

IN THE SUPREME COURT STATE OF NEVADA

GAVIN COX and MINH-HAHN COX,
Husband and Wife,

Appellants,

vs.

MGM GRAND HOTEL, LLC; DAVID
COPPERFIELD aka DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID
COPPERFIELD'S DISAPPEARING, INC.;
TEAM CONSTRUCTION
MANAGEMENT, INC.; and BEACHERS
LV, LLC,
Respondents.

) Supreme Court No. 76422

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) District Court No. 2015-1640

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JOINT APPENDIX - VOLUME 2

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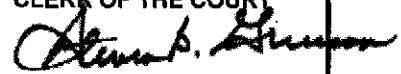
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

GAVIN COX,)
)
Plaintiff,)
)
vs.)
)
MGM GRAND HOTEL LLC,)
)
Defendant.)
AND OTHER PARTIES)

CASE NO. A-14-705164-C
DEPT NO. XIII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

RE: MOTIONS

THURSDAY, JANUARY 19, 2017

APPEARANCES:

FOR PLAINTIFF:

ADAM E. DEUTSCH, ESQ.
PERRY FALLICK, ESQ.
CHRISTIAN N. GRIFFIN, ESQ.

FOR TEAM CONSTRUCTION &
BEACHER'S LV:

GARY W. CALL, ESQ.

FOR MGM DAVID COPPERFIELD &
COPPERFIELD'S DISAPPEARING:

ERIC O. FREEMAN, ESQ.
ELAINE K. FRESCH, ESQ.

FOR BACKSTAGE EMPLOYMENT:

HOWARD J. RUSSELL, ESQ.
D. LEE ROBERTS, JR., ESQ.

ALSO PRESENT:

JERRY POPOVICH, ESQ.

RECORDED BY: MARTHA SZRAMEK, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

JA000239

1 LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 19, 2017, 1:32 P.M.

2 * * * * *

3 THE COURT: Good afternoon. Please be seated. All
4 right. We're convening in Gavin Cox, et al, plaintiffs, versus
5 MGM Grand Hotel LLC, et al, defendants.

6 Please state appearances of counsel.

7 MR. DEUTSCH: Good afternoon, Your Honor. Adam
8 Deutsch from the Morelli Law Firm for the plaintiffs.

9 MR. GRIFFIN: Christian Griffin for plaintiffs.

10 MR. FALLICK: Perry Fallick for plaintiffs, Your
11 Honor.

12 MR. CALL: Gary Call for Team Construction and
13 Beacher's, with the law firm of Resnick & Louis.

14 MR. FREEMAN: Eric Freeman on behalf of MGM Grand
15 Hotel, David Copperfield and David Copperfield's Disappearing,
16 Inc.

17 MS. FRESCH: Good morning -- or good afternoon, Your
18 Honor. Elaine Fresch with Selman Breitman, and I represent the
19 same defendants as Mr. Freeman just said.

20 MR. RUSSELL: Howard Russell and Lee Roberts for
21 Backstage Employment and Referral.

22 MR. POPOVICH: Jerry Popovich, Your Honor, subject to
23 Your Honor's ruling on the pro hac vice, perhaps representing
24 defendants MGM --

25 MR. DEUTSCH: And that -- and then, Your Honor, that

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1 would also go for Mr. Fallick, whose motion has not yet been
2 submitted for pro hac vice, as we notified.

3 THE COURT: All right. I'll hear the motion
4 (inaudible) first.

5 All right. Everything appears to be in order on that
6 motion (inaudible) Popovich, and the same is granted. An order
7 has been submitted, and I'll go ahead and sign that now.

8 And I'll set a status check on notification to the
9 State Bar of this submission (inaudible) March -- March 27th,
10 2017, for 9:00 a.m. If the record shows that the State Bar has
11 been notified of the admission by that time, there will be no
12 need to come to the status check. All right.

13 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

14 THE COURT: Here's the order. All right. Do you
15 want to approach the bench and claim the order.

16 (Inaudible) process the clerk's office.

17 UNIDENTIFIED SPEAKER: Thank you.

18 THE COURT: All right. The thought occurred to me
19 that the next motion in order would be the joint motion for a
20 firm trial setting, or should I hear the bifurcation one first?

21 MR. DEUTSCH: Your Honor, on the motion for the joint
22 trial setting, all counsel had gotten together to discuss that.
23 The biggest concern from everyone was just the amount of
24 witnesses and the amount of expert witnesses and the
25 difficulties of all parties, a lot of whom are coming -- the

1 experts are coming from out of state, and just the difficulty
2 in -- in having sort of a more firm set schedule ahead of time
3 to make the logistics easier was the basis that we had all
4 moved for that -- that firm trial setting.

5 THE COURT: And the record will reflect that we had
6 the pretrial conference just before this. During that time the
7 Court was informed that counsel expects this case to take at
8 least 15 trial days.

9 MR. DEUTSCH: I think that would be an accurate
10 assessment.

11 THE COURT: The motion sought to have a firm setting
12 on this stack, which does not have that many days.

13 MR. DEUTSCH: We understand that --

14 THE COURT: All right. (Inaudible) you're seeking a
15 firm setting?

16 MR. DEUTSCH: We are seeking a firm setting.
17 Obviously part of the motion was the hope that we could in some
18 way take preference in light of the complexity of this case
19 over some of the other cases that you had in this stack. As I
20 notified the Court in the back, you know, my clients are under
21 some pretty significant financial distress in light of this
22 case taking as long as it has.

23 And the longer that it continues to get delayed is
24 difficult for them, and therefore I believe as part of that
25 joint motion was a request to take preference on this stack

1 from some of the other cases if the Court was so willing to do
2 so. In light of the number of -- we have 2, 4, 6 -- we have 9,
3 10 attorneys. We have a number of witnesses, as I said, from
4 out of town that number probably close to a dozen. So that was
5 the hope in making the motion, Your Honor.

6 THE COURT: I don't know that there is any objection
7 to a firm setting, was there?

8 MS. FRESCH: No, Your Honor.

9 THE COURT: Okay. So here's what I'll do. I'll
10 grant the motion for a firm setting; however, I can't grant --
11 I can't grant -- I can't grant a firm setting on the upcoming
12 stack. It's just not long enough. (Inaudible) cases
13 (inaudible) as well.

14 So here's what I'm going to do. I spoke with my JEA
15 after the pretrial conference before coming out here, and she
16 said that the best thing to do would be for her to confer with
17 counsel as to -- to let you know what stacks were available.
18 So what I'll do is I'll recess here for a moment and have her
19 come out here and meet with counsel to discuss that.

20 MR. DEUTSCH: Thank you, Your Honor.

21 MS. FRESCH: Thank you, Your Honor.

22 (Pause in the proceedings.)

23 THE COURT: All right. We're back on the record.
24 You may be seated. My JEA has met with counsel now and has
25 discussed possibilities for the firm setting that's been

1 ordered by the Court. That being so, we know the firm setting
2 will not -- it will be set as a firm setting. We know it will
3 not be going on the stack. So I'll vacate the trial as
4 presently scheduled, which is January 31st, and I'll vacate
5 the calendar call, which is the 23rd. Okay. And a new trial
6 order will issue, and we'll go from there.

7 Okay. I think the next motion I guess would be what,
8 the bifurcation motion?

9 Okay. And that motion is -- let me look at my
10 calendar. Is that defendant Backstage Employment and Referral,
11 Inc.'s motion to bifurcate trial? Right?

12 MR. RUSSELL: Correct, Your Honor.

13 THE COURT: You know, before we get to that, maybe
14 what we ought to do is have an understanding as to all the
15 sealing motions that were filed. I don't think there were any
16 objections to any of the sealing motions, were there?

17 MR. RUSSELL: Oh, I don't believe there were any
18 objections. No.

19 MS. FRESCH: No, me neither.

20 THE COURT: Okay. So that being so, I'm persuaded
21 that the motions to seal the items that are referenced in each
22 one should be sealed, and accordingly all the sealing motions
23 are granted. Okay. (Inaudible.)

24 All right. So now I'll take the bifurcation.

25 MR. RUSSELL: Thank you, Your Honor. Again, Howard

1 Russell for Backstage Employment and Referral.

2 This case is somewhat unique in that bifurcation is
3 probably more appropriately the rule rather than the exception
4 in a case like this. Bifurcation is not normally granted, and
5 we don't file these types of motions in every case; however,
6 this is a case in which we have a very, very clear delineation
7 in time, really a particular moment in time that the trial can
8 be bifurcated across.

9 Now, the basis for granting bifurcated trials in
10 Nevada is if it's going to avoid prejudice, promote expedition
11 and judicial economy and so long as the issues of liability and
12 damages are not so intertwined that you can't reasonably have
13 two separate proceedings.

14 As to the first issue of avoiding prejudice, this
15 case carries with it a very significant risk of prejudice to
16 the defendants if there is a single proceeding. The Court has
17 now heard from the parties, both as part of the motion for
18 joint firm trial setting as well as during the pretrial
19 conference, that this is expected to be a lengthy trial. I
20 will represent to you that I believe no one will disagree that
21 the vast majority of that time is going to be spent on damages.
22 The liability aspect of this case should take two to three
23 days.

24 We have I think about six witnesses. We have
25 Mr. Copperfield himself. We may have somebody -- MGM may bring

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1 somebody as a corporate representative. We will have a couple
2 of employees from Backstage, all of whom will talk about this
3 illusion and how it's carried out. Plaintiff Gavin Cox will,
4 of course, testify. His wife Minh-Hahn Cox may testify, but
5 her testimony would be pretty limited since she was not there
6 during the illusion. Maybe she'll testify to what they did
7 that day, you know, prior to going to the show and what she saw
8 during the illusion, but that would be a fairly discrete amount
9 of testimony.

10 And then depending on the Court's ruling, there may
11 or may not be a liability expert on behalf of the plaintiffs to
12 talk about the actual execution of the illusion. Not only do
13 we have a limited number of witnesses, six, seven at the most
14 if you count Mrs. Cox -- and then, I apologize, one other
15 witness perhaps on behalf of Team Construction to talk about
16 their work there and whatever cleanup work they did around the
17 construction area. Not only do we have a very limited number
18 of witnesses, but the testimony is going to be very brief.

19 The liability witnesses as far as Backstage is
20 concerned, their depositions lasted about a total of an hour
21 and a half each, and they were pretty extensive. All of the
22 liability aspects of this case happen in a 10 minute, 15 minute
23 time frame essentially. They happen from the moment in time in
24 which Mr. Copperfield and the stagehands start throwing beach
25 balls out to the audience. When Mr. Cox catches one, comes up

1 to the stage, is asked if he can run and then does the
2 illusion.

3 The moment in time he starts to stumble forward,
4 that's where the liability issues end. That's where the
5 question of why did he fall and was it because of the
6 negligence of one of the defendants, okay. So we've got a
7 very, very limited scope of liability testimony, and then the
8 jury will hear a week and a half and two weeks worth of damages
9 testimony.

10 After, you know, we expect we're going to be possibly
11 15 trial days which will possibly constitute four to five
12 calendar weeks, it's going to be very difficult for a jury to
13 divest itself from what it's heard over the past three weeks
14 about Mr. Cox's claimed injuries, his claimed traumatic brain
15 injury, his claimed damages going forward, and to go back in
16 time and to think objectively, well, wait, let me decide if any
17 of the defendants actually caused this man to fall in the first
18 place.

19 The prejudice to the defendants is very, very real in
20 this case if we're asking the jury to be able to objectively
21 weigh the evidence after hearing all of that damages testimony.
22 There is no prejudice to the plaintiffs in this case, not any
23 significant prejudice. They can tell their liability story.

24 The only person that's going to have to testify in
25 both phases of trial will be Mr. Cox and again Mrs. Cox if she

1 wants to give a little background about the evening they spent
2 before the illusion. He's going to be here through the trial
3 anyway.

4 The testimony about the accident took up -- we cited
5 the Court to it -- I think about 20 pages of deposition time,
6 and that was a pretty thorough examination of step-by-step each
7 thing that happened along the way. I anticipate his liability
8 testimony will take an hour or two. It's going to be very
9 brief. There's not going to be duplication. So there is no
10 prejudice to -- to bifurcating the trial because there's not
11 going to be any overlap, and the plaintiffs aren't going to
12 have to put on a second case.

13 THE COURT: Under the bifurcation scenario envisioned
14 by you, what would the jury need to be told in the first phase
15 about the injuries being claimed by the plaintiffs so that they
16 would understand what impact that might have upon his testimony
17 and his ability to testify and that kind of thing?

18 MR. RUSSELL: I think that it can be simply -- first
19 of all, I don't think it's really necessary because, as we
20 pointed out to the Court, Mr. Cox remembers very, very clearly
21 what happened up until the point of his fall, and we cited to
22 the Court to specific testimony which he says after he fell,
23 And at that point I don't remember much. We're talking about
24 pages and pages of very precise deposition testimony; however,
25 that's a fair point, and plaintiffs have raised that.

1 I think the jury can simply be told at the outset
2 that, ladies and gentlemen, you're going to hear issues about
3 the liability of the defendants and whether or not any of them
4 caused Mr. Cox to fall. Part of Mr. Cox's claim for damages
5 involves impaired memory, impaired cognitive abilities because
6 of his injuries, and in the event this case goes to a second
7 phase, you'll hear more about those injuries later; however, to
8 the extent you find Mr. Cox has recollection issues, that is
9 part of his claimed damages. And leave it at that, and so
10 it'll give the jury some context.

11 I do think that's fair. Again, I don't think he's
12 going to have trouble because he didn't, you know, a year ago.
13 So if we need to advise the jury, I think we can do that in a
14 way that doesn't put too much weight or emphasis on it, simply
15 acknowledge that Mr. Cox is claiming some cognitive and some
16 recollection difficulties because of his injuries. You know,
17 you can't -- you know, and if you even want to go so far as to
18 say you can't hold that against him, innocent recollection,
19 innocent lack of recollection is not suggesting that he's
20 lying. We can give the jury an instruction on that. That can
21 be cured fairly easily.

22 Now, whether it will promote expedition, I think
23 that's very clearly as well because if we can try this
24 liability issue in two, three, four days and be done with it
25 and the jury decides that the defendants were not negligent or

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1 that any alleged negligence did not cause Mr. Cox to fall, the
2 case would be over very, very quickly. So there's certainly a
3 significant chance that we're going to promote judicial economy
4 in this case if indeed we bifurcate the action.

5 So then the last issue is is there a clear
6 delineation between liability and damages? As I said, there is
7 a very clear moment in time. The second in time where Mr. Cox
8 begins to stumble forward, the liability question's
9 essentially, you know, did one of the defendants cause that to
10 happen?

11 How he fell, and I mean how he fell from the
12 standpoint of the mechanism of how he fell, how did that fall
13 impact his injuries? How did that fall cause his injuries?
14 How does his demeanor and his conduct and his actions after he
15 fell, how does that fall into his injuries? All of those
16 things are damages issues. There's not any overlap there.

17 And the reason you can see there's no overlap there
18 is because none of the damages experts in this case, none of
19 plaintiffs retained experts, none of his treating physicians
20 have looked at anything to do with liability. They haven't
21 looked at the surveillance video. They haven't looked at the
22 incident reports. Most of them haven't read Mr. Cox's
23 deposition. They don't really care what caused him to fall.
24 They might care about how his fall impacted his injuries, and
25 that's understandable, but that's part of damages.

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1 You've been through enough trials, Your Honor, that
2 you know that most treating physicians and damages experts will
3 come in and will say I'm not here to talk about liability. You
4 know, I don't know why this person fell, or I'm not here to
5 talk about how he got hurt. I'm here to tell you that he told
6 me he fell, and I'm telling you that because he fell, X, Y and
7 Z happened. So there is a clear delineation there.

8 And, in fact, the experts and the plaintiff's
9 treating physicians, they can't testify to anything to do with
10 liability because they haven't looked at any of that material,
11 and it had nothing to do with their treatment, and it had
12 nothing to do with their expert analysis. Everything the
13 damages experts talk about will start at that moment in time
14 after he has started to stumble forward.

15 The plaintiffs keep mixing these concepts of
16 causation. You know, there are two causation issues here:
17 What caused him to fall, and was it the defendant's negligence,
18 and what injuries were caused once he fell? And it's that
19 break in time that makes bifurcation in this case appropriate
20 and hopefully will promote some judicial -- will preserve some
21 judicial resources if we can expedite the trial and get the
22 liability issues tried quickly.

23 I don't believe in the length of the trial at all.
24 As we said, the liability issues are fairly discrete, and
25 giving the jury a day or a day and a half to deliberate, to

1 decide liability issues is not going to cause any significant
2 lengthening of the trial. So this is one of those rare cases
3 where really bifurcation is not only appropriate but warranted.

4 THE COURT: Any of the joining defendants wish to be
5 heard on this bifurcation?

6 MR. FREEMAN: We joined, but no further comments.

7 MR. CALL: We joined also, Your Honor, but one
8 further comment on this. We agree with the premise here about
9 the bifurcation, and one of the reasons my client agrees with
10 it is because I think my client would be prejudiced by also
11 hearing the damages aspect of the case because of the egregious
12 damages that are being alleged arising from this.

13 My client is being alleged to have dust on the
14 walkway, and it's our position later on in our motion for
15 summary judgment that there's no causation issue, but it's
16 feared that my client may be brought in and be held somewhat
17 liable for having dust on the walkway even though that they had
18 little to anything to do with this, with this injury.

19 THE COURT: All right.

20 MR. DEUTSCH: Thank you, Your Honor. I think Your
21 Honor touched on the most important piece here, which is the
22 issue of credibility in the case, and as we all know, there's a
23 lot of trial lawyers in this room, and we've talked to a lot of
24 juries. One of the most important functions of a jury is to
25 assess the credibility of a witness, especially in a case like

1 this, and Mr. Cox's credibility is going to be at issue, and I
2 don't believe that even a simple suggestion of that he's
3 claiming memory impairment or that he's claiming this is
4 sufficient to overcome the prejudice.

5 Mr. Cox answers questions very slowly. He speaks
6 slowly. He has trouble identifying words. He has memory
7 problems, and when you talk to juries during jury selection,
8 the number one thing that jurors tell you is what do you look
9 for when you assess credibility, and they say the body
10 language, how long it takes someone to answer a question,
11 whether the person has difficulty finding the answer, whether
12 they remember things.

13 Those are key components in this case, and to -- to
14 just brush by them and have the jury wonder with a very simple
15 phrase that he's claiming brain injuries does not in any way
16 allow them to either excuse or recognize why he's answering the
17 questions the way he is, and I think that is the most important
18 point against bifurcation.

19 The other factor is is that, you know, I appreciate
20 that Mr. Russell wants to sort of separate the causation
21 analysis, but throughout all of the depositions of experts in
22 this case, the way he fell, the way the accident happened, how
23 fast he was running, how slow he was running, whether he was
24 running or not, what direction he fell, how he fell are all
25 parts of all of the defendants' -- all of the defendants'

1 defense in this case.

2 They're claiming that he could not have sustained
3 this brain injury based on how this accident happened. So if
4 they are coming here to say that that's no longer an issue in
5 the case, that they're not going to make that argument, then
6 okay, but since I doubt that's going to happen, it's pretty
7 clear to me that the issue of how the accident happened and
8 what his injuries were are totally inextricably combined that
9 that bifurcation would not be proper.

10 And I appreciate Mr. Call's argument that, well, just
11 because my client sustained serious, serious injuries, that
12 that's somehow prejudice to his client to sit through a trial.
13 That's no different than any other trial. We're claiming that
14 he sustained serious injuries. We're claiming that they were
15 at fault for those injuries, and that's what the jury is going
16 to have to decide, and the fact that his injuries are more
17 severe than someone else doesn't create an additional prejudice
18 on his client.

19 THE COURT: What if in a bifurcated trial the
20 plaintiff were allowed to call a medical witness just to
21 establish a diagnosis or condition of plaintiff?

22 MR. DEUTSCH: The problem --

23 THE COURT: Without getting into causation of it or
24 anything like that.

25 MR. DEUTSCH: Well, the problem I think is that it

1 would be a number of witnesses. There would be a neurologist.
2 There would be a neural radiologist to talk about his brain
3 injury. There would be a number of witnesses, and at that
4 point, we're talking three probably of the main medical
5 witnesses in the case. At that point I'm not sure if it really
6 makes much of a difference, bifurcation or not.

7 THE COURT: Okay. Just as a matter of observation,
8 the last trial -- jury trial conducted in the old Clark County
9 courthouse was my trial. It was bifurcated. The jury came
10 back and found liability in the old courthouse, and we tried
11 damages in this courthouse. Okay.

12 MR. DEUTSCH: It happens.

13 THE COURT: So, I mean, bifurcation doesn't mean that
14 the -- that the -- cases can be bifurcated, you know.

15 MR. DEUTSCH: I agree cases can be bifurcated. I
16 think that there's significant prejudice to my client in this
17 case because of the nature of his injuries and the defenses in
18 the case where they're going to relitigate liability in the
19 damages portion of the trial again. We're going to do
20 everything twice -- how he fell, how his accident happened --
21 because all of their doctors opine on that issue in saying to
22 the jury that he can't have a brain injury based upon how this
23 accident occurred.

24 So I think that if anyone is prejudiced, I think the
25 prejudice issue with respect to the credibility issue is -- is

1 far and away more of a concern than the cost or the number of
2 days, and, you know, it's hard pressed to argue anything about
3 cost for the defendants here. They have three lawyers when I'm
4 sure that they're all each capable by themselves. So I don't
5 think that it's really a cost issue that's a concern. I think
6 it's a prejudice issue, and I think my client is the one that
7 will be prejudiced.

8 THE COURT: Okay. Thank you.

9 Do you want to respond?

10 MR. RUSSELL: Just briefly.

11 THE COURT: Sorry about this pillar.

12 MR. RUSSELL: That's okay.

13 MS. FRESCH: I'll just point.

14 THE COURT: I should probably put a mirror someplace
15 over here and over here.

16 MR. RUSSELL: Just on -- simply I want to respond to
17 the issue of the defense experts and the notion that we're
18 going to litigate liability issues twice. It's simply not
19 true. I'll tell you the defense experts on the traumatic brain
20 injury component are a neurologist, a neuroradiologist, a
21 neuropsychologist, but those experts are going to testify that
22 this man's cognitive testing and his neuropsychological testing
23 and his brain imaging do not -- are not consistent with someone
24 who claims to have suffered a traumatic brain injury.

25 We have a biomechanic who's going to talk about the

1 mechanism of fall, but he doesn't have any opinions about why
2 Mr. Cox fell. He's simply saying, okay, I've seen this
3 man's -- you know, I've seen the way this man fell. I've read
4 the descriptions of how we fell. When someone falls in that
5 manner, you don't suffer a traumatic brain injury. When
6 someone falls in that manner, you don't suffer certain cervical
7 injuries. When someone falls in that manner, you might suffer
8 a shoulder injury. I can appreciate that.

9 All of that testimony, and all those opinions about
10 the mechanism of the fall, again, they start at that point in
11 time after the fall has already started, and I -- I debated
12 whether to include my little diagram in my reply brief, but I
13 actually think it's a fairly perfect depiction of what we're
14 talking about here. It's that moment in time, and once he
15 starts stumbling forward, the reasons why and whether it was
16 because of the negligence of one of the defendants, that's
17 already been established. You know, that point time is now
18 over, and now we start talking about damages. So the jury
19 should be able to decide at that point in time.

20 Thank you.

21 THE COURT: All right. Thank you. I'll reflect on
22 that motion a bit more. I'll have it under advisement for now,
23 and I'll make a ruling as soon as I can after -- after
24 (inaudible.)

25 Now, it seems to me that we probably ought to get

1 into the summary judgment motions, then go from there to the in
2 limine motions. How's that?

3 So that being so, anybody have a consensus on the
4 order in which the summary judgment motion should be taken?
5 The first one on calendar is Backstage Employment and
6 Referral's motion for summary judgment, right? Let's hear that
7 one.

8 MR. RUSSELL: Thank you again, Your Honor. I don't
9 want to rehash the extensive briefing. So I'll try and focus
10 on some of the things that were raised in the opposition and
11 address those. They were addressed in our reply, but I think
12 they're important to point out.

13 The interesting point I think that has been made is
14 the plaintiffs apparently still are relying on an old summary
15 judgment standard. The slightest doubt standard is no longer
16 the standard for resolving motions for summary judgment in this
17 jurisdiction. That has been changed since 2005; yet the
18 arguments that plaintiffs make are essentially nothing more
19 than slightest doubt arguments, that if there is any minimal
20 amount of evidence, that somehow creates a material question of
21 fact for the jury to consider.

22 The Nevada Supreme Court has been very clear on this
23 point, that summary judgment motions should no longer be
24 disfavored. They should be considered an important procedural
25 tool for the resolution of cases, and in light of that policy,

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1 the slightest doubt standard no longer obtains, and the Court
2 is supposed to look at whether the plaintiff has raised a
3 material question of fact that a jury can rely on to find in
4 the plaintiff's favor.

5 So with that standard in mind, go through the basic
6 elements that we have to deal with in this particular case. At
7 its heart, this is a negligence case. The first question is
8 whether there is a duty, and we have raised the issue in the
9 motion about the potential application of a limited duty. For
10 purposes of resolving this motion, we don't necessarily need to
11 decide that today.

12 The Fiesta Palms decision from a couple years ago
13 from the Supreme Court left open a window to say there might be
14 situations in which we can extend the Turner versus Mandalay
15 Entertainment rule. There might be situations in which the
16 plaintiff engages in a recreational or an entertainment
17 activity in such a way that there is a risk inherent in
18 engaging in that activity, and that risk of injury creates only
19 a limited duty on the -- on the entertainer or on the sports
20 team.

21 They did not extend the rule in the Fiesta Palm case,
22 but they did leave open that possibility. So I do think that
23 that would be a briefing for another day as to whether limited
24 duty should apply here.

25 But I do think a situation in which a person

1 voluntarily engages in a magical illusion, is asked if they can
2 run, is then asked to run during the illusion and then slips,
3 that could potentially put us into a scenario of only imposing
4 a limited duty because the risk of slipping while running is a
5 risk inherent in running, and the participant, the voluntary
6 participant has now been told you're going to be asked to run
7 so. But I don't think we need to address that issue today.

8 I raised it for the Court's consideration because at
9 some point in time, either through jury instructions or further
10 motions we are going to be asking the Court to apply a limited
11 duty to the particular situation. The point of our motion is
12 to highlight that no matter whether you apply a general
13 negligence standard or a more limited duty, there is no
14 evidence to support the breach element of a negligence claim,
15 and that's what we need to focus on.

16 The first couple aspects in the motion we can get out
17 of the way right away. There was no opposition to the motion
18 on the issue of punitive damages. Plaintiffs have essentially
19 conceded that, and there's clearly no evidence of punitive
20 conduct. So that portion of the motion should be granted.

21 Plaintiffs have not disputed the position that
22 respondeat superior is not a cause of action. That should not
23 be a cause of action. It's not going to be on a verdict form.
24 It's not going to be read to the jury. That cause of action
25 should be dismissed because it's not a recognized cause of

1 action.

2 And then the negligent hiring, training, supervision
3 claim, there is good case law, including from Nevada now, which
4 says that a negligent hiring, training, supervision claim
5 emerges if the employer admits respondeat superior liability
6 for the acts of its employees which we have in this case.
7 We've cited -- we've given the Court some of that case law, and
8 the reason is -- it's fairly obvious and it's been addressed by
9 numerous courts -- the plaintiff can only recover once if an
10 employer has acknowledged responsibility for its employees'
11 acts, and if the employee acted negligently, the employer's on
12 the hook. You don't need a secondary cause of action for
13 negligent hiring, training or intention. So those causes of
14 action should merge, and again we've provided the Court with
15 the case law on that.

16 In addition to that case or that claim, I should say,
17 being legally subject to dismissal and summary judgment,
18 there's also evidence to support any negligent hiring -- hiring
19 or training claim. That claim requires evidence that an
20 employee was unfit for his job or that the employer didn't
21 properly train the employee to do his job.

22 There has been no evidence provided or cited by the
23 plaintiffs to support any such claim. There is no evidence
24 that Backstage did not train its employees properly. There is
25 no evidence that the employees did something contrary to what

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1 they were trained to do. There is no evidence that the
2 employees were somehow unfit for their position.

3 What the plaintiffs have said is, well, you shouldn't
4 have trained your employees to do this. Essentially they've
5 taken the employees' testimony and corporate representatives'
6 testimony, which coincide, match up, and they say, well, you
7 shouldn't have trained your employees to do this. Well, that's
8 just your basic negligence standard. That's going back to
9 Backstage and saying you shouldn't do this as part of carrying
10 out this illusion. It doesn't add an additional claim for
11 negligent hiring or training or supervision. That doesn't --

12 UNIDENTIFIED SPEAKER: Sorry.

13 MR. RUSSELL: That doesn't -- that doesn't constitute
14 evidence of negligent hiring or training or supervision. So
15 there's been no evidence and really no argument articulated as
16 to how there would be factually a claim for negligent hiring,
17 training, supervision or retention, and as I pointed out,
18 legally that claim should merge into the negligence claim given
19 that we've acknowledged respondeat superior.

20 THE COURT: But evidence of the facts or that the
21 plaintiff contends to have been negligence in training or
22 supervision or something like that would still be adduced,
23 right? It just wouldn't be a separate cause of action?

24 MR. RUSSELL: Correct. Yeah. I mean, they can argue
25 that Backstage was negligent --

1 THE COURT: It's part of the negligence.

2 MR. RUSSELL: Right. Exactly. It's not a separate
3 cause of action.

4 Now, as to the negligence claim, again we're focusing
5 on what evidence is there that there was actually a breach of
6 any duty owed to plaintiff, and we would submit that there is
7 no evidence of any breach of any duty. The plaintiffs have
8 raised various theories in various arguments that they will
9 make, but at this point in the litigation, theories and
10 arguments don't carry the day.

11 So what is the evidence that any duty of care was
12 breached to Mr. Cox because he was allegedly hurried through
13 the illusion? The simple fact that he was hurried through the
14 illusion, how is that evidence of negligence? There's no
15 expert to talk about the standard of care for a production
16 company in a similar position as Backstage who carries out an
17 illusion like this. They have not put up an expert that's
18 going to say, no, that's the wrong way to do that illusion.
19 You shouldn't do it that way. You should have done it this
20 way.

21 Okay. There's no evidence of any prior injuries
22 during the illusion. So there's no evidence that Backstage had
23 reason to believe that the way that it conducted the illusion
24 and allegedly hurrying people through it was going to cause any
25 risk of danger because no one had ever been injured doing it in

1 the hundreds, if not thousands of times it had been done. You
2 have to recall, Your Honor, this trick, this illusion was done
3 15 days -- 15 times a week for several years without incident.

4 So also where is the evidence that you've breached
5 the duty of care by asking someone if they can run, having them
6 run and then they slip and fall? That is simply a situation
7 where an accident has happened, but an accident itself is not
8 proof of negligence. That's exactly what the plaintiffs want
9 to do in this case. They want to say, well, Mr. Cox slipped
10 and fell. So therefore someone must have been negligent to
11 make him slip and fall. That's not enough. They need actual
12 evidence and proof of negligence, and they've not done that.

13 The other -- another theory they bring up, well, they
14 failed to -- to protect him from known hazards. Well, what is
15 the evidence of a known hazard? As I mentioned, there haven't
16 been any injuries in carrying out this illusion. So where is
17 the evidence that Backstage knew of a hazard of someone getting
18 hurt?

19 There's no evidence of notice to Backstage of the
20 alleged construction debris or dust. There's been no one to
21 come up and testify that they went out there and they saw it
22 and Backstage should've seen it as well.

23 There's also no evidence to suggest that Backstage
24 had any reason to believe that Mr. Cox was incapable of
25 running, that they were subjecting him to some hazard because

1 he was incapable of performing the illusion. Again, we're
2 going back to, well, this accident happened so it must be
3 somebody's fault, and there's no evidence of that.

4 This is all just supposition and theory at this point
5 in time. And then we go through the discussion of plaintiff
6 saying, well, there's evidence that they failed to warn him of
7 hazards. Again, what did Backstage fail to warn Mr. Cox of?
8 He was asked if he could run. He ran. Yes, they run through
9 this corridor, but they run through a corridor with people
10 lining each side of it telling them which way to go.

11 There's a train of people with one of our employees
12 at the front and one of our employees at the back who are
13 running the exact same route. There are 12 other participants
14 who are running the exact same route. None of whom ever came
15 forward and claimed that they engaged in or -- or encountered
16 any known hazard or that Backstage failed to warn them of any
17 hazard.

18 So again, we're talking about theories and
19 speculation at this point. We're not talking about evidence,
20 and plaintiffs in responding to our summary judgment motion
21 have not put forth any evidence of a breach of duty. They've
22 simply put forth their theory, and under Wood versus Safeway,
23 and the summary judgment standards of this state, that's not
24 sufficient anymore.

25 Thank you.

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1 MR. DEUTSCH: I think where we need to start, Your
2 Honor, is -- is what this -- what we're dealing with here,
3 which is we're dealing with a situation where Copperfield takes
4 people out of the audience at random. It's late at night.
5 They've sat through a show. They get pulled up on stage and
6 put into a box. They're told nothing at all about what's about
7 to happen, where they're supposed to go, what they need to do,
8 what they're about to do, where they're going to go, how fast,
9 nothing.

10 They're asked three questions. Are you a magician?
11 Are you in the press? Or can you run? That's it. They're not
12 asked what kind of shoes you're wearing. They're not asked
13 anything about anything. The curtain comes down when these
14 people are sitting there oblivious of what is about to happen,
15 oblivious. They don't know where they're going to go. They
16 think they're going to disappear.

17 They have no idea, and at some point a gentleman pops
18 out of a secret compartment. The testimony in the case, not
19 theory or supposition, but the testimony in the case is that
20 the Backstage employees then yell at these people let's go,
21 let's go, let's go. They get up. They don't know where
22 they're going. They then start to run, and, you know, there's
23 a lot of testimony in terms of issues of fact where they claim
24 nobody really does run, but if you watch the video, everybody's
25 running. The documents say these are the people that are

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1 supposed to make them run. The testimony is that everybody's
2 running.

3 They're running around through a corridor in the
4 dark. They then have to go from inside to outside, turning
5 corners. They know none of this. They don't know where
6 they're going. They're given a flashlight that doesn't work,
7 trying to turn on the flashlight -- Mr. Cox -- it doesn't work.
8 He goes outside, and outside there's a dumpster by Team
9 Construction, and the photographs show it. We have them here.
10 They're attached to a number of different motions that show the
11 dust that's all over the ground in this area next to the
12 dumpster.

13 This argument that they have no evidence of any prior
14 injuries is a red herring. I don't think they should be able
15 to make that argument. If it were a negligence case involving
16 an automobile, the fact that I've never gotten in an accident
17 before doesn't change anything here. This night was different
18 than all other nights. Mr. Cox was a different participant
19 than any other night.

20 The construction dust is all over the back of the
21 theater. Right next to the dumpster where Mr. Cox was running.
22 When he falls, if you look at the photographs of him
23 afterwards, the construction dust is all over him. Nobody
24 warns him of that. Nobody says from Backstage that says you're
25 going to have to run, and we're going to go outside in the

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1 dark, and there's going to be no lights, and there's
2 construction going on. So be careful. Watch where you're
3 going. None of that happened.

4 The testimony from Mr. Cox is that it's pandemonium
5 is the word he uses, that he's getting pushed by Backstage
6 employees to go faster, go faster, go faster. They didn't warn
7 him that it was going to be dark. All of these things are
8 issues of fact that a jury could conclude is negligence on
9 behalf of Backstage -- how the trick was done, what they told
10 my client before he started to do it and how they went about
11 doing it.

12 Is it safe to have someone running in the dark when
13 they don't know where they're going while you're screaming
14 let's go, let's go, let's go? We believe that's negligence,
15 and clearly there is an issue of fact with respect to whether
16 or not Backstage employees, who there's a concession from
17 Backstage, everyone agrees, that them along with Copperfield
18 personally were the ones who were at least partially
19 responsible for the protocols of how this trick was done, for
20 making sure those protocols were followed, deciding what the
21 route was that the patrons were supposed to take. Those were
22 all things that they are responsible for.

23 And all of those things create a number of issues of
24 fact as to whether my client -- as to whether Backstage failed
25 to warn Mr. Cox as to the dangers that are inherent in this

1 trick, inherent dangers in sending a gentleman who's a large
2 man, who's wearing moccasins at the time and having him run
3 with no knowledge of where he's going with the only -- their --
4 their suggestion here with respect to this limited duty is
5 preposterous. It's preposterous.

6 You go to a baseball game. You know that a foul ball
7 may come and hit you. Mr. Cox knew nothing of what to expect.
8 How they could suggest that he somehow assumed a risk in this
9 trick by catching a beach ball and getting called up on stage
10 is insane. It's as insane as this trick. It really is. And
11 we don't know that nobody else has fallen. We don't know
12 whether someone else has gotten hurt, and we don't know if this
13 trick ever happened while there was construction outside.

14 What we do know is that there have been times in the
15 past when Backstage and Copperfield decided not to have the
16 people reappear. So what they did was in the past is that they
17 would have the people disappear, but because of some reason or
18 another, for example raining outside, they wouldn't have them
19 run outside. They would just have them disappear, and that
20 would be the end of the trick instead of reappearing in the
21 back.

22 I think there's issues with respect to notice,
23 constructive notice. Should they have known that there were
24 dangers outside? If you look at the photographs that are in
25 all of these respective motions, there's dust everywhere.

1 There's piles of debris from Team Construction's construction
2 work, and I think that if you put all of those factors
3 together, it's clear that a jury could say that there was a
4 failure to warn him. So I think there's a number of issues of
5 fact here, and I think their motion is totally baseless in this
6 instance.

7 MR. RUSSELL: I'll -- I'll touch on the issue of the
8 dust because even though I told the Court I was going to focus
9 on breach, I'm going to have to phase into causation now. The
10 problem with the argument about dust being out there is there's
11 no evidence and no testimony that the dust is what caused him
12 to fall or that the dust made the sidewalk any more slippery.
13 The Court and every member of this jury is going to know that
14 dusty sidewalks in Las Vegas are nothing new or nothing all
15 that unique.

16 We asked plaintiff's expert -- and this is part of
17 our motion in limine on that expert -- about the dust, and,
18 well, did the dust make the sidewalk more slippery? Did his
19 shoes make him more susceptible to fall because of the slippery
20 surface. His answer was, well, I think so, but I don't really
21 know because I haven't done any testing. I haven't done any
22 coefficient of friction testing. I haven't done any slip
23 resistance testing. So I really don't know how it impacted
24 things. So now you're asking the jury to speculate as to
25 whether or not the dust actually made the pathway more

1 dangerous, and the jury is not allowed to do that.

2 There's no evidence that the dust actually made the
3 pathway more dangerous. So we can take that on the causation
4 front, and that's the issue there, and there's no evidence of
5 that, and plaintiffs have not presented it. They have not
6 presented a single expert. They have not presented a single
7 witness who's going to come in and say that because there was
8 dust on the sidewalk the sidewalk was more slippery than it
9 would've been any other day.

10 Now, plaintiff keeps going back -- plaintiff's
11 counsel keeps going back to, well, we can't talk about the lack
12 of accidents because that -- that's irrelevant. Well, it's not
13 irrelevant. Negligence is did you fail to act as a reasonable
14 person would under the circumstances. Well, the reasonable
15 person we're looking at are the people that have been running
16 this show for years and carrying out this illusion, and so the
17 question is did they act reasonably given their knowledge?

18 Because the plaintiff is going to want to argue,
19 they're going to want to argue to the jury that Backstage
20 should have known that carrying out the illusion in this
21 fashion would lead to injury. That has to be their argument
22 because that's the definition of negligence is that you knew or
23 should have known that your conduct was -- was presenting a
24 risk of injury. So since we don't have any prior accidents, I
25 don't know what evidence they are going to use to prove that

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1 Backstage knew or should have known that there was a risk of
2 injury in carrying out this illusion because there were no
3 other injuries.

4 And plaintiff's counsel says, well, we don't know.
5 Well, we've been done with the discovery in this case for
6 months. They asked these questions in discovery. They asked
7 these questions during deposition, and witness after witness
8 and discovery response after discovery response was we don't
9 know of any injuries to any other people carrying out this
10 illusion. They had a chance to ask those questions, and so now
11 he's saying, well, we don't know. So essentially we don't have
12 proof of other accidents, but we would like you to presume
13 there are some because that's what would put Backstage on
14 notice of a potential risk in carrying out this illusion in
15 this manner.

16 This is all just speculation on top of speculation.
17 If they want to argue to the jury that Backstage should have
18 known that carrying out the illusion in this manner caused a
19 risk of injury, then by all means, the fact that there were no
20 prior injuries is absolutely relevant, and the jury will
21 absolutely need to hear about that, and once they do, that then
22 eradicates any claim for breach of a duty because there was no
23 reason to know that an injury could have occurred. We get to
24 rebut that.

25 And the last point I'll point out is I don't think

1 it's preposterous that there might be a limited duty.
2 Obviously the Nevada Supreme Court in the Fiesta Palms case
3 didn't think it was preposterous because they spent several
4 pages talking about it. He's now explained that his client
5 stood up, all of a sudden "didn't" have a flashlight that
6 didn't work, and it was dark, but he continued on.

7 There was never -- there was never any evidence that
8 he tried to get out of the illusion, that he stepped out of the
9 way, that he didn't want to be part of it. He was part of it.
10 He chose to be part of it. So there might be a limited duty.
11 It's not preposterous, and we'll have to deal with that when it
12 comes down the pipe.

13 But for the purposes of this motion, there is no
14 evidence to support the fact that simply carrying out this
15 illusion after they asked plaintiff if he could run, had him
16 run, and no evidence of any breach of duty causing injury.
17 There is no negligence claim there. Summary judgment would be
18 warranted in these -- in these circumstances.

19 Thank you.

20 THE COURT: All right. Thank you.

21 MR. DEUTSCH: Your Honor, may I be heard on one
22 point?

23 THE COURT: Yes.

24 MR. DEUTSCH: I just -- this issue that he's raised,
25 that lack of evidence of prior accidents is somehow an

1 element --

2 THE COURT: I'm not going to get into that right now.

3 MR. DEUTSCH: Okay.

4 THE COURT: Okay. I don't -- the motion is not
5 entirely without merit. I will grant it in part relative to
6 punitive damages and a separate cause of action for respondeat
7 superior. Also my understanding is that the defendant
8 recognizes the negligent -- negligence and failure to warn,
9 negligence in training and that kind of thing would be part and
10 parcel of an underlying claim for negligence. That being so,
11 I'll also grant the motion relative to the separate cause of
12 action for negligent hiring, training and retention.

13 But I'll deny the motion in part insofar as it
14 relates to the underlying claim of negligence, and I'm not
15 going to treat right now the prior incident situation. That
16 will be further developed. Okay.

17 MR. FREEMAN: Thanks, Your Honor.

18 THE COURT: So now the next motion, I believe, is
19 Team Construction Management, Inc., and Beacher's LV's motion
20 for summary judgment.

21 MR. CALL: Thank you, Your Honor. This is Team
22 Construction's motion for summary judgment against plaintiff.
23 Mr. Russell set out the standard of care -- the standard --

24 THE COURT: Before we go further, I'll ask counsel
25 for plaintiff to -- well, let's see. Counsel for plaintiff,

1 submit the proposed order on that one?

2 MR. RUSSELL: It was --

3 THE COURT: Does it make any difference?

4 MR. RUSSELL: I can prepare the order, Your Honor.

5 THE COURT: Will you run it by counsel for the
6 plaintiff?

7 MR. RUSSELL: I will.

8 THE COURT: Okay. Thank you.

9 MR. CALL: Okay. Mr. Russell set out the standard
10 for a motion for summary judgment in the State of Nevada. It
11 is not the slightest doubt standard as has been argued by
12 plaintiff. In this action or this motion, Team Construction
13 and Beacher's will concede the duty portion of this motion at
14 this time.

15 Now, what I want to address here prior to getting
16 into the merits of the motion is that plaintiff needs to
17 establish causation as an element of its cause of action, and
18 in this instance, it's our position that they cannot move
19 forward on causation because they cannot show that anything
20 that Team Construction or Beacher's did out there at the scene
21 resulted in Mr. Cox's fall.

22 I think it's up to the Court to look at cases and
23 identify factually unsupported claims. The reason that the
24 Court needs to do this is so we don't waste, you know, the time
25 of the Court, and we don't cause undue anguish to the

1 litigants, and they're expensive. And that's what this motion
2 is all about is because, as Mr. Russell pointed out, and which
3 I was going to point out, plaintiff has not shown that anything
4 on that walkway, whether it be dust, debris or anything, caused
5 that walkway to be more slippery.

6 In fact in their opposition, they provide five areas
7 where they say there's a material issue of fact. One's
8 Mr. Cox's testimony; the other one, photographs taken after
9 Mr. Cox's fall depicting dust on Mr. Cox's clothing;
10 photographs of the accident location depicting identical dust
11 on the illusion pathway which Mr. Deutsch showed the Court,
12 which frankly I don't -- I think are just pictures of a
13 walkway; photographs of the accident location also depicting
14 construction debris. This was taken after the date of the
15 incident. And last, which I'll go into first is their expert,
16 Dr. Ayres's report.

17 Dr. Ayres's report doesn't have a scientific basis
18 for its opinion that there was debris or dust on the walkway
19 that caused Mr. Cox to slip and fall. Dr. Ayres's deposition,
20 in his deposition he testified he did not perform any
21 scientific test on the walkway. He did not perform a
22 coefficient of friction indicating that the walkway was
23 slippery.

24 He did not perform any test that the walkway would be
25 slippery even with this alleged concrete dust that plaintiff

1 states was present on the walkway. So he has no basis for
2 doing that, for making an opinion that that walkway was
3 slippery. In fact, his whole report should be stricken. He
4 should not be allowed to testify.

5 So what do they have to rely on as far as showing
6 causation element of their case? Mr. Cox's testimony. If you
7 look at Mr. Cox's testimony, he described the dust as
8 cement-like. He was assuming that it was cement dust. That
9 is -- that is throughout his deposition testimony. He doesn't
10 know what it was essentially. He just assumed it was, and when
11 he assumed it was, after two days later, when he went out there
12 with his attorney to point out where he fell, there was
13 construction going on in the site.

14 In plaintiff's opposition they present pictures of
15 the concrete all over the walkway. In fact, that dumpster that
16 we've been talking about is now in the middle of the walkway.
17 That wasn't like -- like that at the scene. In fact, the
18 scene, the dumpster was on the side. There was no big
19 construction debris in the walkway. This was two day -- two to
20 three days later, and that's when he assumed it was concrete
21 dust that was on his clothes. That's where he ties it in, and
22 he's assuming that's what caused his fall. He's assuming it
23 caused his fall because he doesn't know.

24 Okay. The dust on Mr. Cox's clothing could have been
25 picked up by falling on the sidewalk. I mean, as Mr. Russell

1 pointed out, and I was going to point out, there's dust all
2 over the sidewalk here in Las Vegas, whether it's in Las Vegas,
3 New York City, you know, or anywhere. I mean, you fall, you're
4 going to get dust. At that point on that walkway, there's a
5 planter also next to the walkway. There's this dumpster that's
6 there that with MGM's permission was placed there.

7 There was no construction going on at that time by
8 Mr. Haversack [phonetic], MGM's person most knowledgeable. In
9 his deposition he said there was no construction going on there
10 at that -- that night. This happened during the night about
11 8:00 o'clock. That area was controlled by MGM during that
12 time. In fact, Brinks trucks could go in and out of that area
13 because there was a, I think, a cage there for cash.

14 It is incumbent on plaintiff to show that there was a
15 causal link between whatever my client did and the fall. It's
16 not incumbent upon my client to prove their case. They have
17 not provided this Court with any evidence to show that what my
18 client did caused the fall. They have to connect that dumpster
19 to the dust which is all speculation at this time, and that
20 dust caused the fall because it made that walkway slippery.
21 They have not presented any evidence so far, and I doubt that
22 they can, Your Honor.

23 Thank you.

24 MR. DEUTSCH: Let me start by saying, Your Honor,
25 that irrespective of the motion in limine with respect to

1 Dr. Ayres, I don't -- and whether he's called or not called,
2 this is not a case that requires expert testimony. I know you
3 guys probably don't deal with it a lot out here, but we do back
4 in New York -- snow and ice cases. If I slip on a piece of
5 ice, I don't need an expert to come in and say that ice is
6 slippery. Same thing here -- it's a slip and fall case, and
7 you do not need an expert to testify about a slip and fall
8 case.

9 We have photographs of a walkway that is covered in
10 dust. We have my client who's got dust -- which is clearly
11 different than just falling on a sidewalk -- all over him
12 immediately after the accident that is identical to the color
13 of the dust emanating from that dumpster outside of the doorway
14 where he was running past. So clearly there's issues of fact.

15 But before we even get there, there's the issue of
16 whether or not Team Construction has met their burden for
17 summary judgment here. At this point in the case, it is their
18 burden to prove that there was no dust there, that they didn't
19 cause and create any dangerous condition, that they -- that
20 they didn't have any notice of any dust on the floor.

21 This is their burden. They don't put in anything to
22 meet that burden. There's not an affidavit of someone from
23 Team Construction that says we cleaned the area. That's not
24 our dust. We, you know, cleaned it very carefully, and last
25 time I saw it before this trick it was clean. We don't have

1 that. We don't have any deposition testimony from anyone from
2 Team Construction saying what they did. There is absolutely
3 nothing from them to meet their burden that this dust was not
4 theirs, that there was -- that the dust wasn't there. I think
5 that the pictures clearly --

6 So irrespective of the fact that they didn't meet
7 their burden, and I don't even think we should get to the rest
8 of it, a reasonable jury could look at the photographs, could
9 look at the fact that there's the dumpster there, could look at
10 the fact that there's construction there, can see the pictures
11 of the walkway, can see the pictures of Mr. Cox afterwards and
12 can reasonably infer that all of those things were from Team
13 Construction's construction work, and there was testimony by
14 Mr. Haversack who said that the responsibility for cleaning
15 that area up was Team Construction's because of the fact that
16 they had the dumpster there.

17 And what's -- what's kind of interesting was that we
18 have pictures of this location which show dust on the ground.
19 We have a picture of the part of the walkway which also shows
20 huge piles of dust on the ground, but one picture that was --
21 and these were taken by MGM and disclosed by MGM, but one
22 picture that was taken of the area that I think that covered
23 exactly where he fell reminded me of the picture in *My Cousin*
24 *Vinny* where the woman was looking through the screen, and it
25 was completely fuzzy. So they decided not to take another

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1 photograph of the exact location where she fell. So clearly
2 there's issues of fact, Your Honor, with respect to whether or
3 not there was dust from this dumpster, that it was on the
4 ground, that it was on Mr. Cox and that dust like that can be
5 slippery and cause someone to fall irrespective of whether you
6 have an expert to say it or not.

7 THE COURT: Okay. I think MGM was --

8 MR. DEUTSCH: I'm sorry?

9 THE COURT: I think MGM filed an opposition, too,
10 right?

11 MR. CALL: Yes, they did.

12 MR. FREEMAN: Yeah. We'll just submit on the
13 opposition.

14 THE COURT: Okay. All right.

15 MR. CALL: Your Honor, two things I'd like to
16 address. The first is I guess the inherent slipperiness of
17 dust, whether it's concrete dust or not, okay, and that's not
18 even going to the fact that I don't think they've even shown
19 where the concrete -- the alleged concrete dust, if it was,
20 arose from anything that Team Construction did.

21 Unlike ice, there's nothing that shows that dust on a
22 walkway is inherently slippery. It's not like water that you
23 have on a floor that could be slippery when somebody steps on
24 it. Plaintiff is incorrect. You do need an expert to show
25 that if something's slippery, whether it's going to be a marble

1 floor with nothing on it that's been waxed, you have to have an
2 expert to come in and show that the way that the wax was put
3 on, how much wax was put on, that it was slippery at that time
4 that the plaintiff fell.

5 In this instance, we don't have anything. We just
6 have allegations. Allegations are not good enough to carry --
7 to dispute a proper motion for summary judgment as we have
8 here. They don't show anything. They just allege that because
9 a dumpster's there the dust came from that dumpster, and it
10 came from TCM, and that because the dust was on the ground,
11 then naturally it was slippery. They haven't shown us anything
12 that dust on a sidewalk is inherently slippery.

13 And also, secondly is plaintiff, you know, says that
14 TCM and Beacher's has a burden to show that the dust wasn't
15 present on the ground. There's nothing that says that we have
16 the burden to show that. In fact, it is plaintiff's burden to
17 prove every element of their cause of action, one of that being
18 causation, that dust on the ground was a substantial factor in
19 causing Mr. Cox's fall. They haven't done it. They don't have
20 any experts to do it, and they're only speculating whether it
21 was something that came from work by Team Construction.

22 Let me inform the Court here that plaintiff had every
23 opportunity to determine what was going on there at the time
24 that Mr. Cox fell, the day that he fell, you know, the day
25 before he fell and what kind of renovations were being taken in

1 a different part of the MGM facility to show that there was
2 possible debris on the ground. They didn't depose anybody.
3 They didn't try to bolster their case to be able to prove their
4 cause of action against Team Construction. They did nothing,
5 and now they're asking this Court to not grant this motion for
6 summary judgment essentially based upon speculation.

7 Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 All things considered, I'm not persuaded by the
10 motion, and it's denied. All right.

11 The next one I have on the calendar is defendant's
12 motion for summary judgment on punitive damages. I already
13 ruled on one motion for summary -- on that.

14 MR. DEUTSCH: We had no opposition to those motions,
15 Your Honor. We will -- we will stipulate to withdraw that, the
16 claim for punitive damages against all defendants.

17 MR. CALL: Okay. Because Team Construction --

18 MR. FREEMAN: We filed a notice of --

19 MR. CALL: -- joined on that.

20 MR. FREEMAN: Yeah.

21 -- a notice of nonopposition as well.

22 THE COURT: All right. Very well. So that motion's
23 granted then.

24 I received a proposed order on that motion from Ms.
25 Fresch, right?

1 MS. FRESCH: Yes, Your Honor.

2 MR. CALL: Your Honor, we -- Team Construction and
3 Beacher's also joined that motion, too, and it's not reflected
4 in that order.

5 MR. FREEMAN: We can revise that order to show that
6 it's for everyone.

7 THE COURT: Okay. Yeah. Just make it applicable to
8 all --

9 MR. FREEMAN: Yeah.

10 THE COURT: -- moving parties. Okay.

11 Now I've got MGM Grand Hotel LLC's motion for partial
12 summary judgment against defendants Beacher -- Beacher's LV LLC
13 and Team Construction Management.

14 MR. DEUTSCH: Your Honor. Your Honor, since I have
15 no skin in this motion, may I use the rest room while they --

16 THE COURT: Oh, of course.

17 MR. DEUTSCH: Thank you.

18 MS. FRESCH: Your Honor, MGM has brought a motion for
19 summary judgment and/or alternative leave for summary
20 adjudication against both Beacher's and Team, and it really
21 segues into what the last motion was about because it's all
22 about this claim that there was construction dust at the point
23 of where Mr. Cox fell and that that was the cause of Mr. Cox to
24 fall whether -- however he might have fallen.

25 Beacher's contracted with MGM to lease space, and

1 Team Construction contracted with Beacher's to do the
2 construction. Beacher's lease with MGM had a specific express
3 indemnity provision in it, and we assert that Beacher's and
4 derivatively Team because they incorporated our lease into
5 their construction contract with Beacher's that they would both
6 defend and indemnify MGM. There is a clear allegation that
7 Team and Beacher's were negligent because they did not comply.

8 If plaintiff can prove their case that it was
9 construction dust that led to the fall, Beacher's and Team had
10 an obligation to keep that area clean and safe, and if it's
11 proven that there was construction dust on the ground and
12 that's what led Mr. Cox to fall, then they're -- they were
13 negligent, and pursuant to that agreement, they had an
14 obligation to both -- to indemnify MGM.

15 More importantly, they have the immediate duty right
16 now to be defending, and they have failed, and they have -- to
17 defend MGM. It's rather ironic because Team has agreed to
18 defend Beacher's. So it's really no different because it's the
19 same contractual relationship between these three parties. So
20 if Team has acknowledged that it needs to defend Beacher's, it
21 should also be defending my client right at this point and pay
22 and reimburse us for past defense fees up and to this date.

23 The contract is quite clear. Their opposition went
24 into the fact that they are somehow -- that under -- going with
25 the Rayburn analysis that that is unclear about the negligence

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1 of MGM. We assert that the agreement is not ambiguous. It is
2 quite clear that it says however and by whomever caused. That
3 would put that it doesn't matter if we have negligence or not
4 separate or in combination with them. They still have to
5 defend. They still have to indemnify us.

6 And then finally --

7 THE COURT: If they were negligent.

8 MS. FRESCH: Well, they have to defend regardless,
9 even if they were negligent or not because there's been a claim
10 that they are negligent, and so we have to defend that claim
11 because of them. So I assert that it's clear that they have a
12 duty to defend regardless if there's an ultimate finding of
13 negligence or not. Now, the indemnity --

14 Obviously we all deny that there was construction
15 dust on the ground. I'm not -- that's our position. We say
16 there wasn't construction dust. We say none of us were
17 negligent, and none of us led or caused the fall that Mr. Cox
18 suffered, however, if plaintiff proves their case, they have an
19 obligation to indemnify us, and we -- we'd like a declaration
20 that they do have an obligation to indemnify us if plaintiff
21 proves that they were negligent and that they should be
22 defending us right now.

23 THE COURT: All right.

24 MR. CALL: Your Honor, plaintiff's causes of action
25 are varied and many in this instance, as you well know.

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1 They've claimed against MGM because of the walkway. There was
2 a ramp on part of the walkway. They accused MGM of not having
3 proper lighting out there and allowing David Copperfield's
4 company to go ahead and use that walkway even at the time that
5 my client had that dumpster out there at the time, and so
6 there's many areas you can look at where liability could
7 possibly lie.

8 As far as the indemnity agreement between Beacher's
9 and the MGM, as the Ryburn [phonetic] case and its progeny
10 show, that indemnification agreements are supposed to be
11 strictly construed. In fact, when we -- indemnification of one
12 person, the contractual language on point must be particularly
13 clear and explicit. In this instance it's more general type of
14 language, boilerplate language contained in the indemnity
15 agreement, and therefore -- and that is something that is
16 not -- and that's been ruled as unfavorable in the State of
17 Nevada.

18 And especially when you have somebody in superior
19 bargaining power, such as the MGM which owns probably, you
20 know, half the Las Vegas Strip, against a local contractor, to
21 put something such as that is onerous. They -- if they want to
22 do something like that, they should make it explicit that my
23 clients would go ahead and indemnify them for anything that MGM
24 did. In this instance I don't think that the indemnity clause
25 is explicit enough under Ryburn and the other cases. United

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1 was one of them, and therefore you should deny the motion, Your
2 Honor.

3 MS. FRESCH: I really just want to touch on one point
4 from counsel's argument that it's not clear concerning the
5 indemnity rights under the contract. First, it's ironic that
6 they're claiming that somehow my client had a superior
7 bargaining position, but in actuality, Beacher's had a superior
8 bargaining position over Team, and Team is defending Beacher's
9 in this lawsuit. So and again the two contracts are
10 essentially hooked together because Team accepted all the
11 obligations and responsibility of the -- Beacher's had to MGM
12 in the lease agreement.

13 And it's -- the indemnity provision is a little bit
14 unique, and it's because under 12.5.1 it specifically says that
15 the tenant, which is Beacher's, has an obligation to indemnify
16 if they breach the lease. They have breached the lease here
17 because they were supposed to keep it safe and clean. They
18 didn't do that because their contractor didn't do that -- if,
19 in fact, it's proven because again we all deny that there was
20 dust on the ground -- but that breach requires them to
21 indemnify.

22 The language couldn't be any more clear. It's they
23 breached the lease. They had an obligation to indemnify us.
24 If they are negligence -- negligent, they have an obligation to
25 indemnify us, but the defense duty is much broader, and it's

1 clear that they have a duty to defend MGM right now because the
2 allegation is clear. We just heard the last motion. We've
3 heard enough from the plaintiff's counsel through the papers
4 and in the courtroom today that their main allegation is that
5 there was dust that led to the fall of Mr. Cox.

6 MR. CALL: Your Honor, if I may just --

7 THE COURT: Okay. She has the last word though.

8 MR. CALL: Okay. Briefly. Under United Rentals
9 Highway text, the indemnification duty to defend is also
10 subject to strict construction. So I just want -- I just
11 wanted to inform the Court.

12 THE COURT: I wanted to ask Ms. Fresch what if the
13 jury were to come back and find that the -- find negligence but
14 find that it wasn't Team Construction and the other one,
15 Beacher's or whatever it is, that it was Backstage, for the way
16 in which the defendant was handled?

17 UNIDENTIFIED SPEAKER: I object.

18 THE COURT: The way people were directed or hurried
19 or this and that the other thing. What -- what would be the
20 situation then (inaudible)?

21 MS. FRESCH: Well, I -- I would assert that the way
22 the indemnity agreement is written in terms of whoever and
23 whatever, if there's any negligence that would be found as to
24 MGM, as to their conduct with respect to their participation or
25 involvement in the illusion and keeping -- it's really MGM's

1 responsibility really stems from what the premises that --

2 THE COURT: It seems to me like you're seeking a
3 conditional declaration. If it's determined that because of
4 the fall was the dust, and if it's determined that whatever it
5 is, those companies, they're the ones that caused the dust,
6 then there's a duty to indemnify. That's what it seems to me
7 that you're saying.

8 MS. FRESCH: Well, if they're -- if they have
9 negligence, they for sure have a duty to indemnify, and if
10 it's -- if we're found to be negligent, I --

11 THE COURT: Yeah. Yeah. That's what I'm saying.

12 MS. FRESCH: Well, if I'm -- if MGM. Obviously --

13 THE COURT: Right.

14 MS. FRESCH: -- there has to be a finding of
15 negligence because then if there's no finding of negligence as
16 to MGM, then -- then clearly they don't have a duty to
17 indemnify because there is nothing to indemnify, but that
18 doesn't really address the fact that the duty to defend is
19 right now. They should be defending us. Even if Your Honor
20 looked and said we're not going to make a decision on the
21 indemnity right now, we should wait and see how it plays out in
22 the first phase of this trial, then -- but it doesn't matter
23 with respect to the defense duty.

24 THE COURT: Okay. But MGM has been defending itself
25 up to now, and couldn't it if it was determined that there were

1 the right to recover on that claim that could be effectuated
2 down the road, couldn't it, for reimbursement and the cost of
3 defense recovered?

4 MS. FRESCH: Well, true, but the intent of the
5 parties at the time by putting it in, the provision is clear
6 that it's -- if they make a demand to -- for Beacher's and Team
7 to defend it, they have an obligation right then to accept that
8 defense, and they should be paying for a defense now
9 regardless. I mean, it's prejudicial to my client that they're
10 having to be held in abeyance when it was clear intent of the
11 parties from the contract that the Team and Beacher's were
12 going to defend if a claim arose that related to Team and
13 Beacher's.

14 THE COURT: Let me hear from Mr. Call on that again,
15 and then you'll have the last word.

16 MR. CALL: Okay.

17 THE COURT: I'm looking for the defend aspect as
18 opposed to the indemnity agreement.

19 MR. CALL: Defend aspect is also similar to the
20 indemnity aspect, especially when you have where you have to
21 defend like MGM in this case because it has to be -- it's
22 strictly construed. I mean, MGM did not -- it could've put it
23 in the indemnity clause that we would indemnify MGM for MGM's
24 negligence, and in this case they did not do so.

25 They put in ambiguous language, you know, any and all

1 claims which is disfavored by the Court here, and whomever and
2 soever. That is ambiguous. It doesn't state MGM in
3 particular. They need to be specific. They did not do so in
4 this instance, and therefore, we would assert that the duty to
5 defend is not triggered until you show that, you know, Team
6 Construction or Beacher's did something incorrectly, and that
7 they were negligent in this action.

8 Here we're saying that there's no causation as, you
9 know, MGM says, and so the duty to defend isn't even triggered
10 at this time, and the duty for indemnification is not an
11 express indemnity clause. It's a general indemnity clause, and
12 we do not have to go ahead and, I mean, we do not have to
13 indemnify MGM for their own -- for their own negligence.

14 THE COURT: So what you're saying, I guess, is that I
15 can make that ruling on the duty to defend just based on the
16 language of indemnity or the contract?

17 MR. CALL: You can make it on the contract because
18 it's ambiguous. The contract does not specifically state that
19 we would indemnify them or defend them for their own negligence
20 in this cause of action, and we don't have any duty to
21 indemnify them for their own negligence which is, according to
22 plaintiff, is pretty great.

23 THE COURT: Where's the language regarding the duty
24 to defend? I'm going to have to look at that. I'm looking at
25 the indemnity -- okay. Okay. It's the, Tenant hereby

1 covenants and agrees to indemnify, defend, save and hold the
2 landlord parties, the premises and the leasehold estate created
3 by this lease --

4 That's what we're talking about, right?

5 MR. CALL: Correct.

6 THE COURT: That language.

7 -- and the hotel complex free and clear and harmless
8 from and against any and all liabilities, losses, costs and
9 expenses including reasonable attorney's fees, judgments,
10 claims, liens, fines, penalties and demands of any kind
11 whatsoever caused by, resulting from or in any way connected
12 with one, any act or omission for negligence of tenant or
13 tenant's agents, employees, servants, contractors, subtenants,
14 licensees, customers or business invitees while in, upon, about
15 or in any way connected with the premises or the hotel complex,
16 including but not limited to the sale of unlicensed merchandise
17 or goods to, arising from any accident, injury or damage
18 howsoever and by whomsoever caused to any person or property
19 whatsoever occurring in, upon, about or in any way connected
20 with tenant's activities, tenant's work or tenant's use of the
21 premises or the hotel complex or any portion thereof.

22 MR. CALL: And it hasn't been determined whether any
23 of Beacher's or Team Construction has done anything that
24 would've caused any injury at this juncture, and again, just to
25 reiterate, the language in that indemnity agreement is more

1 boilerplate than specific as required under the Ryburn case and
2 the other cases that discuss strict indemnity.

3 THE COURT: Could I make a conditional determination
4 that if it's determined that it was due to?

5 MR. CALL: I think then it would -- if it's a general
6 indemnity agreement, I think what would happen is that it would
7 have to be an apportionment, and that would be --

8 THE COURT: Well, the point is I think a conditional
9 one would probably effectuate it right now in any event.

10 MR. CALL: Correct.

11 THE COURT: Okay. So did you have anything else to
12 say, Counsel?

13 MS. FRESCH: Well, Your Honor, I just -- just very
14 briefly because you read the provision, I just want to
15 reiterate, to me, the whomever whatsoever language is really
16 clear, and counsel is trying to say, well, that's not specific
17 enough under Rayburn, but I can say I don't know how more
18 specific you need to get, and the cases are clear you do not
19 need to use the word negligence. The indemnity agreement
20 though does go into their negligence and any act or admission
21 by them, and it's clear from whomever that would have to
22 include MGM. I don't understand how it could be anything else.

23 THE COURT: Well, I know the duty to defend can
24 transcend the duty to indemnify, but the language that I'm
25 referring to here at the end says, About or in any way

1 connected with tenant's activities, tenant's work or tenant's
2 use of the premises or hotel complex, right? And we don't know
3 what the ultimate determination is going to be. The
4 determination might be, if it were made for the plaintiff, it
5 could be that it was Backstage and not the other ones, right?

6 MS. FRESCH: Well, I guess theoretically you could
7 find that it would just all be Backstage. We dispute that, but
8 I just -- but I still say the defense obligation can be ruled
9 upon right now and declaration can be made with a summary
10 adjudication that the duty -- they have a duty to defend
11 because there is a claim about their activities on -- at the --
12 at the MGM with respect to this construction. That is not --
13 it's not in dispute, but that is the claim.

14 THE COURT: Okay.

15 MS. FRESCH: So their duty should for defending
16 should be right now, and to me, this provision, 12.5 --
17 12.5.1 -- I said that too quickly -- is quite clear on that.

18 THE COURT: All right. All things considered, I'm
19 going to deny the motion. Of course, that's without prejudice
20 to your intentions down the road as to rights, duties and
21 obligations are. Okay.

22 MS. FRESCH: Okay. So --

23 THE COURT: I need a proposed order on that.

24 MR. CALL: I'll prepare the order, Your Honor.

25 THE COURT: Okay. Okay. The David Copperfield

1 motions.

2 MR. FREEMAN: Good afternoon again, Your Honor.
3 You've heard motions from the corporate defendants. I want to
4 focus on the individual David Copperfield who is named in this
5 lawsuit. Plaintiffs claim that David Copperfield is
6 individually liable by his personal participation and actions
7 that caused plaintiff's injury. They say they're not pursuing
8 David -- Mr. Copperfield as president or manager of David
9 Copperfield Disappearing, Inc., which I'll refer to as DCDI
10 from now on, but that is exactly what they're doing in their
11 opposition.

12 First starting by looking at their complaint, the
13 allegations are against the acts of corporate defendants, the
14 alleged duties and breaches of these corporate defendants.
15 There aren't any allegations against Mr. Copperfield, that he
16 personally participated in any act in his individual capacity.
17 They're trying to hold Mr. Copperfield liable for the alleged
18 torts of the corporate defendants.

19 There isn't any allegation that Mr. Copperfield in
20 his individual capacity had anything to do with this incident,
21 Mr. Cox's fall. The allegations are generally regarding the
22 handling, setting up, performing of the show, performing of the
23 illusion, not the personal actions of Mr. Copperfield. When
24 plaintiff fell, Mr. Copperfield was inside onstage. He was
25 nowhere near Mr. Cox.

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1 They are alleging personal participation, but when
2 you look at the actual allegations, they're against the
3 corporate defendants, and they're basically saying David
4 Copperfield and DCDI are one and the same. They've alleged
5 that Mr. Copperfield leased the theater, that he purchased the
6 illusion, he designed the sets in the show, he entered
7 contracts with MGM. That's DCDI. That's not Mr. Copperfield,
8 but they're just lumping it all in to one to try to bring -- to
9 bring and keep Mr. Copperfield in this case. They're doing it
10 because they're saying he is DCDI.

11 If this was David Smith, he would not be in this
12 case, but he's David Copperfield. It's the David Copperfield
13 show. We've already seen plaintiffs reach out to tabloids and
14 the media. It's David Copperfield, and that's why they want
15 him in here, not because they have actual allegations of his
16 personal participation, stuff that he individually did that
17 caused this accident. If someone was to trip and fall at a
18 Walmart, you wouldn't sue Sam Walton.

19 THE COURT: Automobile accidents happen all the time
20 where the driver's sued in addition to the truck companies.

21 MR. FREEMAN: Well, and that's where -- and that all
22 goes down to that personal participation. They cited several
23 cases about entertainers being involved, but when you looked at
24 those cases, the entertainer was stage diving. He landed on
25 someone and injured them. The other one the entertainer was

1 assisting a person off the stage by taking their hand and
2 leading them down. Mr. Copperfield was on the stage. Others
3 were --

4 THE COURT: Giving the direction to people
5 according -- I mean, that's what the contention is is that he
6 was the face of giving the direction to people of what they
7 were supposed to do and --

8 MR. FREEMAN: Well, and that was all stagehands.
9 There was, you know, 30-some-odd people. You know, he's on
10 stage. There's stagehands on stage, but once that curtain goes
11 down, there isn't any -- there isn't any contact with David
12 Copperfield and the audience participants. He's on -- he's in
13 front of the audience talking to the audience about what's
14 going on. There's stagehands who are taking the people off of
15 the apparatus leading them down the ramp, taking them outside
16 and around. Mr. Copperfield's not involved in any of that.

17 And again, you know, we're talking about this
18 personal participation. The cases that they also cite are all
19 controlling corporate entities that have responsibility, that
20 have a duty. Two of the cases that they cited, FGA and the
21 Elko case, one was a slip and fall in a restaurant. They
22 brought the allegations against the corporate entity. They
23 didn't sue the president of the company. They didn't sue the
24 waitress or the hostess or the bartender.

25 They brought these claims against the corporate

1 entity, and, you know, the allegations are that the
2 corporations had a duty to use reasonable care, not an
3 individual manager, owner or employee. Personal liability
4 can't be imposed on an individual manager, owner or employee
5 simply because they have general administrative duties with the
6 corporation. There has to be some actual conduct, for example,
7 jumping off the stage, driving the truck into the back of
8 someone, leading someone off a stage.

9 There has to be some sort of action that ties that
10 individual to the incident, and again they don't have that.
11 They go back and say, well, David Copperfield signed the lease.
12 That's been disclosed in evidence, and the lease is signed by
13 David Copperfield Disappearing, Inc., again the corporation.
14 They're not one and the same.

15 Also, as far as -- we put a section in the -- in our
16 motion about alter ego because we're -- we're trying to find
17 what avenue do they have there to try to get to Mr. Copperfield
18 individually. DCDI didn't file a motion for summary judgment.
19 That's a separate entity. We're talking about David
20 Copperfield individually.

21 And plaintiffs claim that the record evidence
22 established that there's material facts that Mr. Copperfield is
23 the alter ego, and what they do is they offer conclusory
24 statements. They say, well, he was the president and sole
25 officer. That's not one of the factors that finds alter ego.

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1 They say that, well, he couldn't recall some of the corporate
2 formation details. The corporation was formed over 30 years
3 ago. He wasn't there being deposed as the PMK. They took the
4 PMK's deposition afterwards, and they didn't get any evidence
5 that there was any alter ego going on between Mr. Copperfield
6 and DCDI.

7 DCDI is a Nevada corporation in good standing. They
8 are up to date on all of their filings. They're sufficiently
9 insured and capitalized, and there's no evidence of commingling
10 or undue influence. These are the factors that support a
11 finding of alter ego. In this case we don't have any of that
12 evidence here and, you know, you can't rest on the general
13 allegations and assertions and unsubstantiated conclusory
14 statements.

15 David Copperfield is entitled to summary judgment in
16 this matter as he -- starting from the complaint, allegations
17 aren't alleged against him individually. They're all focused
18 on these corporate entities.

19 Thank you.

20 MR. DEUTSCH: Mr. Freeman started with the -- ended
21 with the complaint. So I will start with the complaint.

22 Paragraph 16 of the complaint, Defendants and each of
23 them failed to warn plaintiff that unreasonably dangerous
24 conditions exist.

25 Paragraph 18, Defendants by implementing this trick

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1 did place Gavin Cox in physical danger, giving him no warning
2 of the same.

3 Paragraph 19, Defendants had a duty to maintain the
4 premises and keep clear the areas of traffic and walkways where
5 the trick was being performed.

6 Paragraph 20, Defendants had a duty to maintain the
7 premises and keep warning signs -- warning signage in the areas
8 of traffic and walkways.

9 Paragraph 21, Defendants had a duty to keep common
10 areas and walkways clean and free of hazards.

11 Paragraph 25, Each defendant breached their duties in
12 the following ways, including, but not limited to, one,
13 hurrying plaintiff through a dark construction zone; two,
14 failing to clear the walkway of debris and dust; three, failing
15 to -- failure to maintain adequate lighting; four, failure to
16 devise a trick that would be safe for audience participants;
17 five, failure to warn audience participants of hazards prior to
18 participation; six, failure to adequately warn or instruct the
19 audience participants prior to getting consent for
20 participation; seven, knowingly subjecting audience
21 participants to knowing hazards.

22 So I don't think there's really a dispute that the
23 complaint clearly does lay out claims against Copperfield
24 personally. There's no dispute here on what the law is. The
25 defendants' cases concede, their motion concedes that when

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1 there's an issue of personal participation of a director or
2 member of a company or a corporation that that person has
3 individual liability separate and apart from the company. The
4 motions they cite GK Las Vegas and a number of the other ones
5 also clearly say that they cite the restatement of agency.
6 That also says the same thing.

7 So then the question is let's look at what
8 Mr. Copperfield's participation was personally in the issues
9 that we've been talking about this afternoon.

10 On pages 60 and 64 and 65 of Copperfield's
11 deposition, he -- he admits that after purchasing this trick
12 that he modified it to make it his own. So when we're talking
13 about the issue of the trick in and of itself is just
14 ridiculous, he's the one who created that. That's personal
15 participation.

16 On pages 68, 76, 77, 94 and 95, Copperfield admits
17 that he designed and implicated -- implemented the protocols
18 for this illusion.

19 On pages 167, Copperfield admits that he's the guy
20 with final decision-making authority as to everything that goes
21 on with respect to this trick.

22 On pages 26, 27 and 28 of Mr. Kenner's deposition,
23 and Mr. Kenner is the gentleman from Backstage who was -- who
24 testified that Mr. Copperfield personally was the person who
25 set up the pathway for the illusion, so this issue of where

1 they're running, and how they're running, all Copperfield
2 personally.

3 Mr. Kenner then testified also that the -- on page 87
4 of his deposition which is Exhibit 7, testified that
5 Copperfield is along with everybody else, but him individually
6 is responsible for keeping this pathway clear of debris.

7 Mr. Haversack, who is the 30(b)(6) witness from MGM,
8 testified on pages 60 and 61 and 64 that Mr. Copperfield was
9 the guy responsible for warning participants about the
10 elevation changes in this pathway that he was responsible for
11 choosing.

12 On page 57 of Mr. Copperfield's dep, he testifies
13 that one of the things he personally does is assess whether the
14 people coming up on stage are fit to run around like they do,
15 what clothing they're wearing, if he feels they're comfortable,
16 and the people from Backstage testified that everything they
17 did, there were things they do are from -- from the protocols
18 that they set up and at the end of the day Mr. Copperfield has
19 the final say. So there's clearly an abundance of evidence
20 that Mr. Copperfield individually was negligent here, and there
21 are issues of fact as to that.

22 I don't even think we need to get to the alter ego
23 argument, but because they brought it up, I will just note that
24 Mr. Copperfield testified that he's the president and the only
25 officer of David Copperfield Disappearing, Inc. Everyone

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1 concedes that -- Mr. Copperfield at page 41 of his deposition,
2 Mr. Kenner at page 10 and 11 of his deposition.

3 And yet despite the fact that he is the only officer,
4 the only person employed by David Copperfield Disappearing,
5 Inc., Mr. Copperfield didn't know when the entity was
6 incorporated, where it was incorporated. He didn't know where
7 it was domiciled. He didn't know if there were any other
8 shareholders or officers. He didn't know whether it had an
9 annual meeting. He didn't know whether it had any employees,
10 and the reason he didn't know this thing is because this
11 company doesn't do anything. This company is Mr. Copperfield's
12 alter ego.

13 And Mr. Kenner, who testified exactly that, he was
14 asked the direct question at page 27 and 28 of his deposition.
15 I think this was on 27. He's asked, question, David
16 Copperfield is the David Copperfield Disappearing, Inc.,
17 correct? Nobody else? Answer, Yes. So even with respect to
18 the issue of alter ego, there's the issues of fact that the
19 jury would have to decide.

20 I think their motion should be denied, Your Honor.

21 MR. FREEMAN: He went through and read a bunch of the
22 allegations of their complaint and they say defendants, so on,
23 defendants, so on. That's just lumping in Mr. Copperfield with
24 a bunch of corporate defendants. There isn't any evidence that
25 Mr. Copperfield is personally involved. All the things they

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1 cited to was David Copperfield purchased the illusion. David
2 Copperfield set up the show. David Copperfield sets up the
3 illusions. David Copperfield did this and that. Sure. He's
4 the boss, but because he's the boss and he has general
5 management duties doesn't make him individually personally
6 liable when someone slips and falls. He has to have some sort
7 of involvement in that beyond just generally involved with
8 putting on the David Copperfield show.

9 THE COURT: So you're saying that if this were a
10 situation with somebody on stage directing somebody to get into
11 a tank of water or something like that and the tank was
12 defective and filled up and the person couldn't out, you're
13 saying that the person who directed the person to get into the
14 tank couldn't be held liable?

15 MR. FREEMAN: Well, there would be some personal
16 involvement if they were putting them in that tank whereas
17 plaintiff's alleged that someone pushed them or yelled for them
18 to hurry.

19 THE COURT: There was personal involvement allegedly,
20 wasn't there, in the sense that he's the one who directed them
21 to do what they did, right -- the people who were involved in
22 this act?

23 MR. FREEMAN: The corporate entities are what set
24 this up.

25 THE COURT: Well, he was the one on the stage, right?

1 MR. FREEMAN: Yeah. There -- there was a bunch of
2 people on stage. It's -- I mean, it's a big production.
3 They're trying to make it sound like, you know, David
4 Copperfield puts on this show and does everything, you know.
5 This is -- there's, you know, many, many things involved, you
6 know, but what personal action did he take? You know, they
7 went through their (unintelligible) thing.

8 There isn't any evidence that David Copperfield
9 personally had a duty to clear the walkways, that he personally
10 had a duty to maintain the lighting, that he needed to -- had a
11 duty to personally warn anybody, that there isn't any evidence
12 that David Copperfield told Mr. Cox to hurry, that he failed to
13 clean up any debris that was out there. These are all things
14 that show that Mr. Copperfield was not involved when plaintiff
15 fell.

16 There's allegations against corporate entities.
17 There's a number of businesses involved in putting on this show
18 in production, but as far as a personal standpoint, what action
19 did he take? There isn't any evidence of that.

20 I mean, really under plaintiff's theory, then every
21 single person involved in the show should be named individually
22 because they had different -- different involvements with the
23 illusion and the route and the design and the lighting and the
24 what have you, you know.

25 And then as far as saying, you know, the alter ego

1 issues, you know, under their theory all single owner companies
2 would be alter egos under their theory. Alter ego finding is
3 the exception, not the rule. There has to be findings that are
4 laid out in clear Nevada case law, you know, evidence of
5 commingling, undue influence, a whole list of things. There
6 isn't any evidence of that at all.

7 This case, there's been discovery going on for
8 several years. They took Mr. Copperfield's deposition. They
9 took the PMK deposition which was under their topics of review.
10 They didn't get any evidence that says that DCDI is some sham
11 corporation and it's all David Copperfield. He just happens to
12 be the sole owner.

13 You know, and again I think it comes down to, you
14 know, what can you point to as the personal participation. The
15 cases that they cite, you see clearly what they are. A guy
16 dove off the stage into a crowd, and someone was injured.
17 That's being pretty -- pretty involved in that incident
18 happening. Or if Mr. Copperfield --

19 THE COURT: What about -- how about before --

20 MR. FREEMAN: -- had taken the person's hand and said
21 come on, Mr. Cox, let's go.

22 THE COURT: How about if at the start of the show
23 says go jump off the roof and the person does it? You're
24 saying that's not anything that could lead to personal
25 responsibility?

1 MR. FREEMAN: Well, that could be -- that could be
2 possibly he's -- he's directing them to do something, you know,
3 but go jump off the roof. We'll take care of it. It's all
4 part of the act --

5 THE COURT: Wasn't he directing him to do this?

6 MR. FREEMAN: He wasn't doing that. No. People came
7 up on the stage. There are stagehands there. They walk around
8 the apparatus, and then stagehands begin to lead him up into
9 this suspended cage.

10 THE COURT: The ones who are directed to be led,
11 right? The ones who catch the ball?

12 MR. FREEMAN: The one who catch -- the people who
13 catch the balls, they're the audience participants. There's a
14 whole, you know, vetting process about whether these people,
15 you know, should be involved in this. They get on stage.
16 Someone puts a cover on it, and then that's when the stagehands
17 come in and get involved in, you know, opening up the back,
18 taking the people out and going around. You know, the only
19 time Mr. Copperfield spoke to these -- these individuals is
20 afterwards when he's thanking them for participating and, you
21 know.

22 THE COURT: Okay.

23 MR. FREEMAN: So thank you.

24 THE COURT: All right. Here's my ruling; I'll deny
25 the motion as it relates to the claim against David Copperfield

1 individually for alleged negligence on his part. I'll grant
2 the motion in part relative to the alter ego aspect of it
3 because I don't see any genuine issues there. Okay.

4 MR. FREEMAN: Thank you.

5 THE COURT: So that's the motion's granted in part,
6 denied in part.

7 Let's take a brief recess till how about a quarter to
8 4:00. All right.

9 (Proceedings recessed 3:31 p.m. to 3:47 p.m.)

10 THE COURT: All right. Be seated. We're back on the
11 record.

12 Are there any other motions for summary judgment?

13 MR. DEUTSCH: None, Your Honor.

14 THE COURT: Everything else now relates to motions in
15 limine, right?

16 MR. DEUTSCH: Correct.

17 THE COURT: Is there a consensus on the order in
18 which I should hear them?

19 MR. DEUTSCH: We have. We have spoken, Your Honor,
20 and I think that we agree that some of them, at least at this
21 point, may be premature, and if we were going to start with
22 any, I think some of the ones that are more contentious are
23 going to be the ones dealing with the National Health System
24 and the testimony from experts with respect to treatment in
25 England versus treatment here and what value should come of

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1 them.

2 THE COURT: Okay.

3 MR. DEUTSCH: So I think maybe that's where we should
4 start.

5 MR. CALL: I would agree.

6 MR. DEUTSCH: So I think there's one -- there's an
7 MGM and Copperfield made one about Clauretie regarding
8 Household Services, I think, UK.

9 (Counsel conferring.)

10 MR. DEUTSCH: Which I think is Copperfield's Motion
11 In Limine No. 3.

12 THE COURT: That's defendant's motion in limine to
13 exclude plaintiff's expert Terrence M. Clauretie regarding loss
14 in the value of household services, Motion in Limine No. 3.

15 MR. DEUTSCH: I think that's the one, and I think the
16 other one is -- I think the more important one actually is
17 Backstage Motion in Limine No. 1, which is the opinions of
18 Dr. Oliveri with respect to the cost of the future medical care
19 in England versus the United States.

20 (Counsel conferring.)

21 MR. RUSSELL: Is that okay with you, Your Honor?

22 THE COURT: What's that?

23 MR. RUSSELL: Is that -- would you like to do that
24 one first?

25 THE COURT: Okay.

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1 MR. RUSSELL: All right. So this is our Motion in
2 Limine No. 1 on precluding Dr. Oliveri from testifying as to
3 the costs of future medical care in the United Kingdom. I
4 think as you read the briefs, Your Honor, you find that
5 there's -- well, there's no dispute that the law in Nevada is
6 that a plaintiff is only entitled to recover future medical
7 damages which he is reasonably certain to incur. That's what
8 the law says, what the jury instruction says.

9 There's also absolutely no dispute that Mr. Cox is
10 going back to the United kingdom after this case is over, and
11 the sooner the better according to him and his wife. And
12 Dr. Oliveri, who I have nothing but respect for and I think is
13 a fine witness and has a great deal of integrity, and so when
14 he learned that Mr. Cox was returning to the UK, he revised his
15 report to say, well, if he's going back to the United Kingdom,
16 then I need to revise my report, and so this is what I'm going
17 to do.

18 And so Dr. Oliveri said that, well, looking at going
19 back to the UK, Mr. Cox is going to incur significantly less or
20 he is reasonably likely to incur significantly less because of
21 the National Health System. So then he calculated his damages
22 and his life care plan that way. So everyone seems to be in
23 agreement that the United Kingdom costs will control, that the
24 cost of healthcare in the United Kingdom, whether it be through
25 the National Health System or through some private funding,

1 that's going to be benchmarked for what Mr. Cox is reasonably
2 certain to incur.

3 The only evidence of what the cost of Mr. Cox's
4 medical care is going to be in the United Kingdom comes from
5 experts. It comes from Dr. Oliveri and our expert Dr. Luke
6 [phonetic], and Dr. Oliveri has not come forth with a report
7 which says, you know, this particular procedure or this
8 particular surgery or this particular drug or this particular
9 modality is going to cost X amount of dollars.

10 Instead he's provided us a life care plan which has
11 no costs associated with it for a good number of the items.
12 Pain management, based on research, this is provided under the
13 NHS. Mr. Cox would have access to physicians; therefore, no
14 costs are listed for this, and so he took about -- out a bunch
15 of his costs. So there's a whole component of costs that
16 everybody agrees on.

17 The -- I suppose the disputed area and really kind of
18 the focus of our motion is the cost of attendant care. Now,
19 Dr. Oliveri is going to offer the opinion that because of what
20 Mr. Cox is reporting as a brain injury and what the medical
21 experts that are going to be called by plaintiffs are going to
22 identify as a brain injury, Mr. Cox is going to need certain
23 future care. He's going to need certain treatments. He's
24 going to need certain attendant care, and a big component is
25 that he's going to need some sort of assistance with activities

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1 of daily living.

2 Now, I don't dispute that Dr. Oliveri is qualified to
3 render opinions on the -- I mean, there might be some areas
4 that he's not qualified, but as a general matter, he's a life
5 care plaintiff's medical doctor, and as long as it's within his
6 scope of treatment, and as long as it's within his foundation
7 as a life care planner and medical doctor, he's going to be
8 able to offer some opinions on what Mr. Cox's needs are.
9 That's not what this motion is about.

10 The motion is about the next step. What do those
11 needs really cost? And Dr. Oliveri's opinion at this point is,
12 well, I don't know what they're going to cost because I don't
13 really know anything about the National Health System; however,
14 if Mr. Cox has to pay for these things out of pocket, here's
15 how much they would cost, and I've done some research and found
16 out how much they cost in the area which he lives because he
17 agrees that the benchmark for future medical care is the area
18 where Mr. Cox is going to live.

19 So Dr. Oliveri says, Well, I've knocked out all of
20 the medical treatments because they're all covered. So there's
21 no cost associated with that; however, there might be these
22 costs associated with attendant care, and he's broken that
23 down. The problem with the second part of that opinion is
24 Dr. Oliveri doesn't know whether or not that attendant care is
25 going to be covered by the National Health System because he

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1 doesn't know anything about it. He's not done the research
2 about it. So he is not in a position to offer to a reasonable
3 degree of medical probability what the cost of that attendant
4 care are going to be in the United Kingdom.

5 He acknowledges that there is a needs test, and if
6 Mr. Cox passes this needs test, then, yeah, all of this is
7 going to be covered, but I don't really even know what the
8 needs test is, and so I'm not really sure how it's going to
9 work. So he's come up with basically no opinion, and he even
10 says he has no opinion on whether these attendant costs would
11 be covered.

12 And so plaintiffs apparently want to put them up here
13 just to speculate about, well, if they're not covered, then it
14 might cost this, but he doesn't have any expert opinion on
15 that, and it is plaintiff's burden to prove what medical costs
16 Mr. Cox is reasonably certain to incur, and Dr. Oliveri doesn't
17 get the (unintelligible.) Can he get up there and say I think
18 he's going to need this type of help? Yes, subject to being
19 cross-examined on what his qualifications are, yes, because
20 he's got some background. He's got some education and some
21 history to talk about that.

22 But can he talk about, well, and when he goes back to
23 the United Kingdom to get these costs -- to get these
24 treatments, it's going to costs this? No, he can't testify to
25 that because he's not qualified to do so.

1 So now that gets us down to the question of are we
2 improperly using the National Health System as a collateral
3 source? This is not about collateral source. Collateral
4 source is the jury hears evidence that the plaintiff is going
5 to need X, Y and Z treatments in the future, and X, Y and Z
6 treatments cost this much money, and, yes, just because you've
7 got insurance doesn't mean you get to zero that money out,
8 okay, because there is a reasonable certainty that the
9 plaintiff is going to incur them. Yeah, he might get insurance
10 to pay for them, but he's reasonably certain to incur those
11 costs. In some sense, he's going to get billed for them.

12 In Mr. Cox's case, he's never going to get a bill.
13 This is not privatized insurance. This is not insurance at
14 all. It's a universal national health program, so much so that
15 Dr. Oliveri himself has said there are no costs incurred with
16 this. This isn't a matter of Mr. Cox going and getting billed
17 for it. He's going to show up at the doctor, show his ID and
18 get the medical care he needs. There are no out-of-pocket
19 costs. There are no costs that he's reasonably certain to
20 incur.

21 As it relates to a vast majority of Dr. Oliveri's
22 life care plan, the reasonable costs or the costs that are
23 reasonably certain to be incurred are zero, and so we're not
24 talking about a collateral source. The point is is that it's
25 plaintiff's burden to show what costs he's going to incur, and

1 in this situation, because of the national health plan, it's
2 zero. So they haven't gotten over the first hurdle of what are
3 the costs that he's reasonably certain to incur.

4 Again, we're not talking about a situation in which
5 you're presented with evidence of what the cost of a particular
6 treatment is, and you're asking to zero it out because of
7 insurance. The cost to Mr. Cox is zero, and Dr. Oliveri has
8 not provided anything to the contrary. He hasn't come in and
9 said, well, in the UK this medicine costs this much. He's just
10 said the cost is zero. That's his opinion. They're his
11 expert. If they're going to put him on the stand to talk about
12 that, he's stuck with it.

13 THE COURT: Do we know anything about subrogation?

14 MR. RUSSELL: In the UK, there is no -- I mean, it's
15 a universal health plan. I mean, it's --

16 THE COURT: I mean, could it subrogate --

17 MR. RUSSELL: No.

18 THE COURT: -- on any recovery by the plaintiffs?

19 MR. RUSSELL: I don't -- I don't believe so, no.

20 THE COURT: All right.

21 MR. RUSSELL: I don't know. No. But fortunately for
22 me, I'm not the plaintiffs. So I don't have to actually prove
23 what that will be dealing with.

24 But now as a procedural matter, and this is
25 important, the plaintiffs have essentially already conceded

1 application of the National Health System. They're required
2 under 16.1 to provide a calculation of damages. After
3 Dr. Oliveri redid his life care plan and after they had
4 Dr. Clauretie rerun the numbers, they provided an updated
5 calculation of damages which basically took out every dime that
6 was going to be covered by the National Health Plan.

7 We are now, I mean, we're longer from trial than
8 where we started this morning, but that's what they've
9 disclosed with a week and a half before the scheduled trial
10 date as to what their damages were. So they can't go back now
11 and say, well, no, actually it costs this. You know, they lost
12 the opportunity to do that. Dr. Oliveri has laid that down.

13 So all that's left to question is has Dr. Oliveri
14 provided an adequate foundation, an adequate expertise to be
15 able to talk about the cost of attendant care in the United
16 Kingdom, and he hasn't. His response to the questions is I
17 don't know if it's going to be covered or not. I don't know if
18 Mr. Cox is going to have any out-of-pocket expenses. I know
19 there is this needs test. I know he has to go through that. I
20 don't know what the outcome is going to be. So I don't know if
21 he's going to have these costs or not, and I don't know is not
22 an acceptable answer for an expert.

23 Thank you, Your Honor.

24 MR. DEUTSCH: I disagree fundamentally that there's
25 any concessions here with respect to what applies. Dr. Oliveri

1 gave two separate reports that talk about different scenarios,
2 and we don't know sitting here today whether the National
3 Health System, A, will be around next year or in two years or
4 in three years. As we know from what's going on in our own
5 country, that stuff could disappear very quickly.

6 There's other cases involving situations. There was
7 just one out of the Second Circuit where a veteran was injured,
8 and the defendants in that case argued that -- I'm blanking on
9 the name. I apologize -- where the veterans in that case said,
10 well, he shouldn't be entitled to any future medical care
11 because he could go to the VA and get free care, and the Court
12 said, well, absolutely not because if the jury finds that you
13 caused these injuries and that these injuries require future
14 care, he should be allowed to go wherever he wants to get that
15 care, and that's the same thing in England.

16 The doctor that he may choose to go to for a specific
17 thing, that's the best guy in the world, that he should be
18 entitled to go see if they find that they were responsible for
19 causing his injuries may be in Sweden. It may be in the United
20 States. It may be somewhere else, and he shouldn't be required
21 to go in a national system when there's something better.

22 It would be the same thing here as saying, well, you
23 know, you were injured, but why should we pay for it? Go get
24 Medicare. Go get Medicaid. We know that that's not legitimate
25 because the person should be entitled to choose whatever doctor

1 they choose, wherever that doctor is, and they should ~~have~~ to
2 pay for it if the jury so finds.

3 So I believe that Dr. Oliveri giving the cost of this
4 treatment, here in the United States is what's more appropriate
5 for the jury in that we're not dealing with pounds. We're not
6 dealing with anything else. We're dealing with the damages law
7 of the state where the accident occurred is what always
8 applies, and that's what we're talking about here.

9 So I do not concede that there's been any concession
10 that -- that one applies over the other. Dr. Oliveri gave two
11 separate reports to cover multiple bases and, you know, to make
12 a suggestion that he should be required to go back home and
13 accept free treatment is -- is just not right. If they're
14 found to have caused the injuries and those injuries require
15 care, he should be entitled to go anywhere for them, and he's
16 not going to have an opportunity to come back here.

17 If they find, well, you're under the national
18 healthcare and in two years the National Health System is no
19 longer available or the type of care that he needs is not
20 covered under that system, he can't come back to court and say,
21 hey, pay for it now. This is his time, and he should be
22 compensated based on the numbers here in the United States for
23 those things.

24 MR. RUSSELL: I guess now I'm confused as to where
25 Mr. Cox is going to get his medical treatment in the future. I

1 mean, well, he can get it here if he wants. He can get it in
2 Sweden if he wants. Those are all wonderful fanciful things,
3 Your Honor, but we're here about evidence and proof and experts
4 and testimony and what the jury can do.

5 The jury in this case, the law of this state, which
6 does control, is that the only future medical damages Mr. Cox
7 is entitled to are those which he is reasonably certain to
8 incur. He is not reasonably certain to incur costs in the
9 United States. Why? Because he's not staying in the United
10 States. He has no intention of staying in the United States.
11 He has not asked to stay in the United States. He's going
12 back. He's not reasonably certain to incur some Swedish doctor
13 because he's not going to Sweden.

14 But most importantly, what Mr. Deutsch is saying is
15 well, he gets to pick what doctor he wants, and he can get
16 whatever medical care he wants, and we should maybe hear it --
17 we should price it here in the United States. Where are the
18 prices for these other doctors? Where are the prices for the
19 doctor in Sweden that he might go to? Where are the prices for
20 the doctor in the United States that he might go to? That's
21 speculation.

22 The rule is, the law is is that what he's reasonably
23 certain to occur. So this has to be based on UK costs because
24 that's the only evidence we have is that Mr. Cox intends to go
25 to the UK as soon as this case is over. So the fact that he

1 might want to choose where he goes is irrelevant because he
2 doesn't get to recover his cost based on where he might choose
3 to go sometime in the future if the National Health System
4 which has been in place for 70 years all of a sudden folds
5 tomorrow. I have a hard time that that's going to happen.

6 And as far as the case Mr. Deutsch talked about with
7 the VA, they didn't provide that in their brief. So I don't
8 really have much to go on, but I will say this. It's one thing
9 to say you live in this country. This is what medical care
10 costs. Yeah, you have another option to go get it somewhere
11 else, but there's a situation, like I talked about earlier with
12 the collateral source rule, where you're saying here's how much
13 this treatment costs.

14 It costs \$15,000 to get the surgery in this -- in
15 the, you know, in the locale where you live because even
16 Dr. Oliveri will tell you that's the determining factor, where
17 you live. So it costs \$15,000 to get this surgery. Sure you
18 could go get it from the VA for free, but the collateral source
19 rule says we're not going to let you put that into evidence.
20 The National Health System is something different.

21 There's not been any evidence that it's going to cost
22 \$15,000 for Mr. Cox to have this procedure, but he can get it
23 from the national healthcare. There's -- the \$15,000 hasn't
24 been put on the table. No expert, no witness, no doctor has
25 said this is what it will cost. All you have is Dr. Oliveri

1 saying there is no cost. So there's no alternative that we're
2 trying to wipe out with the collateral source rule. This is a
3 wholly different regime that we're dealing with.

4 And so on those facts and on that basis, we need to
5 determine a cost based on UK costs, which for, again, a large
6 portion of these treatments is zero, and as far as future care
7 that Dr. Oliveri has put a cost with, since he doesn't know
8 that Mr. Cox is actually reasonably certain to incur those
9 costs, he can't testify to it because it's too speculative.

10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 All right. That one stands submitted. I'll review
13 it further before I make my ruling. I'll do so as quickly as I
14 can. I know it's one of the ones you're waiting for.

15 And the next one is -- is it Dr. Clauretie?

16 MR. CALL: Your Honor, I was -- if you don't mind, I
17 was going to go on the wage loss issue.

18 THE COURT: The what?

19 MR. CALL: The wage loss.

20 THE COURT: Oh, wage loss.

21 MR. CALL: This is Team Construction's motion in
22 limine for wage loss.

23 THE COURT: Okay.

24 MR. CALL: Okay. I'm going to hit on two issues on
25 the wage loss issues here. One is Ira Spector, who was

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1 plaintiff's expert for future wage loss. He used a database
2 from the United Kingdom; however, he was unfamiliar with the
3 database. He did not research it, whether it was actually
4 similar to the United States information that he had previously
5 used. He testified that when asked have you ever used this
6 report in any other evaluation, and he had not, and I am
7 certainly not an expert on this statistical research, and I
8 didn't examine anything other than this small snapshot of
9 occupations to come to a conclusion regarding Mr. Cox's wage
10 loss or alleged wage loss.

11 And last, in addressing Ira Spector's report, he used
12 a life expectancy information based on US data, and US data I
13 would submit is dissimilar from a person that lives in the
14 United Kingdom with the United Kingdom's health plan and, I
15 guess, culture, whether the life expectancy information based
16 upon US data would be similar to the United Kingdom data I
17 think is left up to speculation, and Mr. Spector cannot testify
18 to life expectancy based upon data he is unfamiliar with.

19 Second of all, the wage loss presented by plaintiffs
20 is essentially tainted. We have wage loss information provided
21 to us by testimony from Mr. Cox about how much wage loss he
22 incurred; however, right at the beginning of this litigation,
23 his son Oliver Cox --

24 THE COURT: He chucked everything, right?

25 MR. CALL: He chucked everything. He chucked

1 everything, and the thing is, Oliver Cox's girlfriend is the
2 one that put him in touch with an attorney here in the United
3 States; therefore, they knew that this was in litigation. It's
4 not something like, oh, dad, I didn't know that you were suing.
5 They knew he was going to -- you know, pursuing a cause of
6 action against Copperfield and the MGM, and therefore, what I'm
7 saying is everything that they present the defendants have had
8 no opportunity to look at that wage loss claim and dissect it
9 and determine whether it's a firm basis for that.

10 We're essentially going by the word of the plaintiff,
11 and based upon that, we think the wage loss should be
12 considered excluded in this or at the very least we should have
13 an instruction about that, that it should be presumed it
14 would've gone against them.

15 Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. DEUTSCH: Your Honor, I think that their motion
18 is misplaced because I think that all of these things go to the
19 weight of this testimony, not its admissibility. My clients
20 are entitled to testify that this is how much they were making.
21 We're entitled to get the testimony from the experts, and
22 Mr. Call is going to adequately represent his client by getting
23 up here and cross-examining Mr. Cox about the fact that are we
24 supposed to believe you? You threw out all the documents. We
25 don't have them, and the jury is going to be able to consider

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1 do we believe this? Would we have liked to see the documents?
2 All of that goes to the weight of the evidence, not to its
3 admissibility.

4 And, in fact, Mr. Oliver Cox, the son, did testify,
5 not that he knew. He, in fact, testified that he didn't know.
6 He testified that the house was being sold and that they got
7 rid of the documents, and there's no evidence to suggest that
8 Oliver Cox, a young kid from England, was in some way aware
9 that his parents' lawsuit in a United States court had claims
10 involving lost earnings where these documents were going to be
11 relevant. So there's going to be able to be no showing by
12 anybody that there was any intent or malice by Mr. Cox in
13 getting rid of these documents.

14 So I think all of this goes to the weight of the
15 testimony and not its admissibility, and it's all fair game for
16 cross-examination, and they might be able to score, well,
17 really good points, but it shouldn't be precluded.

18 MR. CALL: Your Honor, defendants tried to get tax
19 information from plaintiff during the case and were never
20 provided that. We would ask that if the Court is not inclined
21 to exclude testimony concerning wage loss that at least there
22 should be a jury instruction concerning the wilful destruction
23 of this evidence.

24 THE COURT: Thank you.

25 Here's what I'll do. I won't preclude the plaintiff

1 from endeavoring a foundation for the wage loss evidence. I
2 don't settle jury instructions until the evidence is closed,
3 and I don't -- I don't state which instructions I'm going to
4 give until the evidence is closed, but I will likely be willing
5 to give an adverse inference instruction based on what I
6 understand the situation to be at this point.

7 I'm not determining at this point that it was
8 intentionally disposed of or whatever, but it appears that it
9 may have been negligently disposed of. I'm not going to make
10 that determination now. I'll be open to that, and then I'll
11 likely give such an instruction.

12 MR. CALL: So how would you like the order to read?
13 That you denied the order -- I mean, the motion?

14 THE COURT: It's without prejudice to objections and
15 without prejudice to proffers of jury instructions relative to
16 evidence spoliation, higher evidence would be adverse
17 (unintelligible) being produced, that kind of stuff.

18 MR. RUSSELL: Well, I apologize. Your Honor, just
19 for clarity, though, we're talking about two sort of separate
20 things. We're talking about whether plaintiff can put on a
21 wage loss claim by getting up there and saying how much he made
22 as opposed to whether Mr. Spector without foundation can get in
23 and testify as an expert.

24 THE COURT: I said I'm not going to preclude him at
25 this point.

1 MR. RUSSELL: Okay.

2 THE COURT: I'm not going to say he can't endeavor a
3 foundation.

4 MR. RUSSELL: Okay. Thank you.

5 THE COURT: So and that's without prejudice to any
6 objections that are made. Okay. Sometimes what I'll do is
7 when it comes to that, I take things outside the presence of
8 the jury, the foundation aspects and things like that. Okay.
9 So if it comes to that, approach the bench, and we'll have the
10 jury go out and then we'll explore it further.

11 All right. The next one then would be what?

12 MR. FREEMAN: To exclude expert Terrence Clauretie
13 regarding the loss of valued household services.

14 THE COURT: Okay.

15 MR. DEUTSCH: Before we start, Your Honor, I would
16 prefer that if, like, the identical motion to the one we just
17 dealt with.

18 MR. FREEMAN: Well, and that -- that's the perfect
19 time to deal with it now. I'm not going to take very long.
20 It -- it is -- it is similar to the other issues. Here we
21 have --

22 THE COURT: It wasn't a --

23 MR. FREEMAN: Oh, sorry.

24 THE COURT: There's nothing about disposing of
25 evidence or anything, is there, in this one?

1 MR. FREEMAN: No. No, there isn't. No.

2 THE COURT: So that's what -- okay.

3 MR. FREEMAN: It's basically an opinion with no
4 evidence.

5 THE COURT: (Unintelligible.)

6 MR. FREEMAN: Dr. Clauretie has issued a report
7 regarding a loss of value of household services, and this is
8 based on an interview with Mr. Cox and some US studies. Again,
9 we know all this loss of household services is going to be
10 involved -- involved with Mr. Cox returning to the UK. His
11 opinion is based on an unreliable methodology, false
12 assumptions and speculations. Clauretie did not take into any
13 facts regarding household services in the UK. There weren't
14 any personalized facts. This was a cut and paste motion.
15 There's areas in there where he had her loss instead of his
16 loss, and so it's -- it's just all speculative and misleading.

17 There's nothing to base that the reasonable costs of
18 what household services are in the US. There wasn't any basis
19 on medical records, vocational assessments, no confident --
20 competent evidence except for an interview with the plaintiff,
21 and again it's going to be his self-serving statements that is
22 the basis of Mr. Clauretie's report, and that just does not
23 meet the standard of Hallmark.

24 Thank you.

25 MR. DEUTSCH: I disagree, Your Honor. I think that

1 everyone in the courtroom is aware of the expert field of
2 vocational rehabilitation. I think everyone in the courtroom
3 has seen vocational rehabilitation experts testify. I don't
4 think that there's anyone here saying that Mr. Clauretjie's
5 credentials don't qualify him as a legitimate vocational rehab
6 expert.

7 THE COURT: He's not --

8 MR. DEUTSCH: Nevada law permits the loss of
9 household services as an item of damages to be claimed.
10 There's no one here disputing the fact that there is a
11 legitimate basis for the fact that there were household
12 services that were lost.

13 Dr. Clauretjie's opinions are based upon his expert
14 knowledge, his experience in the field, the study of
15 peer-reviewed literature on the subject and tables and other
16 surveys that are used in his field on an everyday basis to come
17 to a value of all of these services. They're based upon
18 national criteria and standards, all things that will assist a
19 jury in being able to identify if they believe that he lost
20 these household services of what kind of monetary value should
21 be awarded for those things. So I don't think that there's
22 anything out of the ordinary here.

23 I think that just the fact that he lives somewhere
24 else versus here I think is really a red herring, and I don't
25 think it plays any part in this motion, and I think their

1 motion should be denied.

2 MR. FREEMAN: And I would just like to add that
3 Dr. Claurette is not a vocational expert. He's an economist,
4 and he based his opinions on these US studies. He didn't base
5 them on any of the actual medical records or vocational
6 assessments to support his opinions.

7 THE COURT: Okay. I'll -- and I won't preclude
8 defendant from endeavoring a foundation to admit some or all of
9 the evidence from Dr. Claurette. All right.

10 MR. DEUTSCH: Yeah.

11 THE COURT: So the motion's denied without prejudice
12 to objections and --

13 MR. POPOVICH: A question, Your Honor, on that. When
14 plaintiff seeks to lay a foundation, does the Court allow
15 defense counsel to stand up and ask to voir dire the witness on
16 that?

17 THE COURT: Oh, yes. Absolutely.

18 MR. POPOVICH: Beautiful. Thank you.

19 THE COURT: Yeah. And that's what I was saying
20 earlier I often will have the jury taken out, and we'll have
21 proceedings take place outside the presence of the jury.

22 MR. DEUTSCH: You know, along those lines, Your
23 Honor, I know it's late, but there are a couple of other
24 motions that I think we could probably dispose of very quickly.

25 THE COURT: Okay.

1 MR. DEUTSCH: Things that I think in line with some
2 of these issues are just premature. There was a motion from --

3 THE COURT: You know, on the last couple -- I think
4 on the last couple I heard I need to have orders submitted by
5 counsel for the plaintiff, right? And so just pass them by
6 counsel.

7 MR. DEUTSCH: Okay. Sure.

8 You know, there's a couple others that I think we can
9 just dispose of quickly. There was a motion by MGM, their No.
10 1 about excluding certain photographs and videos that were
11 taken concededly after the fact. You know, look, we're
12 entitled to attempt to lay a foundation for whatever photograph
13 we have. If a witness from MGM --

14 THE COURT: Should I hear the motion first? Should I
15 hear the moving party?

16 MR. FREEMAN: Yes.

17 MR. DEUTSCH: All right. I was trying to speed
18 things up, but okay.

19 THE COURT: Does everyone agree I should hear that
20 one next?

21 MR. FREEMAN: Sure. Why not.

22 MR. DEUTSCH: I just thought we had a couple minutes.
23 I thought we could do it quickly.

24 THE COURT: Yeah. All right.

25 MR. FREEMAN: Well, there's -- there's several issues

1 with the video and photos. It's not only can -- it can't be
2 authenticated and they can't lay any foundation, they have no
3 knowledge about these photos. There's the other issue of it's
4 irrelevant and prejudicial.

5 The video and photos were disclosed saying that it
6 was video taken by Mr. Gavin Cox. Going through his
7 deposition, he never took the video. He's never seen the
8 video. He doesn't know when the video was taken, from what
9 location it was taken. He didn't know anything. He said he
10 admitted he'd have to guess. Took the deposition of Mrs. Cox,
11 and she was of the same opinion, didn't know anything about it,
12 but her husband never took it. So the fact that it was
13 disclosed as being a video taken by Mr. Cox is untrue.

14 Same thing with the photographs. He assumed his
15 attorney took it because he went there with his attorney but
16 wasn't sure. So that's one issue.

17 The other one is that --

18 THE COURT: Did he say anything about the photos
19 looking like it appeared at the time of the incident or --

20 MR. FREEMAN: No. In fact, that was my next point,
21 and this is really critical because he said, you know, it looks
22 like the area, but it's not how it was the day I was there. He
23 said there was not piles of rubble here on the ground, and
24 there was not a dumpster in the path that I took to get back
25 into the theater. So we've got a picture that was the area but

1 looks completely different about it, and how is it going to
2 look --

3 And in their opposition, plaintiffs claim that the
4 sole purpose of the photo is just to show the area, what it
5 looked like, design of the driveway, the doors, the routes.
6 Okay. But we sat here today and counsel pulled out pictures
7 and saying, Look, piles of debris. If they go and pull those
8 photos out and show piles of debris along with their
9 allegations that he slipped on construction dust, a jury is
10 going to go well the picture shows a pile of debris and
11 construction dust right there even though it has absolutely
12 nothing to do with what the real scene was, and that's Mr. Cox
13 stating that. He actually brought it up before we even got
14 into questioning on it saying, you know, this is the area, but
15 this is not what it looked like. So another thing -- so again,
16 highly prejudicial.

17 Here's the other thing. Plaintiff's expert was given
18 access to the show, the exact route and the entire area, and it
19 was documented, photographed, videoed. David Copperfield's
20 show even comped him tickets to see the show. They got access
21 to everything. So it's been documented. If they want to show
22 some pictures of what the area -- how did they -- to just show
23 with the area looked like, they could have those photographs
24 which would be far more telling of what it looked like on an
25 evening before, during and after a show and the entire route

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1 can be shown.

2 These photos here was it was a photo of a pile of
3 rubber -- rubble with a dumpster in the back. It doesn't show
4 the door. It doesn't show the pathway. It doesn't show the
5 area. It shows a pile of rubble, and regardless of whether
6 they think they can authenticate it, it should not come in
7 because it's completely irrelevant to as to the time of the
8 incident, and it's certainly prejudicial.

9 Thank you.

10 MR. DEUTSCH: I agree with almost everything that he
11 said, that before I could use a photograph and admit it into
12 evidence and show a jury, I have to lay a foundation for it.
13 Mr. Cox is one witness who I can lay a foundation for a
14 photograph with. There's going to be about 11 other witnesses
15 who were there that night and who know what the scene looked
16 like that may say something different. If I asked them a
17 question, and they say that's not what it looked like, maybe it
18 doesn't come in. If I ask them a question, and they do say
19 that's what it looked like, then it comes in. It's premature,
20 this motion.

21 THE COURT: Well, we got photos --

22 MR. DEUTSCH: Photos and -- so the photographs are --
23 are what I was just talking about, the issue of whether there
24 were piles or things. I'm entitled to ask all the different
25 witnesses because a lot of them, you know, unfortunately I

1 could take the position here that I was not involved in this
2 case when a lot of these depositions went on. So I could sort
3 of say that, but there has -- I'm entitled to try to lay a
4 foundation with the photographs, whether this pile of dust,
5 these things were there that night and whether it fairly and
6 accurately represents --

7 THE COURT: Is it admitted that the dumpster isn't in
8 the same place or --

9 MR. DEUTSCH: There is one photograph where a
10 dumpster is in a different place, but the photo could be used
11 for different purposes with respect to just the pile of dust
12 with a limiting instruction of the understanding that the
13 dumpster is moved.

14 THE COURT: How long after the incident were these
15 photos taken?

16 MR. DEUTSCH: I think within a couple of days.

17 THE COURT: Because the video was like five months.

18 MR. DEUTSCH: I agree, and the video is a different
19 issue because the video would not be used for the purposes of
20 saying that this is exactly what happened.

21 The video, if used at all, would be used for
22 demonstrative purposes only with the understanding to the jury
23 that this is not exactly what happened that night, but the
24 jury's going to hear a lot of testimony about people running
25 around the corner and where they're going, and it's really

1 difficult unless maybe Mr. Copperfield would be happy to have
2 us all go down the street and check out the trick from
3 Backstage while it's going on. Maybe we could do that instead
4 of the video.

5 But -- but the video will be used for -- if used or
6 offered will be for demonstrative purposes only just so the
7 jury will be able to see what we're talking about because the
8 video footage from that night, the surveillance footage is very
9 blurry, covers a very limited area of -- of this thing. So I
10 think the video would be a demonstrative exhibit only with the
11 understanding that it is not representative specifically of
12 that.

13 I think with respect to the photographs and arguably
14 with the video, too, I think we're entitled to attempt to lay a
15 foundation with any witness that testifies in trial, and I
16 think that any motion to exclude evidence such as this at this
17 point in time is premature.

18 MR. FREEMAN: A couple more things, Your Honor. We
19 are not asking to exclude all photographs. There were
20 photographs that were taken the night of the incident by the
21 MGM security that, you know, they were I think less than an
22 hour after it happened, but what we're talking about is these
23 photos taken several days later.

24 And just, you know, forget about the authentication
25 and trying to lay foundation, how prejudicial the photos and

1 video is. The video appears that it looks like he's across the
2 street zooming in. It looks like someone's running through a
3 dark tunnel. You can't even really make out figures. To put
4 it in that light, to show the photos, you know, to sit here
5 today and have plaintiff's counsel say piles of debris are
6 shown in these photos, you know what the intention is. They're
7 trying to say look, piles of debris and all that's going to do
8 is confuse the issues, mislead the jury and very prejudicial.

9 So, you know, that's why we're asking here for an
10 order in limine --

11 THE COURT: What about the video as demonstrative?
12 What's your take on that?

13 MR. FREEMAN: Well, just I don't think it is
14 demonstrative. It's -- it's a dark tunnel from someone so far
15 away. I mean, if I had to guess, they were standing at the
16 Tropicana or out there on the --

17 THE COURT: Are these photos -- do the photos that
18 we're talking about here also include those emergency room
19 photos, or is that a different --

20 MR. DEUTSCH: Different batch, Your Honor.

21 MR. FREEMAN: Yeah. Those, you know, we asked -- we
22 included that into our motion but our main focus is the photos
23 of the piles of rubble that were not there at the time of the
24 incident, the dumpster that was not in the path, that plaintiff
25 said this does not look like it, and then --

1 THE COURT: All right. Thank you.

2 I need to -- I haven't looked at all of those photos
3 and the video yet.

4 MR. FREEMAN: And you were provided the photos in the
5 video.

6 THE COURT: Yeah. And I'll look at them.

7 MR. DEUTSCH: Your Honor, if I just may -- may I add
8 one little piece to what -- I agree. We cannot make an
9 argument about piles of rubble or anything in front of the jury
10 until we have some evidence of it, and if one of the witnesses
11 in the case, and obviously they will be very well prepared to
12 not say that, but one of the witnesses in the case says, yeah,
13 that pile of rubble was there that night, it comes in.

14 THE COURT: Well, do we have a witness that says
15 that?

16 MR. DEUTSCH: As of now we don't but that doesn't
17 mean --

18 THE COURT: Okay.

19 MR. DEUTSCH: -- but that doesn't mean that at trial
20 that by my brilliant cross-examination of one of these
21 witnesses might not make one of them say you know what, now
22 that I think about it, that pile was there. They weren't asked
23 at the deposition.

24 MR. CALL: Your Honor, if you don't mind, there was
25 pictures taken on the day of the incident, the night of the

1 incident --

2 THE COURT: Without the piles of rubble.

3 MR. CALL: -- and without piles of rubble --

4 MR. DEUTSCH: Well, Your Honor, actually that's not
5 true.

6 MR. CALL: This is nothing but prejudicial.

7 MR. DEUTSCH: That's not true, Your Honor. The
8 picture of the location of the accident is the one that was
9 taken, at least one of them was the one that I showed you that
10 looks like it was taken through the dirty screen from My Cousin
11 Vinny. The one photograph of the actual location is the only
12 one that was blurry.

13 And when the gentleman who was taking these
14 photographs for the purposes of doing an accident investigation
15 took the photograph, I'm sure it wasn't done by a film camera.
16 I'm sure he had an opportunity to see in the little screen what
17 it looked like, and he saw that it was blurry because those
18 little things in front of it were leaves, and the screen is
19 dirty. He chose not to take it again. I think there's an
20 argument to be made that there is an inference as to why, and
21 I'm entitled to try to argue that and try to lay a foundation
22 for the other photographs.

23 MR. FREEMAN: And one more thing, we asked Mr. Cox if
24 there were any piles of rubble, if he saw any disrepair of the
25 concrete, and he said no. So, you know, the fact that they

1 have a photo days later of a pile of rubble is again would
2 completely confuse the jury as to why is that here, and is not
3 representative of the scene besides the fact that it's so
4 highly prejudicial.

5 Thank you.

6 THE COURT: Thank you.

7 Okay. What's the next one that you want me to
8 address now?

9 MR. DEUTSCH: I have -- I have a motion, Your Honor,
10 in one of our omnibus motions about the issue that we raised
11 earlier this morning about the issue of being able to argue
12 that no prior accidents had ever occurred as some evidence that
13 they were not negligent in this instance. I think those should
14 be precluded. I mentioned it earlier with respect to the car
15 accident case. I had tried to -- I was going to get up at some
16 point after Mr. Russell --

17 THE COURT: Well, a car accident case is entirely
18 different from a premises liability.

19 MR. DEUTSCH: Your Honor, here's my question. If --
20 let's say the facts were identical to this case except that
21 this is two weeks in or a month in to Mr. Copperfield doing
22 this trick, every other fact being identical, and they say,
23 well, we couldn't have been negligent because nobody's fallen
24 this month. There's always a first, and just because something
25 doesn't happen in a particular time doesn't mean that somehow

1 this is not a negligent trick or that they didn't act
2 negligently.

3 Every single other day, maybe things were different.
4 According to Mr. Copperfield, on every other occasion these
5 people are specifically told not to run. That was the
6 testimony from the defendants. They're not supposed to run.
7 Nobody runs. They walk briskly.

8 THE COURT: So this is -- this is one of your omnibus
9 motions, right?

10 MR. DEUTSCH: Correct.

11 MR. FREEMAN: No. 22.

12 MR. DEUTSCH: 22, Your Honor.

13 THE COURT: Okay. Because, you know, we're not going
14 to get through all these motions today obviously.

15 MR. DEUTSCH: No. I was just throwing them out
16 there, a couple of them. We can wait until another time for
17 this if Your Honor would like to. It's late and --

18 THE COURT: Well, I think for purposes of the record,
19 I think it's probably better to do it that way because
20 otherwise we're going to -- well, did we do that on that day?
21 No, I don't think so.

22 MR. DEUTSCH: I understand, and I'll be happy to just
23 wait, and we'll save all of these until a later day.

24 THE COURT: If there are any specific motions, apart
25 from addressing piecemeal omnibus motions, I think that we

1 better do that.

2 MR. DEUTSCH: Understood, Your Honor.

3 THE COURT: I think we're at the point now where we
4 should adjourn and just -- do you want to come back on the
5 30th? Is that what we had determined?

6 MR. RUSSELL: I don't know that there's a rush to
7 come back prior to the settlement conference on any of these.
8 I --

9 MR. DEUTSCH: My request, Your Honor, just in light
10 of the fact that we are traveling from New York would be that
11 if we could somehow -- if we do pick a date for the settlement
12 conference, potentially it could work out where they're all
13 done the same, and I could save my clients the expense of
14 having to fly out here again and -- because unlike the
15 defendants, at the end of the day, all my expenses will come
16 out of money that's in their pocket at the end of the day if we
17 are successful. So I would ask --

18 THE COURT: So just --

19 MR. DEUTSCH: And it --

20 MR. FREEMAN: Well, we had a conversation with
21 Lorraine here that we would conference with ourselves about the
22 different stacks, and we would also talk about dates that would
23 be good for an MSC. I think probably we need to do that first,
24 and then we could maybe set something up in conjunction that
25 way.

1 THE COURT: Do you want me to set a status check in
2 this case then maybe or --

3 MR. DEUTSCH: Yeah. I think that would be --

4 THE COURT: Anyone not here could participate by
5 telephone.

6 MR. DEUTSCH: That would be -- that would be good I
7 think so things don't get lost in --

8 MR. FREEMAN: Yeah. Yeah.

9 MR. DEUTSCH: Things don't just disappear magically.

10 THE COURT: Okay.

11 MS. FRESCH: I think I feel a motion in limine coming
12 on.

13 THE COURT: How far down would you want me to set a
14 status check?

15 MR. DEUTSCH: Well, the hope from our discussion
16 before was that there is a stack available for the end of
17 March, and I know that one of the defense counsels --
18 Ms. Fresch, has an issue with that. That -- you know, the
19 options after that are not until, you know, late in the summer
20 or even in October, and -- and my --

21 MS. FRESCH: May.

22 MR. CALL: Yeah. We've got the May --

23 MR. DEUTSCH: No. Well, may we are potential backup
24 because there was another case on. So we potentially could
25 back up on it, but my position, Your Honor, would be, and

1 obviously I'm never wanting to affect anyone's personal
2 vacation time or whatever they have, but with that being said,
3 I do have a client who is -- this is really a financial burden
4 on them, that as long as this case --

5 Ms. Fresch is from a very large firm. There's at
6 least one other attorney who's already here trying the case on
7 behalf of them. So if March 28th was a date that worked for
8 everyone, I would really push -- implore the Court to ask, to
9 order that we take that trial stack as opposed to October just
10 in light of Ms. Fresch's, you know, potential vacation
11 schedule, and again I hate to do that but --

12 THE COURT: All I'm doing now is setting a status
13 check that has to do with ascertaining what's happened relative
14 to setting a settlement conference and for scheduling a further
15 proceeding -- further proceedings on motions in limine.

16 MR. DEUTSCH: Okay. Maybe two weeks.

17 THE COURT: So I was thinking maybe February 2nd,
18 Thursday.

19 MR. DEUTSCH: Yeah.

20 THE COURT: Is that -- is that a good day?

21 MR. FREEMAN: What time?

22 THE COURT: 9:00 a.m. It would be a status check
23 regarding settlement conference and resumption appearing on
24 motions in limine, right? That would be the status check.

25 MR. DEUTSCH: Right.

1 THE COURT: In the meantime, it'll give you a chance
2 to talk among yourselves and everything else, and then I can
3 figure out when to hear the rest of these motions in limine, et
4 cetera.

5 MR. DEUTSCH: Thank you, Your Honor.

6 THE COURT: And anyone who is not in town can
7 participate by telephone.

8 MR. DEUTSCH: Thank you very much. We'll get the
9 number from your officer.

10 THE COURT: Talk to Bob about how to do that.

11 MR. DEUTSCH: Yeah.

12 THE COURT: Okay.

13 MR. FREEMAN: And if I may, what was the date again
14 for compliance with the State of Nevada on the pro hac?

15 THE COURT: March 27th.

16 MR. FREEMAN: March 27th.

17 THE COURT: Yeah, just -- all I need is proof of
18 service of the order from the State Bar.

19 MS. FRESCH: Yeah, we'll get that before.

20 MR. FREEMAN: Yeah. I just want to make sure I
21 wasn't running up against the --

22 MR. DEUTSCH: And we do have one more pro hac motion
23 that we'll get filed also for Mr. Fallick. So we'll get that
24 filed as well.

25 THE COURT: Very well. Okay. Those of you

1 traveling, have a safe trip back.

2 MR. DEUTSCH: Thank you very much, Your Honor, for
3 your time.

4 MS. FRESCH: Thank you, Your Honor.

5 THE COURT: Thank you.

6 (Proceedings concluded 4:36 p.m.)

7 -oOo-

8 ATTEST: I do hereby certify that I have truly and correctly
9 transcribed the audio/video proceedings in the above-entitled
10 case.

11

12

Dana P. Williams

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Dana L. Williams
Transcriber

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JD Reporting, Inc.

A-14-705164-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability

COURT MINUTES

February 02, 2017

A-14-705164-C Gavin Cox, Plaintiff(s)
vs.
MGM Grand Hotel LLC, Defendant(s)

February 02, 2017 5:04 PM Decision

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Marwanda Knight

PARTIES None. Minute Order only - no hearing held.
PRESENT:

JOURNAL ENTRIES

- HAVING further reviewed and considered the subject of Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial filed on December 19, 2016 and heard on January 19, 2017 together with the Joinders thereto, the Court determines that the same has merit and it is GRANTED. In making this ruling, the Court will permit Plaintiffs to adduce limited evidence in the first, liability phase concerning the nature and extent of injuries claimed.

Counsel for moving Defendant is directed to submit a proposed order consistent herewith and with the underpinnings as briefed and argued in support of the Motion.

IT IS SO ORDERED.

CLERK'S NOTE - A copy of this Minute Order was distributed to the following:

Christian N. Griffin, Esq. (By facsimile: 702-880-4528)

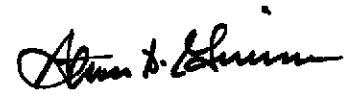
Adam E. Deutsch, Esq. (By facsimile: 212-751-0046)

Gary W. Call, Esq. (By facsimile: 702-997-3802)

Eric O. Freeman, Esq./Elaine K. Fresch, Esq. (By facsimile: 702-228-8824)

Howard J. Russell, Esq./D. Lee Roberts, Esq. (By facsimile: 702-938-3864)

22


CLERK OF THE COURT

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6385 S. Rainbow Blvd., Suite 400
7 Las Vegas, Nevada 89118
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8 Facsimile: (702) 938-3864

9 *Attorneys for Defendant*
10 *Backstage Employment and Referral, Inc.*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

14 GAVIN COX and MINH-HAHN COX, Husband
and Wife,

Case No.: A-14-705164-C
Dept. No.: XIII

16 Plaintiffs,

17 v.

18 MGM GRAND HOTEL, LLC; DAVID
19 COPPERFIELD aka DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT AND
20 REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
21 CONSTRUCTION MANAGEMENT, INC.;
DOES 1 through 20; DOE EMPLOYEES 1
22 through 20; and ROE CORPORATIONS 1
through 20;

24 Defendants.

**ORDER GRANTING DEFENDANT
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.'S MOTION TO
BIFURCATE TRIAL**

26 ///
27 ///
28 ///

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
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COURT DEPT# 13

RECEIVED

23

23

1 Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial came
2 before the Court for hearing on January 19, 2017, D. Lee Roberts, Jr., Esq. and Howard J. Russell,
3 Esq. appearing for Defendant Backstage Employment and Referral, Inc., and Adam Deutsch, Esq.
4 and Christian Griffin, Esq. appearing for Plaintiffs. Having reviewed the briefs and submissions of
5 all parties (including the Joinders by Defendant Team Construction Management, Inc., Beachers
6 LV, LLC, David Copperfield Disappearing, Inc., David Copperfield aka David S. Kotkin, and
7 MGM Grand Hotel, LLC), considering the arguments of counsel, and for the reasons set forth, the
8 Court finds as follows:

9 FINDINGS

- 10 1. Defendant Backstage Employment and Referral, Inc. ("Backstage") moves to bifurcate trial of
11 this matter into separate phases for liability and damages. Backstage argues the following with
12 respect to this Motion:
- 13 a. The Court has the authority to bifurcate trial if it will avoid prejudice and promote
14 expedition and judicial economy. *See* NRC 42(b).
 - 15 b. The issue of liability is separate and distinct from the issue of damages as the evidence
16 presented during the liability phase will focus solely on the execution of the Illusion to
17 the point of Mr. Cox's fall while the damages phase will focus solely on the events after
18 Mr. Cox's fall.
 - 19 c. Trying the liability issues first will assure that the jury makes a reasoned, dispassionate
20 decision on liability before Plaintiffs present Mr. Cox's alleged injuries, alleged
21 damages, and the emotional accounts of his injuries, treatment, and future prognosis.
 - 22 d. Bifurcation will promote expedition and judicial economy as the liability portion of the
23 trial is expected to last only a few days while the damages portion is expected to last
24 several weeks.
 - 25 e. A non-bifurcated trial could waste considerable resources and the time of both the
26 judiciary and the parties, at the risk of prejudicing Defendants if the jury cannot
27 objectively decide liability issues after weeks of damages testimony.
- 28 2. Plaintiffs oppose Backstage's Motion on the following grounds:

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- a. The liability and damages issues in this action are inextricably interrelated and cannot be efficiently or fairly tried separately.
- b. Bifurcation will severely prejudice the Plaintiffs by preventing them from explaining Mr. Cox's severe cognitive deficits which will be evident to the jury during his trial testimony and by unfairly requiring Plaintiffs to present the same evidence twice.
- c. Backstage has failed to demonstrate that bifurcation is clearly necessary to lessen costs and expedite the litigation.

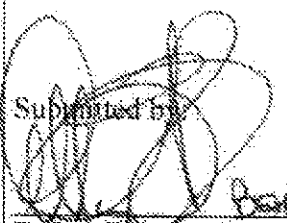


HOLDING

1. Backstage's Motion to Bifurcate Trial is **GRANTED**.
2. Trial will be bifurcated into two separate phases: the liability phase followed by the damages phase, if necessary.
3. Plaintiffs are permitted to adduce limited evidence in the first phase (i.e., the liability phase) concerning the nature of the injuries claimed. Specifically, Plaintiffs are permitted to adduce limited evidence in the first phase as to what Mr. Cox alleges his ^{general} injuries are to establish that Mr. Cox may have less than a clear recollection of the events on the night of the fall. Plaintiffs will not otherwise be permitted to adduce evidence as to the nature or extent of Mr. Cox's alleged injuries, or the damages and medical treatment stemming therefrom, in the first phase.

IT IS SO ORDERED.

This 24th day of February, 2017.


HON. MARK R. DENTON
DISTRICT COURT JUDGE

Submitted by 


D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
Timothy A. Matt, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
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Attorneys for Defendant
Backstage Employment and Referral, Inc.

Order Granting Defendant Backstage Employment and Referral, Inc.'s Motion to Bifurcate Trial

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Approved as to form and content:

No Response

Adam E. Deutsch, Esq.
Admitted Pro Hac Vice
(Signed with permission)
777 Third Avenue 31st Floor
New York, NY 10017

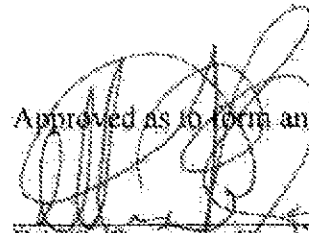
Counsel for Plaintiffs

Approved as to form and content:

Gary Call, Esq.
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Attorneys for Defendants Team Construction Management, Inc. and Beacher's LV, LLC

Approved as to form and content:


Eric O. Freeman, Esq.
SELMAN BREITMAN, LLP
3993 Howard Hughes Pkwy., Suite 200
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Attorney for Defendants David Copperfield's Disappearing, Inc., David Copperfield aka David S. Kotkin and MGM Grand Hotel, LLC

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

GAVIN COX,)	
)	
Plaintiff(s),)	CASE NO. A-14-705164-C
vs.)	
)	DEPT. NO. XIII
MGM GRAND HOTEL LLC,)	
)	
Defendant(s).)	

BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

**TRANSCRIPT OF PROCEEDINGS RE:
PLAINTIFFS' OMNIBUS MOTION IN LIMINE; DEFENDANTS' MOTION IN
LIMINE; TEAM CONSTRUCTION MANAGEMENT, INC., AND BEACHER'S LV
LLC'S JOINDER TO FOURTH SUPPLEMENT TO DEFENDANT BACKSTAGE
EMPLOYMENT AND REFERRAL, INC.'S DESIGNATION OF EXPERT
WITNESSES AND DOCUMENTS**

MONDAY, SEPTEMBER 18, 2017

(APPEARANCES ON PAGE 2)

COURT RECORDER: JENNIFER GEROLD, DISTRICT COURT
TRANSCRIPTION BY: SHAWNA ORTEGA, CET-562

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APPEARANCES:

For the Plaintiff(s): ADAM E. DEUTSCH, ESQ.
CHRISTIAN N. GRIFFIN, ESQ.

For the Defendant and
Cross-Defendant,
Team Construction
Management, Inc.;
and for Third-Party Defendant,
Beacher's LV LLC: GARY W. CALL, ESQ.

For the Defendants and
Cross-Claimants,
David Copperfield's
Disappearing, Inc.,
and David Copperfield;
and for the Defendants,
Cross-Claimants, and Third
Party Plaintiffs,
MGM Grand Hotel LLC: ERIC O. FREEMAN, ESQ.
ELAINE K. FRESCH, ESQ.
JERRY POPOVICH, ESQ.

For the Defendant,
Backstage Employment
and Referral, Inc.: D. LEE ROBERTS, JR., ESQ.
TIMOTHY A. MOTT, ESQ.
HOWARD J. RUSSELL, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, SEPTEMBER 18, 2017

2 [Proceeding commenced at 9:46 a.m.]

3
4 THE COURT: Appearances, please.

5 MR. DEUTSCH: Good morning, Your Honor. Adam
6 Deutsch from the Morelli Law Firm for the plaintiff.

7 MR. GRIFFIN: Good morning, Your Honor. Christian
8 Griffin for Plaintiffs.

9 MR. FREEMAN: Eric Freeman on behalf of David
10 Copperfield, David Copperfield Disappearing, Inc., and MGM
11 Grand.

12 MS. FRESCH: Good morning, Your Honor. Elaine
13 Fresch, also for the same defendants as Mr. Freeman.

14 MR. CALL: Gary Call on behalf of the Beacher's LLC
15 and Team Construction.

16 MR. POPOVICH: Jerry Popovich for defendants MGM
17 Grand and Copperfield.

18 MR. RUSSELL: Howard Russell for Backstage
19 Employment and Referral.

20 MR. ROBERTS: Good morning, Your Honor. Lee
21 Roberts, also for Backstage.

22 MR. MOTT: Good morning, Your Honor. Tim Mott,
23 Backstage Employment.

24 THE COURT: All right.

25 MR. DEUTSCH: Once again I feel outnumbered, Judge.

1 THE COURT: All right. Well, Plaintiff's omnibus
2 Motion in Limine, I'll take that first.

3 MR. DEUTSCH: Sure, Your Honor.

4 We discussed outside to try to sort of narrow
5 the issues that -- that at least I think need to be decided
6 today. And there were three things that were really
7 important that I'd like to just focus on. The first is, is
8 the issue with respect to the defendant's suggestion that
9 they're going to make some arguments during the case that
10 during the life of this illusion or this trick, that there
11 had never been any prior accidents.

12 And I think that that's -- that's problematic
13 for -- for a number of reasons, Judge. One is because the
14 evidence in the case already suggests that that's just not
15 accurate. There's testimony from two witnesses that people
16 had fallen during this trick.

17 THE COURT: Well, I'm not -- this isn't a Motion for
18 Summary Judgment.

19 MR. DEUTSCH: No, no. I understand. But the -- the
20 question is they want to argue that there were never any
21 prior accidents. We think that's prejudicial. We think that
22 it's extremely prejudicial, and we think it's -- it's not
23 admissible and relevant to this case. Just like in a case
24 with a car accident, I've never been in an accident before;
25 it doesn't mean they were not negligent on this day.

1 I understand in a products liability case they
2 cite the case involving Grassli [phonetic] I think it is,
3 with a jungle gym in the McDonald's that was hot. That's the
4 same, that jungle gym, every time. So if Plaintiffs are
5 trying to argue that the jungle gym was defective and someone
6 comes in and say, We've had this jungle gym there for 10
7 years, no one's ever gotten hurt on it before, I understand
8 how that's relevant.

9 This is a very different scenario. This is a
10 scenario where every night the trick is different. This
11 night there was construction, other nights there weren't
12 construction. And their ability to come in and say we've
13 never had an accident before, in all the years we've been
14 doing this trick, no one's ever had an accident, is
15 impossible for us to refute. We can't cross-examine it. We
16 know that it's not true, because there's two witnesses that
17 have testified that there were accidents.

18 So then they try to change the argument to,
19 well, no one's ever gotten injured during this trick. Well,
20 that's not really relevant, either. Because that goes to
21 causation and damages, not to liability. The issue with
22 respect to someone could have fallen and just gotten lucky
23 and not gotten hurt. So it has no relevance as to whether or
24 not they were negligent in a performance of the trick on the
25 night of the accident. So -- so that's the first piece that

1 I think is -- they should not be allowed to argue that we've
2 been doing this trick for 20 years and no one's ever gotten
3 hurt.

4 THE COURT: Well, we're not talking just about
5 argument, we're talking about evidence. I mean, this is a
6 Motion in Limine to preclude evidence. Not --

7 MR. DEUTSCH: That's all right. We're asking to
8 preclude them from offering testimony that they've been doing
9 this trick for 15 years and no one's ever gotten hurt,
10 because it has no relevance in this case.

11 THE COURT: Anybody want to respond?

12 MR. FREEMAN: This was -- they started at the end.
13 This was No. 22 on Plaintiff's omnibus motion. And, you
14 know, this -- simply what they want to do is claim that the
15 illusion was dangerous, that no measure of safety was taken;
16 we knew of this danger and hazard and we didn't care; we had
17 notice of this; and it's -- it's too broad as a Motion in
18 Limine just to say outright any other evidence is --

19 THE COURT: Okay. Thanks. Anything you want to say
20 in response?

21 MR. DEUTSCH: I don't think it's broad at all, Your
22 Honor.

23 THE COURT: I -- I think it is. I'm denying the
24 motion without prejudice to any objections that are made in
25 the context of what's happening at trial. Okay.

1 MR. FREEMAN: Thank you.

2 THE COURT: The next one --

3 MR. DEUTSCH: The next one, Your Honor, deals with
4 the issue of medical payments from the National Health System
5 in London. As you know, my clients are from London. And the
6 defendants are -- are -- we anticipate an argument from the
7 defendants with respect to future medical damages in the
8 case, that they shouldn't be entitled to recover future
9 medical damages, because when they go back to London, they
10 can get free medical care. And I think that's -- it's
11 prejudicial. I think it's -- it's not a legitimate argument.
12 It's just any other collateral source, Your Honor.

13 If -- if my clients were -- if it's found that
14 my clients were injured as a result of their negligence, my
15 clients should be allowed to go to whatever doctor they want
16 to get treatment. And that includes in -- in London, where
17 you can get treatment above and beyond what the National
18 Health System requires. So I don't think it's proper for the
19 jury to hear anything about the -- a collateral source that
20 they may or may not get free treatment in London with respect
21 to future medical damages for my client.

22 MR. RUSSELL: Thank, Your Honor.

23 Well, there -- there are two aspects on this
24 evidence of the National Health System. One Mr. Deutsch just
25 pointed out was on the future care. Well, as the Court

1 knows, you've already ruled that Dr. Oliveri cannot testify
2 as to what the future medical care costs are in the United
3 Kingdom, because he's not an expert on those issues. We've
4 already had that argument, you've already entered an order on
5 that.

6 That being the case, there is no -- there will
7 be no future care number put up, because there's no expert to
8 come in and say what that number is. They've not offered any
9 evidence, because the only evidence they had was through
10 Dr. Oliveri, which has now been stricken by the Court. They
11 are not going to have a witness come up here and testify as
12 to what it will cost in London, whether by private care or
13 the National Health System or whatever it may be.

14 So we actually, as far as future care goes, we
15 don't need our expert to come in and talk about the fact that
16 their future care will be free, because they don't have --
17 they have a zero to put up. Now, they can come in and talk
18 about his needs, they can come in and head off Dr. Oliveri,
19 say that I believe he's going to need X, Y, and Z. And they
20 can argue that as part of their general pain and suffering.
21 But they can't -- at this point they can't put a specific
22 number on it. So I don't have to bring in an expert and talk
23 about a zero when they already have a zero. So that takes
24 care of sort of the future care.

25 As far as -- now, that being said, if during

1 trial there's some suggestion or testimony by the plaintiffs
2 that say, Oh, we have all the future care, we're going to
3 have to pay for it, well, now I do have to bring in a
4 rebuttal expert that says, well, no, you don't.

5 So as of right now, if it simply stands that
6 there's no future medical care number put up. I don't need
7 to worry about the National Health System, because I don't
8 need to rebut anything on that.

9 Now, the past medical damages, it is relevant on
10 a few potential issues. One, failure to mitigate. There has
11 already been testimony in this case that, you know, this has
12 caused them to become poverty stricken. And if they bring
13 that up, and I'm not saying they will, but if they bring that
14 up, we are certainly entitled to bring in evidence of the
15 fact that they could have gone back to the United Kingdom to
16 get whatever medical care they needed without having to incur
17 over a million dollars in charges here in the United States.
18 So that does go to failure to mitigate, and there is case law
19 that says once you've opened that door and cried poverty, the
20 fact that you had a collateral source of benefits to help pay
21 for your medical care does become relevant and admissible.

22 Even beyond that, though, there are medical
23 records from the Center for Neuro Skills, which is a
24 in-patient facility that Mr. Cox attended in California.
25 Among those records are phone calls from his wife complaining

1 about the delay and why haven't you seen my husband yet and
2 why haven't you taken his case? Well, if they come into
3 court and then complain that, well, we couldn't get our
4 medical care here in the United States fast enough, they
5 wouldn't take us in California fast enough, we should be
6 allowed to put in evidence of the fact that, well, you had
7 the opportunity to get the care you needed back in -- in the
8 United Kingdom.

9 And our expert has looked through all of the
10 medical records and has determined that all of the medical
11 care Mr. Cox has received would have been provided free of
12 charge back in the United Kingdom.

13 And finally to the extent that they argue there
14 was some unavailability of treatment, well, he needs to get
15 this treatment, but he's not been able to, because he doesn't
16 have the money or he doesn't have a doctor here that will
17 refer those things. Again, that goes to rebuttal testimony
18 that we should have an expert be able to come in and say, You
19 could have gone and got this medical care. So it goes to a
20 rebuttal -- a rebuttal to an argument on damages and a
21 failure to mitigate damages. So that's where we are on the
22 National Health System stuff.

23 On the future care matters, like I said, I don't
24 think it's really an issue, because they don't have any
25 future care numbers to be able to present to the jury on past

1 medical damages, it does go to the failure to mitigate.

2 THE COURT: Okay.

3 MR. RUSSELL: Thank you.

4 MR. DEUTSCH: Your Honor, a couple of things that
5 are -- that were inaccurate there. First of all, there's no
6 rule anywhere that requires someone to go -- if they're
7 injured and they say you could go to this doctor, whether
8 it's Medicaid or Medicare or the National Health System that
9 said that I have to go to the free doctor. I might, if I get
10 injured as a result of their negligence and I want to go see
11 the best guy in the field to do my surgery, I'm entitled to
12 go to that guy. And if I incur costs as a result of it, they
13 should have to pay for it. They don't get a benefit because
14 I could have gone to a worse doctor for free. So that's with
15 respect to the past damages.

16 With respect to Dr. Oliveri, the only ruling
17 that Your Honor made was that Dr. Oliveri couldn't offer any
18 cost with respect to London. There was no ruling about him
19 being able to give costs of the stuff that he testified --
20 he -- his report already talks about the future care that he
21 needs, and the cost of those with respect to the American
22 system. So I don't think the -- the London issue has any
23 bearing on either the past costs or the future costs, because
24 there's no rule that requires someone to go to the -- the
25 free doctor instead of the best doctor.

1 THE COURT: All right. I'm going to grant the
2 motion subject to the door being opened on -- based on what
3 the plaintiff presents.

4 MR. RUSSELL: Well, I -- I do have --

5 THE COURT: Because you've -- you've characterized
6 this as being your right to rebut.

7 MR. RUSSELL: I -- I --

8 THE COURT: Let's see what -- if there's anything to
9 rebut as presented by the plaintiff.

10 MR. RUSSELL: I -- I agree with that on the past
11 damages. But I'm a little concerned about what I just heard,
12 that Dr. Oliveri's going to come into trial and testify
13 about --

14 THE COURT: Well --

15 MR. RUSSELL: -- the cost of American damages.
16 Because that's not what his report says. His report says, As
17 a life care planner, I have to use the numbers --

18 THE COURT: Okay.

19 MR. RUSSELL: -- of where the person lives.

20 THE COURT: All right.

21 MR. RUSSELL: And he's already -- he's -- he's
22 way -- you know, he's already taken his American numbers out.

23 THE COURT: Okay. Well, thanks for the -- the heads
24 up on that.

25 MR. RUSSELL: Yeah, so --

1 THE COURT: But I think my -- my ruling on -- in the
2 context of this motion --

3 MR. RUSSELL: Of the past.

4 THE COURT: -- stands. It's granted. But if the
5 door's opened, it may very well be something that you can
6 explore. Okay?

7 MR. RUSSELL: Thank you, Your Honor.

8 THE COURT: What's the next one?

9 MR. DEUTSCH: Our motion, Your Honor, to preclude
10 them -- there's an issue with respect to emotional damages in
11 the case, depression. And there's no dispute that -- that
12 Mr. Cox did have a history of some depression. And,
13 obviously, we're going to conceded that.

14 Our only piece about that is that -- that
15 there's some discussion about the fact when he was 17, 40-50
16 years ago, that he -- he tried to commit suicide. And -- and
17 we believe that that is -- is way too remote to be relevant
18 here. And, obviously, we -- we'd like that precluded. We
19 think it's prejudicial. There's no dispute that within a
20 couple of years before this accident, that he had treated for
21 some depression. We're going to concede that.

22 We're just talking about something as remote as
23 when he was a child, we think it's prejudicial and -- and has
24 no real probative value. Considering that from that point up
25 until close to the accident, where there's no argument, he

1 didn't have any issues. So I think it's -- it's too remote,
2 it's prejudicial, and has no probative value. And they
3 should not be allowed to argue or discuss the fact that --
4 that he has this issue where he tried to commit suicide when
5 he was a teenager.

6 THE COURT: All right.

7 MR. FREEMAN: Again, this is No. 1 on the omnibus
8 motion. I think the way the -- the motion is written is it's
9 asking for a blanket order on all prior and subsequent
10 accidents, injuries, or medical conditions. Again, that's --
11 that's far too broad. There is a history of depression and
12 anxiety that carries some significance as far as Plaintiff's
13 mental condition, how he presented to Defendant experts on --
14 at the IMEs. It also goes to their alleged damages.

15 So, you know, in the proper context, this
16 evidence can be relevant and admissible as far as it goes to
17 causation or a possible alternate explanations as to his
18 condition and -- and injuries. You know, maybe something as
19 remote as a suicide attempt back when he was 17 might not be,
20 but we know months before, he spoke to mental health
21 providers about suicidal thoughts and -- and, you know,
22 where -- where he was on that.

23 And so there's a big, broad history when you're
24 talking about generally his prior -- his prior conditions and
25 injuries or accidents. So again, this is something that

1 should be brought up, depending on the context, should be
2 ruled when it's -- the specific --

3 THE COURT: Okay.

4 MR. FREEMAN: -- subject comes up.

5 THE COURT: All right. Thanks.

6 Counsel?

7 MR. DEUTSCH: Your Honor, if I may. I think what he
8 said is exactly right. He agrees with me completely. The
9 motion itself might have been broad. I'm here today to limit
10 it. There's no dispute. He just said the stuff that
11 happened within the year or two prior, there's no argument
12 about it. They could bring it up, we'll bring it.

13 I'm talking specifically about the stuff when he
14 was 17. He just conceded that that was too remote and that's
15 really the only part of the motion that -- that we're looking
16 to keep out.

17 THE COURT: Counsel, did you hear what was said just
18 now?

19 MR. FREEMAN: Well, I don't think there was -- we --
20 we agreed with him. We basically said it depends on the
21 situation --

22 THE COURT: That's what I understood him to say.

23 MR. FREEMAN: -- as they come up in the context of
24 it depends on the witness and the evidence and -- there's too
25 many factors to decide right now whether a particular thing

1 is excluded or not.

2 MR. DEUTSCH: Your Honor, my issue is I'm trying to
3 limit it to a very specific thing. There's no doubt that my
4 client had some history of depression. There's -- it's in
5 the records all over the place. We can't hide it. We're
6 going to talk about it.

7 I'm talking about just precluding the fact that
8 he tried to commit suicide when he was 17. Mr. Freeman just
9 got up here and said, I agree that that's kind of remote. So
10 I don't think that that has any relevance. I think it's
11 prejudicial and it has no bearing in the case. If they want
12 to talk about his depression within the three, four, five
13 years before this accident, go ahead. We're going to talk
14 about it, too. So it's -- it's an exacerbation with respect
15 to those symptoms; they're entitled to talk about it. I'm
16 just talking about the suicide. That's all.

17 MR. FREEMAN: Well, and I believe there were three
18 separate suicide attempts. And as -- as remote as it is, I
19 only meant that in the context that it happened when he
20 was 17 years old. As far as a medical context, it could be
21 very relevant.

22 So again, it depends on what exact incident or
23 condition or injury are we talking about and in what context.
24 It's -- it's far too broad of a -- of a motion just to say
25 it's granted, all prior conditions and injuries.

1 MR. DEUTSCH: Judge, I'm -- respectfully, I thought
2 I made myself pretty clear. I'm not asking for all prior.
3 I'm asking for as narrow a border as -- as the Court could
4 potentially give, which is that the issue with respect to his
5 attempts at suicide when he was a teenager should be out of
6 the case, because it's way too remote and has no bearing.
7 That's it. Very narrow, nothing broad about it at all.

8 MR. FREEMAN: And -- and although it is remote, it
9 could account for the changes that were seen in the brain
10 MRI, the reasons for the conditions in the brain MRI could
11 have been these past suicide attempts.

12 MR. DEUTSCH: No experts --

13 MR. FREEMAN: No medical expert, but --

14 MR. DEUTSCH: No -- no expert of the defendants even
15 remotely tries to talk --

16 THE COURT: So what you're saying, as I understand
17 it, is that you're narrowing your motion to just these two
18 suicide attempts --

19 MR. DEUTSCH: That's it.

20 THE COURT: -- right?

21 MR. DEUTSCH: They're entitled to talk about his --

22 THE COURT: Because the motion was much broader than
23 that originally, I think.

24 MR. DEUTSCH: I -- I agree. I agree, Your Honor.

25 THE COURT: Okay. All right.

1 MR. DEUTSCH: And -- and I'm narrowing it because --

2 THE COURT: Okay. Narrowed down, the motion is
3 granted on the two suicide attempts --

4 MR. DEUTSCH: When he was a teenager.

5 THE COURT: -- unless the door is opened in the
6 context of what's presented by the plaintiff.

7 MR. DEUTSCH: That's all we're asking.

8 MR. CALL: Your Honor, may I jump in for a second on
9 this? I disagree with the Court's ruling on this. It -- the
10 suicide attempts are pertinent to this. First of all,
11 because of the depression, it shows how serious the ongoing
12 depression since he was a young man.

13 Second of all, Dr. Lewis also opined in his
14 deposition ischemic changes could be caused by strangulation.
15 He tried to hang himself once, he tried to drown himself
16 once. There was white matter changes on the brain MRIs,
17 which could be tied to his prior suicide attempts.

18 So I do -- I think they are relevant and that
19 the jury should be allowed to hear the --

20 THE COURT: Can you not get into those conditions
21 without attributing them to suicide attempts?

22 MR. CALL: Pardon?

23 THE COURT: I mean, if they exist, so -- so that's
24 part of the evidence, right?

25 MR. CALL: That's --

1 THE COURT: But do you have to attribute them to
2 suicide attempts?

3 MR. CALL: Well, they were ischemic changes. That
4 means he was cut off, again, with The blood to the brain for
5 a short period of time, which could be addressed to the white
6 matter changes within the MRI. They're saying that the white
7 matter changes to the MRI were the result of this fall.
8 We're going to say that it was probably the result of other
9 things that happened.

10 THE COURT: But you don't have to say it was suicide
11 attempt. It's just -- say it preexisted. Right?

12 MR. CALL: Well, I think you have to show that the
13 suicide -- that his depression, which is going to go to the
14 symptoms alleged on the TBI, are related to his severe
15 depression, which is shown also by the suicide attempts.

16 THE COURT: Okay.

17 MR. RUSSELL: And -- and the -- and the
18 neuropsychological and neurologic defense experts both talk
19 about his history of depression going back to his teenage
20 years as being, you know, as being relevant to and important
21 to their diagnosis as to what his current state is.

22 So they do go back that far into his broad
23 psychological history in their testing and in their analysis.
24 And those reports have been out there for a while, Plaintiffs
25 know that those opinions are --

1 THE COURT: So in other words, the fact of suicide
2 attempts is germane to the condition?

3 MR. RUSSELL: Their analysis. Correct.

4 MR. DEUTSCH: Your Honor, it is -- to -- to suggest
5 that a 60-year-old person's suicide attempt when he was a
6 teenager, and then had no problems until recently before this
7 accident, is -- is -- it's crazy.

8 THE COURT: Well, I don't know what --

9 MR. DEUTSCH: It's just there's --

10 THE COURT: I don't know whether it is or not, but
11 I'm being asked to -- I'm not -- I'm not a doctor. Okay. I
12 don't know. I'm going to -- I'm going to -- I'll rescind my
13 prior ruling. I'll deny the motion without prejudice to
14 objections and context of the case. And in doing so, I'm not
15 requiring you now to narrow your -- your motion as it was.
16 As far as I'm concerned, all the things are on the table and
17 I'll entertain any objections that are made to evidence as
18 it's adduced. Or as efforts are made to adduce them. Okay.

19 So what's the next?

20 MR. DEUTSCH: Your Honor, there was an issue, and
21 unfortunately in my notes I didn't argue what number they
22 are, so I apologize. But there was an issue with respect to
23 Minh Cox, his wife, had filed a claim for disability at some
24 point in her life. And we anticipated the defendants wanting
25 to raise that in some suggestion that they're litigious

1 people or something else.

2 THE COURT: She's got a -- she's got a claim for
3 loss of consortium.

4 MR. DEUTSCH: Number 15. She has a loss of
5 consortium claim. But that has no bearing on the fact that
6 she hurt her back a couple of years ago at work and filed a
7 disability claim, which is what it was. So I don't see what
8 relevance that has in this case at all. And it -- it should
9 be precluded, Judge.

10 THE COURT: Okay. Anybody want to address that?

11 MR. CALL: Your Honor, the extent of her disability
12 is germane to this, especially for the loss of consortium
13 claim. You've got a loss of society as far as, you know,
14 sexual relationships, her ability to perform different tasks
15 together, you know, enjoy each other's life.

16 Regarding whether she was disabled or not I
17 think ties right into that. What were they doing prior to
18 this? How did her disability affect that? And how did it
19 change after Mr. Cox's alleged injuries? So I think it is
20 germane to, you know, what we're looking at.

21 As far as, you know, delving, you know, drilling
22 down deep into her disabilities, I don't think we have to.
23 However, I think it is relative to show -- to contrast what
24 she was able to do before, what she was able to do afterward,
25 and how that impacted their relationship.

1 THE COURT: But the -- the motion seems to go to
2 disability/wrongful termination action. What does that have
3 to do with anything?

4 MR. CALL: The wrongful termination action is
5 relevant to Mr. Cox's wrongful termination.

6 MR. DEUTSCH: No, it was Minh Cox's wrongful
7 termination.

8 MR. RUSSELL: No. It was his against the --

9 MR. CALL: No.

10 MR. RUSSELL: -- the Box Club [phonetic].

11 MR. DEUTSCH: Oh. Right.

12 MR. CALL: So Mr. Cox was essentially terminated
13 from his prior employment. Right after that, he also had an
14 exacerbation of his depression. And -- and that really
15 impacted his life after that. He was very intimately
16 involved with trying to show that he was wrongfully
17 terminated. In fact, during the termination phase of the
18 case, he had -- it was denied, his termination appeal,
19 because he had failed to tell his employer that he was
20 disabled because of his mental health issues.

21 So I think that is germane to what happened here
22 and whether he was able to continue and how that affected his
23 depression after his termination from the club.

24 THE COURT: Well, I thought Mrs. Cox had a prior --

25 MR. CALL: She did.

1 THE COURT: -- disability/wrongful termination
2 claim. Mrs. Cox's prior disability/wrongful termination
3 claim is what's referenced in the motion.

4 MR. DEUTSCH: Yes.

5 THE COURT: Her claim.

6 MR. CALL: Okay. So we're -- you're not opposing
7 bringing in Mr. Cox's termination from the Box Club?

8 MR. DEUTSCH: I don't --

9 MR. CALL: That's how I understood them.

10 MR. DEUTSCH: Well, I don't think -- they're
11 entitled to talk about Mr. and Mrs. Cox's -- things that they
12 could do beforehand, things they couldn't do beforehand,
13 things that they did together, all of that, without the
14 necessity of talking about the legal claims that were filed.
15 Those have no bearing on anything other than to try to smear
16 their character and make it seem as if they're litigious
17 people. And that doesn't really have any bearing here.

18 So if they want to talk about the things that
19 Ms. Cox -- Ms. Cox, what did you used to do beforehand?
20 Isn't it true that you didn't really do much beforehand?
21 They're free to do that. But to say you filed a lawsuit
22 about it is irrelevant.

23 THE COURT: All right. I agree. Motion's granted,
24 unless the door's opened to get into why there were certain
25 conditions or whatever.

1 MR. RUSSELL: On the disability claim.

2 THE COURT: Okay?

3 MR. CALL: Okay.

4 THE COURT: So how what's the next one?

5 MR. DEUTSCH: The next one I have here I think I
6 might have spoken about. But I would ask the Court for --
7 for a clarification on this issue with respect to the safety
8 of the illusion. Our -- one of our concerns, Your Honor, is
9 that they're going to come in here in opening statements,
10 before any evidence gets put on, and they're going to say,
11 ladies and gentlemen, you're going to hear --

12 THE COURT: Well, okay. Opening statement, you're
13 telling the jury what the evidence is going to show. Maybe
14 it won't show that. They'll have to live with that if -- if
15 it doesn't.

16 MR. DEUTSCH: Except, Your Honor, we -- we think
17 that -- that based upon the case law, that is irrelevant.
18 The fact that nobody has gotten hurt on this illusion
19 before --

20 THE COURT: It has to do with foreseeability,
21 doesn't it?

22 MR. DEUTSCH: But there's no --

23 THE COURT: The context of what happened?

24 MR. DEUTSCH: But there's no -- it -- it doesn't
25 have to do with foreseeability, Your Honor, for a couple of

1 reasons. One, because this is not like a products liability
2 case where we're saying this chair is the same every time.
3 This is an argument, Your Honor, where every night that they
4 do this trick --

5 THE COURT: Sounds to me like you've got great
6 cross-examination. But I -- I don't agree with you on the
7 other. I think it's --

8 MR. DEUTSCH: Your Honor, if it was a motor vehicle
9 case and I came in here and try to argue --

10 THE COURT: We've been running this thing for 10
11 years and nobody's ever had a problem until now. Okay.

12 MR. DEUTSCH: But we --

13 THE COURT: I mean --

14 MR. DEUTSCH: But we know that that's not true.

15 THE COURT: Well --

16 MR. DEUTSCH: We know that, A. And B --

17 THE COURT: Cross-examination.

18 MR. DEUTSCH: But I can't do -- other than the fact
19 that we have testimony from two witnesses that say that
20 they're aware of someone who fell --

21 THE COURT: Uh-huh.

22 MR. DEUTSCH: -- what other investigation or
23 discovery can I do to be able to legitimately cross-examine a
24 claim such as that?

25 THE COURT: It -- it seems to me to be something

1 that they can proceed with, and you've got -- it goes to
2 weight of the evidence, it doesn't go to the admissibility of
3 the concept that this has endured for some period of time
4 without something like this ever happening.

5 MR. DEUTSCH: But this is not something that
6 endured. This night that they did the trick, just like it --

7 THE COURT: You know, I really have to move on.
8 I've made my ruling on it. Okay.

9 So let's go to the next motion.

10 MR. DEUTSCH: I think that's all the plaintiffs have
11 in their omnibus motion. There was an issue with respect to
12 Gavin Cox being a malingerer. I'll withdraw that part of
13 the -- the motion. If they want to argue --

14 THE COURT: And keep in mind on the last one we were
15 talking about -- I hate to open up Pandora's box, but the
16 point is I have said you can object in context. If -- if
17 there's something that is being improper in your mind,
18 object.

19 MR. DEUTSCH: Okay.

20 THE COURT: And I'll -- I'll determine at that time.

21 MR. DEUTSCH: Okay.

22 THE COURT: And I would, I guess, caution defense in
23 their opening statements to anticipate that there may be
24 objections that may be sustained. Okay.

25 MR. DEUTSCH: Fair enough, Judge.

1 And so the only other one I think that was the
2 issue with respect to whether he's a malingerer, that's their
3 defense. Let them argue it all they want.

4 THE COURT: Okay.

5 MR. DEUTSCH: I think that was all I had, Judge.

6 MR. CALL: I think you were withdrawing your motion
7 on Dr. Ayers [phonetic]?

8 MR. DEUTSCH: That was your motion.

9 MR. RUSSELL: That was our motion. He's -- he's not
10 going to call Dr. Ayers.

11 MR. DEUTSCH: Right. They had made a motion with
12 respect to precluding Dr. Ayers, which I don't know whose
13 motion or what number it was.

14 MR. RUSSELL: It was our number -- No. 2.

15 MR. DEUTSCH: Number 2.

16 MR. FREEMAN: As far as -- as far as Plaintiff's
17 motions, you're -- you're done, right?

18 MR. DEUTSCH: That's all I got for now.

19 MR. FREEMAN: And -- and I think of those 22, we
20 obviously didn't go through 22 motions today. But -- but a
21 great number of those were covered in a stip and order that
22 we filed. And I would just say that, as far as the others
23 that weren't argued, that those would be denied.

24 MR. DEUTSCH: My request, Your Honor, is that --
25 that I think that the -- the real -- instead of just denying

1 them, that they should be denied in the same context that you
2 denied the other one, which is that there are things that we
3 could deal with at trial as they come up. I don't think
4 there are things they necessarily --

5 THE COURT: Right.

6 MR. DEUTSCH: -- need to be dealt with today.

7 THE COURT: Without prejudice to objections.

8 MR. FREEMAN: Exactly. Okay.

9 MR. DEUTSCH: Yeah. Okay.

10 THE COURT: Okay. Now, so who'll submit the order
11 on the one -- on the -- should I have separate orders on each
12 one of those motions that I heard today or?

13 MR. RUSSELL: Those were all part of the omnibus
14 motion, Your Honor. So I guess the plaintiff motion, maybe
15 they need to do a single order --

16 MR. DEUTSCH: Yeah, we'll -- we could --

17 THE COURT: Will you do the --

18 MR. DEUTSCH: We'll -- we'll do an order, Judge.

19 THE COURT: You want that?

20 MR. DEUTSCH: And we'll circulate it.

21 THE COURT: Run it by counsel? Okay.

22 MR. DEUTSCH: Yeah.

23 THE COURT: So now it's 10:15. The thought occurs
24 to me that maybe I could interrupt this case and take a
25 prove-up that I've got real quick. Is there any problem with

1 that?

2 MR. FREEMAN: No, no problem. I don't think so.

3 THE COURT: Because then I can hear the defense
4 motion.

5 MR. DEUTSCH: We're going to be back here this
6 afternoon, anyway, Judge. So.

7 THE COURT: Yeah.

8 MR. FREEMAN: And I think there's four -- or, no,
9 three remaining -- three remaining motions. But one is not
10 going to be -- need to be heard. So.

11 MS. FRESCH: Just two.

12 THE COURT: How long do you think it's going to take
13 me to hear these?

14 MS. FRESCH: For the two?

15 MR. FREEMAN: I think it'll be pretty quick. We
16 talked about these outside --

17 MR. DEUTSCH: I think it'll be pretty quick. Yeah.
18 I think --

19 MR. FREEMAN: -- as well.

20 [Court recessed at 10:15 a.m., until 10:16 a.m.]

21 THE COURT: Now I'm going to be addressing the
22 defendants' Motion in Limine, right?

23 MR. FREEMAN: Defendant's Motion in Limine No. 2
24 regarding preclusion of financial condition and wealth.
25 It's -- kind of goes two different ways. And in the

1 opposition, Plaintiffs admitted that comments or references
2 to Defendant's wealth or their financial condition would be
3 irrelevant and prejudicial. So in that respect, this motion
4 would be granted.

5 But there's another part of it and it's that it
6 appears that Plaintiffs plan to present evidence that they've
7 been financially impaired because of this case and because of
8 this incident above and beyond presenting their case and --
9 and alleged damages. There were -- there were comments of we
10 were forced to move to the United States, we're held hostage
11 here, we're trapped here, we're destitute, this case has
12 caused us to be financially ruined. And these are all
13 improper appeals to -- to the jury.

14 It's well settled in Nevada that an appeal to
15 economic prejudices to the -- excuse me, that the appeal to
16 the economic prejudices of the jury are improper and it's
17 misconduct. We've already seen the plaintiffs, what they've
18 said to the UK tabloid media. We're concerned that
19 Plaintiffs are going to try to turn this courtroom into TMZ
20 with these type of comments and, you know, like I said, the
21 held hostage, you know, they're -- they're forcing us to stay
22 here, that kind of stuff.

23 MR. DEUTSCH: We're not going to do it, Your Honor.
24 We spoke -- we spoke about it outside. I took Mr. Freeman
25 outside while you were doing other cases, we discussed this,

1 we told them that we were going to do it and that there was
2 no reason to even argue the motion. So I'm somewhat
3 perplexed by the fact that we're listening as he's arguing
4 the motion.

5 THE COURT: This has to do with the defendants'
6 wealth aspect of it. You're not going to be arguing about
7 the defendants' --

8 MR. DEUTSCH: Don't think I need to tell anyone I
9 North Las Vegas how rich David Copperfield is, Your Honor.

10 THE COURT: Well, I don't know.

11 MR. FREEMAN: And we did talk about it outside. But
12 I wanted to make sure our conversation was -- was officially
13 on the record and that we wouldn't revisit this later on
14 saying, But there was a conversation outside. So.

15 THE COURT: So what do I do? Do I --

16 MR. DEUTSCH: Your Honor --

17 MR. FREEMAN: Well, I think they've admitted that
18 both parts of the motion, they're not going to bring up the
19 wealth of David Copperfield and they're also not going to
20 bring up the lack of wealth or --

21 THE COURT: So you're saying the motion's moot based
22 on that or do I need to rule on it?

23 MS. FRESCH: Go ahead.

24 MR. DEUTSCH: Your Honor, I think that the -- if I
25 may, Your Honor, I think that all of these motions are better

1 left till --

2 THE COURT: Well, let me hear each one so I know
3 what you're talking about. Okay. I'm hearing this one now
4 having to do with excluding reference to defendants'
5 financial condition and wealth, right? That's the one I --

6 MR. FREEMAN: That's the one part of it. And by
7 their opposition, they basically said we're not going to do
8 it, we agree it's prejudicial.

9 THE COURT: So is it moot?

10 MR. FREEMAN: Well, and I think the -- it is,
11 according to them, but I think it should be granted.

12 THE COURT: Okay. The record will so reflect.

13 MR. FREEMAN: It's, basically, unopposed as far as
14 that is concerned.

15 THE COURT: Okay. The record will reflect that it's
16 moot based on the plaintiff's statement that they will not be
17 alluding or referencing Defendants' financial condition and
18 wealth. Okay?

19 MR. FREEMAN: Well, then there's the second part of
20 the motion --

21 THE COURT: Which has to do with the plaintiffs' --

22 MR. FREEMAN: The plaintiffs, yes.

23 THE COURT: -- condition.

24 MR. FREEMAN: Their side. Their -- their basic
25 financial impairment and lack of wealth. And it's due to,

1 you know, above and beyond just proving their -- their
2 damages. These outrageous comments of, you know, we were
3 held hostage here. And again, they said they're not going to
4 do it, so based on that, I think that's unopposed motion, as
5 well, and should be granted in its entirety.

6 THE COURT: Or is it moot?

7 MR. DEUTSCH: Your Honor, my -- my clients are going
8 to discuss the fact that this accident changed their lives --

9 THE COURT: Okay.

10 MR. DEUTSCH: -- significantly.

11 THE COURT: The motion -- that aspect of the
12 motion's denied without prejudice to objections and context.
13 Okay?

14 MR. FREEMAN: Okay. There's another one, No. 4, and
15 this goes to precluding inflammatory arguments and questions
16 and responsibility avoidance arguments. Specifically, in
17 deposition, Plaintiffs' counsel asked a lot of irrelevant and
18 harassing questions to Mr. Copperfield. They twisted prior
19 public statements, they took them out of context, and had no
20 relevance other than to harass and embarrass Mr. Copperfield.

21 They asked him, you know, is he the best ever,
22 is he the best magician in the world, did he think he's
23 better than Jesus Christ; stuff like that is -- is completely
24 irrelevant. Again, it's -- it's, you know, it -- now, the
25 questions originally came through -- I talked about TMZ

1 before, I think these were those type of TMZ
2 walking-the-red-carpet kind of -- kind of questions.
3 They're -- you know, while they may be funny for reality
4 television, they're inappropriate in -- in the courtroom.

5 They have, you know, they -- they -- not only do
6 they have not any relevancy, but I think it -- they're trying
7 to show David Copperfield is egotistical, arrogant,
8 religiously insensitive, even blasphemous. These type of
9 questions are -- are just not appropriate.

10 As far as the responsibility avoidance
11 arguments, Defendants have a fundamental right to defend
12 themselves; to -- they have the right to confront witnesses
13 against them; they have a right to present their defenses in
14 their case.

15 You know, Plaintiffs start off with the
16 conclusion that it's already been established that Defendants
17 have breached their duty and now they're failing to accept
18 responsibility for that. They have, you know, they have -- I
19 could go in going back to keeping us hostage here, you know,
20 how did they have the audacity to -- to take this to court,
21 why aren't they accepting responsibility for what they did.
22 And -- and those type of arguments are improper. Thank you.

23 THE COURT: Thank you.

24 MR. DEUTSCH: Your Honor, the stuff -- the -- the
25 initial part of that motion, with respect to comments made by

1 David Copperfield, there's lots of comments that he's made in
2 the past that are relevant towards his credibility, towards
3 his demeanor on the witness stand, and they're all fair game.
4 If there's a question that's asked at trial that Your Honor
5 feels is inappropriate, they can object to it. A blanket
6 ruling about all questions on cross-examination seems a
7 little bit much at this point.

8 I don't quite understand what the second part of
9 his motion is about. Your Honor's already bifurcated the
10 case. If we get to a damages phase in the trial, we're
11 entitled to tell the jury that they've already been found
12 responsible for this accident. And I don't know if that
13 would be encompassed in what they're seeking to preclude,
14 because I don't think it's very clear.

15 I think every plaintiff in every case is
16 entitled to say we think they have a responsibility here that
17 they're not living up to. And I think we intend to do that
18 here. So -- but I don't think that's out of the ordinary of
19 any case. We believe they had a duty. They're not taking
20 responsibility for what they had a responsibility to do. As
21 a result, my client suffered and we're here in court. I
22 don't think that there's anything wrong with that, Your
23 Honor.

24 THE COURT: Anything else?

25 MR. FREEMAN: Well, just again, that really pertains

1 to those type of comments about being held hostage here
2 and -- and forced to be here, which, as part of the other
3 motion, they've agreed that they're not planning to bring
4 that up. So --

5 MR. DEUTSCH: In -- in terms of a this phrase held
6 hostage here, we had a discussion, we did it in the pre-trial
7 stipulation that any issues with respect to my client's
8 immigration status or any of that, that they would agree that
9 that has no bearing in it, and as a result, we're not going
10 to argue in any way that they're here solely because of the
11 defendant's fault.

12 We're going to argue, and I -- I tried to make
13 this clear outside with everyone, that this accident affected
14 their life, it disrupted their life, it caused them to have
15 to lose their business and -- and disrupt them in terms of
16 their kids. But I don't think anyone's going to say they
17 were held hostage here. So --

18 THE COURT: All right. Motion's denied without
19 prejudice to objections. Okay.

20 Anything else?

21 MR. DEUTSCH: There was the Dr. Ayers motion, but we
22 agreed, Your Honor --

23 THE COURT: Okay.

24 MR. DEUTSCH: -- not to call Dr. Ayers.

25 MR. RUSSELL: Yeah. So our -- yeah, Backstage's

1 Motion No. 2 is withdrawn based on Plaintiffs' counsel's
2 agreed that he's not going to call Dr. Ayers.

3 THE COURT: Okay. Very well. And we have a pre-
4 trial conference this afternoon, right?

5 MR. FREEMAN: And then there was one other one, but
6 I don't think it's a big deal, it was No. 5, about
7 prescreening demonstrative evidence. Really, the point of
8 that was you can't -- you can't unring the bell. And if
9 incomplete evidence is brought in front of the jury, that
10 could be a mistrial here and, you know, we're not asking to
11 see Plaintiffs' entire opening statement, but if they have
12 some sort of some demonstrative evidence that they -- we have
13 a prescreening outside of the jury, just -- again, so --

14 THE COURT: That sounds reasonable.

15 MR. DEUTSCH: Whatever demonstratives we're going to
16 use, we'll show them to them before we bring them out.

17 THE COURT: Okay. That works.

18 MR. DEUTSCH: And we ask for the same courtesy --

19 THE COURT: Okay.

20 MR. DEUTSCH: -- the other way around.

21 THE COURT: Yes.

22 MR. FREEMAN: It goes both ways.

23 THE COURT: Okay. Very well. So ordered.

24 So now I need an order on the defense motions.
25 Who will do that?

1 MR. FREEMAN: I'll prepare that, Your Honor.

2 THE COURT: Okay. Thank you. I'll see you this
3 afternoon at 1:30?

4 MS. FRESCH: Yes.

5 THE COURT: Okay. How many people -- will everybody
6 who's here be there?

7 MS. FRESCH: Yes.

8 THE COURT: Okay. So I have to anticipate -- I may
9 have -- I may have it in the jury room if -- if I can't get
10 everybody into chambers. I may not be able to get everyone
11 in chambers. Okay.

12 MS. FRESCH: Okay.

13 THE COURT: Okay. Thank you.

14 MS. FRESCH: Thank you, Your Honor.

15 MR. DEUTSCH: Thank you, Your Honor.

16 THE COURT: If you'll come into the courtroom first,
17 I think you're the first ones on the list, I think.

18 MS. FRESCH: Yes. We -- we are listed for 1:30.

19 THE COURT: Okay. Thank you.

20 MS. FRESCH: Thank you, Your Honor.

21 MR. DEUTSCH: Thank you, Your Honor.

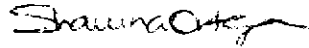
22 [Court recessed at 10:28 a.m.]

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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled
3 case to the best of my ability.

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7 Shawna Ortega, CET*562

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

GAVIN COX,

Plaintiff(s),

vs.

MGM GRAND HOTEL LLC,

Defendant(s).

Case No. A-14-705164-C

DEPT. XIII

BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

THURSDAY, MARCH 29, 2018

**TRANSCRIPT OF PROCEEDINGS RE:
PRETRIAL CONFERENCE**

(APPEARANCES on page 2.)

RECORDED BY: JENNIFER GEROLD, COURT RECORDER

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APPEARANCES:

For the Plaintiff(s):

ADAM E. DEUTSCH, ESQ.
(Appearing telephonically)
CHRISTIAN N. GRIFFIN, ESQ.
PERRY S. FALICK, ESQ.
(Appearing telephonically)

**For the Defendant and
Cross-Defendant,
Team Construction
Management, Inc.;**
**and for Third-Party Defendant,
Beacher's LV LLC:**

GARY W. CALL, ESQ.
ROGER W. STRASSBURG, ESQ.

**For the Defendants and
Cross-Claimants,
David Copperfield's
Disappearing, Inc.,
and David Copperfield;**
**and for the Defendants,
Cross-Claimants, and Third
Party Plaintiffs,
MGM Grand Hotel LLC:**

ERIC O. FREEMAN, ESQ.
ELAINE K. FRESCH, ESQ.
JERRY POPOVICH, ESQ.
(Appearing pro hac vice)

**For the Defendant,
Backstage Employment
and Referral, Inc.:**

D. LEE ROBERTS, JR., ESQ.
HOWARD J. RUSSELL, ESQ.

1 **LAS VEGAS, NEVADA, THURSDAY, MARCH 29, 2018**

2 [Case called at 10:37 a.m.]

3
4 THE COURT: In a few minutes I'll be summoning counsel into
5 chambers relative to the *Cox vs. MGM* case. Okay.

6 [Off the record at 10:37 a.m. until 10:44 a.m.]

7 THE COURT: All right. This is not a hearing, it's a
8 conference. Okay. Usually I do these pretrial meetings before the
9 commencement of a jury trial in chambers, but given the number of
10 people who are here and given some of the issues involved here in the
11 proceeding, I decided to come out into the courtroom.

12 The recorder is going to, as I understand it, record this. But
13 not because it's a hearing, but because it's -- to do minutes, the clerk is
14 going to, you know, may have some questions about what we discuss.

15 So do you have everybody's appearance here?

16 THE CLERK: Yes.

17 THE COURT: Okay. Anybody -- if you want to sit somewhere
18 or --

19 MR. CALL: Yeah, we're -- we're back here in the corner, Your
20 Honor.

21 THE COURT: If you want to move over --

22 MR. CALL: So this is going to be --

23 THE COURT: -- wherever you want to be, just so -- so it's --

24 MR. FREEMAN: Do you mind if we tear out this phone?

25 THE COURT: Yeah, I know. That's the --

1 MR. CALL: I know, that's --

2 THE COURT: That's why they call this courtroom 3D. It's
3 got -- okay. All right. Well -- and we've got somebody on the phone.

4 MR. DEUTSCH: Yeah, Judge. Adam Deutsch and Perry
5 Fallick in New York.

6 THE COURT: Okay.

7 MR. DEUTSCH: Good morning.

8 THE COURT: So we're scheduled next week to -- to start
9 trial, right? For purposes of jury selection -- and this case has been
10 bifurcated, so we're going into the liability phase first. And so one thing
11 that we'll want to be prepared for earlier on than would normally be the
12 case will be jury instructions. So we'll want to -- I'm not sure how long
13 the liability phase is going to last. Anybody have anything you want to
14 say about that?

15 MR. DEUTSCH: You know, it's hard to tell, Your Honor.
16 We -- we think it should be rather -- move rather quickly. You know,
17 we're prepared to -- to provide everyone, you know, sooner rather than
18 later, with sort of a pared down witness list from the, you know, zillions of
19 witnesses that were on everyone's witness list initially. We're calling
20 most of the defendant's witnesses and they all should be pretty short,
21 other than a couple. You know, it all depends on how many zillions of
22 witnesses the defendants are planning on calling.

23 THE COURT: Okay. Well, in any event, we're going to be
24 going to the jury with jury instructions after the liability phase is
25 concluded. So we're going to want to keep that in mind. And, of course,

1 most of those -- a lot of those jury instructions will be the stock
2 instructions that we'll be utilizing, and then we'll just indicate that -- that
3 the issue is, you know, what -- what's being presented at that time, that'll
4 be more specific.

5 And then depending on what happens in the liability phase,
6 then we go in -- we may or may not go into a damages phase. And then
7 there'll be subsequent instructions given to the court -- or given by the
8 court if that were to be the case.

9 I think what we -- one thing we need to do, first of all, as far as
10 I'm concerned there are two sides in this case. Okay. We have two
11 sides. I know there are -- I think there are cross-claims or whatever, I
12 don't remember exactly off the top of my head. But there are basically
13 two sides here. So when we're doing the -- let's -- let's identify the --
14 we're going to have 24 people that are going to be seated in the -- in the
15 jury box or in folding chairs in front of it, because there aren't 24 seats
16 there. And then each side will have, let's see -- let's see, what do we
17 have? We've got the -- each side will have four peremptory challenges
18 to the regular jurors. And four peremptory challenges to the -- I'm sorry,
19 two peremptory challenges to the alternate jurors. Okay.

20 So what we need to do at this point is we need to identify who
21 the alternate jurors are going to be. And the way that I do that, I do it by
22 seat, okay, by seat number. All right. So I do it by flipping a coin
23 initially. Whoever wins the coin toss, that side selects the first -- the first
24 alternate seat. Okay. And then I go to the other side to select the next
25 one, then back to the first side, then back to the other side.

1 So let's see here. I think what we're looking at here is who
2 wants to call the -- who -- Bob will do the coin toss, so who wants to call
3 the coin toss?

4 Bob, you have a coin? I've got one.

5 MR. POPOVICH: Oh I have a coin.

6 MR. GRIFFIN: You have a coin? Wow.

7 THE COURT: I've got one.

8 MS. FRESCH: Oh, I have a coin.

9 MR. FREEMAN: There -- there we go.

10 THE COURT: Okay. Who wants to call it? Which side wants
11 to call it? Hold on.

12 MR. GRIFFIN: Call it, Adam.

13 MR. POPOVICH: Call it, Adam.

14 MR. DEUTSCH: All right. We can call it. We're going to go
15 with -- with tails.

16 MR. POPOVICH: You lost.

17 MR. DEUTSCH: Our bad.

18 MR. POPOVICH: It is tails.

19 THE COURT: It is tails? So I think it would be a number
20 from 1 to 12.

21 MR. DEUTSCH: How many alternates are we selecting, Your
22 Honor?

23 THE COURT: You have four alternates. So choose a
24 number -- choose a number from 1 to 12.

25 MR. DEUTSCH: 1 to 12.

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THE COURT: Okay.

MR. DEUTSCH: 8.

THE COURT: Okay. That's the first alternate. Now the other side, choose a number from 1 to 12, except 8.

MR. DEUTSCH: Judge, if I may for a second, just to clarify, so -- so when we -- the jury gets selected and they're put in the box, whoever ends up in that eighth seat is an alternate, is what we're saying here?

THE COURT: That's right.

MR. DEUTSCH: Okay. Gotcha.

THE COURT: And you should have been given -- I'm sorry, I -- you should have given the --

MR. DEUTSCH: I do have the instructions.

THE COURT: Yeah, the process.

MR. DEUTSCH: And I read them a couple of times. But --

THE COURT: Right.

MR. DEUTSCH: -- I wasn't 100 percent clear. But thank you.

THE COURT: Okay. So now we go to the defense side to choose a number from 1 to 12, excluding 8.

MR. POPOVICH: I think we consensused at 7.

THE COURT: 7? Okay. Plaintiff's side again. 1 to 12, excluding 8 and 7.

MR. DEUTSCH: 12.

THE COURT: Okay. Defense side again? 1 to 12, excluding 8, 7, and 12.

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MR. POPOVICH: 11.

THE COURT: Okay. All right. So those will be the alternate seats. I don't identify the alternates until the conclusion of the argument and before the jury goes into deliberation. Okay. So whoever ends up in those seats will be alternate jurors. Okay.

MR. GRIFFIN: And, Your Honor, to clarify --

MR. DEUTSCH: Judge, are the --

MR. GRIFFIN: -- that is the order of the alternates?

THE COURT: Yes. And that's the order. First alternate is 8, second is 7, third is 12, fourth is 11. Okay.

MR. DEUTSCH: And, obviously, I understand why Your Honor does not say anything to them until they go into deliberate. In terms of the bifurcated trial, do those people then remain or are we going to select new alternates or how does that work at that point?

THE COURT: My recollection, you know, that's a good question. My recollection is that they -- that they would remain. But -- but I need to verify that. I think we had a case that was on that point some time ago. But that's my -- that's the presumption that I'm going by is that those alternates would remain. There's no --

MR. DEUTSCH: They would remain and then they would be alternates again on the next phase?

THE COURT: Yes. Unless -- unless there's a need to replace a regular juror. Yeah. Uh-huh.

MR. DEUTSCH: Okay.

THE COURT: Okay? So that takes care of that. How long do

1 you think jury selection's going to take?

2 You know, before I -- before I get to that, why don't we do this,
3 let's make sure we -- we note there are a couple of jurors -- we have two
4 more that have requested an excuse. One is Jason Volts [phonetic]. He
5 sent an e-mail to the court on Monday, the 26th.

6 THE CLERK: Do you know his badge number?

7 THE COURT: His badge number is I think 14, is it?

8 MR. POPOVICH: 614.

9 THE COURT: Oh, I'm -- yeah. Uh-huh. Let's see. 614, that's
10 right. Uh-huh. He says -- let me read this to you and then I'll make this
11 the next court exhibit in order, this particular e-mail. I'll read a portion of
12 it, I'm not going to read the whole thing. The most recent one,
13 March 26th, and he says:

14 Good morning. I'm awaiting feedback from you regarding my
15 request to be excused from jury duty. The court has been moved
16 from March 27th to now, April 3rd. In addition to the issue that I am
17 having with school and the interference this court date will cause me,
18 now with the date changed I am also having an additional issue
19 about the jury duty. I am a guest of honor for a luncheon on
20 April 4th, the day after my required court appearance. If I am
21 chosen to serve for court, I will not be able to attend this important
22 function. I have been patiently waiting a response to my first e-mail
23 since it has been over six days since I had sent the e-mail. The
24 e-mail response that was sent to me said that I will receive a
25 response to my e-mail in 24 to 48 hours based on business levels.

1 So far it has been six days and I have yet to hear any
2 communication regarding my request. Like I said before, I am happy
3 to serve my civic duty, but right now a lengthy court case will disrupt
4 my life and cause a major issue with my education that I am seeking.
5 Thank you for your assistance in this matter. Jason Volts.

6 MR. POPOVICH: Your Honor, Jerry Popovich. When we
7 compare what Mr. Volts said in his hardship request to his actual
8 questionnaire, he's a full-time casino manager. And he's taking one
9 course, which I assume is at night, I don't know that we know that, in
10 order to complete his master's. My thought is if he can work a full-time
11 job, he can come and do jury duty instead of working the full-time job,
12 and he really doesn't have a net change in the time he has available to
13 finish his master's thesis and things he's talking about.

14 I at least wanted to talk to him.

15 THE COURT: Okay. Very well. Anything else?

16 Okay. So at this point he'll be informed that he's expected to
17 come to court on the 3rd and further questioning. Okay.

18 So that's the next court exhibit.

19 Then I've also gotten one this morning from looks like it's
20 Phoebe Carrasco [phonetic].

21 MR. POPOVICH: Badge 717.

22 THE COURT: Okay.

23 MR. DEUTSCH: Number 40? Yeah.

24 THE COURT: She sent something. It's:

25 To whom it may concern, I am requesting for an excusal from

1 jury duty because of traveling on April 8, 2018, to May 9, 2018,
2 going to Philippines. Attached is my itinerary. Hoping for your kind
3 consideration. Respectfully yours, et cetera.

4 And she's provided a copy of a ticket apparently, Korean Air.
5 All right?

6 MR. POPOVICH: For MGM and Copperfield, no objection to
7 releasing.

8 MR. FREEMAN: Same for Backstage, no objection.

9 MR. DEUTSCH: We have no objection, Your Honor, the
10 plaintiff.

11 MR. CALL: Yeah, no objection for the Team, Your Honor.

12 THE COURT: Okay. Very well. Ms. Carrasco will be
13 informed that she is excused from further service in this case.

14 And that this item will be the next court exhibit in order.

15 All right? Okay. Now, having discussed that, I assume what
16 counsel will do is get together and compare notes relative to their
17 thinking about the questionnaires and agree upon -- I mean, you may
18 agree upon excuses for some or whatever.

19 MR. DEUTSCH: We've already started to do that, Your
20 Honor. And have circulated a bunch of names already back and forth,
21 so.

22 THE COURT: Okay. So you'll be working on that. And then
23 the dust will --

24 THE JEA: He was supposed to give it to us today.

25 THE COURT: What's that?

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THE JEA: He was supposed to give it to us today.

THE COURT: Apparently that was supposed to be given to us today. Is that going to happen today?

MR. POPOVICH: Defense circulated eight names on Tuesday by e-mail. And we received this morning from Plaintiffs one, two, three, four, five, six, seven, eight more names. I have not had a chance --

THE COURT: Okay.

MR. POPOVICH: -- to go back and look at the questionnaires of the ones received this morning.

THE COURT: Is tomorrow okay?

MR. CALL: Can -- can we get those to you tomorrow? Okay.

THE COURT: Yeah. Okay.

THE JEA: Let's set a time, please.

THE COURT: Should we do it --

MR. DEUTSCH: That would --

THE COURT: How about by noon tomorrow?

MR. DEUTSCH: -- there's a couple on there --

THE COURT: Is by noon tomorrow okay?

MS. FRESCH: Yes, Your Honor.

MR. POPOVICH: We can get it done.

THE COURT: Okay.

MR. DEUTSCH: There's a couple of them, in order to speed up the process, there's at least one I think that we can all agree on without the need for the questionnaire, Mr. -- Mr. Feiger

1 [phonetic] No. 34, is a construction manager at the MGM.

2 THE COURT: Okay. Well, you can discuss these things
3 among yourselves and --

4 MR. DEUTSCH: Okay.

5 THE COURT: -- whatever -- yeah, we're not going to deal
6 with each one right now.

7 Okay. So that being so, how many is that going to leave? Do
8 counsel -- what have you calculated as to how many that's going to
9 leave in the jury venire?

10 MR. RUSSELL: As of -- as of yesterday, the ones we had
11 agreed on, Your Honor, 11 and I think Mr. Deutsch had, like I said,
12 seven or eight more. So we had a couple that were being circulated. So
13 I think we're probably looking about 20 total, and that includes the four
14 that were gone last week. The four that had already been excused. So
15 I'm including those in that count. So we're -- we're looking at 20 and
16 maybe there'll be a couple of others circulated. So I would think we'd
17 still be left with at least 50 to 55 jurors.

18 THE COURT: Okay. So I think we had discussed doing the
19 voir dire in stages with the prospective jurors because of the time -- or
20 the space constraints that we have here. So I was thinking we maybe
21 bring in 30 at a time, isn't that what we discussed, something like that?

22 MR. POPOVICH: I think that would be fine.

23 THE COURT: Okay. And of course I orient the prospective
24 jurors when they come in and then I allow counsel to commence their
25 voir dire. Do I need to place any time limitations on -- on voir dire? Do

1 you think this is going to go efficiently or?

2 MR. GRIFFIN: I think we're all hoping it goes efficiently.

3 THE COURT: Okay.

4 MR. GRIFFIN: I would expect any time --

5 MR. DEUTSCH: I think we'll be okay, Judge.

6 THE COURT: All right. How long do you think it's going to --

7 MR. DEUTSCH: At least from our perspective, Your Honor,
8 we -- we have the interest of getting done and back home to our families
9 as soon as possible.

10 THE COURT: Okay.

11 MR. POPOVICH: Your Honor, can I just ask a -- a daily trial
12 day question.

13 THE COURT: Uh-huh.

14 MR. POPOVICH: I'm assuming there's a break in the morning
15 and a break in the afternoon.

16 THE COURT: It's --

17 MR. POPOVICH: But how long is the lunch break?

18 THE COURT: It's usually 12:00 to 1:30.

19 MR. POPOVICH: Okay.

20 THE COURT: Now, I do -- thanks for bringing that up.

21 Because I -- I have to adjourn a little bit early on April 6th, Friday,
22 April 6th, about 4:30. Would that be okay?

23 MS. FRESCH: Yes, Your Honor.

24 THE COURT: I have to be someplace at 5:00. Okay. So.

25 MR. DEUTSCH: And what time again, Your Honor, do we

1 start in the morning?

2 THE COURT: We start at 9:00, go till 12:00, then 1:30
3 till 5:00. That's the usual time when -- on our all-day sessions. Okay.

4 MR. DEUTSCH: Yes.

5 THE COURT: And except Friday the 6th, I've got to be out of
6 here at 4:30 to be someplace at 5:00. Also we won't be in session on
7 April -- Thursday, April 19th, and Friday, April 20th. Okay?

8 MR. FREEMAN: Will we be able to go till 5:00 on that
9 Wednesday, or do you need to leave that afternoon?

10 THE COURT: As far as I know we can go till 5:00.

11 MR. FREEMAN: Okay.

12 THE CLERK: I have the calendar. Can you go over the dates
13 with them?

14 THE COURT: Okay. Here's what we have set out so far for
15 the -- for the dates. Start on the 3rd of April, 9:00 to 5:00, with a lunch
16 of 12:00 to 1:30; Wednesday 9:00 to 5:00, again, lunch 12:00 to 1:30;
17 Thursday the 5th, 1:30 until 5:00, because I've got motions on Thursday
18 morning. Now if it turns out on Wednesday the 4th that I could give
19 some time on Thursday the 5th in the morning, I'll let you know and we'll
20 see -- but -- but, I mean, these are the dates and times I'm going to be
21 giving the prospective jurors. So I think that if I -- if I do a different time, I
22 have to make sure that they're on the same page. Okay.

23 So then the 6th, 9:00 to 12:00, and then 1:30 till 4:30. Okay.
24 We're not in session on Monday the 9th. Tuesday the 10th, 9:00
25 to 5:00, same lunch period; Wednesday the 11th, 9:00 to 5:00; Thursday

1 the 12th, 10:00 to 5:00. I apparently can give you some time on
2 Thursday the 12th, because of a short motions calendar. Friday
3 the 13th, that's usually a holiday in Department 13, but --

4 MS. FRESCH: Yeah.

5 MR. POPOVICH: It should be.

6 THE COURT: -- but we're going to --

7 MR. POPOVICH: Yeah, it should be.

8 THE COURT: We'll be in session 9:00 to 5:00. Okay. Let's
9 see. Apparently I've got the afternoon open on the 16th. Is that right?
10 So I could give you time the afternoon of the 16th. So why don't we just
11 do that. Let's make it 1:30 till 5:00, how's that? Will that work for you?
12 Unless you've already made plans based on --

13 MR. DEUTSCH: Your Honor, we -- we had planned on -- on
14 not being back in Vegas until that Monday --

15 THE COURT: Okay.

16 MR. DEUTSCH: -- afternoon.

17 THE COURT: Okay. So since that was -- since you weren't
18 told that I would be available, I won't make you change your plans.
19 Okay. So we won't be in session on Monday the 16th. And usually I'm
20 not in session on jury trials anyway on -- on Mondays. Okay. 17th
21 at 9:00 to 5:00; 18th, 9:00 to 5:00; dark on the 19th and 20th, as I
22 indicated. Then we go back on the 24th, 9:00 to 5:00; 25th, 9:00
23 to 5:00; 26th, 1:30 till 5:00; 27th, 9:00 to 5:00. Okay. And apparently I
24 do have some time open on Monday the 30th if it gets to that. Okay. So
25 we can discuss that later, unless you want me to go ahead and -- and

1 make it clear that we'll be in session that day if necessary?

2 Mr. Deutsch, did you have a problem?

3 MR. DEUTSCH: That was --

4 THE COURT: That's a Monday again.

5 MR. DEUTSCH: That was Monday the -- or the 30th?

6 THE COURT: Right.

7 MR. DEUTSCH: That's kind of far off. I hadn't looked that far
8 forward.

9 THE COURT: Okay. Let's --

10 MR. DEUTSCH: So if we could --

11 THE COURT: Okay. Let's keep that, you know, that's a
12 possible time. Then we go to May 1st, 9:00 to 5:00. Now, I do have a
13 commitment at noon that day, so I'm not sure -- that shouldn't take too
14 long, though. But it's 9:00 to 5:00 on Tuesday the 1st; 9:00 to 5:00
15 Wednesday the 2nd; 1:30 to 5:00 Thursday the 3rd; and 9:00 to 5:00 on
16 Friday the 4th. So -- okay. Very good.

17 Then we'll all be ready for Cinco de Mayo Saturday the 5th.
18 Okay.

19 So what -- anything else?

20 MR. DEUTSCH: At this pace, Your Honor, we might need to
21 get ready for Thanksgiving.

22 THE COURT: All right. Okay. Now, I know we've got the
23 issue regarding the cameras and all that. So we're going to have to
24 focus on that somewhat. I indicated that they -- the cameras will not be
25 in court during jury selection. Okay. I think there was some discussion

1 about opening statements. And we'll need to figure out how to attend to
2 that. I think -- what I'm thinking is that once Plaintiff gets to the point that
3 Plaintiff's going to be discussing in opening statement the manner in
4 which this happened, you know, in other words, the -- the magical
5 aspect of it, we're going to probably require -- I'll probably require the
6 counsel to approach the bench and let me know so that I can then
7 instruct the camera operators to -- or operator to turn it off. Okay.

8 MR. DEUTSCH: My guess is, Your Honor, that that will be so
9 intertwined with the opening that if Your Honor is inclined to keep
10 cameras off for anything detailing how the trick is done, then -- then it's
11 probably better off just to not have them there for opening statements.
12 Our position is, is that there's nothing confidential about this trick at all,
13 and therefore having the cameras there for opening statements is --
14 there's nothing wrong with that.

15 I understand that if a certain witness does not want to be on
16 camera, that they have that right, because they don't want to be on
17 camera. But since Your Honor's already ruled that the courtroom is
18 open and free for reporters to report on it, including reporting on how the
19 trick was done, because there is no confidentiality for that, I don't quite
20 see how filming the opening statements is a problem.

21 THE COURT: Okay. And response to that?

22 MR. POPOVICH: Your Honor, I don't believe the court ruled
23 one way or another whether open versus not. We had addressed the
24 fact that there might be portions of the trial where we're going to ask for
25 the courtroom to be closed. That has not been addressed to the court. I

1 didn't think the court had made a ruling. So that being said --

2 THE COURT: No, I didn't. I'm just throwing it out and giving a
3 head's up, basically.

4 MR. POPOVICH: Yeah.

5 MR. DEUTSCH: Well, Your Honor, I thought that the court
6 hadn't ruled on that. I thought that the -- the court was pretty clear -- and
7 if I was wrong, I apologize -- that -- that while cameras can be potentially
8 turned off if certain witnesses don't approve, then Your Honor
9 recognized that courtrooms are open and that if reporters or whoever
10 else wants to be in the courtroom to report on things, that the
11 confidentiality does not apply once you get to trial.

12 THE COURT: I think I did --

13 MR. DEUTSCH: I -- I thought that --

14 THE COURT: I think I did allude to opening statements in
15 my -- in -- as I recall when it came before me. I think I alluded to the
16 concept of opening statements and the possibility that maybe the
17 camera would not be operable during a portion of opening statements.

18 MR. DEUTSCH: Right. But -- but reporters would be allowed
19 in the courtroom during opening statements, correct?

20 THE COURT: As far as -- yeah, this is an open courtroom.
21 The question --

22 MR. POPOVICH: It seems --

23 THE COURT: -- came to me from the camera aspect. That
24 was how it was presented.

25 MR. DEUTSCH: That's what I thought. Though my point was

1 as long as the reporters to report on -- on what we're saying in our
2 opening statements, then I don't -- I don't understand what the rationale
3 would be for not having a camera there. I understand the rationale for
4 certain witnesses not wanting to be on camera themselves. But if it's
5 just a question of not reporting on certain things about how the trick is
6 done and that could be done any way by a reporter sitting in a
7 courtroom, I don't see why the defendants would have a rationale to -- to
8 seek to turn cameras off during opening statements.

9 THE COURT: Okay.

10 MR. FREEMAN: Well, you know, there is a confidentiality
11 agreement in place, and you know, I know Plaintiff's position is that, well,
12 go on the Internet and there's all sorts of stuff on there. Even
13 participants in the illusion do not know the entirety of how the illusion is
14 performed. And so it is -- it should be kept confidential, whether you're
15 in the audience or even as a participant, there are aspects that they
16 don't get the full effect of the illusion, how it's done. And so that's what
17 needs to be protected.

18 THE COURT: Okay.

19 MR. DEUTSCH: But --

20 MR. FREEMAN: And that's what we agreed to early on.

21 THE COURT: I'm not making a ruling now --

22 MR. DEUTSCH: That's --

23 THE COURT: -- I'm just listening to what you're saying.

24 MS. FRESCH: Okay.

25 MR. DEUTSCH: Just so I'm clear, Judge, I disagree that

1 that -- from what Mr. Freeman said in terms of our position. Our position
2 is that confidentiality agreements in any trial do never extend to when
3 the trial started. They're for discovery purposes only. And once the trial
4 starts, the courtroom is open and never sealed, because it's against the
5 Constitution to seal the courtroom.

6 So I don't think that anything that was bound in the
7 confidentiality agreement during discovery extends to once the trial
8 begins.

9 THE COURT: All right. Thank you. I know your respective
10 positions now. I'll think about it, determine on what to do. Okay.

11 MR. RUSSELL: Your Honor, I know there was a question with
12 the -- the real-time reporter, has she got that worked out now? I know
13 there was a concern whether we all agreed to it. So we'll have a
14 real-time reporter set up. I think we're okay with that. I just wanted to
15 make sure we --

16 THE COURT: Let's make sure the record reflects what it is
17 that the real-time reporter will be doing and what will be the official
18 record. My understanding is the official record will be the court
19 recorder's transcript --

20 MR. RUSSELL: Right.

21 THE COURT: -- right?

22 MR. RUSSELL: But we -- the parties will be allowed to refer --
23 to use the real-time reporter's transcript --

24 THE COURT: Right.

25 MR. RUSSELL: -- as part of the case.

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THE COURT: Right.

MR. RUSSELL: Correct.

MR. DEUTSCH: Correct. For the purposes of cross-examination or closings or whatever. Yes.

THE COURT: Right.

MR. DEUTSCH: We agree.

MR. RUSSELL: Okay.

THE COURT: Anything else need to be said about that to make sure the record's clear? Okay. I didn't --

MR. RUSSELL: Or is it -- do you generally place -- I don't think it'll be an issue, particularly for the liability phase, but do you put any time limits on opening?

THE COURT: Well, that's a question that I ask, and that is, should I?

MR. DEUTSCH: I didn't hear you, Howard. I'm sorry.

THE COURT: Question is whether I should put time limits on opening statements.

MR. DEUTSCH: Oh. I don't think it'll be necessary. But -- I don't think it'll be necessary. At least from our perspective.

MR. POPOVICH: For MGM, agree.

MR. FREEMAN: Yeah.

MS. FRESCH: And Copperfield.

THE COURT: All right.

MR. DEUTSCH: One question I have in terms of the reporter again, just to go back for a second. If -- if the jury needs sort of like a --

1 asks for, like, a read-back of testimony or something, does that come
2 from the real-time reporter or does that have to come from the recording
3 device?

4 THE COURT: The real-time reporter.

5 MR. DEUTSCH: Okay.

6 THE COURT: Okay?

7 MR. DEUTSCH: Yeah. That's fine.

8 MR. POPOVICH: That's what we intended, I believe, Your
9 Honor.

10 THE COURT: Okay.

11 MR. RUSSELL: And this is not something that needs to be
12 resolved today, but it does need to be resolved during -- before
13 openings. I know there was an issue, because the bifurcated trial, that
14 the court was going to give some instruction to the jury on -- on the
15 plaintiff's mentation. So we could avoid Plaintiff getting into why he
16 claims he has recollection issues. So just before opening, I think we'll
17 just have to have -- understand what the court's language is going to be
18 on that.

19 THE COURT: I think the idea was that the jury could be
20 informed about what's ultimately being -- well, contended by the plaintiff
21 relative to his recollection.

22 MR. RUSSELL: Right. That -- that -- as I understood, the
23 court's instruction is going to be something along the lines of the -- the
24 plaintiff alleges he has a medical condition which impacts his ability to
25 recall things and therefore you can't --

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THE COURT: Well --

MR. RUSSELL: -- hold it against him for his lack of --

THE COURT: -- you think counsel can come up with an agreed upon instruction that I --

MR. RUSSELL: Yeah, we'll circulate something.

THE COURT: Beg your pardon?

MR. RUSSELL: We'll circulate something. Yeah.

THE COURT: Why don't you do that? That -- that's what I think would be good. Okay. All right.

Lorraine?

MR. RUSSELL: I think our -- we've got the defense exhibits here today. They're going to be provided. I spoke with Mr. Deutsch this morning. I understand by -- by close of business tomorrow we'll have a Dropbox of all the up-to-date Plaintiff exhibits. Correct?

MR. DEUTSCH: Yeah. You know, but Howard, I -- the one that was circulated last night said Bates-stamped. I thought they were. I'm looking at them now and they don't appear to be. So I just followed up to see exactly what happened to those. Because I thought that that had been finalized and Bates-stamped and they were all done. But I don't see that. So I'll figure that out today.

MR. RUSSELL: Thank you.

MR. CALL: They'll be finalized today, Adam.

MR. DEUTSCH: But the -- but the list is finalized. The list is -- is finalized.

MR. RUSSELL: Right. Understood. Understood. Okay.

1 Thank you.

2 MR. DEUTSCH: One issue that we wanted to raise, Your
3 Honor, a concern that we had in light of Your Honor's point at the
4 beginning that there are really two sides to this lawsuit, our concern is
5 that there's a lot of -- there's a bunch of cumulative testimony in terms of
6 some of the experts and the questioning. And our concern is that -- that
7 the multiple defendants are going to call similar experts giving the
8 identical opinion just to sort of, you know, pile on the same thing over
9 and over again. And we don't think that they should be entitled to do
10 that.

11 THE COURT: Well, let me look --

12 MR. DEUTSCH: And it's hard --

13 THE COURT: Let me look at it in context, though, when --

14 MR. DEUTSCH: Yeah.

15 THE COURT: -- if it's theirs, you can object, you know, if you
16 think that --

17 MR. DEUTSCH: Okay.

18 THE COURT: -- there's an objection. Okay. The sides, one
19 of the reason I brought up the sides aspect, two sides, is an exercise or
20 waiver of your peremptory challenges. The plaintiff is one side, the
21 defense is the -- another side. So you --

22 MR. DEUTSCH: Right.

23 THE COURT: -- the defense will get together in determining
24 how to exercise or waive their peremptory challenges. Okay.

25 MR. POPOVICH: In the process, is Your Honor adverse to

1 giving us, you know, 30 seconds or a minute to mingle --

2 THE COURT: No. No.

3 MR. POPOVICH: -- and reach a decision?

4 THE COURT: No. I want you to make informed decisions.

5 MR. POPOVICH: Thank you.

6 THE COURT: Okay.

7 MR. DEUTSCH: Did --

8 THE COURT: *All right?*

9 MR. DEUTSCH: We have one other issue, Your Honor, which
10 is a Motion in Limine that was -- was not made by us that we would seek
11 to make at this point with respect to one of the liability experts of Team
12 Construction. Having got -- we received yesterday or within the last
13 week or so a PowerPoint presentation of this expert I guess that he
14 intends to try to use during trial. That's close to 200 slides. And in going
15 through that, it became clear -- and then looking back at his report again,
16 it became clear that -- that a bulk of his testimony was based upon some
17 testing he did with respect to this slip resistance of the -- the coefficient
18 of friction on the -- the floor where Mr. Cox fell. And in preparing the
19 case, you know, as we approach trial and seeing that, it became very
20 clear that he -- that the floor that he tested had been changed and
21 there's a different floor than at the time of the accident. So I'm not
22 exactly sure how he could give any of those -- that testimony at all.

23 So I don't know if Your Honor would like to sort of just wait as
24 we get closer to that witness or if Your Honor would give us leave to file
25 a -- a Motion in Limine with respect to that now. But --

1 THE COURT: I think it's probably best to wait for the witness.
2 *And if you think that a foundation has to be laid or whatever or at that*
3 *point --*

4 MR. DEUTSCH: Okay.

5 THE COURT: -- I can excuse the jury and you can conduct --

6 MR. DEUTSCH: Perfect. Thank you, Your Honor. That's
7 what we thought, but we appreciate that. Thank you.

8 THE COURT: All right. All right. Let's see. Settlement
9 conference? I mean, I -- it's Thursday at 11:15. I don't know if I could
10 get anybody to do one. But.

11 MR. CALL: I think that's Mr. Deutsch's call on that.

12 MS. FRESCH: We're -- the defense is always willing.

13 MR. POPOVICH: We're happy to go for it.

14 MS. FRESCH: We're -- yes. We're happy to participate.

15 THE COURT: What do you think, Mr. Deutsch?

16 MR. DEUTSCH: I'm not sure, you know, what we're
17 participating in, Your Honor. We've been -- we -- we -- you know, when
18 we last left off this conversation, we informed them that we were always
19 open to talking. And I -- I had received no phone calls from any of the
20 attorneys with any interest. And at this point I don't believe that their
21 positions have changed in terms of their view of the value of the case,
22 and therefore I'm not sure --

23 THE COURT: All right. Well, you can talk among yourselves.

24 MR. DEUTSCH: -- unless there -- unless their views changed,
25 I don't know --

1 THE COURT: All right. Well, you can talk among yourselves
2 and if you think you'd like one, let us know. The sooner we know, the
3 sooner we can get one set up, hopefully.

4 MR. DEUTSCH: Okay. We'll do that.

5 THE COURT: And I -- I do settlement -- I don't do settlement
6 conferences in my own bench cases, but -- nonjury cases, but I -- I do
7 them -- I'm willing to do them in jury cases where all sides -- where both
8 sides agree, all parties agree and everything. I can understand why you
9 wouldn't want the trial judge to do a settlement conference. But by the
10 same token I've done them in some cases that have resulted in
11 settlement. There have been some cases where I started -- went into a
12 settlement conference mode the first day of trial and we've got them
13 settled. Other cases we did the same and didn't get them settled.

14 But, you know, I prefer, basically, that it be somebody else.
15 But if it's agreeable to everybody, I can take a stab at it. But by the
16 same token, we don't want to -- we don't want to lose trial time in this
17 case. So.

18 MR. CALL: Your Honor, just for the record, the -- the defense
19 is ready to, you know, enter into a settlement conference. Mr. Deutsch
20 just has to go ahead and say yes, and we can go ahead and do that.
21 So.

22 THE COURT: Okay.

23 MR. CALL: We're here --

24 THE COURT: Since we're not going to be in session on
25 Monday, I mean, the sooner we know that you'd like -- well, we're not

1 going to be in session tomorrow, although I think tomorrow's probably
2 not a -- not a real good day. But in any event, if we could know that you
3 want one, we could try to get one set up.

4 MR. DEUTSCH: I think what our position would be, Judge, is
5 if the defendants called us and told us that they're starting at a point that
6 is within the realm of reality, then we'll be happy to do it. But -- but
7 based upon the discussion thus far, we believe that it would be a waste
8 of time.

9 THE COURT: What about virtual reality?

10 MR. DEUTSCH: So if they want -- if they would call me up --
11 I'm sorry.

12 THE COURT: Okay. All right. Well, in any event, anything
13 else to come before the court at this time in this conference? Yes?

14 THE JEA: How are we going to know which ones they agree
15 upon? In a conference call or an e-mail or?

16 THE COURT: Which?

17 THE JEA: Jurors they excuse.

18 THE COURT: Oh, yeah. You've got to let the -- by tomorrow
19 at noon, you'll let Lorraine know which jurors you've agreed to excuse,
20 right?

21 MR. GRIFFIN: You want an e-mail?

22 THE JEA: However you want.

23 MR. FREEMAN: E-mail.

24 THE JEA: Okay.

25 THE COURT: Is that handled -- that taken care of?

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THE JEA: Yeah.

THE COURT: Okay.

THE JEA: So you -- you all will agree --

MR. FREEMAN: Yes.

THE JEA: -- and then somebody will send me one e-mail with everybody?

MR. FREEMAN: We'll give you a singular list with the ones that are agreed.

THE JEA: Okay. Sounds good.

MR. FREEMAN: Okay.

THE COURT: Okay. Anything else?

MS. FRESCH: Your Honor, just a -- a housekeeping, just to inform you. A stipulation was filed to stay the cross-claims that were filed way back when amongst some of the defendants and cross-defendant -- or cross-plaintiffs. That -- we haven't received it back, but I just wanted to inform the court that that was out there, so that's -- the cross-claimants are not -- they're stayed for now.

MR. DEUTSCH: And that's all of the cross-claimants, Elaine?

MS. FRESCH: Yes. Yes.

MR. FREEMAN: There's a -- there's a cross-claim, a third-party claim, and a counter-claim. And those were all stipulated to be stayed until --

THE COURT: Until?

MR. FREEMAN: Until -- until after the liability or -- or damages phase.

1 THE COURT: Oh. Oh, okay. Very well.
2 Well, everybody have a nice rest of the week and -- weekend.
3 All right. And I'll see you on Tuesday the 3rd.
4 MR. GRIFFIN: Your Honor, is the court going to go ahead
5 and -- sign the -- the stipulation on the cross-claims to stay those?
6 THE COURT: Sure.
7 MR. GRIFFIN: Okay.
8 THE COURT: Once I get it. Do we have it?
9 THE JEA: Did they -- ask them if they submitted it. I didn't --
10 MS. FRESCH: We have an extra copy.
11 MR. FREEMAN: I don't have the one that we signed, but I
12 think we'll both contest that -- yeah, just --
13 MR. RUSSELL: Give us a minute and we'll get it to you.
14 THE COURT: Once you -- once you submit it, we'll --
15 MR. FREEMAN: Yeah. It was submitted on Monday, so it's
16 somewhere.
17 THE COURT: Do you have it?
18 THE LAW CLERK: I'm sure I do. I can get it to you.
19 THE COURT: Okay.
20 MS. FRESCH: Yeah. I just wanted you to know, since we're
21 here right now.
22 THE COURT: Okay.
23 MS. FRESCH: I mean --
24 THE COURT: Very well.
25 THE LAW CLERK: Unless you want me to get it right now?

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MR. CALL: And it'll help alleviate some preparation.

THE COURT: Well, let me have my law clerk see if he's got it there. Just a second. Just be at ease for a second.

[Pause in proceedings.]

THE COURT: You're still on the phone, right, Mr. Deutsch?

MR. DEUTSCH: I'm here, Your Honor.

THE COURT: Yeah, I'm just waiting for this stipulation to be brought to me so I can sign the order on it.

MR. POPOVICH: Your Honor, while we're waiting, are bottled water things like this, okay in this court?

THE COURT: Sure. Absolutely.

[Pause in proceedings.]

THE COURT: Okay. The item that's been presented to me by my law clerk is stipulation and order to stay cost claims, third-party claims, and counter-claims. All right?

MS. FRESCH: Yes.

MR. FREEMAN: Correct.

THE COURT: Okay.

[Pause in proceedings.]

THE COURT: Okay. I've got signatures by Mr. Call and by Ms. Fresch, right?

MR. CALL: Yes.

MS. FRESCH: Yes.

THE COURT: All right. I've signed the order on the stipulation and you can come up and claim this and process it in the

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clerk's office. Okay.

THE CLERK: Your Honor, do you do three copies of exhibits -- will the witness stand have their own copies of exhibits?

MR. CALL: Yeah, I'm pretty sure we --

MR. FREEMAN: We brought three down.

MR. CALL: Uh-huh.

THE CLERK: Oh, you have three? Okay. Perfect.

MR. FREEMAN: There's three sets there, yeah.

THE CLERK: Perfect.

MR. FREEMAN: There's two sets there, yeah?

THE CLERK: Two sets?

MR. FREEMAN: One for the court, one for the witness, correct?

Yeah, we have one for the court, one for the witness here.

THE CLERK: Do you -- do you need a copy for yourself?

THE COURT: I'm usually given one, but it's, you know I don't require it.

MR. CALL: Yeah, we have one for the --

THE COURT: I just don't want the copies to get confused with the originals.

THE CLERK: Yeah.

THE COURT: That's the main thing.

THE CLERK: Because as far as the clerk's -- my -- my copies, and due to the volume of the trial, the -- there's not enough room to have everything. So they're going to be in an evidence vault upstairs.

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So, you know, using mine would -- it would be best if the witness had their own copy.

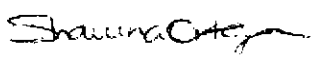
MR. FREEMAN: Okay. So we'll make another set of defense binders for Judge Denton to use. And so you'll -- there's two here, and then we'll make one more set.

THE CLERK: Correct.

THE COURT: All right. Well, thank you very much. We'll see you next week.

[Proceedings concluded at 11:25 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Shawna Ortega, CET*562



1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

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5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

* * * * *

8 GAVIN COX and MINH-HAHN COX,)
husband and wife,)

9

Plaintiffs,)

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vs.)

11

MGM GRAND HOTEL, LLC; DAVID)

12

COPPERFIELD aka DAVIS S.)

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KOTKIN; BACKSTAGE EMPLOYMENT)

14

AND REFERRAL, INC.; DAVID)

15

COPPERFIELD'S DISAPPEARING,)

16

INC.; TEAM CONSTRUCTION)

17

MANAGEMENT, INC.; DOES 1)

18

through 20; DOE EMPLOYEES 1)

19

through 20; and ROE)

20

CORPORATIONS 1 through 20,)

21

Defendants.)

22

MGM GRAND HOTEL, LLC.,)

23

Third-Party Plaintiff,)

24

vs.)

25

BEACHER'S LV, LLC, and DOES 1)

26

through 20, inclusive,)

27

Third-Party Defendants.)

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REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

TUESDAY, APRIL 3, 2018

29

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

30

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1 LAS VEGAS, NEVADA, TUESDAY, APRIL 3, 2018;

2 1:39 P.M.

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

5 * * * * *

6
7 THE MARSHAL: All rise for the veniremen.

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

10 THE MARSHAL: Just hold up right there.

11 Okay. Just go about halfway down there. Good.

12 All rise. Eighth Judicial District Court
13 Department 13 is now in session, the Honorable Mark
14 Denton now presiding.

15 THE COURT: Good afternoon. Please be
16 seated.

17 All right. Court calls the case of Gavin
18 Cox, et al., plaintiffs v. MGM Grand Hotel, et al.,
19 defendants.

20 Please state appearances of counsel, identify
21 parties and party representatives who are present
22 today.

23 MR. MORELLI: Benedict Morelli for the
24 plaintiff, Gavin and Minh Cox, C-o-x.

25 MR. DEUTSCH: Adam Deutsch, also for the

1 plaintiffs, Mr. and Mrs. Cox.

2 MR. FALLICK: Perry Fallick, also for the
3 plaintiffs.

4 THE COURT: Okay.

5 MR. POPOVICH: Thank you, Your Honor. Good
6 afternoon. I'm Jerry Popovich for defendant MGM Grand
7 Hotel. Part of the team is Susan Fillichio. Also, we
8 have Eric Freeman. And on behalf of MGM today is Kelly
9 Davis. At different times during the trial, we will
10 also have Mark Haversack and Will Martin. And then
11 also part of the team is Mike Infuso.

12 MR. INFUSO: Good afternoon.

13 MS. FRESCH: Good afternoon, everyone. I'm
14 Elaine Fresch, and I represent David Copperfield
15 Disappearing, Inc., as well as David Copperfield.

16 MR. ROBERTS: Good afternoon. My name is Lee
17 Roberts. My partner Howard Russell and I represent
18 Backstage Employment and Referral, one of the
19 defendants in the action.

20 Thank you, Judge.

21 MR. STRASSBURG: Hello, Judge. My name is
22 Roger Strassburg. And my partner Gary Call -- stand
23 up, Gary, would you please -- we'll be talking for Team
24 Construction, a licensed Nevada contractor involved in
25 the case.

1 And here for Team is David Noble.

2 Could you stand up, David.

3 MR. NOBLE: Good afternoon.

4 MR. STRASSBURG: He is one of the cofounders
5 of the company that specializes in remodeling tenant
6 spaces in large casinos on the strip.

7 He's also accompanied here by his number two
8 right hand, Paul King, who is also in the company.
9 Both of them are on the witness list to be called to
10 testify in this case, along with Superintendent David
11 Boyce.

12 Thank you, Judge.

13 THE COURT: All right. Thank you.

14 Also present are the officers of the court.

15 Are counsel and the parties ready to proceed?

16 MR. MORELLI: Yes, Your Honor.

17 THE COURT: All right. Ladies and gentlemen,
18 you're in Department 13 of the Eighth Judicial District
19 Court of the State of Nevada in and for the County of
20 Clark. My name is Mark Denton. I'm the presiding
21 judge in this department. You have been summoned today
22 to serve as jurors in a civil lawsuit.

23 At this time, I will take the opportunity to
24 introduce the court staff with whom you'll be coming
25 into contact.

1 The court recorder on my far left here is
2 Jennifer. She's recording everything that's being said
3 during the trial. We also have here with us -- state
4 your name.

5 THE COURT REPORTER: Kristy Clark.

6 THE COURT: -- right -- who's also reporting
7 what's being said during these proceedings.

8 The deputy court clerk to my immediate left
9 here is Alice. She's the court clerk who swears in
10 witnesses, marks exhibits, keeps track of evidence, and
11 prepares minutes for descriptions of the proceedings
12 for the official record.

13 You have met Bob, the marshal. He's the
14 person with whom you'll have most contact during these
15 proceedings. He maintains courtroom security and
16 brings the jury into court and ensures privacy during
17 jury deliberations.

18 I believe Andrew, my law clerk, is present.
19 If not, you'll meet him later on. He's my law clerk.
20 He will assist -- he'll come out later on to assist
21 counsel during the jury selection process.

22 At this time, I'll ask lead counsel for the
23 plaintiffs to introduce themselves and explain to you
24 the -- briefly the nature of the case, tell you the
25 names of the witnesses he believes he may call to

1 testify on behalf of the plaintiffs. And if his -- if
2 the plaintiffs are present, he'll introduce them as
3 well.

4 MR. MORELLI: Good afternoon, everyone. I'm
5 Benedict Morelli. I'm from New York, in case you
6 couldn't tell by my accent. And we're going to be
7 trying the case. I represent Gavin and Minh Cox. And
8 we're suing, as you can see, a number of defendants in
9 the case.

10 And I'm going to be asking you, as I've asked
11 many juries throughout the country -- because I travel
12 around trying cases -- to give us your God-given common
13 sense and make a determination that you feel is fair
14 and equitable. Okay?

15 Now, just to confuse everything, Juror No. 1
16 is all the way up there. Okay?

17 You're Juror No. 1. How are you?

18 PROSPECTIVE JUROR NO. 031: Fine.

19 MR. MORELLI: Okay. And so it goes that way,
20 1, 7, and so on. Okay?

21 And I'm going to have an opportunity to talk
22 to you about something about the case. At the
23 beginning of the trial, I'll be the first one to speak
24 to you to give an opening statement to tell you what we
25 intend to prove in the case.

1 Now, if in fact any of you have opinions
2 about this particular case after you hear something
3 about it, we would appreciate you sharing those
4 opinions with us so that nobody is prejudiced because
5 of some strong opinion you have.

6 When I talk to jurors in New York and out of
7 New York, in Texas and Illinois and New Jersey and
8 various place where I've been to try cases, I tell them
9 all the same thing. And that is I'm always going to
10 tell you straight and this is --

11 MR. POPOVICH: Objection. Argumentative.
12 Conditioning.

13 THE COURT: Sustained.

14 Counsel, at this time, all you're going to do
15 is tell them generally the nature of the case. We're
16 going to get into some of these other aspects later on.
17 Just generally, it's not argument; it's not an opening
18 statement.

19 MR. MORELLI: This is the case where my
20 client, Gavin Cox, was injured as a result of an
21 accident that happened --

22 Do you need some water? You okay?

23 -- November 12th, 2013. And it happened at
24 the MGM Grand here in Las Vegas. And he was caused to
25 be injured, to fall and be injured, we say as the

1 result of the negligence of the defendants who are
2 represented by these attorneys who introduced
3 themselves.

4 There's various levels of involvement of
5 these defendants. And I'm not going to go into detail
6 now. I will have an opportunity to go into detail with
7 all of you. Those of you who are selected to be jurors
8 in this case will have an opportunity to hear all of
9 our opening statements, where we tell you what we
10 intend to prove and something about why we believe that
11 the plaintiffs are entitled to your verdict.

12 This is a case that is going to be tried in
13 two parts. It's a bifurcated case, meaning that the
14 first part of the case you will hear the liability or
15 responsibility part, who, if anyone, is responsible to
16 Gavin and Minh Cox as a result of this accident.

17 It's a negligence case. It's a slip-and-fall
18 case. It's a simple set of facts. And I will go into
19 detail at the appropriate time when you are impaneled,
20 if any of you or most of you are impaneled as our
21 juror -- as our jury, about exactly what I believe you
22 are going to hear from the testimony, because I know,
23 obviously, a lot about this case. And you don't know
24 anything about this case yet except what you're going
25 to hear from the attorneys.

1 So I'm going to ask you at a certain point,
2 after we introduce ourselves and we have a chance to
3 speak to you individually, to tell us what your real
4 thoughts are and -- so that we can make a determination
5 along with you as to whether or not you should be a
6 fair and impartial juror in this case.

7 If you can be, great; if you can't be, that's
8 fine too. But let's be honest with each other about
9 that. No one's here to try to put you in a bad
10 position. And what we're asking all of you, through
11 your honesty to any of the questions that the attorneys
12 ask you, to not put us in a bad position.

13 If you feel that you can't be a fair and
14 impartial juror, tell us so that we can explore it and
15 talk about it. Okay?

16 Thanks so much.

17 THE COURT: All right. Thank you, Counsel.

18 At this point, I won't ask you to name all of
19 the witnesses that you're intending to call. The
20 witnesses are listed on the attachment to the
21 questionnaire. Okay? So -- but those are witnesses to
22 be called by both sides. So the questionnaire was made
23 available, obviously, to the prospective jurors. And
24 you'll be asked, I'm sure, if there's voir dire later,
25 if you're acquainted with the witnesses or anybody.

1 At this time, I will ask the respective
2 defendants to state -- to introduce -- counsel for the
3 respective defendants to introduce themselves and their
4 client representatives, explain to you the nature of
5 their respective defense cases and ...

6 MR. POPOVICH: Thank you.

7 Once again, I'm Jerry Popovich representing
8 MGM Grand Hotel here. I had mentioned Kelly Davis is
9 here on behalf of MGM.

10 This accident did take place at the MGM Grand
11 Hotel on the outside of the casino on the Tropicana
12 Avenue side. We believe that the plaintiffs are here
13 because Mr. Cox fell and injured himself on our
14 property. He is upset about that. He's upset about
15 his injuries, as are -- as is his wife.

16 Ultimately, we're going to introduce
17 testimony through MGM security folks. We're going
18 to -- introduce evidence through stagehands working on
19 the David Copperfield show, as this accident happened
20 during an illusion.

21 Ultimately, we believe that we can bring
22 these witnesses together to show you that MGM Grand had
23 no fault for this accident; Mr. Cox tripped.

24 Thank you.

25 THE COURT: All right. Thank you.

1 MS. FRESCH: Good afternoon again, everyone.
2 As I mentioned, I'm Elaine Fresch. And I'm very
3 privileged to represent David Copperfield's
4 Disappearing, Inc., as well as David Copperfield.

5 Mr. Cox and his lawyers have sued
6 Mr. Copperfield as well as his corporation because
7 Mr. Cox was injured. We look forward to bringing you
8 the evidence to show that we did everything appropriate
9 in the performance of the illusion, which you will hear
10 a lot about. And we will identify and show you all
11 that, in fact, we did everything appropriately and
12 within the standard of care in our performance of that
13 illusion.

14 Thank you so much.

15 MR. ROBERTS: Thank you.

16 Good afternoon again. To remind you, my name
17 is Lee Roberts. And my partner Howard Russell and I
18 are attorneys here in Las Vegas. We've been here about
19 15 years. Much like the plaintiffs' counsel that you
20 heard from, I came here to try a case and I never went
21 home.

22 We represent Backstage Employment and
23 Referral. And they're a company that provides
24 stagehands to Mr. Copperfield to assist in the
25 performance of his show, including to assist in the

1 performance of the 13 illusion that you're going to
2 hear about in this case.

3 From our perspective, there's no dispute that
4 the plaintiff in this case, Mr. Gavin Cox, fell while
5 volunteering to participate in the illusion. The
6 dispute is, what makes this our fault? There is no
7 negligence on behalf of my client. And that's what we
8 look forward to presenting to you in this case.

9 Before I sit down, I also want to point out,
10 over behind me is Ms. Audra Bonney. She's a paralegal
11 who works for our firm, and she assists in displaying
12 evidence on the video screens and keeping track of
13 exhibits and other things for our team.

14 Thanks very much. Nice to meet you.

15 MR. STRASSBURG: Okay. Speaking for Team
16 Construction, I will prove to you that this accident
17 occurred at 8:35 p.m. Team had closed the job site,
18 cleaned up, gone home six hours earlier at 2:30 p.m.
19 In fact, Team didn't even know that the area in front
20 of its Dumpster outside was part of Mr. Copperfield's
21 illusion. That's a secret. They don't tell the
22 contractors or anyone else. Based on that, we'll prove
23 to you that Team is not liable here.

24 Thank you.

25 THE COURT: Thank you.

1 At this time, Alice will call the roll of the
2 panel of prospective jurors. When your name is called,
3 please answer "present" or "here."
4 THE CLERK: Alex Daniel, Badge 031.
5 PROSPECTIVE JUROR NO. 031: Yes.
6 THE CLERK: Susan Millhouse --
7 PROSPECTIVE JUROR NO. 462: Present.
8 THE CLERK: -- Badge 462.
9 Nicole Lutey, Badge 559.
10 PROSPECTIVE JUROR NO. 559: Present.
11 THE CLERK: Essai Cardoza, Badge 563.
12 PROSPECTIVE JUROR NO. 563: Present.
13 THE CLERK: Mei-Yen Sun, Badge 567.
14 PROSPECTIVE JUROR NO. 567: Present.
15 THE CLERK: Maria Parras, Badge 570.
16 PROSPECTIVE JUROR NO. 570: Present.
17 THE CLERK: Lara Dupree, Badge 0573.
18 PROSPECTIVE JUROR NO. 573: Present.
19 THE CLERK: Enrie Davis, Badge 582.
20 PROSPECTIVE JUROR NO. 582: Present.
21 It's Enrie.
22 THE CLERK: Thank you. Sorry.
23 Richard De-Sterre, Badge 601.
24 PROSPECTIVE JUROR NO. 601: Present.
25 THE CLERK: Cheryl Celline, Badge 604.

1 PROSPECTIVE JUROR NO. 604: Present.
2 THE CLERK: Linette Ayala, Badge 611.
3 PROSPECTIVE JUROR NO. 611: Present.
4 THE CLERK: Jason Voltz, Badge 614.
5 PROSPECTIVE JUROR NO. 614: Present.
6 THE CLERK: Steve Willis, Badge 66 -- 616.
7 PROSPECTIVE JUROR NO. 616: Present.
8 THE CLERK: Sally Wahl, Badge 617.
9 PROSPECTIVE JUROR NO. 617: Present.
10 THE CLERK: Sheila Mosallaei, Badge 622.
11 PROSPECTIVE JUROR NO. 622: Present.
12 THE CLERK: Manuel Garcia-Rayas, Badge 624.
13 PROSPECTIVE JUROR NO. 624: Present.
14 THE CLERK: Nicholas Meneley, Badge 633.
15 PROSPECTIVE JUROR NO. 633: Present.
16 THE CLERK: Nancy Solloway, Badge 636.
17 PROSPECTIVE JUROR NO. 636: Present.
18 THE CLERK: Lisa Duran, Badge 669.
19 PROSPECTIVE JUROR NO. 669: Present.
20 THE CLERK: Michele Taketa, Badge 670.
21 PROSPECTIVE JUROR NO. 670: Present.
22 THE CLERK: Robert Loerwald, Badge 676.
23 PROSPECTIVE JUROR NO. 676: Present.
24 THE CLERK: Gerald Schaffner, Badge 690.
25 PROSPECTIVE JUROR NO. 690: Present.

1 THE CLERK: Germaine Prescott, Badge 696.
2 PROSPECTIVE JUROR NO. 696: Present.
3 It's Prescott.
4 THE CLERK: David Allen, Badge 702.
5 PROSPECTIVE JUROR NO. 702: Present.
6 THE CLERK: Thomas Torres, Badge 704.
7 PROSPECTIVE JUROR NO. 704: Here. Present.
8 THE CLERK: Luzangelica Gomez, Badge 710.
9 PROSPECTIVE JUROR NO. 710: Present.
10 THE CLERK: Lilia Avila, Badge 712.
11 PROSPECTIVE JUROR NO. 712: Present.
12 THE CLERK: John Saylor, Badge 728.
13 PROSPECTIVE JUROR NO. 728: Present.
14 THE CLERK: Michael Carelli, Badge 729.
15 PROSPECTIVE JUROR NO. 729: Hey. I'm here.
16 THE CLERK: Gabriela Pond, Badge 737.
17 PROSPECTIVE JUROR NO. 737: Present.
18 THE CLERK: Debra Crane, Badge 747.
19 PROSPECTIVE JUROR NO. 747: Present.
20 THE CLERK: Yan Wu, Badge 749.
21 PROSPECTIVE JUROR NO. 749: Present.
22 THE CLERK: James Burgett, Badge 769.
23 PROSPECTIVE JUROR NO. 769: Present.
24 THE CLERK: Gary Meyers, Badge 770.
25 PROSPECTIVE JUROR NO. 770: Present.

1 THE CLERK: Nita Douglas, Badge 781.
2 PROSPECTIVE JUROR NO. 781: Present.
3 THE CLERK: Ramon Diaz-Aguacia, Badge 783.
4 PROSPECTIVE JUROR NO. 783: Right here.
5 THE CLERK: Barbara Hall, Badge 790.
6 PROSPECTIVE JUROR NO. 790: Here.
7 THE CLERK: Shing Gan, Badge 797.
8 PROSPECTIVE JUROR NO. 797: Here.
9 THE CLERK: Derick MacFawn, Badge 815.
10 THE MARSHAL: That's it.
11 THE CLERK: We don't have any more after
12 that?
13 THE MARSHAL: No.
14 THE CLERK: So Badge 797 is the last one?
15 THE MARSHAL: Yes.
16 THE COURT: Is there anybody whose name was
17 not called?
18 I see no hands.
19 The questioning of a prospective jury at the
20 beginning of the case is done under oath. Alice will
21 now administer the oath to the prospective jurors.
22 THE MARSHAL: Please stand up.
23 THE CLERK: You do solemnly swear that you
24 will well and truly answer such questions that may be
25 put to you touching upon your qualifications as jurors

1 in this case at issue, so help you God?

2 IN UNISON: I do.

3 THE COURT: All right. Thank you. You may
4 be seated.

5 Ladies and gentlemen, we're about to commence
6 what is called the voir dire examination of the
7 prospective jurors in this case. The term "voir dire"
8 is a French term. Loosely translated, it means to tell
9 the truth. Literally translated, it means "to see, to
10 say."

11 During this process, you will be asked
12 questions bearing on your ability to sit as fair and
13 impartial jurors. The Court, the lawyers, and all
14 persons involved in this case are deeply interested in
15 having this matter tried by a jury composed of 12
16 open-minded people who are completely neutral, who have
17 no bias or prejudice towards or against either side.

18 In order to accomplish this desired result,
19 it is necessary for me to ask you some questions. The
20 attorneys, if they choose, will also be given this
21 opportunity.

22 It's not our desire to unnecessarily pry into
23 your personal lives, although some of the questioning
24 may at times seem somewhat or even intensely personal.
25 Our only objective is to determine whether there is any

1 reason why any of you cannot sit as fair and impartial
2 jurors in this case.

3 Wide discretion is vested in the trial judge
4 as to the method of examination of jurors. Thus, from
5 time to time, I may entertain objections or intervene
6 or inquire of any of the lawyers if there's a problem
7 with the way that the examination is being conducted.

8 The following areas of inquiry are not
9 properly within the scope of your voir dire examination
10 by counsel: Questions already asked and answered by
11 the Court and other counsel; questions touching upon
12 anticipated instructions on the law; questions touching
13 upon the verdict a juror would return when based upon
14 hypothetical facts; questions that are in substance
15 arguments of the case.

16 Ladies and gentlemen, it is important that
17 you know the significance of full, complete, and honest
18 answers to all of the questions that we're about to ask
19 you. I caution you not to try to hide or withhold
20 anything which might indicate bias or prejudice of any
21 sort by any of you.

22 Should you fail to answer truthfully or if
23 you hide or withhold anything touching upon your
24 qualifications, that fact may tend to contaminate your
25 verdict and subject you to further inquiry even after

1 you're discharged as jurors.

2 Your decision should be based upon all of the
3 evidence presented during the trial and not based upon
4 preconceived prejudice or bias. Prejudice is a
5 predisposition against something or someone. Bias is a
6 predisposition in favor of something or someone.

7 I'll be conducting a general voir dire
8 examination of all of you while you're seated in the
9 gallery portion of the courtroom, including those of
10 you who are seated in the jury box portion.

11 After those general questions, Alice will
12 call 24 names using the order provided to us by the
13 jury commissioner as you are seated in the jury box. I
14 and the attorneys will then conduct an examination of
15 those 24 prospective jurors, after which each -- the
16 sides will be entitled to exercise six peremptory
17 challenges each.

18 At some point during the process of selecting
19 the jury, the attorneys for both sides have the right
20 to ask that a particular person not serve as a juror.
21 These requests are called challenges. There are two
22 types of challenges: challenges for cause and
23 peremptory challenges.

24 A challenge for cause means that a juror has
25 been excused because his or her answers to some of the

1 voir dire questions indicate that he or she would have
2 a difficult time in giving a fair and impartial hearing
3 to the case.

4 A peremptory challenge means that a juror can
5 be excused from duty without counsel having to give a
6 reason for the excuse.

7 Please do not be offended should you be
8 excused by either of the challenge procedures. They're
9 simply a part of the procedures designed to protect the
10 rights of the parties under our system of government.

11 Now, if you wish to respond to a question
12 individually and in the affirmative -- a question I'm
13 about to pose to you -- please raise your hand, give
14 your name and indicate the number that you've been
15 given on your badge. All right?

16 Also, the list attached to the questionnaire,
17 as I have indicated to you previously, that you have
18 completed names the parties and the witnesses and
19 attorneys involved in this case. All right? So you've
20 had a chance before today to -- to see that list.

21 Are any of you acquainted with any of the
22 people on that list -- witnesses, attorneys, parties?

23 Okay. I see a hand.

24 Okay. Would you please state your name and
25 badge number.

1 PROSPECTIVE JUROR NO. 670: Michelle Taketa,
2 670.

3 I work for the gaming control board as an
4 agent, so I'm well -- I'm very familiar with the MGM
5 Grand.

6 THE COURT: Okay. All right. Thank you.
7 Anybody else?

8 I see another hand. I see a couple more
9 hands. I'll start in the back and move forward.

10 PROSPECTIVE JUROR NO. 633: Nicholas Meneley,
11 Badge No. 0633.

12 I do entertainment work for MGM, I -- through
13 a third-party company but on all the MGM properties.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 604: Cheryl Celine,
16 0604.

17 The questionnaire I did was on March 8th, but
18 it had -- it was all medical doctors. So I'm a little
19 misled on these names, because mine was all medical
20 doctors and -- and PAs and so on.

21 THE COURT: What was it you were involved in?
22 I couldn't hear.

23 PROSPECTIVE JUROR NO. 604: It was -- the
24 questionnaire that we received on March 8th, that one
25 didn't have any of these names. It was all medical

1 doctors. So that's why I -- I'm a little confused
2 today, because I don't know if I had the wrong
3 questionnaire.

4 PROSPECTIVE JUROR NO. 971: Correct. Same
5 with me.

6 THE COURT: All right. I'm taking one of the
7 completed questionnaires here. It's got a list of
8 names on two pages in the back. Okay?

9 And there are many of these people who are
10 not physicians. For example, No. 34 is David
11 Copperfield a.k.a. David Kotkin.

12 UNIDENTIFIED PROSPECTIVE JUROR: No, he
13 wasn't on there.

14 UNIDENTIFIED PROSPECTIVE JUROR: There must
15 have been 50 doctors.

16 THE MARSHAL: I need only one person to talk
17 at a time, please.

18 THE COURT: What's that?

19 MR. DEUTSCH: We had 115 names on the list we
20 believe was provided.

21 THE COURT: That's what is on here on the
22 questionnaire. And these are completed questionnaires.
23 These are -- for example, I'm looking at one filled out
24 by one of the veniremen here that has the list attached
25 to it. It's signed with the list.

1 PROSPECTIVE JUROR NO. 604: Are they all
2 medical doctors?

3 THE COURT: Let's see. You're No. 604? Is
4 that what you indicated? Cheryl Celline?

5 PROSPECTIVE JUROR NO. 604: Yes, 0604.

6 THE COURT: Okay. I'm looking at the
7 questionnaire that you completed --

8 THE MARSHAL: Come to order.

9 THE COURT: -- and it has that item attached
10 to it.

11 PROSPECTIVE JUROR NO. 604: Okay. And it's
12 all medical doctors on there?

13 THE COURT: No, they're not all medical
14 doctors. There are many medical doctors, but there are
15 lot of non --

16 PROSPECTIVE JUROR NO. 604: That's why --
17 where I got lost at when I saw -- okay. Thank you.

18 THE COURT: Okay. There are a lot of medical
19 doctors, but there are a lot of nonmedical doctors as
20 well.

21 I guess what I could do, Counsel, I could go
22 ahead and read.

23 MR. POPOVICH: Please, Your Honor.

24 THE COURT: I will read the names. There's
25 115, so bear with me. Okay.

1 Gavin Cox; Minh-Hahn Cox; Alexander Anderson;
2 Joseph Stone; James Ramiseier, M.D., Mary Magruder,
3 M.D.; Mark Girella, M.D. -- that's Cirella, M.D.;
4 Jeffrey Markham, M.D.; Douglas White, M.D.; Lawrence
5 Bogle, M.D.; James Balodimas, M.D.; Aury Nagy, M.D.;
6 James Dettling, M.D.; Marjorie Belsky, M.D.; Andrew
7 Cash, M.D.; Michael Horan, M.D.; Mario Tarquino, M.D.;
8 Peter Hamlyn, M.D.; Christopher Brooks, M.D.

9 Bernard Ong; Stephen Yakaitis, M.D.; Juan
10 Martinez-Moreno, M.D.; Keith Lewis, M.D.; James Loong,
11 M.D.; Stuart Kaplan, M.D.; Enrico Fazzini, D.O.;
12 Clifford Friesen, M.D.; Rick Yeh, M.D.; Morris Schaner,
13 M.D.; Maureen McCormack, M.D.; Christopher Johnson,
14 M.D.; Clifford Friesen, M.D.; Brian Lemper, D.O.; David
15 Copperfield, a.k.a. David Kotkin; Kevin Jansen; Dennis
16 Funes-Navas; Juan J. Bermejo, M.D.

17 David J. Oliveri, M.D.; Ryan Carvalho; Pomai
18 Weall; Shane Engle; Nathan Head; Jamie Edelman; George
19 Baker; Troy Mayborne; Spencer Hegewald; Eugene
20 Williams; Patrick Reed; Jacob Hafen; Christian Smith;
21 Michael Hankins; Chris Oberle or Oberle; Jason Higbie;
22 Andrew Lacombe; Cheryl Murphy; Jay Harmas; Chris
23 Kenner; Homer Liwag; John Figg.

24 Rene Nadeau; Danny Berro; Stacy DeRosa;
25 Jackie Fisher; Audra Geving; Elizabeth McInerney;

1 Ashliegh Drew; J.R. Hedger, M.D.; P. Rhode, M.D.; Tim
2 Tees, M.D.; Sultana Rasheed, M.D.; Zoe Kelion, M.D.;
3 Fiona Butler, M.D.; F. Klemperer, M.D.; Alessandra
4 Lemma, M.D.; R. Sanchez, M.D.; Jasmine Chopra, M.D.;
5 Andrew Davies, M.D.; M.J. Sinha; A. Locum, M.D.; Andrew
6 McIver, M.D., Paul Farmer, CPN; K. Al-Kaid, M.D.; Kerry
7 Solomon; Lyn Nicholls, CPN.

8 Bliss White; Adam Cooney; Lars Reinhart,
9 M.D.; Michael Linetsky, M.D.; Robert Asarnow, M.D.;
10 Ronald Luke, PhD; Howard Tung, M.D.; John E. Baker,
11 PhD; Mark Habersack; Matthew Ashley, M.D.; Thomas
12 Ayers, PhD; Govind Koka, M.D.; Terrence Clauretje, PhD;
13 Ira Spector, MS; Arthur Kowell, PhD; Nicholas Yang,
14 PhD.

15 Benedict P. Morelli, Esq.; Adam D. Deutsch,
16 Esq.; Perry Fallick, Esq.; Brian K. Harris, Esq.;
17 Heather E. Harris, Esq.; Christian Griffin, Esq.;
18 Howard J. Russell, Esq.; Timothy A. Mott, Esq.; D. Lee
19 Roberts, Esq.; Gary W. Call, Esq.; Roger Strassburg,
20 Esq.; Elaine K. Fresch, Esq.; Jerry C. Popovich, Esq.;
21 Eric O. Freeman, Esq. That completes the names of the
22 list.

23 All right. Now, I will get back to my former
24 question. Are any of you acquainted with any of those
25 people? Okay. I've heard from some. Now that the

1 names have been -- all the names have been read, I'll
2 go back to the questioning and identify -- have people
3 identify people they're acquainted with.

4 THE COURT: What's the badge number?

5 PROSPECTIVE JUROR NO. 559: 559, Nicole
6 Lutey.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 559: Terrence
9 Clauretjie was one of my professors at UNLV, probably
10 about 20 years ago.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 031: Alex Daniel,
13 0031. I'm not associated with anyone on that list, but
14 I am a contractor, that I have worked on the strip, and
15 I have my wife and my brother that's employed by MGM,
16 so...

17 THE COURT: Okay. Anybody else on this side
18 over here? I see no additional hands.

19 Anyone out in the gallery?

20 I will need your name and badge number,
21 please.

22 PROSPECTIVE JUROR NO. 781: My name is Nita
23 Douglas. Badge number is 781. I'm a pharmacy
24 technician, and Drs. Linetsky and Nagy, I type a lot of
25 prescriptions, so they sound very familiar to me.

1 PROSPECTIVE JUROR NO. 729: Michael Carelli,
2 Badge No. 729. I worked really closely with Cheryl
3 Murphy for a couple years.

4 THE COURT: For which?

5 PROSPECTIVE JUROR NO. 729: Cheryl Murphy.
6 Couple of years. And then Ryan Carvalho, me and his
7 brother Chris, we used to party a lot, so...

8 That's about it.

9 Oh, also, and then I do stage tech work, so I
10 will be working on the MGM here and there too.

11 THE COURT: All right. Anybody else?

12 PROSPECTIVE JUROR NO. 747: Debra Crane,
13 Badge 747. I actually met David Copperfield.

14 THE COURT: You what?

15 PROSPECTIVE JUROR NO. 747: I met -- I met
16 David Copperfield.

17 THE COURT: Okay.

18 Anybody else? Have I covered everybody on
19 that last question? Okay.

20 Are there any of you or members of your
21 immediate families who may be clients of any of the
22 lawyers or law firms involved in this case?

23 I see no hands.

24 Are there any of you who believe you may have
25 heard or read about this case before coming to court

1 today?

2 I see no hands.

3 Does anybody know anything about this case
4 other than what has been stated in the courtroom today?

5 I see no hands.

6 Is there anybody who has such a sympathy,
7 prejudice, or bias relating to age, religion, race,
8 gender, or national origin that they feel would affect
9 their ability to be open-minded, fair, and impartial as
10 jurors?

11 I see no hands.

12 Okay. Now, this case is expected to last --
13 let me look at the calendar here. Looking through the
14 calendar here. I thought I had it.

15 All right. This case is expected to last up
16 to -- I say up to, not necessarily as long as I'm going
17 to indicate; could be shorter, could be longer, but
18 generally the estimates are -- are fairly good -- up to
19 19 to 20 trial days. Trial days. Okay? We're not
20 in -- we're not in trial every day. We're not in trial
21 on Saturday and Sunday, for example. Generally, we're
22 not in trial on Mondays. All right?

23 I'll go ahead and go through this calendar
24 and give you an idea of what days we're likely to be in
25 trial up to that period. Some of those days will --

1 some of the days on the calendar, we won't be in trial;
2 some of the days, we'll be in trial only half day. Let
3 me go through the calendar now, and I'll give you an
4 idea of what the periods expected to be.

5 Today, of course, till 5:00 o'clock.
6 Wednesday, April 4th, 9:00 to 5:00. Generally, we take
7 lunch from 12:00 to 1:30. Okay? Thursday, this
8 Thursday, the 5th, we'll just be in session in the
9 afternoon, 1:30 until 5:00, because I have motions on
10 Thursday mornings, and I have to hear those. So I
11 can't be in trial usually on Thursday mornings.
12 Sometimes I can. But this week it will be 1:30 to
13 5:00. Friday, the 6th, 9:00 until 4:30. All right?

14 We won't be in session on the Saturday, the
15 7th, or Sunday, the 8th. We won't be in session on
16 Monday, the 9th, because I have motions on Monday
17 mornings and other things that are scheduled far in
18 advance in the afternoon. So we won't be in session
19 Monday, the 9th.

20 Tuesday, the 10th, 9:00 to 5:00, again, with
21 the lunch period that I have indicated. The 11th, 9:00
22 to 5:00. The 12th, I can give some time on Thursday
23 morning, so we have it down now for 10:00 to 5:00.
24 Again, we take a lunch break, but we will be in session
25 Thursday morning, the 12th, at 10:00. Okay? Friday,

1 the 13th, 9:00 to 5:00.

2 Not in session Saturday, the 14th, or Sunday,
3 the 15th, or Monday, the 16th.

4 Tuesday, the 17th, from 9:00 to 5:00.
5 Wednesday, the 18th, from 9:00 to 5:00.

6 We will not be in session Thursday, the 19th,
7 or Friday, the 20th, or Saturday, the 21st, or Sunday,
8 the 22nd, or Monday, the 23rd. All right?

9 We'll then be back in session on Tuesday, the
10 24th, from 9:00 to 5:00. Wednesday, the 25th, from
11 9:00 to 5:00. Thursday, the 26th, not in session in
12 the morning. 1:30 till 5:00. Friday, the 27th, 9:00
13 to 5:00.

14 And not in session Saturday, the 28th, or
15 Sunday, the 29th.

16 Monday, the 30th, I can give some time to it,
17 on the afternoon, 1:30 till 5:00.

18 Then, if that matter is not finished by that
19 time, we're not in session. We come back on Tuesday,
20 the 1st, from 9:00 to 5:00. Wednesday, the 2nd, 9:00
21 to 5:00. Thursday, the 3rd, 1:30 to 5:00. Friday, the
22 4th, 9:00 to 5:00. Okay?

23 Those are the days that we have allotted to
24 this case. The case could be shorter. Conceivably it
25 could be longer, not likely. But, in any event, those

1 are the dates and times we have been allotted for this
2 case.

3 Would serving that period of time represent
4 an undue burden upon any of you given the fact that
5 we're not going to be in session every day, there will
6 be space in between trial days? And what I'll do is
7 I'll hear from each of you who raises your hand and
8 identify the nature of the burden. Okay?

9 Let's see. Let me start over to the left
10 side. I'll start the front row. I'll work from my
11 left to the right.

12 Okay. So front row, who do we have here?

13 PROSPECTIVE JUROR NO. 728: My name is John
14 Saylor, Badge 728. I just -- I just have family coming
15 in from Pennsylvania from April 11th through April 20.
16 And I also have an eye doctor appointment on the 5th,
17 which I canceled once already.

18 THE COURT: Okay. So it's April 11th until
19 when?

20 PROSPECTIVE JUROR NO. 728: April 20th. I
21 have family coming from Pennsylvania.

22 THE COURT: Okay. Okay. As I indicated, we
23 won't be in session on Saturday, the 14th, or Sunday,
24 the 15th, or Monday, the 16th, nor will we be in
25 session, Thursday, the 19th, or Friday, the 20th,

1 so ...

2 PROSPECTIVE JUROR NO. 728: Okay.

3 THE COURT: Okay. And you had an eye
4 doctor's appointment you said too?

5 PROSPECTIVE JUROR NO. 728: Yeah. I canceled
6 that once before. Me and my wife. She's disabled, so
7 I drive her.

8 THE COURT: I see. Okay. Thank you.

9 PROSPECTIVE JUROR NO. 728: Yep.

10 PROSPECTIVE JUROR NO. 712: My name is Lilia
11 Avila, Badge No. 712. April, the 20th, I'm finalizing
12 my wedding.

13 THE COURT: You're doing what? Finalizing?

14 PROSPECTIVE JUROR NO. 712: My wedding.

15 THE COURT: Finalizing your wedding?

16 PROSPECTIVE JUROR NO. 712: Yes.

17 THE COURT: It's not the wedding; it's
18 your -- your -- the plans for it?

19 PROSPECTIVE JUROR NO. 712: I have to fly out
20 to finalize everything: venue, food, cake.

21 THE COURT: So the wedding is not going to be
22 here in Las Vegas?

23 PROSPECTIVE JUROR NO. 712: Correct.

24 THE COURT: Okay. You're flying somewhere
25 else to make arrangements for it?

1 PROSPECTIVE JUROR NO. 712: Correct.

2 THE COURT: Okay. When is the wedding
3 scheduled?

4 PROSPECTIVE JUROR NO. 712: October 20th.

5 THE COURT: Oh, okay. All right.

6 PROSPECTIVE JUROR NO. 729: As I said
7 earlier, Michael Carelli, Badge 729. I work stage
8 tech, so I just take projects as they come and I need
9 that money to survive. I've got a lot of projects
10 coming up that don't have a specific date, but they
11 are -- one's starting on Friday, actually, and then
12 over the next couple of weeks, whatever weekday they
13 end up getting them going, so ...

14 THE COURT: Okay. Thank you.

15 PROSPECTIVE JUROR NO. 737: My name is
16 Gabriela Pond, 737. I was born and raised in Moldova,
17 East Europe, and I have a little bit of problem to
18 understand very good English.

19 THE COURT: Okay. Thank you.

20 PROSPECTIVE JUROR NO. 747: Debra Crane, 747.
21 I just returned back to work after having breast
22 surgery, so having that time off could be a financial
23 hardship on my family since I'm already way behind on
24 my bills.

25 THE COURT: Where do you work?

1 PROSPECTIVE JUROR NO. 747: I work for AAA.
2 THE COURT: AAA?
3 PROSPECTIVE JUROR NO. 747: Yes.
4 THE COURT: Do you know whether or not they
5 compensate for jury service?
6 PROSPECTIVE JUROR NO. 747: One day. Today.
7 THE COURT: What's that?
8 PROSPECTIVE JUROR NO. 747: One day. For
9 today. One day at a time. Like they did once, but
10 will they pay me for the three weeks? No. And I can't
11 qualify for short-term disability. I had that, and
12 they only give you 66 percent of your pay, which is why
13 I am far behind on my bills right now, so...
14 THE COURT: Okay. Thank you.
15 PROSPECTIVE JUROR NO. 747: You're welcome.
16 PROSPECTIVE JUROR NO. 770: Gary Meyers,
17 Badge 770. I'm a high school special ed teacher.
18 THE COURT: What's the number?
19 PROSPECTIVE JUROR NO. 770: 770.
20 THE COURT: Okay.
21 PROSPECTIVE JUROR NO. 770: 770. I'm a high
22 school special ed teacher. And starting next -- well,
23 Monday, we're -- I have IPs I have to write and
24 reevaluations on the students between now and the end
25 of April into early May, so...

1 THE COURT: So you work for the Clark County
2 School District?

3 PROSPECTIVE JUROR NO. 770: No, I actually --
4 I actually work in Nye County.

5 THE COURT: Oh, in Nye County.

6 PROSPECTIVE JUROR NO. 770: But I live here
7 in Clark County.

8 THE COURT: Okay. Do you know whether they
9 compensate for jury service?

10 PROSPECTIVE JUROR NO. 770: We are. But
11 it -- we're a very small department at the high school
12 I work at, and to have the other special ed teachers
13 have to write my IPs for my students and the testing
14 would put a hardship on my department.

15 THE COURT: Now, do you -- you live here in
16 Las Vegas or Las Vegas area here?

17 THE CLERK: I live in Mountain's Edge.

18 THE COURT: But when -- do you go to Tonopah
19 or Pahrump?

20 PROSPECTIVE JUROR NO. 770: Pahrump. I work
21 in Pahrump.

22 THE COURT: Pahrump.

23 PROSPECTIVE JUROR NO. 770: But I live here.

24 THE COURT: Okay. Thank you.

25 PROSPECTIVE JUROR NO. 781: My name is Nita

1 Douglas, Badge No. 781. And I was planning on going
2 out of town that weekend. It's my mother's 83rd
3 birthday. She's not doing very well.

4 THE COURT: When are you going out of town?
5 PROSPECTIVE JUROR NO. 781: I'm sorry?
6 THE COURT: When are you going out of town?
7 PROSPECTIVE JUROR NO. 781: On the 13th of
8 April, on that Friday.

9 THE COURT: Okay.
10 PROSPECTIVE JUROR NO. 781: Okay.
11 THE COURT: What time you leaving?
12 PROSPECTIVE JUROR NO. 781: I could leave in
13 the afternoon.

14 THE COURT: And you're just going for the
15 weekend, Saturday and Sunday, and coming back?
16 PROSPECTIVE JUROR NO. 781: Yeah, coming
17 back.

18 THE COURT: Okay.
19 PROSPECTIVE JUROR NO. 783: I am Ramon Diaz
20 Badge 703.

21 THE COURT: What's your badge number, sir?
22 PROSPECTIVE JUROR NO. 783: What you say?
23 Excuse me?

24 THE MARSHAL: Your badge number.
25 THE COURT: What is the badge number?

1 PROSPECTIVE JUROR NO. 783: 703. 783. 783.

2 THE COURT: 783. Okay. All right. Thank
3 you.

4 PROSPECTIVE JUROR NO. 783: I have a problem
5 with my English. I -- I understand. I don't speak
6 English. Sorry.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 790: Barbara Hall,
9 Badge No. 790. I have a disabled husband and a son at
10 home that I have to take care of, and I work for the RJ
11 at night. So usually I sleep during the day, so that
12 would really be a hardship on me.

13 THE COURT: What do you do at home?

14 PROSPECTIVE JUROR NO. 790: I take care of my
15 disabled husband who had a stroke and my son who's had
16 a stroke.

17 THE COURT: All right. Thank you.

18 PROSPECTIVE JUROR NO. 790: Thank you.

19 PROSPECTIVE JUROR NO. 797: Shing Gan, Badge
20 No. 79 -- 797. And my English isn't that good.

21 THE COURT: All right. Thank you.

22 PROSPECTIVE JUROR NO. 749: My name is Yan
23 Wu. My badge is 749. My English is not very well and
24 no understand well anybody.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NO. 749: That's all.

2 THE COURT: Okay. We'll go to this second --
3 front row.

4 PROSPECTIVE JUROR NO. 702: David Allen,
5 Badge 702. I'm technically supposed to be out of town
6 for the next month for work purposes for the
7 out-of-town building of a brand-new store. So over
8 there from Monday to Friday and off on the weekends.

9 THE COURT: Where do you work?

10 PROSPECTIVE JUROR NO. 702: For Star Nursery.
11 It's a plant nursery in Vegas. We're building out in
12 Bullhead City.

13 THE COURT: Oh. Do you know whether you're
14 compensated for jury service or not?

15 PROSPECTIVE JUROR NO. 702: I think so, but I
16 think it's only, like, half. I'm not 100 percent sure.

17 THE COURT: Okay. Thank you.

18 PROSPECTIVE JUROR NO. 696: Germaine
19 Prescott, Badge No. 696. I recently had a breast
20 biopsy, so I have an appointment to see a breast
21 surgeon on the 18th.

22 THE COURT: Okay. Do you know whether or not
23 that that can be scheduled for the next day or -- we're
24 not in session on the 19th.

25 PROSPECTIVE JUROR NO. 696: I can call him

1 and see. I don't know.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR NO. 690: Gerald Schaffner,
4 Badge No. 690. I have a CT scheduled for April the
5 11th and a doctor's appointment on April the 15th.

6 THE COURT: Okay. So you have the --

7 PROSPECTIVE JUROR NO. 690: The problem is
8 getting an appointment with my doctor. If I have to
9 reschedule, it's three to five weeks.

10 THE COURT: You said the doctor's appointment
11 is on the 15th.

12 PROSPECTIVE JUROR NO. 690: Yeah, Monday.
13 Oh, the 15th -- 16th.

14 THE COURT: 15th is a Sunday. 16th we're not
15 in session. Okay. All right. Thank you.

16 PROSPECTIVE JUROR NO. 669: Lisa Duran, 669.
17 I have to take my daughter to California to sign her
18 college papers on this Friday, and then I work for the
19 test site. Starting April 20, we've got a critical
20 mission that I have all the plans for, so I would have
21 to get back to there tonight and try and get the work
22 organized for them to do without me being there.

23 THE COURT: So what -- what's the -- you said
24 the test --

25 PROSPECTIVE JUROR NO. 669: I work at the

1 test site, and we have a critical mission starting on
2 the 20th that I have all the plans for locked in my
3 office that nobody can get into, 'cause coming to jury
4 duty, you just don't really think you will ever get
5 that far.

6 THE COURT: You work for the federal
7 government.

8 PROSPECTIVE JUROR NO. 669: Yes, sir.

9 THE COURT: All right. Thank you.

10 PROSPECTIVE JUROR NO. 616: Steve Willis,
11 Badge 616. I have a flight reservation April 10th
12 through 14th, Tulsa, Oklahoma.

13 THE COURT: What was the time period again?

14 PROSPECTIVE JUROR NO. 616: The 10th through
15 the 14th.

16 THE COURT: And what's happening in Tulsa?

17 PROSPECTIVE JUROR NO. 616: My father, who
18 lives in Cushing, Oklahoma, is not doing well at all.
19 And so I'm flying out to -- to visit with him.

20 THE COURT: Okay. All right. Thank you.

21 PROSPECTIVE JUROR NO. 624: Manuel Garcia,
22 624. I have problem, like, I -- I don't understand
23 English, so that's the only problem I got.

24 PROSPECTIVE JUROR NO. 633: Nicholas Meneley,
25 Badge No. 633. I'm the sole provider for my family.

1 My wife doesn't work. She is a stay-at-home mom. And
2 I already booked out work for Latin Billboards EDC and
3 ACMAs that have just came up for April. So I'm booked
4 every single day.

5 THE COURT: Do you know whether you're
6 compensated for jury service?

7 PROSPECTIVE JUROR NO. 633: I don't think so.
8 We work --

9 THE COURT: What's the name of -- who's your
10 employer?

11 PROSPECTIVE JUROR NO. 633: I work for
12 multiple employers. We work for entertainment
13 companies throughout all the properties for Vegas. So
14 3G, Rhino, ILT. All of them.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 614: My name is Jason
17 Voltz, Badge 614. Just the tail end of getting my
18 master's degree at UNLV, so I'm in the middle of my
19 professional paper/thesis. It's due May 9, so a lot of
20 meetings with my chairperson/professor coming up. So
21 this is going to be a major impact on the -- getting
22 that done. It's been a two-and-a-half-year program.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 604: Cheryl Celline,
25 604. This would be a hardship. I get three days' pay

1 for jury duty, and I've already used two of those. And
2 I have mortgage, car payment. And this would be really
3 difficult. I wouldn't be able to make my bills.

4 THE COURT: Where do you work?

5 PROSPECTIVE JUROR NO. 604: HealthCare
6 Partners. I'm a nurse. And I'm the only nurse in that
7 department there, so it would be a hardship on them
8 too.

9 THE COURT: All right. Do you have any other
10 source of support or --

11 PROSPECTIVE JUROR NO. 604: No. I own my own
12 home, single. And so it's just my finances, mortgage,
13 everything. Car payment.

14 THE COURT: Okay. Thank you.

15 PROSPECTIVE JUROR NO. 601: Your Honor,
16 Richard De-Sterre, Badge No. 601. I work for Air Force
17 Materiel Command. I train, I design, and I work with
18 people that have to go to war. I train them. I go
19 remote. I don't work in Vegas. And we only have two
20 people. I have to get them ready. I cannot go for a
21 whole month. Just sometimes I go with them, so I
22 cannot stay here.

23 My mother's 83 years old. I go home to my
24 mom all the time. I can't leave her alone. I just
25 can't do that. Sorry. But Mr. Denton at the center

1 was my -- was my lawyer, my child's lawyer. They're
2 very good people. Sorry.

3 PROSPECTIVE JUROR NO. 559: Nicole Lutey,
4 Badge 559. I'm a UNLV law student, and I have a class
5 that runs on Tuesdays and Thursdays, starting at 4:40.

6 THE COURT: 4:40?

7 PROSPECTIVE JUROR NO. 559: Yep. Every
8 Tuesday and Thursday.

9 THE COURT: What class is that?

10 PROSPECTIVE JUROR NO. 559: "Bioethics and
11 the Law."

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 563: Essai Cardoza,
14 Badge No. 563. I live with my aunt and my uncle who
15 are disabled due to a car crash out back on -- back at
16 '06. And I help take care -- take care of them by
17 moving them around and move -- putting -- sitting them
18 up for eating and on the wheelchair.

19 And on top of that, I do not have
20 transportation. No -- I don't have a car. So it's
21 really, like, puts me in --

22 THE COURT: What part of town do you live in?

23 PROSPECTIVE JUROR NO. 563: I live on -- I
24 believe the east side. No, it was -- you know where
25 5045 North Monte Cristo Way, next to the Santa Fe

1 Casino?

2 THE COURT: Next to what?

3 PROSPECTIVE JUROR NO. 563: The Santa Fe
4 Casino, all the way over there.

5 THE COURT: Okay. And how did you get here
6 today?

7 PROSPECTIVE JUROR NO. 563: Well, I got -- I
8 got an Über. But the thing is I don't have the
9 financials to keep calling Über for 20 or more days
10 because it's 20 -- 20 to get here and 20 to go back,
11 that's 40.

12 THE COURT: Is anybody helping with your aunt
13 and uncle at this time?

14 PROSPECTIVE JUROR NO. 563: No. It's only
15 me.

16 THE COURT: So they're by themselves now?

17 PROSPECTIVE JUROR NO. 563: Yes.

18 THE COURT: How old are they?

19 PROSPECTIVE JUROR NO. 563: How old are they?
20 They're 50, and the -- and my uncle is Geraldo. He's,
21 like, 60.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 563: And I'm only 20.

24 THE COURT: Okay. Thank you.

25 PROSPECTIVE JUROR NO. 031: Alex Daniel,

1 0031. I do have a civil duty to be here, but I also
2 have 120 employees that I'm responsible for, and asking
3 for 20 workdays is pretty hectic.

4 THE COURT: Well, all the days we're in
5 session are not -- several days are workdays, but we
6 won't be in session. I mean, workdays, you know,
7 for -- for you, but not -- we won't be in session on
8 those days. So some Mondays we won't be in session.
9 Right?

10 PROSPECTIVE JUROR NO. 031: Correct. I -- I
11 still have business that I got to run.

12 THE COURT: What days do you work?

13 PROSPECTIVE JUROR NO. 031: Oh, Monday
14 through Saturday.

15 THE COURT: Monday through Saturday. So
16 we're not in session on Saturdays, and we're not in
17 session on Mondays. Okay.

18 PROSPECTIVE JUROR NO. 031: Workdays.
19 Workdays. Monday through Friday.

20 THE COURT: And you work for the --

21 PROSPECTIVE JUROR NO. 031: I have my own
22 company.

23 THE COURT: Your own company. Okay. Thanks.

24 PROSPECTIVE JUROR NO. 570: Hi. My name is
25 Maria Parras, and my badge number is 4215.

1 It would be a hardship for me to do this,
2 because my schedule time where I work, I work in a home
3 through a company called Dungarvin. I'm a caretaker to
4 four individuals with disabilities. And every single
5 day that you have here except for one Monday is my day
6 off, every single day. From Tuesday to Sunday I work,
7 so it would be hard.

8 I do 2:00 to 10:00 every -- every single day.
9 Saturdays, I work a graveyard shift and a regular
10 shift. So that's not going to matter for Sunday, but
11 Monday through Friday, I can't.

12 THE COURT: Okay. Do you know whether you
13 are compensated for --

14 PROSPECTIVE JUROR NO. 570: No, we're not.

15 THE COURT: -- for jury service?

16 All right. Thank you.

17 PROSPECTIVE JUROR NO. 570: Thank you.

18 THE COURT: Anybody else?

19 Okay. I see no additional hands.

20 Are there any of you who believe that, for
21 any other reason, you would be unable to serve on this
22 particular case other than what's been stated so far?

23 Okay. I see no hands.

24 PROSPECTIVE JUROR NO. 601: Your Honor, how
25 my personal belief -- sorry.

1 THE MARSHAL: Hang on.

2 PROSPECTIVE JUROR NO. 601: Badge No. 601,
3 Richard De-Sterre.

4 How about a personal belief?

5 THE COURT: Okay. That's 601, you said?

6 PROSPECTIVE JUROR NO. 601: Yes, sir.

7 THE COURT: Richard De-Sterre; right?

8 PROSPECTIVE JUROR NO. 601: Yes, sir.

9 I'm a Chinese, and our culture is always
10 working hard and never take anything for anything. And
11 my wife retired from UMC. She retired with 640 hours
12 of sick leave. And, according to most people, when
13 they retire, they take sick leave -- you burn up the
14 time. You get paid. We don't believe in that.

15 I work for my company 30 years. I never call
16 a single day sick. To me, those falls, I have fallen
17 quite a few times at Wal-Mart because the floor was
18 wet. I got up and go -- kept going. Those things, to
19 me, is I just don't believe, you know, can cause by
20 other things. Sorry. I don't want to affect anybody
21 else. That's my personal belief.

22 THE COURT: Okay. Thank you. All right.

23 PROSPECTIVE JUROR NO. 601: Sorry, sir.

24 THE COURT: Is there anybody who may not be
25 able to follow all of the instructions of the Court on

1 the law of the case even if the instructions differ
2 from their personal beliefs of what the law ought to
3 be?

4 Okay. I see no -- okay. I saw a hand back
5 there.

6 PROSPECTIVE JUROR NO. 747: Can you explain
7 that?

8 THE MARSHAL: Your badge number?

9 PROSPECTIVE JUROR NO. 747: 747, Debra Crane.

10 THE COURT: What was the badge number again?

11 PROSPECTIVE JUROR NO. 747: 747, Debra Crane.

12 THE COURT: Okay. What that means is that
13 the Court will instruct you on the law that applies in
14 the case. The jury determines what the facts are, then
15 the Court instructs you on what the law is. And the
16 question is whether you would have any difficulty
17 following the instructions of the Court on what the law
18 is even if that differed from what your personal
19 beliefs are.

20 PROSPECTIVE JUROR NO. 747: Okay. I get it
21 now. Thank you, sir.

22 THE COURT: Thank you. Okay.

23 Now, as a follow-up to the previous question,
24 I must tell you that, in this civil trial, there are
25 actually 13 judges. The 12 members of the jury sitting

1 collectively are going to be the judges of the
2 questions of fact in the case.

3 As presiding judge, I'm judge of the
4 questions of law. It's my responsibility to be sure
5 that I give instructions on the law that applies in a
6 particular case. It would be a violation of a juror's
7 duty if he or she tried to render a judgment based upon
8 what he or she believed the law to be if that differed
9 from my instructions.

10 With that in mind, is there anybody who feels
11 that he or she cannot be a fact-finder and follow my
12 instructions on the applicable law in this case?

13 Okay. I see no hands.

14 Okay. At this time, I would ask counsel to
15 approach.

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

18 THE MARSHAL: Please no talking. Everything
19 is being recorded.

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

22 THE COURT: All right. Ladies and gentlemen,
23 if and when I read your name, please stand and remain
24 standing until I give you further directions. All
25 right?

1 Richard De-Sterre. That's badge No. 601.
2 PROSPECTIVE JUROR NO. 601: Yes, sir.
3 THE COURT: Cheryl Celline, 604.
4 Manuel Garcia-Rayas -- I'm sorry. No,
5 that's -- pardon me.
6 Next one is 633, Nicholas Meneley.
7 All right. Next is -- that's Badge No. 633.
8 Next is 669, Lisa Duran. All right?
9 Okay. The next is 729, Michael Carelli.
10 THE MARSHAL: He's in the bathroom, Your
11 Honor.
12 THE COURT: Okay. 729, Michael Carelli.
13 747, Debra Crane.
14 Okay. 749, Yan Wu.
15 783, Ramon Diaz-Aguacia.
16 Okay. 790, Barbara Hall.
17 797, Shing Gan. Did I say that right?
18 PROSPECTIVE JUROR NO. 797: Yeah.
19 THE COURT: Okay. Those of you whose names
20 I've just called out will be excused from further
21 service in this case. We thank you for your
22 participation up to now in this rather tedious process.
23 You're directed to leave the courtroom, and I believe
24 you need to go back to the jury office for any further
25 instruction that they may have for you. Okay?

1 PROSPECTIVE JUROR NO. 747: Thank you so
2 much, Your Honor.

3 (Whereupon excused jurors exited the
4 courtroom.)

5 THE COURT: Okay. At this time, I will ask
6 Alice to call the first 24 names that will be seated in
7 the order 1 through 24 over here in the jury box and in
8 the chairs just in front of it. Some of the people are
9 already in the proper seats that will have to be --
10 some may have to move over or -- so let's make sure
11 everyone is in the proper seats.

12 Bob, I think people should go back where they
13 were and we're just going to fill the empty seats. So
14 they should go back.

15 THE MARSHAL: You don't want them in order?

16 THE COURT: No, she's going to fill the seats
17 that were vacant.

18 THE CLERK: Right now, we're going to have
19 Alexan Daniel in Seat No. 1.

20 Susan Millhouse in Seat No. 2.

21 Nicole Lutey in Seat No. 3.

22 Essai Cardoza in Seat No. 4.

23 Mei-Yen Sun in Seat No. 5.

24 Maria Parras in Seat No. 6.

25 Lara Dupree in Seat No. 7.

1 Enrie Davis, Seat No. 8.

2 THE COURT: Slow down a little bit now. So
3 now they've got two that were excused, which were 9 and
4 10.

5 THE CLERK: Okay. Seat No. 9 is going
6 to -- to be Thomas Torres. He is Badge No. 704.

7 THE MARSHAL: So that's Seat No. 9?

8 THE CLERK: Seat No. 9, correct.
9 Seat No. 10 will be Luzangelica Gomez, Badge
10 710.

11 Seat No. 12, Jason Voltz, Badge No. 614 --
12 or -- yeah, Seat No. 11 -- Seat No. 11 is Linette
13 Ayala, Badge 611 in Seat 11.

14 Jason Voltz, Badge 614, in Seat 12.
15 Steve Willis, Badge 616, in Seat 13.
16 Sally Wahl, Badge 617, in Seat 14.

17 THE MARSHAL: Yeah.

18 THE CLERK: Sheila Mosallaei, Badge 622, in
19 Seat 15.

20 Manuel Garcia-Rayas, Badge 624, in Seat 16.
21 Lilia Avila, Badge 712, please take Seat
22 No. 17.

23 Nancy Solloway, Badge 636, please take
24 Seat 18.

25 John Saylor, Badge 728, please take Seat