 well, do you know what day the cruise left port out of  
22 Florida?

23          A     I wouldn't know that.

24          Q     At the time of your fall, you don't know whether Mr.  
25 Risco's cruise ship had departed or not?

1           A     No, I wouldn't know.

2           Q     You didn't make any attempts to contact Mr. Risco on  
3 the day of your fall, did you?

4           A     Oh, no.

5           Q     And he was the person that you were most close to in  
6 your personal life at that point in time; is that correct?

7           A     Yes, but he wasn't here.

8           Q     There was nothing prohibiting you from contacting  
9 him though by phone, was there?

10          A     I probably didn't even know how to contact him.

11          Q     Did he have a cell phone?

12          A     No.

13          Q     Do you know what hotel he was staying at?

14          A     No.

15          Q     You didn't know anything about where he was going to  
16 be during this cruise?

17          A     Probably not.

18          Q     Did he invite you on this cruise?

19          A     Yes.

20          Q     And you declined to go with him, correct?

21          A     Yes.

22          Q     Now, do you know when he returned from his cruise?

23          A     Yes. I picked him up -- I believe it was on  
24 Valentine's Day, February 14th.

25          Q     If my math's correct, that would have been six days

1 after your fall?

2 A About that, yes.

3 Q Okay, and you had arranged to pick him up at the  
4 airport?

5 A Yes.

6 Q And did you talk to him at any point in time before  
7 he returned -- well, let's back up. When Mr. Risco was  
8 returning from his cruise, was he flying directly from Florida  
9 to Las Vegas, or going somewhere else?

10 A I'm sorry?

11 Q Okay. Did you call him at any point in time during  
12 his cruise?

13 A I -- I don't remember, but I doubt it, because --  
14 because we went on a lot of cruises. He goes on cruises all  
15 the time, and I'm not in the -- I wasn't in the habit of  
16 calling him when he went on a cruise.

17 Q You were just letting him do his thing?

18 A Yeah, he does his thing.

19 Q How did you know -- or how did he know, rather, that  
20 you were going to be picking him up at the airport?

21 A Oh, he knew when he was going to be arriving at the  
22 airport, and we had that all set up, you know, when I'd pick  
23 him up. He already had his flight.

24 Q So, you knew what return flight he was coming in on?

25 A Yes.

1           Q     And you had talked about that you would pick him up  
2 from the airport before he left?

3           A     Right, it was all set. But like I said, if I talked  
4 to him once he landed or something, I doubt it very much, but  
5 I don't remember that. I just doubt it.

6           Q     And you drove to the airport to pick him up, in  
7 fact?

8           A     Yes.

9           Q     And after your fall, you were driving -- well,  
10 strike that. Between the time that you had your fall and you  
11 picked up Mr. Risco, you were in fact driving your automobile,  
12 right?

13          A     Yes, I picked him up at the airport.

14          Q     Okay, but the day after your fall to the day that he  
15 returned from his cruise, did you do any driving at all?

16          A     I had to -- I had to drive myself to UMC two days  
17 later after the fall on the 10th.

18          Q     Do you recall doing any other driving?

19          A     Well, that day, of course I had to go pick up the  
20 medicine, and I don't recall doing any driving until I picked  
21 him up from the airport.

22          Q     And when you picked Mr. Risco up at the airport, you  
23 told him about the fall?

24          A     Yes.

25          Q     Did you provide him with any specifics concerning

1 what happened?

2 A I don't recall.

3 Q Did you -- do you recall telling him about any of  
4 the specifics of your injuries?

5 A Oh, I told him I hurt. I was in a lot of pain.

6 Q Did you tell him anything more specific that you  
7 were hurting and in a lot of pain?

8 A I'm not sure what specifics I gave him. I just --  
9 he just knew that I hurt. I think I told him I hurt all over.  
10 Oh, he -- no.

11 In addition to that, the doctor at UMC two days  
12 later, she had told me that I had bruises on my body, and I  
13 couldn't see them, because I wasn't in a position to be able  
14 to see them. So, when I picked up Sal and we went to his  
15 house, I told him I had bruises, so he took some pictures of  
16 some of my bruises, of just the ones that the doctor had told  
17 me about. And I probably had bruises on the rest of my body,  
18 but I don't know where; I couldn't see them. So, he took  
19 pictures of those bruises.

20 Q Now, on the day of your fall, you didn't reach out  
21 to Corey after -- after you had the fall? You didn't call him  
22 with the card -- based upon the card he had given you, did  
23 you?

24 A Correct, I didn't.

25 Q But Mr. Prowell did in fact offer assistance to you

1 if you did need it, didn't he?

2 A Yes, that's why he gave me his card, and he said --  
3 and I told him, well, I didn't know. I didn't know if I was  
4 going to be able to -- to get to my car, and if I couldn't, he  
5 knew that I'd be calling him.

6 Q Did you believe that Mr. Prowell did a professional  
7 job when he was interacting with you?

8 A He was nice.

9 Q Okay. You don't have any issues with his demeanor,  
10 his behavior, anything like that? He acted professionally  
11 with you?

12 A Yes.

13 Q Did you believe that he was sympathetic to you and  
14 was attempting to care for you?

15 A Sympathetic, no.

16 Q He did offer medical attention to you though if you  
17 wanted it, right?

18 A Yes.

19 Q Is it true that you didn't contact anyone about your  
20 fall on the day that it took place? You didn't call anyone?

21 A Well, I tried to think of who I could call, but I  
22 couldn't think of anybody that -- so, no, I didn't call  
23 anybody.

24 Q You didn't have any close friends that you could  
25 reach out to since Sal was out of town?

1 A Not -- not really. We -- we didn't -- no, I didn't.

2 Q Ms. O'Connell --

3 MR. SEMENZA: May I approach, Your Honor?

4 THE COURT: Yes.

5 MR. SEMENZA: I want to talk to you about some  
6 documents here now.

7 (Pause in the proceedings)

8 MR. SEMENZA: Your Honor, I'd move for the admission  
9 of Plaintiff's Proposed Exhibit R, 1 through 6.

10 MS. MORRIS: I think that's defendant's.

11 THE COURT: They're marked as a group of --

12 MR. SEMENZA: I'm sorry, Defendant's R, 1 through 6.

13 THE COURT: Defendant's R, and it's -- so it's one  
14 exhibit; it consists of six pages?

15 MR. SEMENZA: Yes, Your Honor.

16 THE COURT: Any objection?

17 MS. MORRIS: No.

18 THE COURT: It will be admitted.

19 (Defense Exhibit R is admitted)

20 MR. SEMENZA: Thank you.

21 BY MR. SEMENZA:

22 Q Ms. O'Connell, can I have you turn to tab R on the  
23 big binder, please?

24 A Okay.

25 Q You're there?

1           A     Yes.

2           Q     And can you take a look at the documents that are  
3 comprised as R1 through 6 real quickly? Just skim them and  
4 tell me if you recognize them.

5           A     Are they -- are they all from the same place, or are  
6 they all from different places?

7           Q     Well, take a look and see if you recognize them, if  
8 you would, please.

9           A     I know that it's my handwriting.

10          Q     Okay. I'm showing you -- or putting up on the  
11 screen R1. Do you see at the top of the document there's a  
12 name?

13          A     Yes.

14          Q     Is that your name?

15          A     Yes.

16          Q     And is that your handwriting at the top?

17          A     Yes.

18          Q     Is it dated -- what is it dated?

19          A     2/17/10.

20          Q     And do you have any reason to dispute that this  
21 document was created on 2/17 of '10?

22          A     No.

23          Q     Do you -- in looking at the complete document, do  
24 you have any understanding as to what medical provider you  
25 completed this for?



1           A     It must be -- because of the date, I'm pretty sure  
2 it was for a Dr. Thompson.

3           Q     Okay, and what did you see Dr. Thompson for?

4           A     I had still -- I still had the pain from the fall,  
5 and so I went to him, and I told him about the fall, and I  
6 told him that I was still hurting.

7           Q     And prior to his treatment of you, you were asked to  
8 complete this chart?

9           A     Prior to him seeing me, yes.

10          Q     Okay. And is this your handwriting on the body  
11 here?

12          A     That's my handwriting on this page.

13          Q     All right. And on this page, you are identifying  
14 sources of pain; is that correct?

15          A     Yes.

16          Q     Okay. And you've identified pain in your -- on this  
17 portion on your neck, your back, your right shoulder -- let's  
18 break it down. Are you identifying that you have pain in your  
19 neck?

20          A     My neck.

21          Q     Okay, and your right shoulder?

22          A     Yes.

23          Q     And your back?

24          A     Yes.

25          Q     And your right arm?

1           A     Yes.

2           Q     And your right hand?

3           A     Yes.

4           Q     Your mid-back?

5           A     Yes.

6           Q     Your right buttocks?

7           A     Yes.

8           Q     Your right thigh?

9           A     Yes.

10          Q     And your right foot?

11          A     Right.

12          Q     Okay. You don't identify any pain that you're

13 experiencing in your left knee; is that correct?

14          A     Right.

15          Q     Okay. You do identify some pain on your right front

16 knee though?

17          A     Yes.

18          Q     You also on the left side of the picture are

19 identifying that you've got pain in the rib area?

20          A     Yes.

21          Q     And there appears to be a square where your heart

22 would be?

23          A     Yes.

24          Q     Okay, why did you put that?

25          A     Well, because that's -- that's part of the pain. I

1 had that shoulder pain, and the pain gets here around my rib.

2 Q Is that -- are you attempting to indicate that you  
3 were having chest pain?

4 A Yes.

5 Q And then you mentioned -- or you identified some  
6 checks near your abdomen?

7 A Yes.

8 Q And then in your groin area; is that correct?

9 A Yes.

10 Q Okay. And on this document, it identifies a number  
11 of levels of pain that you're experiencing; is that correct?

12 A Yes.

13 Q Okay. Under that column, "intensity;" is that  
14 correct?

15 A Yes.

16 Q And for all of those, you've identified ten. Is  
17 that the most extreme level of pain on the chart?

18 A I'm sorry, are you asking -- what are you asking?

19 Q That's fine, I can ask a different question. So,  
20 the tens you identify represent ten of ten pain; is that  
21 correct?

22 A What I was told is what ten means is the most pain  
23 that I have experienced.

24 Q Okay, and you were identifying on this document that  
25 this was the worst pain you had ever experienced?

1           A     Yes. This was all the pain that I had after the  
2 fall, too.

3           Q     And I'm showing you R2. Can I have you turn the  
4 page, Ms. O'Connell? And in this box -- I'm sorry. There's a  
5 portion of the document that says, "Choose three words to  
6 describe how usually you feel physically." And under 2,  
7 you've identified, "Healthy, except for IBS." What did you  
8 mean by that?

9           A     Well, that I was healthy, but I had IBS. I'd had  
10 constipation that I had under control.

11          Q     Okay, and IBS is what?

12          A     Well, for me, it's constipation.

13          Q     But it's -- what do the -- what do the letters IBS  
14 stand for?

15          A     Irritable bowel syndrome.

16          Q     And it identifies here some medication; is that  
17 correct?

18          A     I'm sorry.

19          Q     In the lower lefthand portion of the document --

20          A     Yes.

21          Q     -- it says, "Name of medicine," and it's got some  
22 medicines identified.

23          A     I see that.

24          Q     Okay. Was -- and one of them is Tramadol; is that  
25 correct?

1 A Yes.

2 Q What is Tramadol?

3 A I don't know what these are. This is what -- when I  
4 went to UMC two days after I fell, the doctor prescribed three  
5 drugs for me, and so that's what I was taking; what she had  
6 prescribed.

7 Q You don't know what these medications did though?

8 A Well, if I wrote it here. Well, I assume, you know,  
9 pain -- well, I'm assuming, but it was for pain, and probably  
10 inflammation, and I don't know what else for.

11 Q Did you discontinue taking these medications?

12 A I took almost all of them.

13 Q So, you completed your prescriptions? You took  
14 them?

15 A I took almost all of them.

16 Q And to your knowledge, did they give you any relief?

17 A Well, what happened is I was dizzy, and I was  
18 nauseous, and I'd had a -- symptoms on the left side of my  
19 face, so I didn't feel relief.

20 Q Can I have you turn to the next page, R3? And this  
21 appears to be a history -- past history, preexisting  
22 conditions, those sorts of things? You're supposed to check  
23 or circle which ones you have, correct?

24 A It says, "Any that you now have or have had in the  
25 past."

1           Q     Okay. And you identified here irritable bowel  
2 syndrome, correct?

3           A     Yes.

4           Q     And you did identify fibromyalgia, didn't you?

5           A     Yes.

6           Q     Further on down the document, there's a portion that  
7 says, "Other conditions/diagnoses you have had that are not  
8 listed above;" is that correct?

9           A     Yes.

10          Q     And on this, you identify, "Back was badly injured  
11 in 1989"?

12          A     Yes.

13          Q     And you also identify in this portion that the back  
14 of your neck, the left side, swells and then shrinks. Do you  
15 see that?

16          A     Yes.

17          Q     What did that relate to?

18          A     Oh, the doctor told me those are my lymph glands.

19          Q     And I'm showing you R4. Can I have you turn the  
20 page, Ms. O'Connell?

21          A     Yes.

22          Q     Now, at the top of the document, it says, "Now since  
23 slip and fall." Do you see that?

24          A     Yes.

25          Q     So, anything marked with a "now" is something that

1 you started experiencing after the slip and fall; is that  
2 correct?

3 A Yes.

4 Q And you've checked here, difficult to get to sleep  
5 or stay asleep?

6 A Yes.

7 Q Pain interferes with your sleep?

8 A Yes.

9 Q You have back or neck pain?

10 A Yes.

11 Q Pain that radiates down the leg?

12 A Yes.

13 Q Painful, swollen, or tender joints?

14 A Yes.

15 Q Muscle pain, aches, stiffness?

16 A Yes.

17 Q Joint or muscle weakness?

18 A Yes.

19 Q Irregular heartbeat?

20 A Yes.

21 Q Okay. Did you start experiencing an irregular  
22 heartbeat after the fall on February 8th, 2010?

23 A Yes.

24 Q Do you attribute the irregular heartbeat to your  
25 fall?

1           A     A doctor has to tell you that, but what I can tell  
2 you is that immediately after I fell, I had that pain in my  
3 shoulder right here, and my chest, and, you know, in my ribs.  
4 You know, I still get that pain at the ribs.

5           Q     Well, do you attribute the irregular heartbeat or  
6 palpitations to the fall on February 8th, 2010?

7           A     Well, what I can tell you is that I didn't have  
8 them, I didn't have any problems there, and after I fell, I  
9 did.

10          Q     Is that a "yes" then?

11          A     I'm just saying I didn't have them before, and then  
12 I did, and anything else, a doctor would have to tell you. I  
13 can't say things like that.

14          Q     Well, I'm asking what your opinion is. Do you --

15          A     I -- I'm positive that I was very healthy, I had no  
16 problems in that area before I fell. And after I fell, I had  
17 immediate pains there in my shoulder and in that area.

18          Q     Okay. So, you would attribute your heart  
19 palpitations to the fall on February 8th, 2010?

20          A     Well, I didn't have them, and after the fall, I had  
21 them.

22          Q     Okay, so is that a, yes? I mean, if you don't know,  
23 you don't know, but --

24          A     I can just -- all I can tell you is I -- I was very  
25 healthy, I didn't have them before, and then all the sudden



1 after I fall, I had them. That's what I know. That's what I  
2 can tell you.

3 Q And you identify here that you have chest pressure,  
4 pain, or angina, and that's identified as now, correct?

5 A Yes.

6 Q And that was after the fall on February 8th, 2010?

7 A Right.

8 Q And do you attribute the chest pressure, pain, or  
9 angina to the fall on February 8th, 2010?

10 A The same thing. I didn't have it before, and right  
11 after the fall, I had it.

12 Q And next down, you identify that you had rapid or  
13 racing heartbeat after the fall; is that correct?

14 A Yes.

15 Q Do you attribute your racing, rapid heartbeat to the  
16 fall you had on February 8th, 2010?

17 A The same thing. I didn't have it before, and right  
18 after I fell, that's what I had.

19 Q Moving along, on the right hand side, you identify  
20 that you had low energy, fatigue, and feel tired. And that  
21 was -- do you attribute that to the fall on February 8th,  
22 2010?

23 A Well, same thing. I was very healthy, I was a swing  
24 dancer, had no health issues, I was strong and healthy, and  
25 then, after I fell, I had all these problems.

1           Q     You also identify here that you get lightheaded upon  
2 standing up now, and that was after the fall on February 8th,  
3 2010, correct?

4           A     I'm sorry, I --

5           Q     It's on the right hand side, "Get lightheaded upon  
6 standing up."

7           A     Oh. Okay, I see it. And I'm sorry, what's your  
8 question?

9           Q     Yes. Do you attribute the lightheadedness to the  
10 fall on February 8th, 2010?

11          A     Oh, well, absolutely. I fell, my head hit that  
12 divider, and I got -- I was dazed. I couldn't even get up.

13          Q     Did you inform Mr. Prowell that you hit your head on  
14 the divider.

15          A     Well, at that time, I knew I hit my head; I didn't  
16 know what I hit my head on. Now, I know that it was the  
17 divider.

18          Q     Did you ever tell Mr. Prowell though that you hit  
19 your head?

20          A     I'm not sure. I know he didn't write it down, so  
21 I'm not sure if I told him that or not.

22          Q     Moving down, you identified that you feel anxious,  
23 nervous, frustrated, and irritable. All of that began after  
24 your fall on February 8th, 2010; is that correct?

25          A     Well, I felt really good, I was happy and healthy

1 before it happened, and then -- and then, immediately, I had  
2 all that pain. And also -- I'm sorry. Yes.

3 Q Do you attribute the anxious feelings, nervousness,  
4 frustrated, and irritable symptoms to the fall on February  
5 8th, 2010?

6 A Well, absolutely it made me feel like that.

7 Q And after the fall, you felt depressed?

8 A Yeah, I'm very -- I'm very depressed over it. I'm  
9 very depressed that this has happened to me.

10 Q Moving down, you identify that you have palpitations  
11 and heart fluttering, and again, do you attribute that to the  
12 fall on February 8th, 2010?

13 A And my answer's the same. I was healthy, I had no  
14 problems, no issues with that before I fell, and then I had  
15 the immediate pain and -- and so, it's the same.

16 Q Well, do you attribute it to the fall or not?

17 A I was healthy, and then I fell and immediately had  
18 these. That's all I can say.

19 Q Can I have you turn to R6, please? And under 17,  
20 you identify your severe back injury from 1989?

21 A Yes.

22 Q You felt it was important enough to mention your  
23 back injury which was 25 years ago in this health  
24 questionnaire; is that correct?

25 A Well, all of them ask you to -- to write your

1 history, so I also put down my tonsillectomy that I had in  
2 1955.

3 Q But did you feel that it was important to identify  
4 your back injury as part of your history in this document?

5 A That was part of my history, so I was trying to be  
6 as accurate as possible.

7 Q And you also identified that you had injured your  
8 hands; is that correct?

9 A Yes.

10 Q Okay. How did you injure your hands?

11 A Well, as I explained before, when I -- around 1986,  
12 I had to stop practicing dental hygiene because my -- I  
13 started having trouble holding the instruments while I was  
14 doing the deep cleaning.

15 Q And how did you injure your hands though? You used  
16 the term --

17 A Oh, well, it --

18 Q -- "injure your hands."

19 A It started -- it initially started -- a friend just  
20 kind of went back. We had our arms -- I had my arm around --  
21 behind his back, I guess, and he just went back and -- and it  
22 just swelled up. But that went away, and I played tennis  
23 after, and had no problems with it.

24 (Pause in the proceedings)

25 BY MR. SEMENZA:

1 Q Ms. O'Connell, can I have you turn to tab B?

2 A I'm sorry -- I'm sorry, V?

3 Q B as in boy. Tab B of Defendant's Proposed  
4 Exhibits, and page B54. Are you there?

5 A I'm just about there.

6 Q Okay, take your time.

7 A I'm there.

8 Q Okay. I want you to look at B54 and B55. Do you  
9 recall completing these -- this document?

10 A It's my handwriting.

11 Q And is that your signature on the bottom of page 1?

12 A I'm sorry, did you say page 1?

13 Q I'm sorry, B54. My apologies. So, at the bottom of  
14 B54, is that your signature?

15 A Yes.

16 Q And is it dated?

17 A Yes.

18 Q Okay. And is it dated March 18th of 2010?

19 A Yes.

20 Q Do you have any reason to dispute that that's the  
21 date you signed it?

22 A No.

23 Q And the handwritten portions of the B54 and B55 are  
24 yours?

25 A Yes.

1 Q Do you have any reason to dispute that you completed  
2 this document?

3 A No.

4 Q Does it appear that the document is complete, the  
5 two pages?

6 A I'm sorry?

7 Q Is this a complete document, these two pages, to  
8 your knowledge?

9 A Well, it seems -- I assume so.

10 MR. SEMENZA: Your Honor, I would move for the  
11 admission of just at this point in time Defendant's Proposed  
12 Exhibit B, pages 54 and 55.

13 THE COURT: Well, they've been marked as a joint  
14 exhibit, is my understanding from --

15 MR. SEMENZA: That's correct, Your Honor.

16 THE COURT: -- the book.

17 MR. SEMENZA: I just want to use those two pages.

18 MS. MORRIS: They haven't been marked as a joint  
19 exhibit. It's --

20 THE COURT: No.

21 MS. MORRIS: -- defendant's proposed.

22 THE COURT: I said they've been marked as a proposed  
23 exhibit as --

24 MS. MORRIS: Sorry, I heard "joint." Sorry.

25 THE COURT: -- jointly -- all the pages as a joint

1 exhibit together. So, if you want to remove two of the  
2 pages --

3 MR. SEMENZA: Yes.

4 THE COURT: -- then we'll remove them. Do you want  
5 to -- how do you want to mark them? Do you want to --

6 THE CLERK: I guess I'll make it --

7 THE COURT: BA?

8 THE CLERK: What number is it? 50 --

9 THE COURT: B1.

10 MS. MORRIS: And Your Honor, I have an objection as  
11 to the fact it's incomplete.

12 THE CLERK: What exhibit letter is it?

13 THE COURT: It's B like boy.

14 THE CLERK: B as in boy?

15 THE COURT: I'm sorry, what was your objection?

16 MS. MORRIS: It's -- well, authentication and  
17 incomplete. It's just pulling apart documents here.

18 THE COURT: Well, your -- it's overruled on  
19 authentication. Your client has authenticated the document.

20 MS. MORRIS: Okay.

21 MR. SEMENZA: Thank you, Your Honor.

22 THE CLERK: Okay, I'll think about it. I'll get it  
23 before it's [inaudible].

24 MR. SEMENZA: However you'd like to mark it, I  
25 appreciate it.

1 (Pause in the proceedings)

2 THE COURT: All right, we're going to mark this --  
3 these two pages as Defense Exhibit B-1.

4 MR. SEMENZA: Thank you, Your Honor.

5 THE COURT: And it will be admitted.

6 (Defense Exhibit B-1 is admitted)

7 MR. SEMENZA: Okay.

8 BY MR. SEMENZA:

9 Q Is this a document that you completed on or about  
10 March 18th, 2010?

11 A Yes.

12 Q And what medical provider were you completing this  
13 form for?

14 A I believe this one was Dr. Subramanyam, and my -- I  
15 think this is the first time I'd seen him. I didn't have a  
16 primary care doctor, so I went back to UMC and I found him,  
17 and he's my primary care doctor now.

18 Q Okay. And on this particular document, at the top  
19 of the page, you identify that the symptomology that you are  
20 experiencing is all since the slip and fall; is that correct?

21 A Yes.

22 Q And in this particular section here, you identify  
23 that you had started fainting; is that correct?

24 A I see I marked it, yes.

25 Q Okay. And do you recall in fact fainting after the



1 fall and prior to March 18th of 2010 when you completed this  
2 form?

3 A Well, I think what I'm referring to is, a couple of  
4 days after I fell and hit my head, I had symptoms on the left  
5 side of my face and my left arm went numb, and I think that's  
6 what I'm referring to there.

7 Q Okay. And you also checked that you were having  
8 chills after the slip and fall; is that correct?

9 A I see that, yes.

10 Q And do you attribute your chills to the slip and  
11 fall that took place on February 8th, 2010?

12 A Well, I'm -- I'm just saying that that's what I was  
13 feeling at the time.

14 Q Okay. So, do you attribute it to the slip and fall,  
15 that you were experiencing chills?

16 A Well, at the time. I mean, I didn't have them  
17 before I slipped and fell, and right then at that time, I was  
18 -- that's what I was having.

19 Q Okay. And I want to direct you down a bit. Do you  
20 see here on the lefthand side about halfway down where it  
21 says, "Persistent cough for three to six months"? Do you see  
22 that?

23 A Yes.

24 Q And you identified that you had a cough since the  
25 slip and fall?

1 A Yes.

2 Q And do you attribute the cough to your fall on  
3 February 8th, 2010?

4 A Well, I have a chronic cough now, but -- so I'm just  
5 saying that I didn't have a cough, and now I -- I was coughing  
6 a lot.

7 Q Okay. Do you know one way or the other whether you  
8 attribute the cough to the fall on February 8th, 2010?

9 A Well, they -- there again, I'm just saying here that  
10 I was healthy, and now I have this. That's all.

11 Q You don't know whether it's related or not?

12 A All I -- all I was saying is I was healthy before,  
13 and then, after I fell, now I'm coughing. That's all I was  
14 saying.

15 Q And did you seek treatment for your cough?

16 A Yes, but I still have a chronic cough, so.

17 Q And that chronic cough began in February immediately  
18 after the fall; is that correct?

19 A Well, I didn't have it before; now I do, so.

20 Q And here, we are looking at some of your  
21 constipation issues; is that correct?

22 A Okay.

23 Q Further down on the lefthand side. Do you see that?

24 A I see it.

25 Q Okay, and you were having trouble in that regard?

1           A     Yeah, my system stopped working.

2           Q     Okay, and that happened after the fall on February  
3 8th, 2010?

4           A     Yes. I landed -- my right buttocks landed on that  
5 divider.

6           Q     Do you attribute your issues relating to  
7 constipation to your fall on February 8th of 2010?

8           A     Oh, I -- I'd had IBS constipation before, and I --  
9 but I just had it under control. And so, I'm just saying it's  
10 out of control now, and --

11          Q     Okay. After the fall, it became out of control?

12          A     Yes, I had a hard time dealing with it.

13          Q     And do you attribute that issue to the fall on  
14 February 8th, 2010?

15          A     Well, I just -- I just knew that it made it worse,  
16 and I had a hard time at that time with it.

17          Q     On the right hand side of this document, it  
18 discusses stiffness or pain in the joints. Do you see that?

19          A     Yes.

20          Q     Okay. And you've checked finger, hands, wrist,  
21 elbows, shoulders, neck, back, hip, knee, toes, foot, and jaw.  
22 You've checked every box; is that correct?

23          A     I'm sorry, I don't know -- oh, down here? I see it  
24 now.

25          Q     Yes, the little black squares.

1 A I see it now.

2 Q Yes.

3 A I see that, yes.

4 Q And that's what you assert you were experiencing on  
5 March 18th of 2010?

6 A Well, those were the immediate symptoms I had right  
7 there at the Wynn.

8 Q And this is the second page of the document. And in  
9 this document on the lefthand side, about halfway down -- or a  
10 third of the way down, you identify your back injury from  
11 1989, correct? You can look at the monitor if you like. It  
12 might help you.

13 A Oh, are you pointing there? I'm so sorry.

14 Q Yes. No, no, that's okay. I'm sorry.

15 A I see that.

16 Q And you identify your hand injury?

17 A I think I'm better off here.

18 Q Okay.

19 A I'm sorry, your -- what are you asking?

20 Q Okay. I -- you identify in this portion of the  
21 document that you had your severe back and hand injury,  
22 correct?

23 A Yes.

24 Q Okay, and that led to irritable bowel syndrome,  
25 GERD, stress disorder, a diagnosis of hypermobility syndrome,

1 Marfan's or Ehlers-Danlos, and fibromyalgia.

2 A Yes.

3 Q Do you see that?

4 A Yes.

5 Q Was that your understanding of -- of -- that you  
6 developed these conditions after your back injury and hand  
7 injury in 1989?

8 A No. What I'm -- what I'm saying is that -- again,  
9 it's the same thing. When I was -- when I had to stop  
10 practicing dental hygiene and I was having trouble holding the  
11 instruments, that's what I was talking about. Right here,  
12 they said, well, you're extra limber, and sometimes that's  
13 Marfan's, it's a hypermobility syndrome; sometimes it's  
14 Ehlers-Danlos. And so that's -- that's what I was talking  
15 about, the same thing.

16 And then -- and then when I had the back pain and  
17 they sent me to a physical therapist in 1989 and they couldn't  
18 see anything wrong with it, they said, well, you have pain, so  
19 it could just be fibromyalgia. But then I went to the  
20 physical therapist, and then went a few times, did the  
21 exercises, and then it took away the back pain and I didn't  
22 have it anymore. I was pain-free for 20-some years. That's  
23 the same thing.

24 Q Okay.

25 (Pause in the proceedings)

1 MR. SEMENZA: Your Honor, I would move for the  
2 admission of a portion of Defense Proposed Exhibit P, and I  
3 would ask that pages P3 through P7 be admitted into evidence.

4 THE COURT: Is there any objection?

5 MS. MORRIS: None.

6 THE COURT: All right, so that will be marked as  
7 Defendant's P --

8 THE CLERK: 3 through 7?

9 MR. SEMENZA: Yes, thank you.

10 THE COURT: It's pages that are Bates stamped --

11 THE CLERK: Yeah.

12 THE COURT: -- that, but they'll be marked as P1.

13 THE CLERK: 1.

14 THE COURT: And they're admitted.

15 (Defense Exhibit P1 is admitted)

16 MR. SEMENZA: Thank you, Your Honor.

17 BY MR. SEMENZA:

18 Q Can I have you turn, Ms. O'Connell, to P3? Tab P,  
19 document page 3.

20 A Yes.

21 Q Okay. And do you recall seeing Dr. Cash?

22 A Yes.

23 Q Did he have you fill out a health history?

24 A Yes.

25 Q Do you recall approximately when you completed this

1 form, if you did?

2 A Well, there should be a date on it.

3 Q Okay. You don't have any reason to dispute that you  
4 completed this form on March 23rd of 2010, do you?

5 A No.

6 Q And as part of obtaining your history, there was  
7 this diagram of a person, correct?

8 A Yes.

9 Q And you -- is this your handwriting on the person?

10 A Yes.

11 Q And you've identified basically that you experience  
12 pain -- well, the only locations that you don't experience  
13 pain is in the front of your head and on the very top of your  
14 head; is that fair to say?

15 A Yes.

16 Q And you attribute this pain that you've identified  
17 to the fall on February 8th, 2010?

18 A What I was saying is I hurt all over. Well, no, you  
19 know, I correct that. I wrote exactly what I was saying. I  
20 wrote exactly what I meant.

21 Q So, a portion of that, that's fair?

22 A I'm sorry, I didn't understand your question.

23 Q That's fine. So, on this particular form, you  
24 identified certain things that ached, pins and needles,  
25 burning, stabbing, and numbness?

1           A     Okay, so you're talking about the bodies?

2           Q     Yes.

3           A     Yeah. I -- I wrote down exactly what I meant, and  
4 with this, I was just marking everything.

5           Q     Were you marking everything because you were in pain  
6 from head to toe?

7           A     Well, I was very specific about -- I think, I was  
8 very specific about where I hurt, and --

9           Q     Well, the only -- the only locations on this diagram  
10 where you're not experiencing either aches, pins and needles,  
11 burning, stabbing, or numbness is the front of your face and  
12 on the top of your head; is that fair to say?

13          A     Yes. Well, and also, the immediate injuries that --  
14 my neck, my shoulder, my arms and hands, my buttocks, my back,  
15 my leg down to my foot, that's what I experienced right there  
16 at the Wynn. So, now, on this one, my -- okay, I'd been  
17 limping. If this was in March, I'd already been limping for  
18 -- how long? I'd been limping for over a month.

19          Q     Okay.

20          A     And so, it was making me hurt on my left side. And  
21 I'm pretty sure he even noted that, that, well now, because of  
22 the compensation, that -- so now I had it on the left. That's  
23 what that was there.

24          Q     Okay. So, you were experiencing pain now on your  
25 lefthand side?



1           A     Yes, because when you limp, then it makes other  
2 things hurt.

3           Q     That's -- okay. And -- but would that explain the  
4 pain in your left arm?

5           A     Oh, no. What explains the pain in my left arm, that  
6 day at the Wynn, right there, after I fell, both my arms and  
7 hands hurt. That's why I couldn't take pictures. That's why  
8 I asked them to take the pictures, and they said, oh, don't  
9 worry, we've got all the pictures. So, both arms and hands  
10 there at Wynn.

11          Q     Okay. I want you to turn, if you would, to P7,  
12 please.

13          A     Okay.

14          Q     And on the bottom half of the page, there is a  
15 section that discusses review of symptoms. Do you see that?

16          A     Yes.

17          Q     Okay. And on that document -- or on that portion of  
18 the page, you identify that you've had headaches since the  
19 fall?

20          A     Yes.

21          Q     That you had visual changes since the fall?

22          A     Yes.

23          Q     That you had dizziness since the fall?

24          A     Yes.

25          Q     That you had chest pain since the fall?

1 A Yes.

2 Q That the pain had woken you up at night --

3 A Yes.

4 Q -- since the fall? That you have shortness of  
5 breath since the fall?

6 A Yes.

7 Q That you had a cough since the fall?

8 A Yes.

9 Q That you had abdominal pain since the fall?

10 A Yes.

11 Q That you had nausea since the fall?

12 A Yes.

13 Q That you had heartburn and constipation, which was  
14 out of control since the fall?

15 A Yes.

16 Q Do you attribute those things to the fall on  
17 February 8th, 2010?

18 A Well, what I'm -- then again, what I'm saying here  
19 is I was healthy when I went, but now -- right now, at this  
20 time, this is what I have. That's what I'm -- that's what I'm  
21 saying. I still get those headaches. My neck hurts, and --  
22 and then if I don't do what I need to do to make that pain  
23 subside, it will go up into my head.

24 (Pause in the proceedings)

25 MR. SEMENZA: Your Honor, I'd move for the admission

1 of a portion of Defense Proposed Exhibit E, and specifically,  
2 pages E1 and E2.

3 THE COURT: All right. Any objection?

4 MS. MORRIS: None.

5 THE COURT: All right. So, the first two pages of  
6 Exhibit E, which are Bates-stamped 1 and 2, will be admitted  
7 as Defendant's E1.

8 (Defense Exhibits E1 is admitted)

9 BY MR. SEMENZA:

10 Q And Ms. O'Connell, can I have you turn to E1,  
11 please? Let me know when you're there.

12 A I'm there.

13 Q Okay. Again, do you recognize these two pages?

14 A It's my handwriting.

15 Q Okay. And did you date the document at the bottom?

16 A Yes.

17 Q What's the date of this document?

18 A 6/10/10.

19 Q Okay. I don't want to spend a lot of time on this,  
20 but at the top of the document on the lefthand side, you again  
21 discuss your previous back injury, the stress disorder,  
22 hypermobility syndrome, Marfanoid or Ehlers-Danlos,  
23 fibromyalgia, IBS, and GERD; is that correct?

24 A Yes, it's all the same that I was talking about  
25 before.

1 Q And moving on down to --

2 A And excuse me, I'm sorry. And also, it says 20  
3 years ago.

4 Q It does.

5 A I'm not saying that I had that then. I -- it was 20  
6 years before. I was just trying to be accurate.

7 Q But you did have a previous back injury, correct?

8 A 20 years before, around 1989.

9 Q And you did have a history of fibromyalgia, correct?

10 A Well, they said because -- because they couldn't see  
11 anything wrong with my back, they said, well, you have pain,  
12 so it's just probably fibromyalgia.

13 Q You don't dispute that you had fibromyalgia, do you?

14 A I'm sorry?

15 Q You don't dispute that you had fibromyalgia, do you?

16 A That I have it now, or had it?

17 Q No, that you had it then.

18 A They -- they didn't say, you absolutely have it.

19 They just said -- that's what they called it back then. If  
20 you had pain and they couldn't find a reason for it, they just  
21 called it fibromyalgia. Just meant, well, you have a lot of  
22 pain.

23 So, at that time, there was -- they couldn't find  
24 anything wrong with me, so they said, well, maybe it's just  
25 fibromyalgia. That's what that was. But then I went to

1 physical therapy for my back a few times, and then I had no  
2 problems with it. All the pain went away; had no pain for  
3 over 20 years.

4 Q And do you think you have fibromyalgia now?

5 A Well, now, some doctor said I -- I -- one doctor  
6 said I don't, and another doctor said, well, you have all  
7 these other issues, but you could also have fibromyalgia.

8 Q Dr. Cash was of the opinion that you had  
9 fibromyalgia, correct?

10 A I --

11 MS. MORRIS: Objection, Your Honor, misstates  
12 testimony. Misstates any evidence, actually.

13 THE COURT: Well, is it a foundational objection?

14 MS. MORRIS: It's foundational. Dr. Cash is --

15 THE COURT: That's sustained.

16 MS. MORRIS: -- a spine doctor.

17 THE COURT: Lay a better foundation --

18 MR. SEMENZA: That's fine.

19 THE COURT: -- for the question.

20 MR. SEMENZA: I'll come back to it. Thank you, Your  
21 Honor.

22 BY MR. SEMENZA:

23 Q So, some doctors have in fact identified that you  
24 have fibromyalgia; is that correct?

25 A They said I could have it in addition to the -- the

1 -- the actual injuries.

2 Q Okay. And the fibromyalgia would not be related to  
3 the fall on February 8th, 2010, correct?

4 A Well, I didn't have the pain before. I didn't have  
5 pain for 20-some years. I fall, and have immediate pain there  
6 at Wynn.

7 Q Okay. So, I guess my next question then is, do you  
8 attribute the fibromyalgia, if you do indeed have it, to the  
9 fall on February 8th, 2010?

10 A You'd have to ask a doctor that.

11 Q You don't know?

12 A Well, I'm not a doctor. I can't say that.

13 Q Okay. And about midway down the first page, do you  
14 see where it says "drug intolerant"?

15 A Yes.

16 Q Okay. And are -- do you know whether you're drug  
17 intolerant or not?

18 A Well, like I'm explaining right here -- I'm  
19 explaining it. Drug intolerant. Extremely severe  
20 constipation. I can't take the drugs because a lot will make  
21 you constipated, and if you're constipated already and you  
22 take the drugs, it's a major problem. So, this is what I'm  
23 talking about.

24 Q Okay. And under that same portion, you say chest  
25 pains?

1 A Yes.

2 Q Does your drug intolerance give you chest pains?

3 A I don't think -- I don't think that's what I'm  
4 saying. I'm not saying that.

5 Q Okay. Well, that's --

6 A Or, I'm sorry --

7 Q That's -- I'm sorry, I don't mean to cut you off.

8 A No, I'm not -- I don't think that's what I'm saying.  
9 I'm just saying I'm extremely constipated. I can't take  
10 drugs.

11 Q And is the only reason why you are drug intolerant  
12 as you've identified is because of the constipation issue?

13 A Yeah, that's a major issue.

14 Q Okay. Is that the only issue?

15 A As far as I know.

16 Q Okay. And are there pain medications that you're  
17 aware of that don't cause constipation?

18 A I don't know. And also, I -- I would love to take a  
19 lot of pain medications, I really would, but I don't want to  
20 have more problems than I already have.

21 Q Okay, but my question is, are you aware of any pain  
22 medications that don't have the side effect of constipation?

23 A I don't know that.

24 Q Okay. Have you researched that or sought treatment  
25 from any doctors to discuss that issue?

1           A     I haven't researched it, but doctors tell me -- I've  
2 told them -- I say -- I've told them I have this problem. And  
3 also, I ask them, well, is it going to heal me? And they say  
4 no, and it's -- a lot of them just create more problems, so I  
5 can't -- I can't create more problems.

6           Q     Okay, and that would be with some side effects of  
7 the medication; is that what you're talking about?

8           A     Yes.

9           Q     Do you not take pain medication because of the fear  
10 of the side effects?

11          A     Yes, because, believe me, I would love to take them.  
12 I wish -- I wish they had them that would just make you feel  
13 good and have no side effects.

14          Q     Do you know whether, if you were taking pain  
15 medication, that might reduce your pain level?

16          A     I know a lot of people, and they have -- they do  
17 take pain medications, and those stories that they say -- they  
18 tell me, it -- I don't want to take the chance, because they  
19 develop all these other problems.

20          Q     You don't know whether pain medication might reduce  
21 your symptoms of pain, do you?

22          A     I took the ones that UMC gave me, and it didn't --  
23 didn't take away the pain.

24          Q     And you only take medications that are going to cure  
25 you; is that what you said?



1           A     If they're going to help me and not create more  
2 problems, sure, I'll take them. Like, you know, antibiotics,  
3 you have to take those.

4           Q     On this same portion of the document that we've been  
5 looking at, you also identify that you have a probable ulcer  
6 and hernia. Do you see that?

7           A     Yes.

8           Q     Okay. And does that predate the fall on February  
9 8th, 2010, or is that something that developed after the fall  
10 on February 8th, 2010?

11          A     Oh, no, that didn't predate it. I went to the GI  
12 doctor and I told them about the pain from the fall on the  
13 inside. And that's why Dr. Thompson had sent me for an  
14 ultrasound, because I told him about that pain inside. So,  
15 the GI doctor said, well, maybe you got a hernia, or maybe you  
16 got an ulcer.

17          Q     Okay. Did any doctor diagnose you formally with an  
18 ulcer?

19          A     No, nobody can. They have to do, you know, tests  
20 for that.

21          Q     What kind of tests?

22          A     Well, you know, the -- you know, excuse me. You  
23 know that I'm not -- I'm not asking you for anything for that,  
24 so you really want to spend the time with that?

25               THE COURT: Ma'am, you don't get to ask the lawyer

1 questions. You just have to ask --

2 THE WITNESS: Oh, I'm sorry.

3 THE COURT: You have to answer his questions.

4 THE WITNESS: I'm sorry, I'm sorry.

5 MR. SEMENZA: That's okay.

6 BY MR. SEMENZA:

7 Q Do you -- have you ever been formally diagnosed with  
8 an ulcer or hernia?

9 A They can't -- they can't diagnose me at all, because  
10 they say that they have to do a colonoscopy and an endoscopy.

11 Q And, in fact, a number of doctors have recommended,  
12 based upon your constipation issues, that you should in fact  
13 have a colonoscopy; is that correct?

14 A Yes.

15 Q Okay, and you've declined to do that, correct?

16 A Because I can't.

17 Q Why can't you?

18 A Well, because I've had that constipation issue, and  
19 they say that there's a high risk of them perforating the  
20 intestines or whatever they perforate with it -- with a  
21 colonoscopy, and whatever they perforate with the endoscopy.  
22 So -- so, I haven't had it.

23 Q Okay. So -- but your GI doctors have in fact  
24 recommended to you to have a colonoscopy; is that correct?

25 A Well, they did, and then they said, but you're high

1 risk for this.

2 Q Okay. So, they did in fact recommend that you get a  
3 colonoscopy?

4 A And they left it up to me.

5 Q And you declined to do that?

6 A Yes, because I don't want them to perforate it.

7 Q Okay. And you have a fear that they are in fact  
8 going to perforate your bowel if you do have a colonoscopy?

9 A Yes.

10 Q And the same -- is the same true with regard to the  
11 endoscopy to determine if you have stomach issues, that you're  
12 concerned --

13 A Yes.

14 MR. SEMENZA: Your Honor, I think this is a good  
15 place to stop, if you'd like to.

16 THE COURT: All right. Counsel approach regarding  
17 scheduling.

18 (Off-record bench conference)

19 THE COURT: I'm going to give you an hour-and-a-half  
20 for lunch, so if you want to leave the building, it -- you  
21 know, it will give you enough time if you want to go someplace  
22 other than the sandwich place downstairs. So, ladies and  
23 gentlemen, we're going to take an hour-and-a-half recess, so  
24 until 1:30.

25 During this recess, it is your duty not to converse

1 among yourselves or with anyone else on any subject connected  
2 with the trial, or to read, watch, or listen to any report of  
3 or commentary on the trial by any person connected with the  
4 trial, or by any medium of information, including, without  
5 limitation, newspaper, television, radio, or internet, and you  
6 are not to form or express an opinion on any subject connected  
7 with the case until it's finally submitted to you.

8 And Ms. O'Connell, you're under the same admonition.  
9 You may not discuss your testimony at lunch with your lawyer,  
10 all right, because you're under examination.

11 THE WITNESS: Yes.

12 THE COURT: Thank you. We'll be in recess until  
13 1:30.

14 (Outside the presence of the jury)

15 THE COURT: All right. Any matters outside the  
16 presence now that the jury has departed the courtroom?

17 MR. SEMENZA: No, Your Honor.

18 MS. MORRIS: No.

19 THE COURT: Thank you. We'll be in recess until  
20 1:30.

21 MR. SEMENZA: Thank you.

22 (Court recessed at 12:00 P.M. until 1:29 P.M.)

23 (Outside the presence of the jury)

24 THE MARSHAL: All rise for the jury, please.

25 (In the presence of the jury)

1 THE MARSHAL: Jury's all present, Your Honor.

2 THE COURT: All right, thank you. Please be seated.

3 And the record will reflect we're back within the presence of  
4 all eight members of the jury, as well as the two alternates.  
5 Plaintiff's present with their counsel, and a representative  
6 of the defendant is present with her counsel. All officers of  
7 the court are present as well.

8 And we'll resume the cross-examination of Ms.  
9 O'Connell. So, Ms. O'Connell, you'll need to retake the  
10 witness stand, please.

11 THE COURT: Be seated, please. Thank you.

12 THE CLERK: She's still under oath.

13 BY MR. SEMENZA:

14 Q Good afternoon again, Ms. O'Connell.

15 A Good afternoon.

16 Q When we had left off, we were looking at Exhibit E1  
17 and E2. Do you remember that? Is your --

18 A Yes.

19 Q I'm sorry. Is your binder still on those pages?

20 A Yes.

21 Q Okay. And I just want to finish up with you  
22 relating to the discussion we were having on the ulcer and  
23 hernia. Have you had any follow up care relating to the issue  
24 of whether you have an ulcer or a hernia since you completed  
25 this form?

1 A No.

2 Q Let me have you turn to the next page, Ms.  
3 O'Connell, please.

4 A I'm sorry, just to be clear, I forgot when this was  
5 -- when this was written. I went to three different ones --

6 Q Okay.

7 A -- for it, and they all said the same thing; they  
8 can't -- that I have to have tests for them to say -- for them  
9 to help me.

10 Q Okay. And you're uncomfortable having those tests;  
11 is that fair to say?

12 A Yes.

13 Q Okay. Turning to the next page. Again, I don't  
14 want to spend too much time on this, but at the top of the  
15 page, you identify that those items listed below are all since  
16 the slip and fall on February 8th of 2010; is that correct?

17 A I'm sorry, you're asking me if I see that part?

18 Q Yes.

19 A I see that, yes.

20 Q Okay. And so, the information that you've  
21 identified below that, that information where you've  
22 identified in the affirmative that you've experienced these  
23 symptoms, those all relate to -- or came after the fall on  
24 February 8th, 2010?

25 A Yes.

1 Q And the fourth one down identifies blurred vision;  
2 is that correct?

3 A Yes.

4 Q And you began experiencing blurred vision after the  
5 fall on February 8th, 2010?

6 A After I hit my head, yes.

7 Q And further on down from there, there's a item that  
8 identifies hay fever; is that correct?

9 A Yes.

10 Q And you identify that you started experiencing hay  
11 fever after the fall on February 8th, 2010?

12 A Yes. What I meant was I started having problems in  
13 my -- you know, with my breathing.

14 Q Okay. And do you relate those issues to the fall on  
15 February 8th, 2010?

16 A Well, as far as that, I just know that I didn't have  
17 that problem, and then, as soon as I fell and hit my head,  
18 then I had problems in my head and my breathing.

19 Q And further on down, you identify that you have  
20 difficulty swallowing?

21 A Excuse me, yes.

22 Q Okay. And does that relate to the fall in February  
23 2010?

24 A Well, I didn't have the problem before, and after --  
25 after the fall, because of the nose, I was getting that drip,

1 and that's making me -- it was bothering my throat.

2 Q So, you don't know one way or the other whether it's  
3 related to the fall or not?

4 A I just know that I didn't have a problem with my  
5 head and -- or nose, and then, after I fell, then I had these  
6 issues up here.

7 Q Further on down, you identify that you had chronic  
8 or frequent cough, and we had talked a little bit about that  
9 before, right?

10 A Yes.

11 Q Okay. And that's something you didn't have before  
12 the fall, but you identified you had it after the fall?

13 A After the fall, I was coughing a lot.

14 Q Further on down from there, it identifies that you  
15 have recurrent stomach pain. Do you see that?

16 A Yes. Oh, I'm sorry. Yes, I do.

17 Q Okay. And again, do you relate that to the fall  
18 that took place on February 8th, 2010?

19 A Well, yes. I fell, and my buttocks hit that raised  
20 divider, so -- yeah, so I had pain down in my stomach and  
21 buttocks area.

22 Q Okay, but you hit your -- you hit your buttocks, not  
23 your stomach, right?

24 A Well, that's pretty much close to it.

25 Q Okay. You also identified that, after the fall, you



1 had nausea or vomiting; is that correct?

2 A Yes.

3 Q And did -- were you nauseous at times --

4 A Yes.

5 Q -- after the fall?

6 A Yes.

7 Q And were you throwing up?

8 A Just nauseous.

9 Q Okay. And again, do you relate that to the fall on  
10 February 8th, 2010?

11 A Well, that, yes. After that happened, I didn't feel  
12 good.

13 Q You also identified here, waking during the night to  
14 urinate. Is that --

15 A Yes.

16 Q Is that a problem you did not have before the fall?

17 A Well, I mean, normally -- you know, I'm a normal  
18 person, so people do wake up and do that, but I was having  
19 more problems than a normal -- I normally would.

20 Q And so if I'm correct, what you're saying is there  
21 was a change in that?

22 A Yes, there was a change.

23 Q Okay, and do you relate that change to the fall on  
24 February 8th, 2010?

25 A Well, what I know is -- what I'm saying here is,

1 before I fell, I was healthy and I was a certain way, and  
2 after the fall, then I had all these problems. I'm not saying  
3 I have all of those still now; just at that time.

4 MR. SEMENZA: Your Honor, I'd move for the admission  
5 of Defendant's Proposed Exhibit I, and this time, it would be  
6 the complete document.

7 THE COURT: Is that the pain center?

8 MR. SEMENZA: Yes, Your Honor.

9 THE COURT: Okay, because it's out of order in my  
10 book. That's why I wanted to ask. So, it looks like 1 -- the  
11 Bates stamps are 1 through 4?

12 MR. SEMENZA: Yes, Your Honor.

13 THE COURT: All right. Any objection?

14 MS. MORRIS: None, Your Honor.

15 THE COURT: That will be admitted then as  
16 Defendant's Exhibit I.

17 (Defense Exhibit I is admitted)

18 BY MR. SEMENZA:

19 Q Can I have you turn to tab I, Ms. O'Connell?

20 A Okay. Excuse me.

21 Q And just go to the first page, 11. Again, is that  
22 your -- well, I don't know if it's your signature or your  
23 name. Which is it at the top of the page?

24 A That's my name.

25 Q Okay. And it's dated what?

1           A     October -- 10/15/10.

2           Q     Okay. And did you treat at the Southern Nevada Pain  
3 Center for a period of time?

4           A     Yes.

5           Q     And directing your attention to item number 2, you  
6 identified your pain on that particular day as ten of ten; is  
7 that correct?

8           A     Well, I put -- I circled ten, but I didn't -- it  
9 wasn't -- it's not -- it wasn't 100 percent of the time, but  
10 that was the most pain I'd get.

11          Q     You do identify that you --

12          A     For me.

13          Q     I'm sorry, I didn't mean to cut you off.

14          A     I'm sorry.

15          Q     You do identify however that the daily average was  
16 ten; is that correct?

17          A     Yes.

18          Q     Is that true? Is that a true statement that your  
19 daily average of pain during this period of time was ten of  
20 ten?

21          A     Well, what I'm saying here is that I would get --  
22 the most pain that I had ever had in a day, but I'm not  
23 necessarily saying it's 100 percent of the time. If I let it  
24 go, if I don't do what I need to do to make the pain subside,  
25 the pain just keeps getting worse. And it will get to that

1 extreme now, but now I know what causes it, and I know how to  
2 -- what to do to keep it from going there. So, I'm just  
3 saying here that it reached that, but this is when I didn't  
4 even know how to -- how to deal with it.

5 Q Okay. And so, what I just understood you to say is  
6 that you've been able to deal with your pain over time; is  
7 that fair to say?

8 A I've learned the things that I need to do to keep it  
9 from getting out of control.

10 Q And you learned to control it; is that fair to say?

11 A Well, as much as I can. I mean, I'm in pain every  
12 day, but I now know that there are certain moves that I can't  
13 -- if I move wrong, or if I'm in the wrong position, that will  
14 cause a lot of pain, and if I keep doing it, it just gets  
15 worse. So, now I know a lot of things that I'm not supposed  
16 to do.

17 Q Okay. And so you avoid those kinds of turns, or  
18 bends, or those sorts of things?

19 A Yes, I avoid them.

20 Q And that has reduced your pain level over time; is  
21 that fair to say?

22 A That will reduce it, but like sometimes I -- it's  
23 out of my control, and I can't do what I need to do to -- like  
24 I'd have to lie down, and sometimes you just can't do that.

25 Q And under item number 3, you identified that your

1 pain -- did -- you circled everything in this particular  
2 section, didn't you?

3 A Yes.

4 Q Okay. You identified aching, stabbing, tender,  
5 nagging, throbbing, gnawing, burning, numb, shooting, sharp,  
6 exhausting, and unbearable, correct?

7 A Yes. I had had pain for quite a while then, and I  
8 was worn down, and I just hurt.

9 Q Turning to page 2 of the document, do you see what  
10 this document is dated?

11 A 9/3/10.

12 Q And so that's -- this predates the first page that  
13 we saw, correct?

14 A Yes.

15 Q Okay. And again, you identify on here under section  
16 number 2 that you have ten of ten pain, correct?

17 A Yes, same thing. Same explanation.

18 Q And that's your daily average that you identify  
19 there is ten?

20 A Yes. And you'll note that they're in the same areas  
21 -- when I fell that day, I had immediate pain in certain  
22 areas, which, you know, I still get, and so those are the  
23 areas that I was -- I was having that in.

24 Q And again, under number 3, you've circled all of  
25 those entries, correct?

1           A     Yes.

2           Q     I want to direct your attention to number 10. And  
3 that question states, what treatment -- "What treatments seem  
4 to help you the most in relieving your pain?" Did I read that  
5 correctly?

6           A     Yes.

7           Q     Could you read your handwritten response to that  
8 question, please, out loud?

9           A     "I had more pain after last visit and tried to  
10 continue physical therapy. I fell on 7/14/10. My right leg  
11 hurts so much, it gave out on me, and my right knee hit  
12 furniture. Left knee, floor. Knees and hands injured more.  
13 Left knee had not been injured before."

14          Q     Okay. So, prior to September -- well, the date you  
15 identify here is July 14th of 2010; is that correct?

16          A     Yes.

17          Q     Okay. You had a fall on that day, didn't you?

18          A     Well, my leg gave out on me, which is why I use a  
19 walker. One of the reasons is because my leg and my knees  
20 give out on me. So, it -- it wasn't a complete fall, but my  
21 leg gave out on me, and so --

22          Q     Okay. You do identify in your own words that you  
23 fell, correct?

24          A     Yes, but what I'm saying is -- I explained it here  
25 and also in writing. I wrote, "My leg gave out on me," and

1 that's -- that's what it does still. I walk around my house,  
2 my leg and my knees give out on me, and I don't have complete  
3 falls. So, it's the same thing.

4 Q Okay. And you identify here -- it says, "My right  
5 leg hurts so much." Is that correct?

6 A Yes.

7 Q "It gave out on me," right?

8 A Yes, which is -- that's what it does. That's -- it  
9 hurts when I walk, so I start limping, and then I start  
10 hurting more, and then my leg and my knees give out on me.

11 Q And you say in here your right knee hit furniture;  
12 is that correct?

13 A Yes.

14 Q Okay. And you said your left knee had not been  
15 injured before; is that correct?

16 A Yes.

17 Q So, as of July 14th of 2010, your left knee had not  
18 been injured?

19 A It had not been injured.

20 Q Okay.

21 A I had had the pain on the left side because I'd been  
22 limping.

23 Q So I understand, what you're saying is, because you  
24 were experiencing pain in your right leg, you began limping,  
25 which affected your left leg?

1 A Yes.

2 Q And your left knee?

3 A Yes.

4 Q But you had never injured your left knee before July  
5 10 -- I'm sorry, July 14th of 2010?

6 A Right.

7 Q And you thought that your fall on July 14th of 2010  
8 was significant enough to set forth in this particular  
9 document that was used for your medical care and treatment; is  
10 that fair to say?

11 A I'm really sorry.

12 Q Would you like me to repeat it?

13 A Yes, please.

14 Q Okay. You thought that identifying that you had a  
15 fall on July 14th of 2010 was important in completing this  
16 document, didn't you?

17 A Yes, because I was telling him, I'm in a lot of pain  
18 and I can't -- the point was I'd gone to physical therapy, and  
19 that's what had happened. And I've had so much pain, and I  
20 was telling them, I can't be doing these things because  
21 they're -- they're causing more pain. And so, that's what I'm  
22 saying, that now I know that I -- if I move wrong, and if I'm  
23 in wrong positions, that will cause more pain.

24 Q Did you go seek any medical treatment after your  
25 fall on July 14th of 2010 specifically relating to the fall?



1           A     Oh, yes.

2           Q     That was probably a poor question on my part. Just  
3 so I'm clear, as a result of the fall on July 14th of 2010,  
4 did you seek medical treatment?

5           A     Oh, oh. No, no. I didn't -- it's still the same --  
6 I still had all of that before that. I'm talking about as of  
7 the fall February 8th, 2010.

8           Q     And can you identify the date you completed this  
9 document, please?

10          A     It says --

11          Q     Go ahead. I'm sorry.

12          A     It says 9/3/10.

13          Q     I'm sorry. We're moving on, and that's my fault.  
14 Can I have you turn to I3, please?

15          A     It says 7/9/10.

16          Q     Thank you. Do you dispute that you completed this  
17 document on that date?

18          A     That's my handwriting.

19          Q     And it identifies here that you were being referred  
20 by Dr. Cash; is that fair?

21          A     Yes.

22          Q     It identifies that you are experiencing a pain level  
23 of ten of ten, correct?

24          A     I circled ten.

25          Q     And at the midpoint, it asks you, "Have you retained

1 an attorney," and what did you respond?

2 A Yes.

3 Q So, as of July 9th of 2010, you had retained an  
4 attorney relating to your fall on February 8th, 2010?

5 A Yes.

6 Q Let me have you turn to I4 just briefly. And at the  
7 lower third of the document, it says, "Please check any of the  
8 following that you have or had," and you identify a hiatal  
9 hernia; is that correct?

10 A Yes.

11 Q Okay. And you attribute that hiatal hernia to your  
12 fall on February 8th, 2010?

13 A Well, that's the same thing I was talking about.  
14 The GI doctor said it could be an ulcer or hernia, but we  
15 can't tell you what it is unless we do the test. That's the  
16 same thing I'm talking about.

17 Q And what is -- do you know what a hiatal hernia is?

18 A No, and they said they couldn't even tell me if I  
19 had that, so.

20 Q Okay, but as you sit here today, you don't know what  
21 a hiatal hernia is?

22 A Well, I -- well -- well, I can't really tell you.  
23 I'd have to look it up.

24 Q Did you know what it was when you checked the box  
25 and identified "fall"?

1           A     Oh, I -- what I knew was that the doctors had told  
2 me that it could be a hernia, could be an ulcer, but we can't  
3 tell you for sure without tests.

4                               (Pause in the proceedings)

5 BY MR. SEMENZA:

6           Q     Ms. O'Connell, can I have you turn to tab G, please?

7           A     Okay.

8           Q     Okay. And without identifying the document at this  
9 point in time, does that bear your signature on the bottom of  
10 the first page, G1?

11          A     Yes.

12          Q     Okay. Is that your handwriting on the document?

13          A     Yes.

14          Q     Okay. Let me have you turn to G2. Do you know if  
15 that is your handwriting on the document?

16          A     Well, I wouldn't know that. I don't see any  
17 handwriting. I see X's, and that's it.

18          Q     Okay. Do you have any reason to dispute that you  
19 were the one that created the X's on this document?

20          A     Oh, not if it's part of it.

21          Q     Okay. Do you recall whether it is or isn't part of  
22 it?

23          A     Well, I'm sorry, I wouldn't know that.

24                               (Pause in the proceedings)

25           MR. SEMENZA: Without identifying this document,

1 we're putting it on the Elmo.

2 (Pause in the proceedings)

3 MR. SEMENZA: Okay. Your Honor, I'd move for the  
4 admission of Defense Proposed Exhibit G, and specifically,  
5 just page 1.

6 THE COURT: All right. Any objection?

7 MS. MORRIS: None, Your Honor.

8 THE COURT: All right. So, that will be admitted as  
9 Defense G-1.

10 (Defense Exhibit G-1 is admitted)

11 BY MR. SEMENZA:

12 Q Ms. O'Connell, here's another one that we can talk  
13 about for a moment. Again, is this your handwriting on the  
14 document?

15 A Yes.

16 Q And what's it dated?

17 A 2/21/12.

18 Q And again, on this document, you've checked some  
19 locations where you're having pain; is that correct?

20 A Yes.

21 Q And you've identified on this document that you are  
22 having unbearable pain. That's that dark mark here; is that  
23 correct?

24 A Yes.

25 Q Also on this document, it identifies your leg gave

1 out and fell. You see that there?

2 A Yes.

3 Q And that relates to the July 14th, 2000 fall that  
4 we've talked about --

5 A Right, right.

6 Q -- correct?

7 A I'm trying to let them know that there's certain  
8 movements they can't do.

9 Q Okay. But again, this is -- this is in reference to  
10 the fall you had on --

11 A Yes.

12 Q -- July 14th, 2010?

13 A Yes. And to be clear, it wasn't a fall. Big  
14 difference between that and the fall in February. It was just  
15 my leg gave out on me, and I went forward.

16 Q You did identify it as a -- well, not a fall, but  
17 leg gave out and fell, correct?

18 A Yes, but I didn't -- what I'm saying is I didn't  
19 fall to the ground.

20 Q You hit your leg, your left -- was it your left knee  
21 that you hit on furniture, or your right knee?

22 A Well, whatever I said -- what I just said. Did I  
23 say right? Did I write "right" on the last one? I think  
24 that's what I wrote.

25 Q Well, I'm asking you, do you recall which knee it

1 was that you had that -- injured your knee on July 14th, 2010?

2 A I know I just read it. So, if it said right knee,  
3 then it was that -- it was that knee.

4 Q Okay. And you never informed Dr. Tingey that you  
5 had injured your knee -- your right knee on -- during a fall  
6 on July 14th of 2010, did you?

7 A I -- I let him know that I injured it in February.

8 Q Right.

9 A Because that's when I injured it.

10 Q You had identified to Dr. Tingey that you had  
11 injured your right knee in February --

12 A Right.

13 Q -- of 2010, right?

14 A Right.

15 Q My question is, did you ever inform Dr. Tingey that  
16 you also injured your right knee on July 14th of 2010?

17 A If I recall correctly, what I did let him know, I  
18 believe, because I would let everybody know after that, I  
19 tried, that my leg would give out on me, and my knee -- and my  
20 leg and my knees gave out on me, because ever since I fell in  
21 February, that's what's been happening; my leg and my knees  
22 give out on me.

23 Q Okay.

24 A And that's why I got the walker, because that's what  
25 happens.

1           Q     I understand. And my question specifically is, did  
2 you inform Dr. Tingey that you fell on July 14th, 2010?

3           A     I'm not sure, but like I said, it wasn't -- it  
4 wasn't a complete fall. I -- what happened is my leg and my  
5 knee gave out on me, and I believe I told him that that's what  
6 happens. And that's not the only time it's happened. The leg  
7 and the knees give out on me.

8           Q     So, I want to understand, you -- are you saying that  
9 you did in fact identify to Dr. Tingey that you had a fall,  
10 injuring your right knee, on July 14th of 2010?

11          A     I'm pretty -- I'm almost positive that I -- I know I  
12 told a lot of doctors that -- or several doctors that my leg  
13 and my knees give out on me. So, I'm pretty sure I told him  
14 that, too.

15          Q     But did you specifically reference to Dr. Tingey  
16 that you had a fall and injured your right knee on that  
17 particular day, July --

18          A     On that particular day, probably not. Or I don't  
19 know if he had my -- that was written for my pain doctor, I  
20 think, so I believe he had those records. I believe he did.

21          Q     You believe Dr. Tingey had the records -- your pain  
22 records?

23          A     From the pain doctor? Well, I think if Dr. Dunn had  
24 them -- I think he did. I'm not sure. But if Dr. Dunn had  
25 them, then Dr. Tingey had them, I think.

1           Q     Did you ever identify to Dr. Tingey that you had  
2 injured your left knee during your fall on July 14th, 2010?

3           A     Not -- probably not specifically that day, but I  
4 believe that I told him that my leg and my knees give out on  
5 me.

6           Q     You identified that generically to him, that your  
7 knees and legs give out on you?

8           A     You know, I'm really sorry. What do you mean by  
9 that?

10          Q     My question is -- I'm trying to be as clear as I  
11 can, but did you inform Dr. Tingey at any point in time that  
12 you had fallen on July 14th of 2010, injuring your left knee  
13 for the first time?

14          A     I don't believe that I specifically said on July,  
15 but if he had the records from my pain doctor, that's where  
16 that is.

17          Q     Okay. Did you ever identify to Dr. Tingey that you  
18 had fallen on any other day other than February 8th of 2010?

19          A     Well, like I said, I don't -- I didn't consider that  
20 a fall. It was just my -- the same thing. My leg gives out  
21 on me -- my leg and my knees give out on me. So, I don't -- I  
22 don't consider that a true fall. I've been told it isn't,  
23 because it's not like I fell on the ground.

24          Q     What if anything did you tell Dr. Dunn about any  
25 preexisting conditions that you had before the fall on



1 February 8th, 2010?

2 A Oh, I gave him all my records. He has all those  
3 records. It's -- you see. You've identified them, and many  
4 different ones, so he had my records.

5 Q You had provided Dr. Dunn with your complete  
6 history?

7 A Oh, sure. He has my records.

8 Q And that would include fibromyalgia?

9 A Well, you can see I included every record.

10 Q But did you provide information relating to  
11 fibromyalgia to Dr. Dunn as being a preexisting condition?

12 A I'm almost positive that he got my records, and you  
13 can see there, it's all throughout my records.

14 Q My specific question relates to fibromyalgia though.

15 A But I have that in all of them, don't I?

16 Q Okay.

17 A And excuse me. To be clear, I had no pain at all  
18 for 20-some years.

19 Q I don't think there's a question pending, with all  
20 due respect.

21 A I'm sorry, it was -- it was to complete.

22 Q Okay.

23 MR. SEMENZA: May we approach, Your Honor?

24 THE COURT: You may.

25 (Off-record bench conference)

1 MR. SEMENZA: Sorry for the delay.

2 BY MR. SEMENZA:

3 Q Ms. O'Connell, did you at some point see Dr. Timothy  
4 Trainor?

5 A Yes.

6 Q Who is Timothy Trainor?

7 A Dr. Subramanyam, my primary care doctor, referred me  
8 to Dr. Trainor for my knee, and he saw me once.

9 Q You saw Dr. Trainor just one time?

10 A Yes, and then he referred me to physical therapy for  
11 my knee.

12 Q Okay. And his only treatment of you was relating to  
13 your right knee?

14 A And my hip.

15 Q And your hip?

16 A Well, yeah, only because they typically only see you  
17 for one thing at a time, but -- so -- so he was going to check  
18 my left knee, but I didn't go further with the right knee. I  
19 didn't get the MRI, so.

20 Q Okay. And do you recall when you saw Dr. Trainor?

21 A Yes, it was in 2012.

22 Q Does February of 2012 sound about right?

23 A Yes.

24 Q And do you know if Dr. Trainor made any diagnoses of  
25 your condition?

1           A     Well, he told me, to be sure, he'd have to get an  
2 MRI, but he -- he wrote some things down. I wasn't ready to  
3 get an MRI because I'd had problems with the MRI before, so I  
4 didn't go for one.

5           Q     Do you recall whether he made -- diagnosed you with  
6 fibromyalgia?

7           A     Well, he saw me one time, so it's not like he  
8 checked me for fibromyalgia. So, if he put down fibromyalgia,  
9 it was from the records that I had given him.

10          Q     Okay. Do you know whether he did in fact diagnose  
11 you with fibromyalgia though?

12          A     Well, I don't believe he -- if he did, it wasn't  
13 that he examined me for it. I saw him one time.

14          Q     Do you know if Dr. Trainor ever diagnosed you with  
15 complex regional pain syndrome?

16          A     Okay, he -- I believe he wrote down that maybe I had  
17 one or the other, but not definitely. He said maybe, right?  
18 Because I saw him once.

19          Q     Okay. So, he diagnosed you with one or the other,  
20 either fibromyalgia or complex regional pain syndrome?

21          A     I'm not positive, but I remember seeing that.

22          Q     Did he identify whether there were any organic  
23 problems with your hip or knee?

24          A     Well, like I say, I didn't have the MRIs.

25          Q     Did he refer you to physical therapy?

1 A Yes.

2 Q Where did he refer you to go?

3 A Well, I went -- I went to pool therapy for my -- for  
4 my knee and my hip 20 times.

5 Q Did you go to a location called Sports at some point  
6 in time?

7 A Yes. Can I finish my answer though, please?

8 Q Yes.

9 A You asked me -- okay. First, he referred me to Dr.  
10 Suarez, and I went twice, but then I had a pain in my chest  
11 with some of those movements, so then Dr. Suarez said, well,  
12 you have to go to the cardiologist before I touch you again.  
13 So, then -- then Dr. Trainor referred me to -- to Sports.

14 Q Okay. And did Sports -- what was Sports?

15 A Well, physical therapy, and -- but as their name  
16 says, Sports, I think they focus on the younger people.

17 Q Okay. And how many times did you go to Sports?

18 A I only went once because he said that I needed to go  
19 to pool therapy first, try that first to -- for the overall  
20 strengthening.

21 Q Is it true that Sports told you that they couldn't  
22 help you for the conditions and symptoms that you were  
23 experiencing?

24 A Yes. He said go to pool therapy, and he didn't have  
25 it there.

1 Q And Sports declined to treat you; is that correct?

2 A Well, because he said that I needed pool therapy,  
3 and he didn't have that there.

4 Q But he did -- or that entity -- that physical  
5 therapist did decline to treat you; is that correct?

6 A He -- the correct thing is he referred me to pool  
7 therapy.

8 Q So, were you going to go back to Sports after pool  
9 therapy?

10 A I didn't plan to, because I went at least 20 times  
11 to pool therapy after that.

12 Q Now, at some point after the fall on February 8th of  
13 2010, you believed that you had heart problems; is that  
14 correct?

15 A Well, what happened is, I was -- because -- right  
16 after the fall there, immediately I had that pain in my  
17 shoulder, chest, rib area. And because I had that pain, I was  
18 sent by my primary doctor once I found Dr. Subramanyam, and he  
19 sent me to the GI doctor, and the GI doctor said, well, you  
20 have to go to the cardiologist and check out that pain. So,  
21 that's how I ended up with the cardiologist, and he took  
22 tests.

23 Q Okay. And did the cardiologist conclude that you  
24 had a clear echocardiogram?

25 A No.

1 Q He did not?

2 A Echocardiogram? I -- they took a lot of heart  
3 tests, and most of them were clear, but just on the  
4 echocardiogram, there's -- there's something in there. And to  
5 complete that, so, because of that, then they followed up with  
6 another echocardiogram, and there was something in there, so  
7 then I have to follow up with another echocardiogram.

8 Q Do you recall seeing Dr. Anil Fotedar?

9 A Yes.

10 Q And who is he?

11 A He's a cardiologist.

12 Q Okay. And he treated you; is that correct?

13 A He saw me once.

14 Q Okay. And did he provide a report to your treating  
15 physician, Dr. Subramanyam?

16 A Yes.

17 Q Around what time period was that?

18 A I believe, 2012.

19 Q And Dr. Fotedar concluded that you had a normal  
20 echocardiogram, didn't he?

21 A Well, they took the echocardiograms, and it's in the  
22 reports of the echocardiograms.

23 Q Would seeing the report refresh your recollection as  
24 to whether Dr. Fotedar concluded that you had a normal  
25 echocardiogram?

1           A     You want to show me the reports of the  
2 echocardiogram; is that what you're saying?

3           Q     Would that refresh your recollection as to whether  
4 he concluded you had a normal echocardiogram?

5           A     I'm not a doctor, so I -- if you want to show me the  
6 echocardiograms, I can show you what I was told.

7           MR. SEMENZA: May I approach, Your Honor?

8           THE COURT: Yes.

9           MS. MORRIS: Can I just ask what he's showing?  
10 Sorry.

11           MR. SEMENZA: Sure. I'm sorry.

12 BY MR. SEMENZA:

13           Q     Looking at the highlighted portion of the document,  
14 do you see that?

15           A     Oh, excuse me, these aren't echocardiograms. This  
16 isn't an echocardiogram.

17           Q     You're right, it's not.

18           A     What I said is, the echocardiograms --

19           THE COURT: Ma'am, ma'am, what he wants you to do is  
20 just look at the document, read that part, and then he's going  
21 to ask you a question. So, just read it to yourself, and then  
22 he'll ask you a question, okay?

23           THE WITNESS: Yes, Your Honor. Okay, I read it.

24           MR. SEMENZA: Okay.

25 BY MR. SEMENZA:

1 Q Does that refresh your recollection as to whether  
2 Dr. Fotedar concluded that you had a normal echocardiogram?

3 A Well, he says, "In her mitral and tricuspid  
4 regurgitation described on the echocardiogram were qualified  
5 as physiological" -- those are not normal.

6 Q What did he say before that?

7 A Well --

8 MS. MORRIS: Your Honor, if I could --

9 MR. SEMENZA: She's already read a portion of the  
10 document.

11 MS. MORRIS: Okay, as long as -- but I just want to  
12 state an objection for hearsay.

13 THE COURT: All right. Well, your client is reading  
14 the document aloud, and so now I'm going to allow it because  
15 she opened the door. So, go ahead.

16 THE WITNESS: That's what --

17 BY MR. SEMENZA:

18 Q Let me stop you there for a moment, Ms. O'Connell.  
19 Can you read the highlighted portion of the document?

20 A Echocardiogram.

21 Q Beginning here.

22 A Okay. Excuse me, you would like me to read the  
23 whole --

24 Q The whole --

25 A The whole --



1 Q -- highlighted paragraph --

2 A Okay.

3 Q -- continuing on to there.

4 A Okay.

5 Q Actually, you can go ahead and read down to 2.

6 MS. MORRIS: And a standing --

7 THE WITNESS: I'm sorry, you want me to read it out  
8 loud?

9 MS. MORRIS: -- objection for the record.

10 MR. SEMENZA: Yes, please.

11 MS. MORRIS: Thank you.

12 THE COURT: Overruled. Go ahead.

13 THE WITNESS: "I had a long discussion with the  
14 patient, and I basically tried to assure her that she had a  
15 normal echocardiogram and her mitral and tricuspid  
16 regurgitation described on that echocardiogram were qualified  
17 as physiological. The patient was not very happy with this  
18 and thought that I was not paying a lot of attention to her  
19 echocardiographic symptoms and signs.

20 "I spent more than 30 minutes with her trying to  
21 explain to her that she does not have significant valvular  
22 heart disease at this point in time based on echocardiogram  
23 from April and on clinical examination, and maybe her symptoms  
24 cannot be explained from that. I did however recommend that  
25 she should have a Cardiolute stress test, given that she has

1 recurrent history of chest pain.

2           At this time, she is not ready to do a Cardiolite  
3 stress test. She wants to get a little better with physical  
4 therapy, and then do a plain treadmill stress test. We will  
5 be glad to schedule it for her when she is ready. Meanwhile,  
6 I have asked her to repeat the echocardiogram to follow up on  
7 the very minimal regurgitant lesions she had."

8 BY MR. SEMENZA:

9           Q     And did you in fact follow up on that stress test?

10          A     Not yet.

11          Q     Okay. And this was back in 2012 that Dr. Fotedar  
12 created this report; is that correct?

13          A     Yes.

14          Q     And that's more than three years -- more than three  
15 years has gone by now; is that correct?

16          A     Yes.

17          Q     Okay. At some point in time after the February 8th,  
18 2010 fall, did you contend that you had a mini stroke?

19          A     Well, two days after I fell in February 2010 -- two  
20 days after I fell, I had symptoms on my left side of my face  
21 and my left arm -- down my left arm. That's what I contend,  
22 that I had symptoms there.

23          Q     Okay. And did those symptoms resolve?

24          A     They resolved.

25          Q     Okay. And did you at some point assert after the

1 fall in February 2010 that you in fact had a mini stroke?

2 A Well, since I'm not a doctor, I didn't -- I didn't  
3 mean that I was making that diagnosis. But what I'm saying is  
4 I had symptoms on my left side of my face and down my left  
5 arm. That's -- that's what I'm saying. And I couldn't drive,  
6 and so I just went bed and I -- went to bed, and I took the  
7 drugs that they had given me.

8 Q Who did you see relating to this mini stroke that  
9 you asserted you had?

10 A Okay. Like I just said, when they happened, I  
11 wasn't able to drive, so I didn't -- well, I should have  
12 called the ambulance, really, but I just went to bed. I had  
13 the drugs. I'd already been to the doctor, I'd already been  
14 to UMC, because this happened a couple days after I fell and  
15 hit my head. So, I -- I just went to bed. I took the drugs  
16 they gave me, and I went to bed.

17 Q And did you see Dr. Scott Manthei related to that  
18 drooping issue that you thought you were having?

19 A Yes.

20 Q Okay.

21 A Well, in addition to the cough; that drip I get now.

22 Q And when did you see Dr. Manthei relating to the  
23 drooping issue that you had on your face?

24 A Well, around 2011, I'd also had like a bronchitis  
25 thing. And so, when I went to see him, then I also told him

1 about that. So, I don't know if it was at the follow up in  
2 2012 that I mentioned the -- the left side of my face.

3 Q Okay. And did Dr. Manthei see any of this drooping  
4 that you claimed you were having?

5 A Well, that's -- that's not really my -- what I was  
6 concerned with. I mean, I didn't really care about how it  
7 looked. That wasn't what I was talking about. Then, so what  
8 he said is, go to a neural ophthalmologist, which I did.

9 Q And he didn't appreciate -- or he didn't see any  
10 drooping on the left side of your face, did he? That was his  
11 conclusion?

12 A Well, he didn't see any drooping, but he said, go to  
13 a neural ophthalmologist.

14 Q And when you saw him, were you adamant that your  
15 eyebrows weren't matching?

16 A It wasn't that I was adamant about that. I was  
17 trying to explain to him what I was talking about, and that's  
18 why he said, oh, well, you need to go to a neural  
19 ophthalmologist, because that's not -- that's not his field.

20 Q At some point in time, did you allege that you were  
21 having -- your retinas were detaching?

22 A I had to go to a retina specialist, and I had to go  
23 to an ophthalmologist, and I had to go to a neural  
24 ophthalmologist.

25 Q And the reason being is because you believed that

1 your retinas were detaching?

2 A Because they -- the doctors wrote down what I have.

3 Q And why do you believe that you were having these  
4 eye issues?

5 A I'm really sorry, but I'm not -- I'm not a doctor.  
6 I went to the three specialists, and they wrote it down in the  
7 reports.

8 Q Okay. Do you have an understanding of what the --  
9 your eye problems were?

10 A Well, what I know is I'm still dealing with it.  
11 They said that -- they did say, well, they're detaching, and  
12 you follow them, and if this happens, then you come right back  
13 in.

14 Q So, from what I understand of your testimony, your  
15 doctors did say that your retinas were detaching; is that  
16 fair?

17 A They have it in the reports, but my understanding is  
18 they said they're detaching, and you look for these symptoms,  
19 and if you get these symptoms, you just come right back in  
20 right away.

21 Q And do you attribute these eye problems -- your  
22 retinas detaching to anything in particular?

23 A Because I'm not a doctor, I can't tell you that.

24 Q Did you previously identify during your deposition  
25 that you thought your retinas were detaching because you had

1 undergone MRIs?

2 A Well, what I said was that I had put off having the  
3 MRIs because I had problems with my MRIs in 2010. But then  
4 last year when I decided I have to have my surgeries now, and  
5 I went back for the follow up MRIs, right after those MRIs, I  
6 had the problems with my eyes. So, what I said is that I had  
7 a problem with MRIs before, and then now I get more MRIs and I  
8 have more problems. So, it was -- I was just saying, the  
9 timing -- I got the MRI, and then I had the problem.

10 Q Do --

11 A And then I got -- and then it happened again.

12 Q Do you believe that the MRIs that you underwent  
13 caused your retinas to detach?

14 A I am not a doctor. I have no idea. I just -- all I  
15 can tell you is when I had the MRI before, I had a problem.  
16 And then I went back for more MRIs last year, and immediately,  
17 I had a problem. That's all I can tell you.

18 Q And did you have to get cleared on your heart issues  
19 before you addressed your eye issues?

20 A Dr. Subramanyam, my doctor, told me that before I go  
21 back for more eye tests, that I need to go to the cardiologist  
22 and get cleared.

23 Q And have you been cleared by your cardiologist?

24 A I haven't gone back because I still have the issues  
25 with my eyes. I still have those same symptoms, so the

1 doctors told me, while you have those symptoms, that they're  
2 -- you're at risk for more problems.

3 Q Okay. So, you can't go back to your cardiologist  
4 until your eye issue is corrected or resolved, and you can't  
5 go back to your eye doctor until your cardiologist -- or  
6 cardiac issues are resolved --

7 A My next --

8 Q -- is that fair to say?

9 A My next step is I have to go to the cardiologist and  
10 get a follow up echocardiogram. That's my next step.

11 Q Okay. And Dr. Fotedar told you you should do that  
12 back in 2012; is that correct?

13 A Yes. Well, but -- I'm sorry.

14 Q No, go ahead.

15 A I'm sorry, I lost it.

16 Q It's just a timing issue for you as far as when you  
17 started having these eye problems, and when you went and  
18 undertook the MRIs; is that correct? They're close in time,  
19 and is that why you think that there might be a relationship  
20 there?

21 A Yeah, that's all I can tell you. I had a problem  
22 before right -- well, during the MRI, and then I put it off,  
23 and then I -- when I did get some more, then I had the problem  
24 right after that. So, I'm just saying that this is what  
25 happened. I can't tell you why it happened; it's just what

1 happened.

2 Q Just a moment. Do you recall seeing a Dr. Carr?

3 A Yes.

4 Q And was that for your eyes?

5 A Yes.

6 Q And did Dr. Carr conclude that your eye exam was  
7 normal?

8 A I'm sorry, I -- I forgot what he concluded. I got  
9 -- I'm sorry, I forgot that one.

10 Q You don't remember what he concluded?

11 A I'm sorry, I don't.

12 Q Do you remember testifying during your deposition  
13 that Dr. Carr concluded that your eye exam was essentially  
14 normal?

15 A If that -- if that's what I said then, then that's  
16 probably it.

17 Q Do you have any reason to doubt that?

18 THE COURT: Was there an answer? Did -- do you have  
19 any reason to doubt that?

20 THE WITNESS: No. I don't think so, no.

21 BY MR. SEMENZA:

22 Q Would you consider yourself fearful of medical  
23 procedures?

24 A Well, I -- I -- if they're necessary and they'll  
25 help me, I certainly want them.



1 Q Other than diagnostic testing, have you had any  
2 medical procedures, such as surgeries or anything else, from  
3 February 8th of 2010 forward?

4 A Not yet. Excuse me, other than -- well, you know, I  
5 went to physical therapy, right, and I got the tens, and I  
6 tried --

7 Q You haven't had any surgeries since February --

8 A Surgeries specifically?

9 Q Yes.

10 A Oh, not yet.

11 Q And this is a strange question, but I noted in some  
12 documents, do you have a scar -- a long scar on your back?

13 A Not that I know of.

14 Q Okay. Have you planned out your surgeries as of  
15 yet?

16 A You mean do I have an appointment yet?

17 Q Yes.

18 A Not yet.

19 Q Okay. You don't have an appointment to do your  
20 neck?

21 A Not yet. I first have to go to get cleared for my  
22 heart.

23 Q Okay.

24 A That's the first step. And I haven't been yet. I  
25 have to go -- once my eyes stop doing what they're doing, then

1 I'll go for that, but another reason is I'm -- I'm afraid to  
2 go, too.

3 Q Okay. So, the order of how this will all go is your  
4 eyes need to improve, then you can go to the cardiologist, and  
5 then you can talk about surgery for your neck?

6 A Yes.

7 Q When was the last time you saw Dr. Dunn?

8 A Last year.

9 Q More than a year ago, or about a year ago?

10 A Well, I believe it -- it's about a year now.

11 Q When was the last time you saw Dr. Tingey?

12 A This year. I believe it was May, I think.

13 Q How many times have you seen Dr. Tingey in total?

14 A Well, I saw Dr. Tingey once.

15 Q From February 8th, 2010 to the present, do you have  
16 an estimation of how many doctors -- how many different  
17 doctors you've seen relating to your various conditions?

18 A I haven't counted.

19 Q Would it be over 20?

20 A I haven't counted. Do you want me to -- well --

21 Q Can you estimate for me?

22 A I haven't counted them, but I know you have all the  
23 records.

24 Q Can you estimate for me?

25 A I -- I have no idea. I can tell you what I went

1 for. I went for my neck, my back, my arms and hands, my hip,  
2 and my knees, and my foot, because those were all the injuries  
3 that I had right there at the Wynn.

4 Q You're not currently doing any physical therapy?

5 A No, but I -- throughout the day, I do all my  
6 stretching and the things that I need to do.

7 MR. SEMENZA: Just a moment, Your Honor.

8 BY MR. SEMENZA:

9 Q Okay, let's turn to your fall. When you were  
10 walking through the atrium area of the Wynn prior to your  
11 fall, why were you doing that?

12 A I'm sorry, I'm --

13 Q I can rephrase. When you were walking through the  
14 atrium area of the Wynn on the day that you fell, were there  
15 any sort of special decorations that were up?

16 A Oh, sure. Yeah, I --

17 Q What were the -- what were the decorations?

18 A You know, it was Chinese New Years, I believe, and  
19 they had the beautiful lights on the trees. It's always --  
20 that walkway is beautiful, and they usually have it decorated  
21 really pretty.

22 Q And you were looking at the foliage and --

23 A I was looking at the decorated trees, the plants,  
24 and the flowers.

25 Q Now, when you -- you were going to go out on the

1 Strip and walk, was that for exercise, or just to meander?

2 A Oh, for exercise and to go shopping.

3 Q And were you walking briskly or slowly?

4 A Well, I wasn't out there yet. I mean, I was -- I  
5 was just still walking through the walkway, you know, in  
6 between the -- in the gardens. I was still there, and I was  
7 just coming to the end of it, and coming to the right corner  
8 at the end of that.

9 Q How quickly were you walking though?

10 A Well, I was coming out of the -- I'd still been  
11 looking at all the beautiful things, and so I couldn't have  
12 been walking -- well, I was coming out of the corner, so I  
13 don't know how to answer that.

14 Q And you don't know how fast you were walking; is  
15 that fair to say?

16 A Yeah, I don't know how to answer that.

17 Q Okay. And immediately before your fall, you don't  
18 know where your vision was --

19 A Oh.

20 Q -- addressed to?

21 A Oh. I know that because I was approaching the right  
22 corner and I was going to be turning, or I was starting to  
23 turn, there's the beautiful green and colored tile floor, so  
24 that's one of the things that I always looked at, too. So, I  
25 know that I had already started looking at that, because I was

1 approaching the corner, and I had been looking, of course, at  
2 all the pretty scenery. But I know that I -- I was on that  
3 green and colored tile floor, and I always look at that, too.  
4 That's part of the beautiful walkway.

5 Q So, when you were walking in this atrium area just  
6 before your fall, you were looking down at the tile floor?

7 A In addition -- in addition to the beautiful scenery.

8 Q Okay. And do you recall when I took your  
9 deposition --

10 MR. SEMENZA: Can I have her deposition published,  
11 please?

12 THE CLERK: You want both of them, right?

13 MR. SEMENZA: For now, just the first one.

14 THE CLERK: The March 19th one?

15 MR. SEMENZA: Yes. Thank you. May I approach the  
16 witness, Your Honor?

17 THE COURT: You may.

18 BY MR. SEMENZA:

19 Q Just so I'm clear on your testimony, immediately  
20 prior to your fall, you were looking at the plants and looking  
21 at the tile on the ground; is that correct?

22 A Yes, because I was already on the colored tile.

23 Q Okay. And when you were looking down at the colored  
24 tile, did you see any sort of green liquid substance?

25 A Well, I didn't see it at that time, and it was green

1 liquid -- slightly green liquid on green tile, so I couldn't  
2 see it.

3 Q Okay. So, prior to your fall, you didn't see any  
4 green liquid substance on the ground?

5 A I couldn't see it on that colored tile. You can't  
6 see the green liquid on green tile. And then -- and then,  
7 when I was left standing around the corner, and I looked to my  
8 left where Terry had placed his sweeper machine, I still  
9 couldn't see it because it was -- it was on the green and  
10 colored tile.

11 Q Let me have you turn to page 74 of your deposition.  
12 And specifically, line 14. Tell me when you're there.

13 A Yes.

14 Q Okay. And you stop me if I read this incorrectly,  
15 but I asked the question, "When you were walking immediately  
16 prior to your falling, were you looking down at where you were  
17 going, or were you looking up at the plants?" And your  
18 response was, "I'm not sure." Do you remember that testimony?

19 A I see that.

20 Q Okay. So, is it fair to say that you don't know  
21 where you were looking prior to -- immediately prior to your  
22 fall on that particular day?

23 A I'm sorry, are you still reading this?

24 Q No.

25 A Okay. I'm sorry, was that a question?

1           Q     Is it fair to say based upon your testimony on March  
2 19th that you don't recall or don't know what you were looking  
3 at immediately prior to your fall?

4           A     Well, I was there to look at the scenery, and I  
5 always look at the beautiful colored tile floor also, so that  
6 was my usual routine. I'd been -- I'd done this many times.

7           Q     But again, your testimony was that you weren't sure;  
8 is that correct?

9           A     I said I'm not sure, but then you go forward, too.

10          Q     I'm showing you Stipulated Exhibit 8, it identifies  
11 at the bottom of the document Joint Stipulated Exhibit 10, so  
12 however we're doing this. Do you recall seeing this  
13 photograph?

14          A     Yes.

15          Q     Okay. And at the time of your fall, do you remember  
16 seeing that sign there? Immediately prior to your fall, do  
17 you remember seeing that sign there?

18          A     I don't recall.

19          Q     Now, you don't know what this green liquid substance  
20 was, do you?

21          A     I believed that it was water, and it's on the mop.  
22 They were cleaning it up, so it's on the mop.

23          Q     My question was, do you know what the green liquid  
24 substance was?

25          A     I believe it was water --

1 Q And you --

2 A -- from -- I'm sorry, excuse me.

3 Q Go ahead.

4 A I believe it was water for the plants. I believed  
5 it then because it was right up against the planter, and I  
6 know it's on their mops.

7 Q You -- do you dispute that the liquid -- green  
8 liquid substance was cleaned up prior to Officer Prowell  
9 arriving on the scene?

10 A I know that when he came to me, I was already off --  
11 sitting off to the side. I wasn't at the scene. I was off to  
12 the side, sitting at a machine. So, when I had -- so, I don't  
13 know if he went to the scene.

14 Q Okay. Do you recall your interrogatory responses  
15 where you identified that the green liquid substance was  
16 cleaned up before Officer Prowell arrived on the scene?

17 A I'm sorry, I said that? Could you show me?

18 Q I'm asking you if you recall that.

19 A Could you please show me? I'm sorry. So that I  
20 know what you're talking about.

21 MR. SEMENZA: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. SEMENZA:

24 Q I'll show you your interrogatory responses.

25 A Oh, interrogatories? Okay.



1           Q     Yes. And I'm going to ask you about this portion  
2 right there. And without reading it out loud, if you could,  
3 let me know if that refreshes your recollection as to --

4           THE COURT: Read it to yourself.

5           MR. SEMENZA: -- as to whether you identified that  
6 the spill had been cleaned up prior to Officer Prowell  
7 arriving.

8           THE WITNESS: I'm sorry, where does it say Officer  
9 Crole (sic)? I'm missing it.

10          MR. SEMENZA: May I approach again, Your Honor?

11          THE COURT: Yes.

12          THE WITNESS: Does it say Officer Crole there?

13 BY MR. SEMENZA:

14          Q     Well, does that refresh your recollection as to  
15 whether Officer Prowell arrived on the scene after the green  
16 sticky substance was cleaned up?

17          A     Well, Officer Crole isn't mentioned here, so you're  
18 asking me if -- okay. What I can tell you is, the first time  
19 I saw Officer Crole was I had left, and I'd been standing, and  
20 then I limped off to the side to the first machine that I  
21 could sit at, and I sat there waiting for help, and that's the  
22 first time I saw Officer Crole. But he didn't come -- he's  
23 not the one who came to me when I was left standing there  
24 after the people picked me up. He came to me when I was off  
25 to the side. So, that's when I saw him.

1           Q     Okay. And I just want to know, does that refresh  
2 your recollection as to whether the green liquid sticky  
3 substance was cleaned up prior to Officer Prowell's arrival?

4           A     What I know is that when --

5           THE COURT: Ma'am, ma'am, that's just a yes or no  
6 question. Does it refresh your recollection?

7           THE WITNESS: Oh, does it refresh my recollection?

8           THE COURT: Or not. Either one.

9           THE WITNESS: No.

10 BY MR. SEMENZA:

11          Q     You identified an individual male employee with a  
12 dark uniform -- suit, dark mustache, and stocky. Were you  
13 referring to Officer Prowell, or not?

14          A     Oh, absolutely not.

15          Q     Okay. And getting back to the liquid substance, you  
16 assert that it was water from the planters; is that correct?

17          A     I believe that it was water from the planters, and  
18 I'm sure it's on the mop, so there wouldn't be any question.

19          Q     What do you mean, it's on the mop?

20          A     Well, the little -- the little lady came with a mop  
21 when I was standing here, and the sweeper machine was more  
22 than four feet away from me. She came with her mop and she  
23 started cleaning up -- mopping up the spill, so that would be  
24 on the mop. And I believe that -- I believed it was water  
25 coming off the plants.

1 Q Okay. Do you know when the Wynn waters its plants?

2 A I don't know.

3 Q Okay. Do you know how the Wynn waters its plants in  
4 that area?

5 A Oh, yeah. I read that they water it by hand, and  
6 with a hose, and --

7 Q Okay.

8 A I read that.

9 Q Okay, but you didn't have -- you don't have any  
10 other understanding of how they do it, other than what you  
11 read?

12 A Well, and then they have the sprinklers, too.

13 Q And did you -- how do you know that they have  
14 sprinklers?

15 A Well, I'm sorry, because I read that, too.

16 Q Okay, but you've never seen what time they do any of  
17 their watering?

18 A I haven't noticed.

19 Q Okay. And you don't know when they water any of  
20 those plants, do you?

21 A Only what I read.

22 Q And you don't know what they water those plants  
23 with, whether it's simply water or some other chemical?

24 A Well, I would assume they put fertilizer in it.

25 Q Okay. You don't have any personal knowledge as to

1 whether they put anything into the solution -- or water that  
2 they water the plants with, do you?

3 A I wouldn't know that.

4 Q You wouldn't know?

5 A No.

6 Q And the only reason that you believe that the liquid  
7 substance that you slipped on came from the planters is  
8 because of the proximity of that liquid substance to the  
9 planters?

10 A That, in addition to the fact that it had a little  
11 green tint to it, and also that I believe they would have  
12 saved the mop to prove that it didn't come from the planters.

13 Q Okay, anything else?

14 A Right now, that's what I recall.

15 Q And because, in part, the green liquid -- the  
16 substance was green, you believe that that indicates that it  
17 would come from the plants or the -- where the watering took  
18 place?

19 A That's possible. I thought -- I thought it had come  
20 off the plants, or that it was meant for watering the plants.

21 Q But again, you don't have any personal knowledge as  
22 to what they water the plants with, other than water,  
23 presumably?

24 A And then I would just assume that they -- they -- I  
25 mean, I water my plants with fertilizer, so.

1 Q You don't know if they do though, do you?

2 A I wouldn't know that. They would know it.

3 Q And you don't know if the Wynn had watered that area  
4 where you slipped early that morning?

5 A I don't -- I personally don't know when they watered  
6 it.

7 Q Okay. You don't know whether it could have been a  
8 spilled drink, do you?

9 A When I was there, I didn't think it was a spilled  
10 drink, and it was such a large area, and it was right up  
11 against the plants, and when I was there, I believed it was  
12 water. And I didn't think that there -- I didn't think it was  
13 an issue because I was sure that they were going to save the  
14 mop and we would know, and I believe that they were taking  
15 pictures of it, and so there -- it wouldn't be an issue.

16 Q Did you ever ask them to save the mop?

17 A Well, I asked them for pictures. I -- I --

18 Q That wasn't my question.

19 A Oh. Well, and so -- and since they assured me that  
20 it was all being filmed, and that -- I was sure that they  
21 meant that they would preserve everything there. I mean, I  
22 had no doubt.

23 MR. SEMENZA: Your Honor, may we approach for a  
24 moment?

25 THE COURT: Yes.

1 (Off-record bench conference)

2 THE COURT: Need to get up for a stretch? Anybody  
3 need a bathroom break? Yes. Okay, good. All right. Ladies  
4 and gentlemen, we're going to take a ten-minute recess, so  
5 until 3:15.

6 During this recess, it is your duty not to converse  
7 among yourselves or with anyone else on any subject connected  
8 with the trial, or to read, watch, or listen to any report of  
9 or commentary on the trial by any person connected with the  
10 trial, or by any medium of information, including, without  
11 limitation, newspaper, television, radio, or internet, and you  
12 are not to form or express an opinion on any subject connected  
13 with this case until it's finally submitted to you; 3:15, I'll  
14 see you then.

15 THE MARSHAL: Rise for the jury.

16 (Outside the presence of the jury)

17 THE COURT: All right, and the record will reflect  
18 that the jury has departed the courtroom. Did we have a  
19 concern that we had a sleeper?

20 MR. SEMENZA: I got the nod that there might have  
21 been one. That's why I asked for the sidebar, but I don't --

22 THE COURT: Yeah.

23 MR. SEMENZA: I didn't see her other than with her  
24 head down, so I don't know one way or the other.

25 THE COURT: I've been trying to keep an eye out

1 because the testimony's gone on a long time. You have a very  
2 lulling voice, but -- and I thought I had one and was going to  
3 have to -- so, here, you really need to keep an eye out for  
4 the sleepers, because I can't quite tell. My vision is not  
5 quite good enough. I wish I could whip out opera glasses, but  
6 that would be --

7 MR. KIRCHER: We couldn't tell either.

8 THE COURT: -- that would not be good. So -- but  
9 sometimes a person is looking down but their eyes are open,  
10 and so that's what I was noticing, but then the head came back  
11 up, and it wasn't a head bob, so --

12 MR. SEMENZA: Yeah.

13 THE COURT: -- I didn't think anyone was sleeping.  
14 But let me know if you ever see that, I mean, because we all  
15 try and stay alert for that. All right, recess until 3:15.

16 (Court recessed at 3:06 P.M. until 3:19 P.M.)

17 (In the presence of the jury)

18 THE MARSHAL: Jury's all present, Your Honor.

19 THE COURT: All right, thank you. Please be seated.  
20 And the record will reflect that we've been rejoined by all  
21 eight members of the jury, as well as the two alternates. The  
22 plaintiff is still on the stand and still under oath. She's  
23 with her counsel. Defense is present, as are all officers of  
24 the court. You may proceed.

25 MR. SEMENZA: Thank you, Your Honor.