

**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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**JOINT APPENDIX - VOLUME 3**

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1 No. 19.

2 Michele Taketa, Badge 670, please take  
3 Seat 20.

4 Robert Loerwald, Badge 676, please take  
5 Seat 21.

6 Gerald Schaffner, Badge 690, please take  
7 Seat 22.

8 That was -- was that excused?

9 And Seat 22 will be Gerald Schaffner,  
10 Badge 690.

11 Seat 23 is Germaine Prescott, 696 is the  
12 badge number, sitting in Seat No. 23.

13 David Allen, Badge No. 702, please take seat  
14 No. 24.

15 THE COURT: Okay. Thank you.

16 Ladies and gentlemen, at this time, we're  
17 going to take a 15-minute recess, and remember where  
18 you're seated. Remember where you're seated, those of  
19 you also seated out in the audience portion of the  
20 courtroom, because when you come back, we'll take the  
21 same seats you're in now because they're in order.

22 So we will resume at 25 to 4:00. Be outside  
23 the courtroom just at 25 to 4:00. Okay? Thank you.

24 (Whereupon a short recess was taken.)

25 (The following proceedings were held

1 outside the presence of the jury.)

2 THE MARSHAL: All rise for the Court.

3 THE COURT: You may be seated. We're back on  
4 the record. We're outside the presence of the jury  
5 venire. I understand there's an issue regarding the  
6 reporting, recordation.

7 MR. MORELLI: Well, the first issue, Your  
8 Honor, if I may, is about Mr. De-Sterre before he left.  
9 And I would like Mr. Fallick from my office to tell the  
10 Court on the record exactly what he heard him say when  
11 we were up at the bench.

12 MR. FALLICK: Your Honor, just -- he  
13 continued -- after all the attorneys approached the  
14 bench, I saw him continue and overheard him discussing  
15 some of -- his final comment, which was something along  
16 the lines of not believing in litigation or something  
17 falls and how he was hardworking. And I overheard him  
18 reiterating that to the people basically in -- everyone  
19 around him within earshot.

20 Yeah. And, at some point, Bob -- the marshal  
21 approached and asked the jury as a whole to stop  
22 talking because there was a lot of communication going  
23 on. But, before that, Mr. De-Sterre continued the same  
24 talk that he was having before we adjourned and counsel  
25 approached the bench.

1 THE COURT: All right.  
2 Anybody else want to say anything about that?

3 MR. POPOVICH: If it was the same thing he  
4 said before, I don't see any greater impact, Your  
5 Honor.

6 THE COURT: Okay. All right. Thank you.

7 MR. MORELLI: One of the -- the comments by  
8 counsel when he did say that is he didn't say it for  
9 very long, and it was -- you know, he was cut off and  
10 he didn't say much more.

11 But while we were up at the bench, he  
12 continued to speak to the jury, which I think is  
13 prejudicial, Your Honor. And I -- you know, I renew my  
14 application.

15 THE COURT: Okay.

16 MR. MORELLI: My second comment is that --  
17 would you entertain now challenges for cause so that --  
18 there's one or two people here who I believe should be  
19 challenged for cause.

20 THE COURT: No, let's wait till we're in the  
21 midst of the voir dire, and then you can make your  
22 challenge.

23 MR. MORELLI: Okay. The next thing is, Your  
24 Honor, we now have two records of the trial. All  
25 counsel have stipulated to -- to retain the court

1 stenographer and pay her. And that -- that is the  
2 official record of this case. And whether the audio  
3 tape agrees or disagrees with that record, that record  
4 is the official record of this case.

5           And what I don't want to happen is, God  
6 forbid, there is a problem and somebody wants to  
7 challenge this case. There was a problem. She took it  
8 down wrong or whatever. I -- I don't see the need for  
9 us to be worrying about two records when, in this case,  
10 we were allowed to agree that that's the official  
11 record.

12           Now, I know that what you usually do here is  
13 record it, but we're not doing that here. We have  
14 realtime stenographic notes of the trial. And that's  
15 what we're going to be relying on. And I think that  
16 the -- all of the attorneys should not be, you know,  
17 passing the microphone to these jurors and spending the  
18 time to do that when we have other work to do. And I'm  
19 concerned that, God forbid, there's any witness in this  
20 case at any time or anything during jury selection  
21 that's said, the record that is going to be the  
22 official record is the court stenographer. We don't  
23 need two records. And I -- and I believe that -- that  
24 it's inappropriate for us.

25           THE COURT: That is a matter we discussed at

1 the meeting that we had last week, isn't it?

2 MR. MORELLI: I didn't have any meeting with  
3 Your Honor.

4 THE COURT: But we did have a meeting. You  
5 weren't there, but it was scheduled and everybody  
6 was -- involved participated in it, some by telephone.  
7 And we did discuss this. And it was determined that --  
8 as I recall, that both would happen, but that the court  
9 recorder would be -- if there were a discrepancy, if  
10 the -- the recorder would be the -- would be the one  
11 that would be deemed the official one.

12 Is that not correct?

13 MR. ROBERTS: That is what we agreed to, Your  
14 Honor. And I have no objection to going either way,  
15 but that is what we agreed to.

16 THE COURT: That -- that the person here will  
17 be doing the dailies and everything. And I think  
18 she'll eventually be doing the -- the transcript;  
19 correct? But she'll be working with the court recorder  
20 to make sure that -- that the --

21 MR. MORELLI: So, Your Honor --

22 THE COURT: -- they're on the same page.

23 MR. MORELLI: If, in fact, that's what you  
24 want to do, can we have somebody take care of the  
25 microphones so that I don't have to stand at the

1 podium, and --

2 THE COURT: Well, Bob does the microphone,  
3 don't you, Bob?

4 MR. MORELLI: I don't have to interact with  
5 the jury. I don't think --

6 THE COURT: No, no.

7 MR. MORELLI: -- I don't think that any of  
8 the lawyers should be handing --

9 THE COURT: Bob will be handing the  
10 microphone to the respective jurors, not you.

11 MR. MORELLI: Okay. That's fine.

12 THE COURT: All right.

13 MR. MORELLI: That's fine.

14 THE COURT: Unless there's an agreement  
15 otherwise, that -- that we would dispense with  
16 recordation and just have the court reporter.

17 MR. MORELLI: My understanding was that you  
18 all agreed to the stenographer. What is the point --

19 MR. ROBERTS: I was willing to agree just for  
20 voir dire, Your Honor, if it -- if it was being  
21 proposed. I don't have any objection to that just for  
22 voir dire, but ...

23 THE COURT: That what?

24 MR. ROBERTS: That we waive recordation of  
25 voir dire and only have the court reporter as the

1 official record for the purposes of voir dire.

2 THE COURT: With no need to pass the  
3 microphone?

4 MR. ROBERTS: With no need to pass the  
5 microphone.

6 And then once we get into trial and everyone  
7 has a microphone at the witness stand and here, then we  
8 can go back to recording as we previously agreed. I've  
9 got no objection if plaintiffs' counsel wants to do it  
10 that way.

11 THE COURT: How's that?

12 MR. MORELLI: That's -- that's fine, Your  
13 Honor.

14 THE COURT: Okay. So let's do it that way,  
15 then. You don't have to record the voir dire. Okay.

16 All right. Very well. So if -- anybody  
17 disagree with that?

18 MR. ROBERTS: Here comes Roger.

19 MR. STRASSBURG: Would you give the typical  
20 instruction to the -- to the jurors that, in this  
21 courthouse, they're out in the hall and we're  
22 intermingling with them and we have to ignore them?  
23 Could you tell them the usual thing, that that's going  
24 to happen and it's meant no disrespect; it's just  
25 something we do?

1 THE COURT: I will certainly read them the  
2 admonishment.

3 MR. STRASSBURG: Thank you, sir.

4 THE COURT: Okay. So are we ready for the  
5 venire now?

6 MR. POPOVICH: I think I need one more  
7 clarification. So for voir dire -- and I'm in  
8 agreement, but I just want to be sure.

9 For voir dire, the official record is our  
10 stenographer. After voir dire, when we get to openings  
11 and witnesses, the official record will be the recorder  
12 but we're using the stenographer for our dailies and  
13 that use. Is that --

14 MR. MORELLI: Yes.

15 MR. POPOVICH: Okay. I understand.

16 THE COURT: Understand that, Jennifer?  
17 You're on the same page?

18 THE COURT RECORDER: Yes.

19 MR. POPOVICH: Thank you.

20 THE COURT: You're very welcome. That will  
21 be it. So we're -- all right. So let's have the jury.

22 MR. ROBERTS: Your Honor, there is one other  
23 question. And I -- I apologize. I may not have been  
24 paying full attention. Have we sworn the panel?

25 IN UNISON: Yes.

1 MR. ROBERTS: Just totally missed it.

2 THE COURT: One segment -- the other segment  
3 of the venire is being told to report tomorrow at  
4 9:00 -- or I think they'll come at 8:30 so they can --  
5 I have to orient them as well. So let's see where we  
6 get today. I think we've got four left over after the  
7 excuses; right? So let's see where we go. All right?

8 MR. MORELLI: Yep.

9 THE COURT: Okay. Let's have them brought  
10 in.

11 (The following proceedings were held in  
12 the presence of the jury.)

13 THE COURT: All right. You may be seated  
14 when you've found your assigned seat.

15 Do counsel stipulate that the jury venire is  
16 now present?

17 MR. MORELLI: Yes, Your Honor. Stipulated.

18 MR. ROBERTS: Yes, Your Honor.

19 MR. POPOVICH: Yes, Your Honor.

20 THE COURT: Okay. At this time, I'll be  
21 posing questions to those of who are in the jury box  
22 collectively. And I'll ask you, if you wish to respond  
23 to a given question, raise your hand, leave your hands  
24 up long enough so that counsel can take note to  
25 those -- of those of you who have raised your hand in

1 response to the question posed.

2           Okay? I'm not going to be asking you to  
3 elaborate on the reason why you've raised your hand,  
4 but counsel may want to ask you questions about why you  
5 raised your hand in response to a given question.

6           So please raise your hand if there is any  
7 reason why you could not be a completely fair and  
8 impartial juror if selected to serve in this case.

9           Okay. Put your hands up. Keep them up for a  
10 bit so that counsel may take note. Keep them up until  
11 I tell you to lower them.

12           I see five. Keep the hands up.

13           Have counsel made note?

14           MR. POPOVICH: One more second, Your Honor.  
15 Got it.

16           THE COURT: Okay. You may lower your hands.

17           Please raise your hand if you doubt that you  
18 can wait in forming your opinion on the appropriate  
19 result until all of the evidence has been heard.

20           Okay. I see no hands in response to that  
21 question.

22           Please raise your hand if you doubt that you  
23 can base your verdict solely on the evidence brought  
24 out at trial and the law that applies as stated in my  
25 instructions to you without fear of criticism or

1 popular opinion.

2 I see no hands in response to that one.

3 Now, here's where I may have some questions  
4 of you individually for any of those that have raised  
5 your hand.

6 Please raise your hand if you've ever served  
7 as a juror before.

8 Okay. I see one person. One second.

9 Let's see. And your name is?

10 PROSPECTIVE JUROR NO. 670: Michele Taketa.

11 THE COURT: Okay. How many times have you  
12 served as a juror?

13 PROSPECTIVE JUROR NO. 670: Once.

14 THE COURT: Was that a civil or a criminal  
15 case?

16 PROSPECTIVE JUROR NO. 670: Civil.

17 THE COURT: Without telling us what the  
18 verdict was, did you reach a verdict?

19 PROSPECTIVE JUROR NO. 670: Yes.

20 THE COURT: Were you the foreperson in that  
21 case?

22 PROSPECTIVE JUROR NO. 670: No.

23 THE COURT: All right. Is there anything  
24 about that experience that would affect your ability to  
25 sit as a fair and impartial juror in this case?

1 PROSPECTIVE JUROR NO. 670: No.  
2 THE COURT: Has anybody else served as juror?  
3 Okay. I see no additional hands.  
4 Please raise your hand if you've ever been a  
5 party to a lawsuit, if you've ever been a party to a  
6 lawsuit.  
7 Okay. Keep your hands up long enough for  
8 counsel to take note.  
9 All right. That's -- you've made your note?  
10 You may lower your hands.  
11 Please raise your hand if you've ever been a  
12 witness in a lawsuit.  
13 Couple hands there, Counsel.  
14 MR. DEUTSCH: Could I have the hands one more  
15 time, Your Honor, please?  
16 Thank you.  
17 THE COURT: Has everybody taken note now?  
18 You may lower your hands.  
19 Okay. Please raise your hand if you doubt  
20 that, if you were a party to this case on either  
21 side -- on either side here -- if you doubt that you  
22 would be comfortable with 12 jurors just like you  
23 sitting in judgment of your case.  
24 PROSPECTIVE JUROR NO. 676: Repeat that?  
25 THE COURT: I'll repeat it.

1           Raise your hand if you doubt that, if you  
2 yourself were a party to this case on either side, you  
3 would be -- you doubt that you would be comfortable  
4 with 12 jurors just like you sitting in judgment of  
5 your case.

6           Okay. I see no hands.

7           Okay. At this time, counsel for the  
8 plaintiffs, you may examine.

9           MR. MORELLI: Thank you, Your Honor.

10

11                               VOIR DIRE EXAMINATION

12           MR. MORELLI: Good afternoon again. It's  
13 been a long time. So thanks for being very honest and  
14 open about it.

15           I don't know that I got all of the hands, but  
16 I'm going to start -- I want to tell you a lot of  
17 things and ask you things collectively. But I want to  
18 start with you, Mr. Daniel, not to single you out, but  
19 I know you've raised your hand a few times, you know,  
20 with reference to this case. And I think one of the  
21 things was because the profession you're in; correct?

22           PROSPECTIVE JUROR NO. 031: Correct.

23           MR. MORELLI: And the other thing was because  
24 I believe it's your wife who works at MGM.

25           PROSPECTIVE JUROR NO. 031: Both my wife and

1 my brother.

2 MR. MORELLI: And your brother.

3 PROSPECTIVE JUROR NO. 031: Correct.

4 MR. MORELLI: Okay. And do you feel, as a  
5 result of that, that it would be in any way difficult  
6 for you if you found, with reference to the evidence,  
7 that you had to find against your wife and brother's  
8 employer because they're a defendant?

9 PROSPECTIVE JUROR NO. 031: Regarding the  
10 evidence?

11 MR. MORELLI: Yes.

12 PROSPECTIVE JUROR NO. 031: No.

13 MR. MORELLI: You know what I'm saying?

14 PROSPECTIVE JUROR NO. 031: Yeah.

15 MR. MORELLI: Because in order for us to make  
16 a determination as to whether or not you should be  
17 excused, it has to be based on whether or not it would  
18 cause a problem for you, you know, deciding the case.  
19 Okay? And -- and that has to do with you know that  
20 we're -- that one of the defendants in this case is a  
21 contracting company.

22 PROSPECTIVE JUROR NO. 031: Correct.

23 MR. MORELLI: Is that what you do?

24 PROSPECTIVE JUROR NO. 031: Yes.

25 MR. MORELLI: Okay. And do you think in any

1 way you're going to align yourself with that defendant,  
2 because -- and I want you to think about it. You don't  
3 have to answer me immediately. Let me tell you a few  
4 things about the case and about why I'm here, away from  
5 my family, living here in Las Vegas, to try this case.

6 I keep remembering this.

7 You -- you have to understand that our system  
8 of justice -- our civil justice system is unique in the  
9 world. Okay? Unique in the world.

10 MR. POPOVICH: Objection to the speech, Your  
11 Honor.

12 THE COURT: Just as a premise, I'll allow it  
13 briefly. Okay? As a premise to the question.

14 MR. MORELLI: It's unique in the world. We  
15 have jurors deciding civil cases. And most times, I'm  
16 asked, does the jury make the determination? And the  
17 answer is, yes, you decide the facts in the case  
18 because there are no facts until you say there's facts.

19 So, right now, there's no facts in the case;  
20 there's evidence. And, at some point, if you are  
21 chosen to be a juror in this case and you decide the  
22 case, whatever you decide will become the facts.

23 And I always liken it to, like, baking a  
24 cake, that there's certain ingredients that you need in  
25 order for the cake not to fail, in order for it to not

1 collapse but look good and taste good.

2           So one of the things is the facts as you find  
3 them to be if you're selected as a juror in this case,  
4 and the other one is the law from the Court. And I  
5 believe the judge had spoken to you all and said, can  
6 you take the law as the -- as I give it to you -- as  
7 the judge gives it to you. You have to decide whether  
8 or not -- you have to decide the facts, put them  
9 together with the law as the Court gives it to you,  
10 whether you like it or not.

11           So let's assume for a moment that you hear a  
12 law and you disagree with it. You say, "Well, that's  
13 really unfair." Or "I wouldn't -- if I was writing the  
14 law, I wouldn't write it that way." You know, you have  
15 to follow it. You have to follow it.

16           And so that's a few things that you have to  
17 think about. Can I follow the law if I don't agree  
18 with it? And am I in any way going to be prejudiced in  
19 the case? And I'm going to talk to you in a moment  
20 about prejudice and what I think about it in this  
21 particular case.

22           Now, we all have strong opinions. And --  
23 and, in our country, we know that people feel  
24 differently about things, obviously. And we have the  
25 right to do that. All right?

1           So we're not here to change your opinions  
2 about anything. I for one am not that good. I'm not  
3 here to change your opinion. What I'm here is to find  
4 out whether or not any opinions that you have will in  
5 any way affect the outcome of this case.

6           Mr. Daniel, you understand what I mean;  
7 right?

8           PROSPECTIVE JUROR NO. 031: Completely.

9           MR. MORELLI: And it makes sense; right?

10          So -- so if, in fact, you have a strong  
11 opinion, if that strong opinion doesn't hurt anybody,  
12 if it doesn't affect your judgment in the case, it's  
13 not a prejudice 'cause it's not hurting anybody. Okay?

14          So those are the kind of things that I ask  
15 all of you to think about. And -- and you will see  
16 that during jury selection all of the attorneys are  
17 going to have a chance to speak to you individually.  
18 This is our chance to do that. And I for one believe  
19 that we should have the opportunity to speak to you  
20 directly and -- and get the sense of whether or not you  
21 could be a fair and impartial juror. And it's  
22 certainly what you would want a lawyer to do if someone  
23 was representing you -- right? -- to be thorough and  
24 careful and try to do the right thing.

25          So a number of things -- and so, Mr. Daniel,

1 I want you to keep that in your mind, just think about  
2 it, because if you think you can be a fair and  
3 impartial juror in this case even though your wife and  
4 your brother are employed by MGM. And, you know,  
5 that's a different story, if you feel -- and -- and  
6 understand, it doesn't mean that you're an unfair  
7 person if in fact something close to you affects you --

8 MS. FRESCH: Your Honor.

9 MR. MORELLI: -- in a certain way.

10 MS. FRESCH: Objection. We still don't have  
11 a question.

12 THE COURT: Sustained. Let's get to the  
13 questions now.

14 MR. MORELLI: So what I'm saying to you is --  
15 and I'm -- I'm going to come back to you and ask you  
16 directly in a minute. I just want you to think about  
17 it -- okay? -- with reference to that.

18 PROSPECTIVE JUROR NO. 031: Sure.

19 MR. MORELLI: The -- the fact that we have a  
20 case here where there are two defendants in the case  
21 that are high profile -- and when I say "high profile,"  
22 I mean a defendant that you would recognize the name  
23 of. Okay?

24 Is there anybody here who never heard of the  
25 MGM Grand? Anybody here?

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Anybody here?

No. Everybody knows that.

Anybody here ever -- or never heard of David Copperfield. Does everybody here know who David Copperfield is? Yes?

You don't?

Okay. All right. That's one.

The -- the -- the question that I have for each of you -- and I'll ask you, Mr. Daniel.

If, in fact, the evidence and the law leads you to find that David Copperfield and his company David Copperfield Disappearing, Inc., are responsible to my client in negligence and my client's entitled to a verdict against him and his company or one or the other, could you do that?

PROSPECTIVE JUROR NO. 031: Yes.

MR. MORELLI: Okay. You have no -- have you ever gone to a David Copperfield show?

PROSPECTIVE JUROR NO. 031: No.

MR. MORELLI: Okay. Used to be I would memorize all of this.

Millhouse?

PROSPECTIVE JUROR NO. 462: Yes.

MR. MORELLI: How are you?

PROSPECTIVE JUROR NO. 462: I'm fine.

1 MR. MORELLI: With reference to -- to the  
2 question about David Copperfield. All right? And I'm  
3 going to ask you also is there any reason that you  
4 would feel -- and I'm only asking now about the  
5 high-profile defendants in this case.

6 Is there any reason that you feel that, if  
7 you were to find from the evidence and the law that MGM  
8 Grand is responsible to my client in negligence, could  
9 you find that?

10 PROSPECTIVE JUROR NO. 462: Yes.

11 MR. MORELLI: Okay. And I ask you the same  
12 question with reference to David Copperfield.

13 PROSPECTIVE JUROR NO. 462: Yes.

14 MR. MORELLI: Okay. Have you ever gone to a  
15 David Copperfield show?

16 PROSPECTIVE JUROR NO. 462: No.

17 MR. MORELLI: Have you ever stayed at the MGM  
18 Grand?

19 PROSPECTIVE JUROR NO. 462: No.

20 MR. MORELLI: Okay. So you have no feelings  
21 one way or the other about the MGM Grand or David  
22 Copperfield?

23 PROSPECTIVE JUROR NO. 462: Correct.

24 MR. MORELLI: Okay. Now, understand that,  
25 you know, earlier today, we heard one of the

1 prospective jurors who's been excused state certain  
2 opinions about our system and about what he feels and  
3 about how he's brought up. You heard what he said?

4 PROSPECTIVE JUROR NO. 462: Correct.

5 MR. MORELLI: Okay. Can you put that out of  
6 your mind and not be affected, you know, negatively  
7 about what he said?

8 PROSPECTIVE JUROR NO. 462: Oh, absolutely.

9 MR. MORELLI: Okay. Mr. Daniel, can you do  
10 that too?

11 PROSPECTIVE JUROR NO. 031: Absolutely.

12 MR. MORELLI: Okay. Because you understand  
13 that's one man's opinion, and you understand that if in  
14 fact all of you were to agree with his opinion or be  
15 moved in any way by it, I could go home now; right?

16 Okay. So Ms. Lutkey?

17 PROSPECTIVE JUROR NO. 559: Lutey.

18 MR. MORELLI: Lutey.

19 PROSPECTIVE JUROR NO. 559: Yes.

20 MR. MORELLI: Right. Sorry. I gave you a K  
21 in there. I didn't mean to do that.

22 Same question to you with reference to the  
23 MGM Grand. If you were to find that my clients, the  
24 Coxes, are entitled to your verdict based on the  
25 evidence and the law, could you find the verdict

1 against the MGM Grand?

2 PROSPECTIVE JUROR NO. 559: Yes.

3 MR. MORELLI: Okay. Have you ever gone to a  
4 David Copperfield show?

5 PROSPECTIVE JUROR NO. 559: No.

6 MR. MORELLI: You know who he is --

7 PROSPECTIVE JUROR NO. 559: Yes.

8 MR. MORELLI: -- obviously? Okay.

9 Would you have any problem -- and -- and I --  
10 I like to use the term "based on the merits." Based on  
11 the merits means the evidence and the law, not anything  
12 lawyers tell you, but based on the merits, things that  
13 come from the witness stand, things that come from  
14 documents, things that come from photographs. Okay?  
15 If -- if based on that, that would be the merits in the  
16 case.

17 Would you find -- would there be any problem  
18 with you finding a verdict in favor of my clients if  
19 you felt, based on the merits, that was the correct  
20 thing to do?

21 PROSPECTIVE JUROR NO. 559: No.

22 MR. MORELLI: Okay. And that's true with  
23 reference to Mr. Copperfield and his company.

24 PROSPECTIVE JUROR NO. 559: Yes.

25 MR. MORELLI: Thank you.

1           Okay. Now, Mr. Cardoza, who doesn't know who  
2 Mr. Copperfield is. Okay. Now, how long have you been  
3 living in this area?

4           PROSPECTIVE JUROR NO. 563: Three years.

5           MR. MORELLI: Okay. And you have obviously  
6 never gone to a show that Mr. Copperfield is --

7           PROSPECTIVE JUROR NO. 563: No.

8           MR. MORELLI: Do you have any idea who he is  
9 at all?

10          PROSPECTIVE JUROR NO. 563: Well, based on  
11 what you're saying, I'm guessing he's a magician.

12          MR. MORELLI: Yes.

13          PROSPECTIVE JUROR NO. 563: That's all --  
14 that's all the information I got.

15          MR. MORELLI: That's absolutely true. Okay.  
16 He is.

17          Now, with reference to our lawsuit against  
18 him and his company, you would -- you see any reason  
19 why you would have a problem finding a verdict against  
20 him and his company if the evidence and the law led you  
21 to that decision?

22          PROSPECTIVE JUROR NO. 563: No, I don't see  
23 any problems. But I have a question that's been, like,  
24 in my mind for a while.

25          MR. MORELLI: Okay. Here's -- here's my

1 answer to your question before I hear it.

2 PROSPECTIVE JUROR NO. 563: Yeah.

3 MR. MORELLI: Okay. While you're thinking  
4 about that question, is there any way that you feel  
5 that what you're going to be asking may in any way  
6 affect the rest of these jurors in any way at all?

7 Because, otherwise, I'd like to hear your  
8 question in private.

9 PROSPECTIVE JUROR NO. 563: Probably. Yes --

10 MR. MORELLI: Okay.

11 PROSPECTIVE JUROR NO. 563 -- after that.

12 MR. MORELLI: So can we -- can we do that,  
13 Your Honor, or can we hold the question until after  
14 or ...

15 THE COURT: Well, I think, in the interest of  
16 time, we need to hold it until another time.

17 MR. MORELLI: Okay. Okay. So we're going to  
18 hold -- you can remember that question?

19 PROSPECTIVE JUROR NO. 563: Yes.

20 MR. MORELLI: You're a young man.

21 Okay. Now, with reference to the MGM Grand,  
22 I have the same question. You obviously know who the  
23 MGM Grand is?

24 PROSPECTIVE JUROR NO. 563: Well, my -- I  
25 have a friend who works in the casino. And he would

1 bring, like, MGM Grand merchandise, like bags and  
2 stuff, because he works as a -- like, he sets up --

3 MR. MORELLI: He still works?

4 PROSPECTIVE JUROR NO. 563: He still works  
5 there.

6 MR. MORELLI: Uh-huh.

7 PROSPECTIVE JUROR NO. 563: So, like, that's  
8 where I got the reference from, like, oh, I've seen  
9 this, but I -- other than that, no.

10 MR. MORELLI: Okay. Let me say, in response  
11 to that, it is -- it is not our intention, nor is it  
12 our job -- "our" meaning my team. Okay? The  
13 plaintiffs in this case, we're not here to prove that  
14 MGM is a bad company. We're not here to prove that  
15 David Copperfield's a bad guy or that his company is a  
16 bad company. That's not what we're talking about.

17 What we're talking about is, on  
18 November 12th, 2013 -- easy to remember, even for me,  
19 11/12/13, that's the date of the accident. And we're  
20 saying that on that day they were negligent. On that  
21 day, because of things they did and failed to do --  
22 things they did and failed to do -- my client was  
23 caused to be injured.

24 Now, what I spoke to you earlier about was  
25 that this case is what we call a bifurcated case. Now,

1 that only means one thing. It means that it's a split  
2 trial. We're trying the case in two parts.

3           The Court already spoke to you about what  
4 days the Court is working. The Court spoke to you  
5 about the times that the Court is working. There's no  
6 reason for us to rehash any of that.

7           But what we're speaking about is whether or  
8 not you realize that this is only about negligence.  
9 Straightforward common sense. Okay? So we're  
10 saying -- I'm asking all of you, each one of you  
11 individually, whether or not you could sit on a case  
12 like this and get -- give a fair and impartial verdict  
13 to all of the parties in the case, fair and impartial  
14 verdict.

15           Because there can't be a fair and impartial  
16 verdict if there's any bias or prejudice with reference  
17 to any party in the case. That's not a fair verdict.  
18 Okay? So I'm advocating for my client and I'm saying  
19 to you that the proof will show that we're entitled to  
20 your verdict.

21           MR. ROBERTS: Objection, Your Honor.

22           MR. POPOVICH: Argument.

23           THE COURT: Okay. Let's --

24           MR. MORELLI: You have to decide whether or  
25 not, based on the evidence and the law, whose

1 verdict -- who should get your verdict. That's what  
2 your decision has to be.

3 Now, Ms. Sun.

4 PROSPECTIVE JUROR NO. 567: Yes.

5 MR. MORELLI: I believe that -- before we  
6 talk about what I was just talking about, I believe you  
7 had your hand up with reference to being a party in a  
8 case.

9 PROSPECTIVE JUROR NO. 567: Yes.

10 MR. MORELLI: Okay. Can you tell us a little  
11 bit about that? And when I say "us," I mean all of the  
12 lawyers.

13 PROSPECTIVE JUROR NO. 567: So my husband's  
14 company being sued by an ex-employee. So -- but we did  
15 won this case. And also my husband was being sued by  
16 his ex-partner, and we won the lawsuit also.

17 MR. MORELLI: So this is was sued?

18 PROSPECTIVE JUROR NO. 567: Yes.

19 MR. MORELLI: So it's past?

20 PROSPECTIVE JUROR NO. 567: It's past.

21 MR. MORELLI: Okay.

22 PROSPECTIVE JUROR NO. 567: Last year.

23 MR. MORELLI: Right. Okay. You know, were  
24 you trying to get my attention?

25 PROSPECTIVE JUROR NO. 462: No.

1 MR. MORELLI: Now, generally speaking, being  
2 a party to a lawsuit is not necessarily something that  
3 disqualifies a person as a juror. Okay? But it all  
4 comes back to what I was talking about before. And  
5 that is we have strong opinions based on what happens  
6 to us in our lives. And, as a result of that, you  
7 know, we necessarily may not be able to be as fair as  
8 we need to be in a case if we were a party to a lawsuit  
9 twice being sued. And, obviously, this was very  
10 personal --

11 PROSPECTIVE JUROR NO. 567: Yes.

12 MR. MORELLI: -- to you and -- and your  
13 family. And -- and it -- and I could tell it's very  
14 personal by your demeanor and also the fact that you  
15 told us that you won both cases. Okay.

16 PROSPECTIVE JUROR NO. 567: Yes.

17 MR. MORELLI: Now, understand that you and I  
18 don't know each other. Okay? So I'm only asking you  
19 the question, you know, to be as honest and as open as  
20 you can be with all of us, that will my clients,  
21 because they're suing, my clients are on the other  
22 side -- you know, they're the party bringing lawsuits  
23 against the defendants in this case, more than one  
24 defendant in the case -- be at a disadvantage in any  
25 way at all if you're a juror in this case? That's what

1 I want you to think about. Okay? That's what I want  
2 you to think about.

3 I think that it's -- and I often find, in the  
4 amount of time that I've spent being a trial lawyer,  
5 that I'd rather give somebody a chance to really think  
6 about it rather than just, you know, give me your  
7 answer right away, something like that.

8 So think about that, and I'll come back to  
9 you about it unless you know at this particular time  
10 that it would be a problem for you sitting on the case  
11 because of these prior lawsuits.

12 Do you feel that way at this moment or do you  
13 want to think about it?

14 PROSPECTIVE JUROR NO. 567: Yeah, I do feel  
15 that way.

16 MR. MORELLI: You do feel that way?

17 PROSPECTIVE JUROR NO. 567: Uh-huh.

18 MR. MORELLI: And we -- we appreciate your  
19 honesty.

20 Your Honor, at this time, I'd like to  
21 challenge her for cause.

22 THE COURT: Okay. Sir, do you wish to --

23 MR. POPOVICH: Inquire?

24 THE COURT: Right.

25 MR. POPOVICH: Thank you. Yes, please.

1           Good afternoon, Ms. Sun. Your husband's  
2 lawsuits, did they go to a trial like this?

3           PROSPECTIVE JUROR NO. 567: No. They had --  
4 he didn't go to trial, but had -- a lawyer presented at  
5 a -- I don't know -- what do you call this?

6           MR. POPOVICH: Arbitration?

7           PROSPECTIVE JUROR NO. 567: Arbitration, yes.

8           MR. POPOVICH: So somebody experienced in the  
9 law sat in judgment and listened?

10          PROSPECTIVE JUROR NO. 567: Yes. With a  
11 lawyer, yes.

12          MR. POPOVICH: And was it important to get  
13 somebody that was fair to listen to the case?

14          PROSPECTIVE JUROR NO. 567: Yes.

15          MR. POPOVICH: The parties here on both sides  
16 want fair people to listen to this case. Do you think  
17 that experience makes you at such a place in your life  
18 that you can't be one of those fair people?

19          PROSPECTIVE JUROR NO. 567: Yeah, it's a  
20 little bit -- yeah, because we've been sued and --  
21 well, consider my husband company in that industry is  
22 sort of like a big company. So that's how I look at  
23 it, people just going to automatically sue us. And  
24 even though we won the suit, but it's just kind of a  
25 really stressful time we had to go through all that.

1 MR. POPOVICH: I understand. Thank you.

2 THE COURT: All right. Want to approach?

3 MR. MORELLI: Yeah.

4 THE COURT: Anybody else -- anybody have --  
5 want to approach?

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

8 THE COURT: All right. Ms. Sun, it is?  
9 Correct?

10 PROSPECTIVE JUROR NO. 567: Yes.

11 THE COURT: Ms. Sun, you will be excused from  
12 further service in this case. The challenge has been  
13 sustained. And thank you for your participation up to  
14 now. Please go to the jury office, where you will  
15 follow the instruction that they may have for you.  
16 Okay.

17 At this time, I will ask Alice to call the  
18 next in order to take that seat.

19 THE CLERK: Gabriela Pond, Badge 737, please  
20 take Seat No. 5.

21 THE COURT: What's her badge number?

22 THE CLERK: Her badge number is 737.

23 THE COURT: All right. Ms. Pond, is there  
24 any reason why you could not be a completely fair and  
25 impartial juror if selected to serve in this case?

1 PROSPECTIVE JUROR NO. 737: Because I  
2 don't --

3 THE COURT: Don't tell me any -- any -- just  
4 say yes or no.

5 PROSPECTIVE JUROR NO. 737: No.

6 THE COURT: Okay. Can you wait in forming  
7 your opinion on the appropriate result until all of the  
8 evidence has been heard?

9 Would you be able to wait until all the  
10 evidence has been presented before you make up your  
11 mind?

12 Do you understand that?

13 PROSPECTIVE JUROR NO. 737: Yes.

14 THE COURT: You understand the question?

15 PROSPECTIVE JUROR NO. 737: (Nods head.)

16 THE COURT: Okay. Can you -- can you base  
17 your verdict solely on the evidence brought out at  
18 trial and the law that applies as stated in your  
19 instructions to you without fear of criticism or  
20 popular opinion?

21 Do you understand the question?

22 PROSPECTIVE JUROR NO. 737: No.

23 THE COURT: Okay. Do you doubt that you  
24 could base your verdict solely on the evidence brought  
25 out at trial and the law that applies as stated in my

1 instructions to you without fear of criticism or  
2 popular opinion?

3 Do you understand the question?

4 PROSPECTIVE JUROR NO. 737: No.

5 THE COURT: Okay.

6 MR. POPOVICH: Can I inquire, Your Honor?

7 THE COURT: Yes.

8 MR. POPOVICH: Thank you.

9 Good afternoon, Ms. Pond. You work at Famous  
10 Footwear?

11 PROSPECTIVE JUROR NO. 737: Yes.

12 MR. POPOVICH: Do you deal with customers in  
13 English?

14 PROSPECTIVE JUROR NO. 737: Yes.

15 MR. POPOVICH: And you were kind enough to  
16 fill out the questionnaire for us; right?

17 PROSPECTIVE JUROR NO. 737: Yes.

18 MR. POPOVICH: And do you read English pretty  
19 well?

20 PROSPECTIVE JUROR NO. 737: Yes. I can read,  
21 but I don't understand too much -- too many words.

22 MR. POPOVICH: When the attorneys stood up  
23 and just said a few things about the case, did you  
24 understand what we said?

25 PROSPECTIVE JUROR NO. 737: A little bit,

1 like, half and half, because a lot of words that you're  
2 using here, I -- I don't understand that words.

3 MR. POPOVICH: You told us that you attended  
4 some college in your questionnaire. Did you --

5 PROSPECTIVE JUROR NO. 737: In my country.

6 MR. POPOVICH: Okay. Not here?

7 PROSPECTIVE JUROR NO. 737: Not here.

8 MR. POPOVICH: Have you taken any English  
9 courses since you've been in the United States?

10 PROSPECTIVE JUROR NO. 737: No. No.

11 MR. POPOVICH: Can you give me an estimate of  
12 what percent do you think you've understood of what's  
13 gone on here today?

14 PROSPECTIVE JUROR NO. 737: 60, 70.

15 MR. POPOVICH: All right.

16 Thank you, Your Honor.

17 THE COURT: Anybody else wish to question the  
18 prospective juror?

19 MR. MORELLI: Jerry?

20 MR. POPOVICH: I'm sorry.

21 THE COURT: Anybody else have any questions  
22 of the prospective juror?

23 MR. ROBERTS: No, Your Honor.

24 THE COURT: Will counsel approach, please.

25 /////

1 (A discussion was held at the bench,  
2 not reported.)

3 THE COURT: All right. Thank you, Ms. Pond.  
4 You'll be excused from further service in this case.  
5 You're directed to go back to the jury office for any  
6 further instruction or assignment that they may have  
7 for you.

8 And I will ask Alice to call the next in  
9 order.

10 THE CLERK: James Burgett, Badge 769, please  
11 take Seat No. 5.

12 THE COURT: Mr. Burgett, is there any reason  
13 why you could not be a completely fair and impartial  
14 juror if selected to serve in this case?

15 PROSPECTIVE JUROR NO. 769: No reason.

16 THE COURT: Can you wait in forming your  
17 opinion on the appropriate results until all of the  
18 evidence has been heard?

19 PROSPECTIVE JUROR NO. 769: Yes.

20 THE COURT: Can you base your verdict solely  
21 on the evidence brought out at trial and the law that  
22 applies as stated in my instructions to you without  
23 fear of criticism or popular opinion?

24 PROSPECTIVE JUROR NO. 769: Yes.

25 THE COURT: Have you ever served as a juror

1 before?

2 PROSPECTIVE JUROR NO. 769: I have not.

3 THE COURT: Have you ever been a party to a  
4 lawsuit?

5 PROSPECTIVE JUROR NO. 769: No.

6 THE COURT: Have you ever been a witness in a  
7 lawsuit?

8 PROSPECTIVE JUROR NO. 769: No.

9 THE COURT: Okay. Knowing what you know  
10 about this case thus far, if you were a party to it  
11 yourself, at either one of these tables on either side  
12 of the case, would you be comfortable with 12 jurors  
13 with your frame of mind sitting in judgment of your  
14 case?

15 PROSPECTIVE JUROR NO. 769: Yes.

16 THE COURT: Okay.

17 You may resume.

18 MR. MORELLI: Thank you, Your Honor.

19 Mr. Burgett, welcome.

20 Okay. I'm just going to come back to you,  
21 Mr. Daniel, because I said I -- I'd be back. So I'm  
22 back.

23 With reference to the MGM Grand situation --  
24 okay? -- and you -- you could understand how it's  
25 important to my clients to know whether or not, if

1 you're on this jury, you're a fair and impartial juror  
2 and if, in fact, the evidence and the law show you that  
3 we were entitled to a verdict against the MGM Grand,  
4 that you could render that verdict.

5 PROSPECTIVE JUROR NO. 031: Yes.

6 MR. MORELLI: Okay. Could you do that?

7 PROSPECTIVE JUROR NO. 031: Yes.

8 MR. MORELLI: Okay. And without any problems  
9 in your family or anything?

10 PROSPECTIVE JUROR NO. 031: No, no, not at  
11 all.

12 MR. MORELLI: Okay. All right. Thanks.  
13 Now, Ms. Lutey.

14 PROSPECTIVE JUROR NO. 559: Yes.

15 MR. MORELLI: I got your name right this  
16 time. I'm getting better.

17 I made little notes. Is it correct that you  
18 worked at the MGM Grand for 20 years?

19 PROSPECTIVE JUROR NO. 559: I worked at MGM  
20 Resorts and various subsidiaries of MGM Resorts.

21 MR. MORELLI: Right.

22 PROSPECTIVE JUROR NO. 559: But never for the  
23 entity MGM Grand.

24 MR. MORELLI: Okay. So you know my question.  
25 Okay? With reference to the MGM Grand background that

1 you have, subsidiary background, if, in fact, on the  
2 merits of the case -- that's the evidence and the  
3 law -- that you found that my clients, the Cox family,  
4 were entitled to your verdict against the MGM Grand as  
5 one of the defendants in this case, could you render  
6 that verdict?

7 PROSPECTIVE JUROR NO. 559: Yes.

8 MR. MORELLI: Okay. Without hesitation?

9 PROSPECTIVE JUROR NO. 559: MGM was sued a  
10 lot for very minor slips and falls that I was aware of.

11 MR. MORELLI: Okay.

12 PROSPECTIVE JUROR NO. 559: I know they get  
13 sued a lot.

14 MR. MORELLI: Am I supposed to like that  
15 comment? Am I thrilled right now?

16 PROSPECTIVE JUROR NO. 559: However, you  
17 wanted me to be honest.

18 MR. MORELLI: Can you -- can you understand  
19 that that might be true --

20 PROSPECTIVE JUROR NO. 559: Yes.

21 MR. MORELLI: -- but that we're saying in  
22 this particular case that this is a serious  
23 situation -- okay? -- and we're going to ask you to be  
24 able to look at it and base it on the evidence and the  
25 law in this case and not any -- any history -- because,

1 look, one of the reasons why we ask these questions is  
2 not to waste your time or to waste our time. But it's  
3 really to find out what you're really thinking and  
4 feeling about this.

5           You know, because even though, you know, you  
6 say that, well, I only worked for a subsidiary of it,  
7 you still came out with that comment about the MGM  
8 Grand. You see what I'm saying? So -- so I could  
9 either shoot myself in the head, or I can say to you,  
10 can you be fair to my clients in this case -- okay? --  
11 without hesitation?

12           Because you -- you can't use any prior  
13 knowledge that you have about working at MGM. You have  
14 to use only the evidence and the law in this case. And  
15 that may be something that you are able to do, and it  
16 may be something you are not able to do. I don't know  
17 that; only you know that. Okay?

18           And please understand -- and let me just  
19 reiterate something and clarify something. The judge  
20 explained to you the difference between challenges for  
21 cause and peremptory challenges. Do you remember him  
22 talking about that?

23           PROSPECTIVE JUROR NO. 559: (Nods head.)

24           MR. MORELLI: You do or you don't?

25           PROSPECTIVE JUROR NO. 559: I do.

1 MR. MORELLI: Okay. Peremptory challenges  
2 are challenges that the lawyers have that they can  
3 excuse jurors for no reason at all just because they  
4 think they should be excused. Okay? We all use those  
5 very sparingly. Okay?

6 So what we do is we rely on you and all of  
7 the rest of the jurors to tell us, you know, what  
8 you're really feeling and, you know, come out of the  
9 weeds and tell us what it is. You know? So we have a  
10 case. Part of that case, we're going to be proving --  
11 we're going to be putting in evidence that I believe  
12 is --

13 MR. POPOVICH: Objection. Argument.

14 THE COURT: Sustained. Let's get to the next  
15 question.

16 MR. MORELLI: Part of our case is against the  
17 MGM Grand. Okay? And based on the evidence and the  
18 law, you might find that you might have to find a  
19 verdict against them. Can you do that without  
20 hesitation?

21 PROSPECTIVE JUROR NO. 559: Yes.

22 MR. MORELLI: Are you sure?

23 PROSPECTIVE JUROR NO. 559: Yes.

24 MR. MORELLI: Okay. Now, Ms. Parras --  
25 Parras?

1 PROSPECTIVE JUROR NO. 570: Parras.  
2 MR. MORELLI: Parras? Okay.  
3 My question is -- my original question that I  
4 was asking the rest of the jurors about is the MGM  
5 Grand, which, obviously, you've heard of. David  
6 Copperfield, have you ever been to one of his shows?  
7 PROSPECTIVE JUROR NO. 570: No.  
8 MR. MORELLI: Okay. Is there any reason that  
9 if, in fact, the evidence and the law brought you to  
10 believe that there should be a verdict against David  
11 Copperfield and his company, could you do that?  
12 PROSPECTIVE JUROR NO. 570: Yes.  
13 MR. MORELLI: Okay. Without hesitation?  
14 PROSPECTIVE JUROR NO. 570: Yes.  
15 MR. MORELLI: Okay.  
16 Mr. Burgett, could you do that?  
17 PROSPECTIVE JUROR NO. 769: Oh, yes.  
18 MR. MORELLI: Okay. Do you know who David  
19 Copperfield is?  
20 PROSPECTIVE JUROR NO. 769: Yes.  
21 MR. MORELLI: Okay. Have you ever been to  
22 his show?  
23 PROSPECTIVE JUROR NO. 769: No.  
24 MR. MORELLI: Okay. He's a pretty famous  
25 guy; right?

1 PROSPECTIVE JUROR NO. 769: Right.

2 MR. MORELLI: So -- so do you think that in  
3 any way at all, Mr. Burgett, that because he's famous,  
4 he's entitled to more or less of your consideration?

5 PROSPECTIVE JUROR NO. 769: No.

6 MR. MORELLI: Just the same --

7 PROSPECTIVE JUROR NO. 769: (Nods head.)

8 MR. MORELLI: -- as anyone else --

9 PROSPECTIVE JUROR NO. 769: Yes.

10 MR. MORELLI: -- who is a party in a case?

11 PROSPECTIVE JUROR NO. 769: (Nods head.)

12 MR. MORELLI: Fair enough?

13 PROSPECTIVE JUROR NO. 769: Correct.

14 MR. MORELLI: Okay. Now, the -- the MGM  
15 Grand, do you have any connection to the MGM Grand that  
16 for any reason may affect your judgment in this case?

17 PROSPECTIVE JUROR NO. 769: No.

18 MR. MORELLI: Okay. Let me -- let me go back  
19 to something that I was talking about earlier. And  
20 that is that this case is being tried in two different  
21 parts. The first part is the liability, who's at  
22 fault, and whether or not our clients, the Cox  
23 people -- plaintiffs, are entitled to your verdict.

24 Now, my clients are from the UK. They're  
25 from England. Now, I think you've heard the judge

1 speak about whether or not any of you had any issue  
2 with reference to whether someone has a different race  
3 or religion or ethnic background from you and all of  
4 that.

5 I'd rather ask something very specific. And  
6 that is, Mr. Daniel, the fact that my clients are from  
7 England, does that in any way make you feel that  
8 they're not entitled to the same consideration in our  
9 Courts?

10 PROSPECTIVE JUROR NO. 031: No, of course  
11 not.

12 MR. MORELLI: Okay.

13 Millhouse, I was right. Same question to  
14 you.

15 PROSPECTIVE JUROR NO. 462: No. No, I don't.

16 MR. MORELLI: You feel that you could --

17 PROSPECTIVE JUROR NO. 462: I feel that I  
18 could make an honest decision.

19 MR. MORELLI: Okay. Ms. Lutey?

20 PROSPECTIVE JUROR NO. 559: Yes.

21 MR. MORELLI: Same thing?

22 PROSPECTIVE JUROR NO. 559: Yes.

23 MR. MORELLI: Okay. Now, Mr. Cardoza --

24 PROSPECTIVE JUROR NO. 563: Yes.

25 MR. MORELLI: -- you know, in a little while

1 we're going to speak about what you want to speak  
2 about. But, right now, I'm talking about other things.  
3 All right?

4 So the same question to you. My clients are  
5 from the UK. Do you have any problem with that?

6 PROSPECTIVE JUROR NO. 563: No.

7 MR. MORELLI: Do you feel that if you -- if  
8 you're selected as a juror in this case, you could give  
9 them the same fair trial that -- if they came from  
10 Nevada?

11 PROSPECTIVE JUROR NO. 563: Yeah.

12 MR. MORELLI: Okay. Is that fair,  
13 Mr. Burgett?

14 PROSPECTIVE JUROR NO. 769: Yes.

15 MR. MORELLI: That sounds right; right,  
16 Ms. Parras?

17 PROSPECTIVE JUROR NO. 570: Yes.

18 MR. MORELLI: That sounds good; right?

19 Okay. So the -- before I go on and speak to  
20 Ms. Dupree; right?

21 PROSPECTIVE JUROR NO. 573: Yes.

22 MR. MORELLI: How are you?

23 PROSPECTIVE JUROR NO. 573: Great.

24 MR. MORELLI: The fact that the case is being  
25 tried in two parts is -- is important for us to discuss

1 in one sense. We only have one time -- "we" meaning  
2 the attorneys, all of the attorneys, have one time to  
3 speak to you so that we go to the liability phase of  
4 the case, that's the first phase.

5           And if, in fact, you feel that, based on the  
6 evidence and the law which is -- what I consider the  
7 merits of the case, that my clients are entitled to  
8 your verdict, then we go to the second part of the  
9 case, where you're going to hear testimony from various  
10 medical doctors and -- and -- and testimony and  
11 documents and medical records with reference to  
12 injuries that we claim my client Mr. Cox sustained as a  
13 result of the negligence of the defendants. Okay?

14           Now, when -- we can't reconvene you after the  
15 liability phase if in fact we've been successful based  
16 on the evidence and the law and then start talking to  
17 you about whether or not, you know, you could now  
18 attack the damages phase of the case with the same  
19 openness, honesty, and fair-mindedness as you did the  
20 liability phase. Okay?

21           So what we need to do, Mr. Daniel, is if, in  
22 fact, you are listening to -- now to the damages phase  
23 of the case and you're hearing about, you know,  
24 injuries to Mr. Cox and how it affected his life and  
25 things like that, can you sit and listen to that and be

1 fair and open about that?

2 PROSPECTIVE JUROR NO. 031: Yes.

3 MR. MORELLI: Okay. Now, the -- the claims  
4 in the case -- and I'm -- I'm very careful to say to  
5 you that every single thing that the lawyers talk about  
6 to you at any time is claims, claims, claims. It's  
7 what we claim that you are going to hear and find. It  
8 becomes a fact when you listen to the evidence and you  
9 decide it's a fact. No facts until then. Okay?

10 So I'm saying to you if, in fact, that you  
11 find that my client has suffered numerous injuries and  
12 that those injuries are entitled to your verdict, you  
13 said that you could render that verdict; correct?

14 PROSPECTIVE JUROR NO. 031: Yes.

15 MR. MORELLI: And if you considered that  
16 verdict to be a substantial amount of money, could you  
17 still do that?

18 PROSPECTIVE JUROR NO. 031: Yes.

19 MR. MORELLI: Okay. Because, at this  
20 particular time, I'm not talking to you and saying this  
21 is what I think it should be. Okay? What I'm saying  
22 to you is that there are claims in this case of serious  
23 injuries. And we're saying that, as a result of that,  
24 we're going to be bringing forth evidence not only from  
25 the plaintiff --

1 MR. POPOVICH: Objection. Argument now.

2 THE COURT: Okay. I'll allow it as a premise  
3 for a question.

4 MR. MORELLI: -- not only from the plaintiff  
5 and his family but from medical doctors. And the  
6 difference between a lay witness and an expert witness,  
7 like a doctor, is an expert could give an opinion --  
8 okay? -- could give an opinion. And I'm going to ask  
9 you whether or not there's any reason, Mr. Daniel, that  
10 you've had any bad experiences or any kind of  
11 experiences at all that would cause you a problem  
12 listening to doctors testify to injuries, any doctors  
13 at all, whether it's doctors that are speaking with  
14 reference to the plaintiff or speaking against the  
15 plaintiff. Okay?

16 Can you listen to that testimony and  
17 judge that testimony the way you would judge any other  
18 testimony based on its credibility? Any problem with  
19 that?

20 PROSPECTIVE JUROR NO. 031: No, I have no  
21 problem with that.

22 MR. MORELLI: Okay. And you understand that  
23 doctors could give opinions?

24 PROSPECTIVE JUROR NO. 031: Of course.

25 MR. MORELLI: Okay.

1           Now, Ms. Millhouse, any problem that you have  
2 with reference to that? Understand we can't talk to  
3 you again, you know, after the first phase. So if the  
4 first phase is a verdict for the plaintiffs, then we go  
5 to the second phase. And I have to know whether or not  
6 you are open to listening to damages testimony --  
7 that's what we call it, damages -- about injuries in  
8 this case that we -- that we are claiming are serious.

9           Defendants' lawyers, they have their own  
10 claims. And you'll -- you'll notice that I will listen  
11 to those claims just like you. Okay? And if, in fact,  
12 you feel that you hear the testimony from doctors, can  
13 you judge that testimony the same way you would  
14 judge anybody else's testimony in one respect, and that  
15 is based on credibility?

16           PROSPECTIVE JUROR NO. 462: Yes.

17           MR. MORELLI: Whether it rings true to you?

18           PROSPECTIVE JUROR NO. 462: Yes.

19           MR. MORELLI: Okay?

20           Have you had any experiences with doctors,  
21 good or bad, that would any way affect your judgment to  
22 be open about listening to testimony from medical  
23 people?

24           PROSPECTIVE JUROR NO. 462: No.

25           MR. MORELLI: Okay. Ms. Lutey, same question

1 to you. If we go to the second phase -- okay? -- and  
2 I'm not talking about who the defendant is in this case  
3 at this point. Okay? But you go to the next phase and  
4 we're -- we're discussing issues of damage. All right?

5           You already told me that, you know, the fact  
6 that -- that my clients are from the UK, that's okay.  
7 That's not a problem for you. Judge it like you would  
8 judge anything else. But what about testimony of  
9 medical people or doctors? Do you have any problem  
10 with that? You know, where -- you know, anything a  
11 doctor says, you're going to believe, which is, you  
12 know, a little extreme, or anything a doctor says,  
13 you're not going to believe, which is extreme on the  
14 other side. Any problem with any of that?

15           PROSPECTIVE JUROR NO. 559: No.

16           MR. MORELLI: Okay. Now, when we -- when we  
17 talk about the civil cases being decided by jurors --  
18 okay? -- the jury not only decides whether or not the  
19 plaintiff prevails in the case, but, at the end of the  
20 day, if, in fact, we're in Phase 2 of the trial, the  
21 jury decides whether or not the plaintiffs are entitled  
22 to money damages.

23           Are you okay with that, Mr. Daniel?

24           PROSPECTIVE JUROR NO. 031: I'm okay with  
25 that.

1 MR. MORELLI: You okay with that?

2 PROSPECTIVE JUROR NO. 462: Yes, sir.

3 MR. MORELLI: You okay with that?

4 PROSPECTIVE JUROR NO. 559: Yes.

5 MR. MORELLI: Money damages?

6 And you decide the amount, you decide the  
7 amount. Okay? Are you okay with that?

8 PROSPECTIVE JUROR NO. 559: Yes.

9 MR. MORELLI: Okay. Because you have to know  
10 going in that that's your job.

11 Mr. Cardoza, can you do that?

12 PROSPECTIVE JUROR NO. 563: Estimate the  
13 amount?

14 MR. MORELLI: Not estimate. The jury listens  
15 to testimony in the damages phase of the case,  
16 testimony not only from the lay witnesses, not only  
17 from family members, let's say, but from medical  
18 doctors and -- giving their opinions. And you have to  
19 weed out what is the appropriate testimony for you to  
20 make a decision. And if -- if my clients are entitled  
21 to your verdict, a verdict in money damages, can you  
22 render that verdict?

23 PROSPECTIVE JUROR NO. 563: Yes.

24 MR. MORELLI: Okay. And you along with the  
25 rest of the jurors will be deciding that amount.

1 PROSPECTIVE JUROR NO. 563: Oh, okay.

2 MR. MORELLI: Okay? No problem?

3 PROSPECTIVE JUROR NO. 563: No problem.

4 MR. MORELLI: Okay. Mr. Burgett, can you do  
5 that?

6 PROSPECTIVE JUROR NO. 769: Yes.

7 MR. MORELLI: Okay. Now -- now, before I  
8 told you that, did you know that the jury decides money  
9 damages?

10 PROSPECTIVE JUROR NO. 769: No, I wasn't too  
11 familiar with the process.

12 MR. MORELLI: Okay. Because that's -- that's  
13 true oftentimes, that jurors are in cases and they find  
14 out for the first time when they're impaneled that they  
15 actually if -- if they're called upon in Phase 2 of the  
16 case, that they actually are deciding the amount of  
17 money.

18 And my question to you, Mr. Burgett, is  
19 whether or not you're open to allowing the evidence and  
20 the law -- the evidence and the law, that's the  
21 recipe -- okay? -- to take you where you think is  
22 appropriate to go on the merits. No problem with that?

23 PROSPECTIVE JUROR NO. 769: No problem.

24 MR. MORELLI: Okay. And if, in fact, the  
25 verdict -- Ms. Lutey, if, in fact, you feel that, based

1 on the evidence and the law, that the verdict in this  
2 case should be a substantial amount of money, could you  
3 do that?

4 PROSPECTIVE JUROR NO. 559: Yes.

5 MR. MORELLI: Okay. Even if you felt that  
6 some of that verdict was against the MGM Grand?

7 PROSPECTIVE JUROR NO. 559: Yes.

8 MR. MORELLI: Okay.

9 Same question, Mr. Cardoza. Can you do that?

10 PROSPECTIVE JUROR NO. 563: Yes.

11 MR. MORELLI: Okay. Mr. Burgett?

12 PROSPECTIVE JUROR NO. 769: Yes.

13 MR. MORELLI: No problem with that?

14 PROSPECTIVE JUROR NO. 769: No problem with  
15 that.

16 MR. MORELLI: Okay. Ms. Parras?

17 PROSPECTIVE JUROR NO. 570: No problem with  
18 that.

19 MR. MORELLI: Okay. Because you understand  
20 that we don't get a chance to speak to you again about  
21 this, and that's why I'm talking about it. All right?  
22 Because, right now, we have claims becomes facts when  
23 you say so. Fair enough?

24 PROSPECTIVE JUROR NO. 570: Yes.

25 MR. MORELLI: Okay.

1           Now, Ms. Dupree, I'm going to go along with  
2 the same questions -- I just want to be able to see  
3 you -- along with the same questions that I've been  
4 asking the other jurors. And one is about the MGM  
5 Grand. Okay?

6           If, in fact, you have any problem if the  
7 evidence and the law brought you to that decision to  
8 find a verdict against the MGM Grand.

9           PROSPECTIVE JUROR NO. 573: No.

10          MR. MORELLI: Okay. And the -- the same  
11 question is asked of you about David Copperfield.  
12 Would you have any problem with that?

13          PROSPECTIVE JUROR NO. 573: No.

14          MR. MORELLI: Or his company.  
15 Have you ever seen one of his shows?

16          PROSPECTIVE JUROR NO. 573: No.

17          MR. MORELLI: Before we spoke about him in  
18 this case, were you very familiar with him, partially  
19 familiar with him, with who he was?

20          PROSPECTIVE JUROR NO. 573: I mean, I know  
21 who he is. I don't know if I can tell you very or  
22 partially or -- I just know who he is.

23          MR. MORELLI: Okay. You've read about him or  
24 seen him on television or anything like that?

25          PROSPECTIVE JUROR NO. 573: Yeah, maybe some

1 on television, but not much.

2 MR. MORELLI: Okay. So if, in fact, you --  
3 you had to, based on the evidence and the law -- that's  
4 all I'm talking about -- a verdict against him or his  
5 company or both, you would have no hesitation about  
6 that?

7 PROSPECTIVE JUROR NO. 573: Correct.

8 MR. MORELLI: Okay.

9 Now, Mr. Davis, same question to you with  
10 reference to the MGM Grand. Any problem with that?  
11 And I'm not -- I'm not singling out one defendant to  
12 talk to you about. Because there are, you know, four  
13 defendants in this case. I'm only talking to you about  
14 these two defendants because they're the most high  
15 profile, if you know what I'm saying. And that you  
16 might feel, or any of the jurors might feel, that now,  
17 you know, I know that company or I know that person and  
18 therefore I feel slanted a little bit toward that  
19 person, or against the person, for that matter.

20 Do you feel any of those things with  
21 reference to the MGM Grand?

22 PROSPECTIVE JUROR NO. 582: No.

23 MR. MORELLI: Okay. What about David  
24 Copperfield? Do you know who he is?

25 PROSPECTIVE JUROR NO. 582: I've heard of

1 him. I've heard of David Copperfield, yes.

2 MR. MORELLI: Have you ever been to his show  
3 or anything like that?

4 PROSPECTIVE JUROR NO. 582: No.

5 MR. MORELLI: Okay. Are you somebody who  
6 likes magic?

7 PROSPECTIVE JUROR NO. 582: I don't mind  
8 watching it.

9 MR. MORELLI: Okay. Figured I would change  
10 up the question a little bit.

11 PROSPECTIVE JUROR NO. 582: You got me.

12 MR. MORELLI: Now, let's go, Ms. Dupree, to  
13 Phase 2. Let's assume for a moment -- and anything  
14 that I say to you, I'm saying to you to elicit an  
15 answer so that I can go back and speak to my clients  
16 about whether -- you know, whether or not I feel that  
17 the jury is a fair panel. Okay?

18 So assuming for a moment that my clients are  
19 entitled to your verdict on the liability phase of the  
20 case, who's responsible, that -- that they're entitled  
21 to your verdict, somebody -- some -- one of the  
22 defendants or all of the defendants or some of the  
23 defendants were negligent and therefore my clients are  
24 entitled to your verdict. So let's just assume for a  
25 moment that that happened.

1 PROSPECTIVE JUROR NO. 573: Okay.

2 MR. MORELLI: Now we go to Phase 2. Okay?  
3 And you're going to be hearing testimony from doctors  
4 or medical practitioners, let's say. And I know, on  
5 the questionnaires, all of you were asked questions  
6 about psychiatrists, psychologists, you know, and --  
7 and things like that. And I've read your answers.

8 Now, don't ask me to tell you exactly what  
9 each one of you said because I'm not that good, but  
10 would you say to me that, if you hear doctors or  
11 medical practitioners testify, that you'll be able to  
12 judge their testimony with the same common sense that  
13 you use every day in your life?

14 PROSPECTIVE JUROR NO. 573: Yeah.

15 MR. MORELLI: You know, not more, not less,  
16 listen to what their credentials are and -- and see,  
17 does it ring true?

18 PROSPECTIVE JUROR NO. 573: Sure.

19 MR. MORELLI: Fair enough?

20 PROSPECTIVE JUROR NO. 573: Uh-huh.

21 MR. MORELLI: Okay. And you understand, like  
22 I was talking to Mr. Daniel about, they're entitled to  
23 give opinions. And that's what differentiates an  
24 expert from a lay witness. A lay witness says, "This  
25 is what I saw." And that person can say, "This is what

1 I saw, and this is what I think about it." Okay?

2 So you could listen to that and no problem?

3 PROSPECTIVE JUROR NO. 573: Yes.

4 MR. MORELLI: Okay. So now we get -- we get  
5 a little bit further. And you feel that, based on the  
6 evidence and the law -- okay? -- because nobody is  
7 entitled to and no one here is asking you for a favor.  
8 Okay? We're only asking for your fair judgment.  
9 That's all. Just your fair judgment to decide this  
10 case on the merits. You know? You dropped something.  
11 Decide this case on the merits. Okay?

12 So now you -- you feel that at the end  
13 that -- we're in Phase 2 of the trial -- and that my  
14 clients are entitled to your verdict in money damages.  
15 And you, along with the rest of the jury, has to decide  
16 the amount. Could you do that?

17 PROSPECTIVE JUROR NO. 573: Yes.

18 MR. MORELLI: Okay. And if, in fact -- if,  
19 in fact -- based on the evidence and the law, that you  
20 feel that that verdict is a substantial amount of  
21 money -- forget about exact numbers, a substantial  
22 amount of money -- is that a problem for you or could  
23 you do it if you think it's appropriate?

24 PROSPECTIVE JUROR NO. 573: I could do it if  
25 I think it's appropriate.

1 MR. MORELLI: Okay. Thank you.  
2 Same question. I'm not going to trick you  
3 this time.  
4 PROSPECTIVE JUROR NO. 582: I can do that if  
5 I feel that it's appropriate.  
6 MR. MORELLI: Okay. And understand that all  
7 of this comes down to based on the evidence and the  
8 law. All right?  
9 Have you had any good or bad experiences with  
10 doctors that -- that stand out in your mind?  
11 PROSPECTIVE JUROR NO. 573: Yes.  
12 MR. MORELLI: Okay. Do you want to just give  
13 us a short story about that?  
14 PROSPECTIVE JUROR NO. 573: My mom had an  
15 unknown disease that she passed from.  
16 MR. MORELLI: Okay. It was, in your opinion,  
17 misdiagnosed?  
18 PROSPECTIVE JUROR NO. 573: Well, it was  
19 unknown, so no one could diagnose it.  
20 MR. MORELLI: Oh, okay. All right. But you  
21 didn't fault any doctors for that -- or did you? I  
22 don't know.  
23 PROSPECTIVE JUROR NO. 573: I don't know if I  
24 faulted them, but I was frustrated that no one could  
25 figure it out.

1 MR. MORELLI: Do you think that in any way  
2 that will affect your judgment in this case?

3 PROSPECTIVE JUROR NO. 573: I don't believe  
4 so.

5 MR. MORELLI: Okay. Because I'm not  
6 suggesting it will; I just want to know.

7 PROSPECTIVE JUROR NO. 573: I don't believe  
8 so, because I believe this is a case where they have an  
9 opinion on what the person has.

10 MR. MORELLI: Exactly. Okay. So any other  
11 things in your past or, you know, in your experiences  
12 that you think we should know about?

13 PROSPECTIVE JUROR NO. 573: I don't believe  
14 so.

15 MR. MORELLI: Okay. Thanks.

16 Same question, good or bad experiences with  
17 reference to doctors that may affect your judgment?

18 PROSPECTIVE JUROR NO. 582: It wouldn't  
19 affect my judgment, but I have -- my family has had bad  
20 experiences with doctors.

21 MR. MORELLI: Okay. Do you want to give us,  
22 you know, one that may stand out in your mind?

23 PROSPECTIVE JUROR NO. 582: Most recently, my  
24 father went to the hospital because of high blood  
25 pressure, that he diagnosed him with depression and it

1 turned out he had a stroke. And he's still in the  
2 hospital. This was eight years ago.

3 MR. MORELLI: Wow. He's still in the  
4 hospital today?

5 PROSPECTIVE JUROR NO. 582: He's in a nursing  
6 home now in Youngstown, Ohio.

7 MR. MORELLI: I got you. So they transferred  
8 him from the hospital to facilities --

9 PROSPECTIVE JUROR NO. 582: Right.

10 MR. MORELLI: Is that where you come from  
11 originally, Ohio?

12 PROSPECTIVE JUROR NO. 582: Born in Texas,  
13 raised in Buffalo, New York, kind of lived all over.  
14 But, no, I'm not originally from Ohio.

15 MR. MORELLI: Okay. That's the only place  
16 you missed?

17 PROSPECTIVE JUROR NO. 582: What was that?

18 MR. MORELLI: That was the only place you  
19 missed, was Ohio.

20 PROSPECTIVE JUROR NO. 582: No, I don't miss  
21 it at all.

22 MR. MORELLI: No, I mean, you lived  
23 everywhere but there.

24 PROSPECTIVE JUROR NO. 582: Oh, yeah.

25 Correct.

1 MR. MORELLI: So do you have an opportunity  
2 to visit your father on occasion?

3 PROSPECTIVE JUROR NO. 582: I do.

4 MR. MORELLI: Okay. Do you think that -- in  
5 any way that will affect your judgment in this case or  
6 create a problem for you?

7 PROSPECTIVE JUROR NO. 582: No, it's  
8 completely isolated.

9 MR. MORELLI: Okay. Great.

10 Mr. Torres.

11 PROSPECTIVE JUROR NO. 704: Yes.

12 MR. MORELLI: How are you?

13 PROSPECTIVE JUROR NO. 704: I'm fine.

14 MR. MORELLI: You know the questions that I'm  
15 asking now. I'm losing my voice already, so why don't  
16 you give me some answers.

17 PROSPECTIVE JUROR NO. 704: Okay.

18 MR. MORELLI: All right. You know the  
19 questions that I want to know with reference to MGM  
20 Grand, David Copperfield, any problem with, you know,  
21 you'll find in their favor or against them for any  
22 particular reason?

23 PROSPECTIVE JUROR NO. 704: No.

24 MR. MORELLI: No, no problem?

25 PROSPECTIVE JUROR NO. 704: No problem.

1 MR. MORELLI: Okay. Anything in your  
2 background create any problem for you sitting as a fair  
3 and impartial juror in this case?

4 PROSPECTIVE JUROR NO. 704: No.

5 MR. MORELLI: Okay. My -- my -- my clients  
6 are suing for money damages. Okay? And I want you to  
7 all think about this. Is that okay with you?

8 PROSPECTIVE JUROR NO. 704: That's fine.

9 MR. MORELLI: You know, I'm talking about the  
10 fact that they can do it. I'm not -- I'm not talking  
11 about what's going to happen, because that's up to you.  
12 Okay? You have no problem with that?

13 PROSPECTIVE JUROR NO. 704: No problem.

14 MR. MORELLI: Okay. So now we -- we get to a  
15 point where you feel that my clients -- you're on the  
16 jury and you feel that my clients are entitled to your  
17 verdict. Can you render that verdict without  
18 hesitation?

19 PROSPECTIVE JUROR NO. 704: I can.

20 MR. MORELLI: Okay. We get to Phase 2. You  
21 understand that we're talking about that now, because  
22 we only get one chance to talk to you. Assessing  
23 damages, any hesitation about that?

24 PROSPECTIVE JUROR NO. 704: No.

25 MR. MORELLI: No problem?

1 PROSPECTIVE JUROR NO. 704: No problem.

2 MR. MORELLI: Okay. And you're going to hear  
3 medical testimony. And, understand, all of the  
4 evidence in this case comes through not only -- not  
5 only the -- the documents that are in evidence, not  
6 only photographs, not only medical records, but comes  
7 through, you know, witnesses from the witness stand.

8 And that's why I spoke to you, Ms. Dupree,  
9 about, you know, judging these witnesses based on their  
10 credibility, you know, your God-given common sense, you  
11 know, what do I think about that, you know, that kind  
12 of thing.

13 Mr. Torres, that's what you have to do too.  
14 Okay? No -- no hesitation about that?

15 PROSPECTIVE JUROR NO. 704: No hesitation.

16 MR. MORELLI: I have to be able to go back to  
17 my clients and say Mr --

18 MR. POPOVICH: Objection to the personal  
19 story.

20 THE COURT: Sustained.

21 MR. MORELLI: If, in fact, you're impaneled  
22 on this jury -- okay? -- can I be confident that I have  
23 a fair juror in you?

24 PROSPECTIVE JUROR NO. 704: Yes.

25 MR. MORELLI: Okay. Now, I didn't memorize

1 your name.

2 PROSPECTIVE JUROR NO. 710: That's because  
3 it's hard to pronounce.

4 MR. MORELLI: Gomez; right?

5 PROSPECTIVE JUROR NO. 710: Correct.

6 MR. MORELLI: Okay. That's easy, for me  
7 anyway.

8 You know all the questions that have been  
9 asked; right? And why don't you give me some answers  
10 that you feel that you've already thought about.

11 PROSPECTIVE JUROR NO. 710: I feel like I'm a  
12 fair juror.

13 MR. MORELLI: Okay.

14 PROSPECTIVE JUROR NO. 710: I have no issues  
15 with medical. I feel everything will be fair.

16 MR. MORELLI: Okay. 'Cause you understand,  
17 you know, at this second part of the case is when  
18 you're going to be hearing issues, medical issues,  
19 damages. And you're going to have to render a verdict,  
20 if we get to that point. Okay?

21 If you have to render a verdict, can you  
22 render a verdict in money damages?

23 PROSPECTIVE JUROR NO. 710: Yes.

24 MR. MORELLI: No problem?

25 PROSPECTIVE JUROR NO. 710: No problem.

1 MR. MORELLI: You know, and, look, it all  
2 comes down -- and all of you have to think about  
3 this -- that it's not you alone making a decision; it's  
4 you with your fellow jurors making a decision. So  
5 that -- can you listen to what the other jurors have to  
6 say -- I'm talking about in both parts of the case --  
7 listen to what they have to say? Sometimes they may  
8 have caught something that you missed or you may have  
9 caught something that they missed. So if you don't  
10 talk to them about it, they'll never know.

11 Can you do that?

12 PROSPECTIVE JUROR NO. 710: Yes.

13 MR. MORELLI: Okay. Before I was talking  
14 about money damages and people deciding the case and  
15 the jury rendering the verdict in money damages if it  
16 comes to that.

17 Did you know that -- that that's what the  
18 jury did?

19 PROSPECTIVE JUROR NO. 710: No, I learned  
20 that today.

21 MR. MORELLI: Okay. We're going to the  
22 videotape.

23 THE COURT: Can I ask counsel to approach?

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

1 THE COURT: Just a moment here. Bob, could  
2 you approach?

3 (A discussion was held at the bench,  
4 not reported.)

5 THE COURT: All right. Ladies and gentlemen,  
6 it's -- all right. Okay. It's 5 o'clock and we're  
7 going to adjourn for the day. Remember where you're  
8 seated. And that goes for those of you who are out in  
9 the audience portion of the courtroom as well.

10 I said we'd resume tomorrow morning at 9:00.  
11 However, I'm going to -- as far as you're concerned,  
12 I'll make it 10:00. Counsel are going to be back here  
13 at 9:00. And I have another segment of the jury venire  
14 whom I've got to orient in this case, you know, as I  
15 did with you earlier. And rather than keeping you  
16 hanging around until I've done that, I -- I will have  
17 you come back at 10:00, take your seats where you are,  
18 and then the other segment will have been oriented in  
19 the case, and we'll save some time that way.

20 Does that cause a problem for anybody? It  
21 shouldn't. Later rather than -- yes?

22 PROSPECTIVE JUROR NO. 728: Do we have to  
23 wait for Bob to escort us into the courtroom again?

24 THE COURT: I will -- I will be giving those  
25 instructions in just a moment.

1 PROSPECTIVE JUROR NO. 728: Okay. Thank you.

2 PROSPECTIVE JUROR NO. 570: It does for me.

3 I have to work tomorrow. I have to be at work at  
4 2 o'clock. I provide for myself.

5 THE COURT: What time do you go to work?

6 PROSPECTIVE JUROR NO. 570: I have to be  
7 there at 2:00. And I work 2:00 to 10:00.

8 THE COURT: Okay. Well, we'll be resuming  
9 here at 10:00 with you, and we'll take that into  
10 account as we go through this. Okay?

11 All right. So, in any event, in the  
12 meantime, ladies and gentlemen, you're admonished not  
13 to talk or converse amongst yourselves or with anyone  
14 else, including, without limitation, the lawyers,  
15 parties, and witnesses on any subject connected with  
16 the trial, or to read, watch, or listen to any report  
17 of or commentary on this trial by any person connected  
18 with the case or by any medium of information,  
19 including, without limitation, papers, television, the  
20 Internet, or radio.

21 And you're further admonished not to form or  
22 express any opinion on any subject connected with the  
23 trial until the case is finally submitted to you.

24 And you're directed to return to the outside  
25 of this courtroom tomorrow, April 4, 2018, no later

1 than -- let's make it 9:55, five to 10:00. Okay? So  
2 that instruction goes to all of you. And I'd like  
3 Mr. Carrazza --

4 MR. POPOVICH: Cardoza.

5 MR. MORELLI: Cardoza.

6 THE COURT: Mr. Cardoza, you'll remain here  
7 for now. Okay? Because some questions will be posed  
8 to you.

9 Thank you very much, ladies and gentlemen.  
10 See you tomorrow.

11 Yes, sir?

12 PROSPECTIVE JUROR NO. 676: Any chance at all  
13 at approaching Your Honor and mentioning something to  
14 you with counsel present?

15 THE COURT: You want to mention something as  
16 well?

17 PROSPECTIVE JUROR NO. 676: To you without  
18 these people hearing it based upon what -- the  
19 questions that gentleman was asking.

20 THE COURT: Okay. Sure.

21 PROSPECTIVE JUROR NO. 676: I really don't  
22 want nobody else to hear it.

23 THE COURT: Okay. You remain too.

24 And the rest please depart and be back as  
25 instructed tomorrow. Report no later than five to

1 10:00.

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

4 THE COURT: Okay. For the record, Counsel --  
5 let's wait till the others depart.

6 Mr. Loerwald, Badge No. 676, has indicated  
7 that he has something he wanted to say to me and to  
8 counsel.

9 PROSPECTIVE JUROR NO. 676: And to counsel to  
10 be fair.

11 THE COURT: How about the gentleman who is  
12 here?

13 PROSPECTIVE JUROR NO. 676: You might want to  
14 get rid of him too.

15 THE COURT: Beg your pardon?

16 PROSPECTIVE JUROR NO. 676: You might want to  
17 have him step out of the room too.

18 THE COURT: Okay. Just one second.

19 Could you ask Bob to step in here, please.

20 Bob, could you take Mr. Loerwald, maybe go  
21 through the door right there, and just stand outside?

22 THE MARSHAL: Yes, Your Honor.

23 THE COURT: Actually, wait just one second.

24 No, let's have Mr. --

25 MR. MORELLI: Cardoza.

1 THE COURT: -- Cardoza be escorted out.

2 And then you're going to tell me; right?

3 Sorry. I had it backwards.

4 PROSPECTIVE JUROR NO. 676: Yes, sir.

5 THE COURT: Okay. You take him outside and  
6 just stand there till I hear from -- what Mr. Loerwald  
7 wants to say.

8 For the record, Mr. Loerwald indicated that  
9 he has something he wanted to say but not be heard by  
10 the other prospective jurors, but counsel and the Court  
11 are -- can hear it.

12 PROSPECTIVE JUROR NO. 676: Based upon what  
13 this gentleman is hearing, my past and my experience  
14 with this system, I didn't want none of these people --  
15 he asked questions. Some of my answers might remain in  
16 the minds of some of these people, and I don't want  
17 them to be tainted.

18 I'm a licensed general contractor for 23  
19 years. I do exactly what one of the defendants does,  
20 tenant improvements. And my past history with the  
21 lawsuits, numerous, I -- and especially when my  
22 opinions come to the expert opinions -- you know, the  
23 expert witnesses, you don't want to hear my answers of  
24 what my thing. It will -- it would have tainted --  
25 might have had an impact on what they -- opinion of

1 them.

2           So, you know, I'm going to say it off the  
3 record. They're just hired guns. And that's my  
4 experience, construction defect lawsuits, the Nancy  
5 Quon thing, been side by side for many of those things.

6           THE COURT: Of course this is not a  
7 construction defect.

8           PROSPECTIVE JUROR NO. 676: I understand  
9 that. And, sir -- and -- and you -- the way you worded  
10 it, I was -- I'm more than capable of understanding  
11 what you said, the way you worded it, and not forming  
12 an opinion, I can do all of that.

13           But when push comes to shove, we go to a  
14 possible verdict, and my opinions might be straight one  
15 way or another. I wouldn't want them to be held up on  
16 either side. Just thought I'd throw that out. Because  
17 if you ask the questions, my answers aren't good.

18           So it's up to you, sir.

19           THE COURT: All right. So is --

20           PROSPECTIVE JUROR NO. 676: I just thought  
21 that was fair.

22           THE COURT: Okay. Thank you.

23           Counsel approach, please.

24           Mr. Loerwald, have a seat.

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

THE COURT: Okay. Defense counsel, any  
questions?

MR. STRASSBURG: Me?

MR. ROBERTS: Yeah.

MR. STRASSBURG: Hi. I'm the contractor's  
lawyer.

PROSPECTIVE JUROR NO. 676: Yeah?

MR. STRASSBURG: You filled this out,  
Laurel -- Loerwald, is it?

PROSPECTIVE JUROR NO. 676: Yes. Yeah.

MR. STRASSBURG: And how long have you been a  
licensed contractor in Nevada?

PROSPECTIVE JUROR NO. 676: 23 years.

MR. STRASSBURG: Okay. And what -- are you a  
general, a trade, or --

PROSPECTIVE JUROR NO. 676: That's what --

MR. STRASSBURG: -- or a construction  
manager?

PROSPECTIVE JUROR NO. 676: That's what I  
said over there. I'm a -- I've been -- I do the same  
thing as one of the defendants. I specialize in tenant  
improvements.

MR. STRASSBURG: Okay. So I represent -- I

1 talk for the -- that defendant, Team. And, you know,  
2 they think of themselves as kind of a general  
3 contractor in that they enter into contracts with  
4 subcontractors to actually build out the tenant space.  
5 They do all the housekeeping; right? They -- they do  
6 that themselves. They work for all the big houses on  
7 the strip: MGM, Venetian, all those guys.

8           So in this case what's at issue is the  
9 quality of their housekeeping. You know, did they keep  
10 the place around the Dumpster broom clean, which is  
11 what the contract required; right? There's no -- no  
12 claim of construction defect. There's no claim that  
13 anything they built was substandard.

14           PROSPECTIVE JUROR NO. 676: I understand.

15           MR. MORELLI: Objection, Your Honor?

16           THE COURT: What?

17           MR. MORELLI: Objection. I think he should  
18 ask the man if he could be fair.

19           THE COURT: Okay. Well, he's setting up a  
20 premise for his question just as you have done several  
21 times.

22           MR. STRASSBURG: Yeah.

23           MR. MORELLI: I never questioned this man.

24           THE COURT: Go ahead.

25           MR. STRASSBURG: So -- so do you see a

1 difference between the -- the construction defect  
2 litigation that -- I mean, I daresay the entire  
3 industry has lived with, for probably the last 20  
4 years, the Summerlin case and the Del Webb case, all  
5 those cases --

6 PROSPECTIVE JUROR NO. 676: I'm aware of all  
7 those.

8 MR. STRASSBURG: -- with the big  
9 master-planned communities.

10 PROSPECTIVE JUROR NO. 676: I'm aware of all  
11 of those.

12 MR. STRASSBURG: Were you involved in any of  
13 those?

14 PROSPECTIVE JUROR NO. 676: Yeah. Numerous.

15 MR. STRASSBURG: As a party?

16 PROSPECTIVE JUROR NO. 676: Yes.

17 MR. STRASSBURG: As a witness?

18 PROSPECTIVE JUROR NO. 676: Yeah.

19 MR. STRASSBURG: Okay. But, I mean, you  
20 weren't the general contractor --

21 PROSPECTIVE JUROR NO. 676: No.

22 MR. STRASSBURG: -- in the big tract homes?  
23 So what was your trade? Were you a sub --

24 PROSPECTIVE JUROR NO. 676: I was the general  
25 superintendent.

1 MR. STRASSBURG: For who?  
2 PROSPECTIVE JUROR NO. 676: For the big  
3 company who was getting sued.  
4 MR. STRASSBURG: Which one?  
5 PROSPECTIVE JUROR NO. 676: Stone Canyons.  
6 MR. STRASSBURG: Oh, okay.  
7 PROSPECTIVE JUROR NO. 676: All the Stone  
8 Canyons.  
9 MR. STRASSBURG: And were you a witness in  
10 construction defect litigation?  
11 PROSPECTIVE JUROR NO. 676: Yes.  
12 MR. STRASSBURG: Okay. You would be a fact  
13 witness; right? Like, what do you build? When did you  
14 build it? Or were you an expert?  
15 PROSPECTIVE JUROR NO. 676: Yes. They put me  
16 through the wringer on what I did and how I operated  
17 and what subs I controlled and didn't control.  
18 MR. STRASSBURG: And that would be the  
19 lawyers for the other defendants or the lawyers for the  
20 plaintiffs?  
21 PROSPECTIVE JUROR NO. 676: That would be the  
22 plaintiffs. I was a defendant.  
23 MR. STRASSBURG: Right.  
24 PROSPECTIVE JUROR NO. 676: They were suing  
25 us.

1 MR. STRASSBURG: Got you. Got you. And how  
2 long did that experience last?

3 PROSPECTIVE JUROR NO. 676: Boy, I went  
4 head-to-head with Nancy for months.

5 MR. STRASSBURG: Nancy Quon?

6 PROSPECTIVE JUROR NO. 676: Yeah.

7 MR. STRASSBURG: I got. I got it.

8 And how long ago did you last go head-to-head  
9 with Nancy Quon?

10 PROSPECTIVE JUROR NO. 676: Oh, God. Before  
11 the -- before she got caught.

12 MR. STRASSBURG: Help me out here.

13 PROSPECTIVE JUROR NO. 676: 20 -- 20 --

14 MR. CALL: That was several years.

15 PROSPECTIVE JUROR NO. 676: -- 21 years. Has  
16 to be 21 years.

17 MR. STRASSBURG: Ago?

18 PROSPECTIVE JUROR NO. 676: Yeah.

19 MR. STRASSBURG: So that sounds like that  
20 might have been a cooling-off period. Have your  
21 feelings cooled off since the nip and tuck of the  
22 conflict with Nancy Quon?

23 PROSPECTIVE JUROR NO. 676: No. You want to  
24 know why?

25 MR. STRASSBURG: Yeah.

1 PROSPECTIVE JUROR NO. 676: Because my  
2 insurance rates went through the roof. They got to get  
3 their money back, so --

4 No, sir. Not.

5 MR. MORELLI: I'm not talking to you. I'm  
6 talking to him.

7 PROSPECTIVE JUROR NO. 676: Good.

8 MR. STRASSBURG: If you had to be -- tell  
9 yourself that I'm going to judge this issue based upon  
10 the law the Court gives me --

11 PROSPECTIVE JUROR NO. 676: I'm capable of  
12 that.

13 MR. STRASSBURG: -- I'm going to listen to  
14 the evidence --

15 PROSPECTIVE JUROR NO. 676: Yes.

16 MR. STRASSBURG: -- that witnesses testify  
17 to. All right?

18 PROSPECTIVE JUROR NO. 676: Yes.

19 MR. STRASSBURG: I'm going to look at the --  
20 the scientific proof. I'm going to listen to the  
21 experts from both sides. Right?

22 PROSPECTIVE JUROR NO. 676: That's a tough  
23 deal, sir.

24 MR. STRASSBURG: Yeah, it is.

25 PROSPECTIVE JUROR NO. 676: Yeah, that's a

1 tough deal. You're telling me, who one day -- one  
2 day -- saw Joe Blow on the witness stand tell this guy  
3 he's the best lawyer ever. The next day, the same guy,  
4 different case, different name, said he's the worst  
5 scumbag ever.

6 MR. STRASSBURG: This would be the expert.

7 PROSPECTIVE JUROR NO. 676: The expert  
8 witnesses. So I was a witness to that for months upon  
9 months of that --

10 MR. STRASSBURG: All right. It sounds --

11 PROSPECTIVE JUROR NO. 676: -- situation.

12 I'm just -- I'm just telling. I'm trying to be fair.

13 I've listened to this guy, the way he worded things.

14 And if he starts questioning me those things and I give

15 my answers, I -- I can't -- I'm going to be having a

16 hard time following what he said. I can, but to a

17 certain point, I'm going to be not -- not 100 percent.

18 And that's not fair to either party.

19 MR. STRASSBURG: Yeah. And I'm just trying  
20 to understand the nature of your -- of your feelings.

21 Are you -- is it you have the feeling that  
22 anybody can pretty much hire an expert to say whatever?

23 PROSPECTIVE JUROR NO. 676: That's what  
24 happened.

25 MR. STRASSBURG: Okay. So, if you were faced

1 with having to assess the evidence given by, you know,  
2 say, competing experts, say, two doctors, like one from  
3 the defendant and one from the plaintiff, who were  
4 saying one doctor says, yeah, he's got a -- he needed  
5 surgery on his neck and the other doctor says, no, he  
6 didn't.

7 PROSPECTIVE JUROR NO. 676: Okay.

8 MR. STRASSBURG: All right. How would you go  
9 about weighing and balancing which one of those  
10 witnesses you found most persuasive?

11 PROSPECTIVE JUROR NO. 676: Try to listen  
12 carefully and pay attention to what you believe is  
13 actual fact and maybe something not biased.

14 MR. STRASSBURG: So by listening carefully to  
15 all of the testimony by each expert, right, and  
16 thinking about it in light of what the judge tells you  
17 the law is, do you feel that you could come to an  
18 objective judgment about where the evidence is the  
19 stronger? Just looking at the evidence and the law, do  
20 you feel like you could do that?

21 PROSPECTIVE JUROR NO. 676: I would -- it  
22 would put me to the test.

23 MR. STRASSBURG: And would you expect to pass  
24 that test?

25 PROSPECTIVE JUROR NO. 676: I hope so.

1 That's what I'm here for.

2 MR. STRASSBURG: So you don't see anything in  
3 your -- your current makeup, in your current life  
4 experience, that would obstruct you from weighing and  
5 balancing the evidence on both sides, applying the law  
6 you're given, and deliberating with all your other  
7 jurors and coming to a collective judgment about,  
8 objectively, what the facts are?

9 PROSPECTIVE JUROR NO. 676: Yeah. That's  
10 where I didn't want to put myself in that position of  
11 being maybe I'm the deciding vote or whatever and my  
12 feelings, based upon both sides of the table, are going  
13 to affect something. It's not fair to anybody.

14 MR. STRASSBURG: And the feelings based upon  
15 the 20-year-old history with the construction defect  
16 case?

17 PROSPECTIVE JUROR NO. 676: Oh, it's a lot  
18 more than that. I did one case that I think he was on  
19 the Mark Kabins -- Mark Kabins case? Were you on that  
20 one, sir?

21 THE COURT: For some, he was.

22 MR. STRASSBURG: Mark Kabins, the doctor?

23 PROSPECTIVE JUROR NO. 676: Yeah.

24 MR. STRASSBURG: And what was your  
25 involvement in that?

1 PROSPECTIVE JUROR NO. 676: I read the paper  
2 every day before I go to work.

3 MR. STRASSBURG: Oh, I see.

4 PROSPECTIVE JUROR NO. 676: And I read every  
5 single article in the newspaper about, you know, both  
6 sides, what happened. So that leaves a lot of bad  
7 taste in one's mouth.

8 MR. STRASSBURG: And what case was that?

9 PROSPECTIVE JUROR NO. 676: The one where the  
10 lawyers were in cahoots with the doctors to throw -- if  
11 I'm not mistaken, to refer cases to them that they know  
12 they were going to win or something like that.

13 Dr. Mark Kabins was one of the doctors who did it, him  
14 and his partner. They're on Rancho.

15 MR. STRASSBURG: And that was -- that was  
16 covered in the papers because that was illegal conduct;  
17 correct?

18 PROSPECTIVE JUROR NO. 676: Numerous, both  
19 sides.

20 MR. STRASSBURG: And they were found out, and  
21 they were prosecuted; right?

22 PROSPECTIVE JUROR NO. 676: Yeah.

23 MR. STRASSBURG: And is that the way the  
24 system should work, to catch bad doctors who do bad  
25 things for money?

1 PROSPECTIVE JUROR NO. 676: Sir, if I would  
2 have -- if I would have been able to, I would have  
3 testified for Dr. Kabins. You know why? That guy  
4 saved me. He did my back. I couldn't work. So was he  
5 a scumbag for doing that? Yeah. But he saved my life.  
6 I'm working today, I'm playing golf because of that  
7 guy. So, again, both sides of the coin.

8 MR. STRASSBURG: You know, I want to thank  
9 you for your honesty and your candor.

10 PROSPECTIVE JUROR NO. 676: Didn't want to  
11 affect anything.

12 MR. STRASSBURG: It wasn't easy for you.

13 PROSPECTIVE JUROR NO. 676: I didn't want to  
14 affect either side. That's all.

15 MR. STRASSBURG: No, you know, you're really  
16 unique, in my experience. Most jurors are not so  
17 committed to doing a fair and good thing.

18 PROSPECTIVE JUROR NO. 676: That's why I  
19 asked him the way I did, because I have a lot of  
20 experience in this.

21 MR. STRASSBURG: Look, thank you. I mean,  
22 I'd love to have your experience on the jury, but given  
23 what you said about your concerns -- and I appreciate  
24 your willingness to give it the old college try, and I  
25 want to thank you on behalf of all of us --

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PROSPECTIVE JUROR NO. 676: Okay.

MR. STRASSBURG: -- for the time you have put into this. And thank you for coming.

We wouldn't object to cause, Judge.

THE COURT: No objection.

MR. STRASSBURG: No objection.

THE COURT: Anybody else?

MR. ROBERTS: Yes. Thank you.

I have a couple of follow-up questions for you. And I won't belabor it.

PROSPECTIVE JUROR NO. 676: Sure.

MR. ROBERTS: It sounds to me like your bias isn't against one of the parties but it's against your experience with the court system and your belief about experts?

PROSPECTIVE JUROR NO. 676: Good answer.

MR. ROBERTS: Okay. Now, the law requires people to prove their case, and defendants have to defend their case, and you need to have experts to do that. You understand that general point?

PROSPECTIVE JUROR NO. 676: Boy that's -- go ahead.

MR. ROBERTS: So both sides are going to have experts here.

PROSPECTIVE JUROR NO. 676: Yes.

1 MR. ROBERTS: Experts don't work for free.  
2 PROSPECTIVE JUROR NO. 676: I know what -- I  
3 know what they charge.  
4 MR. ROBERTS: Okay. So assume that the Court  
5 instructed you along the lines that expert opinion is  
6 only as good as the facts and reasons on which it is  
7 based. Right?  
8 PROSPECTIVE JUROR NO. 676: Okay.  
9 MR. ROBERTS: So it doesn't -- would you  
10 agree with me, it doesn't really matter if someone's  
11 being paid to work on a case and give their opinions;  
12 what's important is are their opinions backed up by  
13 facts and reasons that make sense?  
14 PROSPECTIVE JUROR NO. 676: And I understand  
15 that question. But based upon that example I cited  
16 there, where is -- where is the validity in that?  
17 That's not right. That's not fair.  
18 MR. ROBERTS: So you heard the attorney for  
19 the plaintiff --  
20 PROSPECTIVE JUROR NO. 676: Yes.  
21 MR. ROBERTS: -- describe it, I believe, as  
22 "ring true." Listen to the experts, listen to the --  
23 look at their credentials --  
24 PROSPECTIVE JUROR NO. 676: Yes.  
25 MR. ROBERTS: -- listen to the reasons

1 they're giving for those opinions, the facts that  
2 they're citing, and see if it rings true to you.

3           Could you do that?

4           PROSPECTIVE JUROR NO. 676: Yeah, I can.

5           MR. ROBERTS: And if people are going to get  
6 a fair trial and get justice, we have to have people  
7 knowledgeable and smart and willing to critically  
8 evaluate the experts and see who rings true; right?

9           PROSPECTIVE JUROR NO. 676: I'm capable of  
10 that.

11          MR. ROBERTS: Okay. So let me get right to  
12 the key question, because, as the judge said, people  
13 have biases, everyone has life experiences they bring  
14 into the courtroom.

15          PROSPECTIVE JUROR NO. 676: Yes.

16          MR. ROBERTS: The question is can you set  
17 those to the side and listen to the evidence and judge  
18 it critically for yourself and be fair to both parties,  
19 judge both parties' experts by the same standard --

20          PROSPECTIVE JUROR NO. 676: No.

21          MR. ROBERTS: -- and render justice?

22          PROSPECTIVE JUROR NO. 676: No.

23          MR. ROBERTS: You cannot do that?

24          PROSPECTIVE JUROR NO. 676: No.

25          MR. ROBERTS: All right. That's all I need

1 to know.

2 THE COURT: Anybody else? Did you have any  
3 questions, counsel -- plaintiffs' counsel?

4 Okay. Did you have something, Mr. Freeman?

5 MR. FREEMAN: Oh, no. Just stretching.

6 THE COURT: All things considered, I will  
7 sustain the challenge. Okay. You'll be excused from  
8 further service in this case.

9 PROSPECTIVE JUROR NO. 676: Sorry.

10 THE COURT: No, thank you for your candor.

11 PROSPECTIVE JUROR NO. 676: Sorry, guys.

12 THE COURT: Now, we have -- what is his  
13 number?

14 THE CLERK: Gary Meyers is going to be  
15 Seat 77 -- or Badge No. 770 will be Seat 21.

16 THE COURT: He's the one that has the  
17 appointment tomorrow?

18 THE MARSHAL: No.

19 THE COURT: I thought that was Mr. Meyers.

20 THE MARSHAL: He was the one that was in the  
21 audience. He was the teacher in my county.

22 THE COURT: Who was the one that came to me  
23 with that badge?

24 THE MARSHAL: That gentleman.

25 THE COURT: That's what I just said.

1 THE MARSHAL: Yes.

2 THE COURT: He's the one that has a dental  
3 appointment?

4 THE MARSHAL: Yeah. I already told him he  
5 had to come back.

6 THE COURT: So he is the next one.

7 THE MARSHAL: Right.

8 THE COURT: Somebody put in further down the  
9 list, but you know, we didn't know that. So okay. So  
10 Mr. Meyers, Gary Meyers, No. 770, will be -- will be  
11 called as 21. Now, we have --

12 MR. MORELLI: Mr. Cardoza.

13 THE COURT: Mr. Cardoza.

14 THE MARSHAL: Ready?

15 PROSPECTIVE JUROR NO. 563: Hello.

16 MR. MORELLI: You could have a seat and tell  
17 us what it was that you wanted to tell us.

18 THE COURT: For the record, we're talking  
19 about Mr. Cardoza; correct?

20 MR. MORELLI: Yes.

21 PROSPECTIVE JUROR NO. 563: Yes.

22 THE COURT: Okay. Mr. Cardoza, you have  
23 indicated that you have some things to say that you  
24 couldn't say in front of others, so --

25 PROSPECTIVE JUROR NO. 563: Right. What I

1 wanted to ask is what took this person --

2 MR. MORELLI: Need to speak up so everyone  
3 can hear.

4 PROSPECTIVE JUROR NO. 563: What I wanted to  
5 ask was what took this person to file this lawsuit  
6 after five years? Or is this an old case that's been  
7 going on?

8 MR. MORELLI: It's been going on.

9 PROSPECTIVE JUROR NO. 563: For five years?

10 MR. MORELLI: It's been going on. It's not  
11 unusual in our world.

12 THE COURT: For the record, I believe the  
13 complaint was filed in 2014, wasn't it?

14 MR. MORELLI: Yeah, but things happened.

15 THE COURT: What's that?

16 MR. MORELLI: Yes, which is four years ago.

17 PROSPECTIVE JUROR NO. 563: Oh, okay. Then  
18 my question is basically solved, because I thought,  
19 like, that it was barely -- how do you call it? --  
20 asked, like, made this year. So it kind of made me  
21 feel like it is a cash grab, but now that --

22 MR. MORELLI: No. We're not able to do that  
23 because we have statutes of limitations. You've got,  
24 you know, certain amount of time to bring a lawsuit.  
25 So you can't wait four or five years.

1 THE COURT: Counsel, object to me stating for  
2 the record when the complaint was filed in this case?  
3 MR. MORELLI: I have no problem.  
4 MR. ROBERTS: No, Your Honor.  
5 THE COURT: The complaint in this case was  
6 filed on August 6th, 2014.  
7 PROSPECTIVE JUROR NO. 563: Oh, okay.  
8 MR. MORELLI: Okay?  
9 PROSPECTIVE JUROR NO. 563: That's all I  
10 wanted to ask.  
11 MR. MORELLI: Okay. No problem.  
12 PROSPECTIVE JUROR NO. 563: Thank you for  
13 your time.  
14 MR. MORELLI: Have a good day.  
15 THE COURT: See you tomorrow at 10:00, sir.  
16 PROSPECTIVE JUROR NO. 563: Yep.  
17 MR. MORELLI: 10:00 o'clock tomorrow.  
18 THE COURT: Is there anything else to come  
19 before the Court at this time?  
20 MR. ROBERTS: Your Honor, I have something,  
21 but it can wait till the morning before the jury.  
22 THE COURT: Okay.  
23 MR. ROBERTS: Court's preference.  
24 THE COURT: That's fine because I have to  
25 let --

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MR. ROBERTS: Thank you, Your Honor.

THE MARSHAL: All rise.

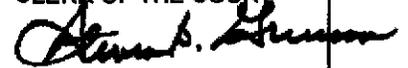
(Thereupon, the proceedings  
concluded at 5:24 p.m.)

-oOo-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
PROCEEDINGS.

*Kristy Clark*

\_\_\_\_\_  
KRISTY L. CLARK, CCR #708



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

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

12 Plaintiffs,

13 vs.

14 MGM GRAND HOTEL, LLC, et. al,

**PLAINTIFFS' TRIAL BRIEF TO  
EXCLUDE CUMULATIVE EXPERT  
TESTIMONY OF DEFENDANTS'  
PROPOSED EXPERT WITNESSES  
JOHN E. BAKER & NICHOLAS YANG**

15 Defendants.

16 Plaintiffs, GAVIN COX and MINH-HAHN COX, by and through their attorneys of  
17 record, MORELLI LAW FIRM, PLLC and HARRIS & HARRIS, hereby submits this Trial  
18 Brief to Exclude Cumulative Expert Testimony of Defendants' Expert Witnesses John E.  
19 Baker and Nicholas Yang.  
20

21 This case evolves from an incident at the MGM Grand Hotel and Casino on November  
22 12, 2013. As a result of his fall, Plaintiff, GAVIN COX, sustained severe and permanent  
23 injuries.  
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1 All of the Defendants, with the exception of Team Construction Management, Inc.,  
2 identified John E. Baker as a proposed liability expert. Defendant Team Construction  
3 Management, Inc. separately identified Nicholas Yang as a proposed liability expert. Both  
4 Mr. Baker and Mr. Yang were designated to provide duplicative and cumulative opinions  
5 regarding the cause of Plaintiff's November 12, 2013 accident.  
6

7 Mr. Yang provided expert reports dated September 1, 2016, April 14, 2017, and  
8 February 12, 2018. *See Defendants' [Proposed] Exhibit 533.* Mr. Yang's reports contain the  
9 following opinion, among others, regarding the cause of Plaintiff's accident: "Mr. Cox likely  
10 experienced a trip and fall event, rather than a slip and fall." *See Defendants' [Proposed]*  
11 *Exhibit 533 (0533-000019).*

12 Mr. Baker provided an expert report dated May 16, 2016 and a supplemental report  
13 dated March 16, 2018. *See Defendants' [Proposed] Exhibit 502.* Mr. Baker's supplemental  
14 report contain the following opinion, among others, regarding the cause of Plaintiff's  
15 accident: "it was apparent that the only possible precipitating mechanism for Cox's subject  
16 fall was a toe-catch *trip*." At the outset of his supplemental report, Mr. Baker states that he  
17 was asked to address "address the precipitating mechanism of the Gavin Cox's fall and  
18 injury" and specifically notes he reviewed the materials of proposed expert Nicholas Yang.  
19 Tellingly, at the conclusion of his supplemental report, Mr. Baker goes on to state that  
20 "Nicholas H. Yang, Ph.D., P.E. has arrived at virtually identical opinions to mine regarding  
21 Gavin Cox' precipitating fall event, the distant location of the point of impact, and Gavin  
22 Cox' fall mechanics."  
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26 According to Mr. Baker himself, he and Mr. Yang's opinions regarding the cause of  
27 Plaintiff's accident are virtually identical. The above is just one of many examples of  
28

1 identical testimony from these proposed liability experts. Given that Mr. Baker's opinions  
2 mirror those of Mr. Yang, Plaintiff seeks to exclude *all* duplicative and/or cumulative  
3 opinions of both proposed experts.

4           The prerequisites of relevancy are set out in *Nevada Revised Statute 48.035*.  
5 Specifically, *NRS 48.035(2)* provides that "[a]lthough relevant, evidence may be excluded if  
6 its probative value is substantially outweighed by considerations of undue delay, waste of  
7 time or needless presentation of cumulative evidence."

8           The opinions of Mr. Baker and Mr. Yang are duplicative, cumulative and should be  
9 excluded at trial. Defendants identified two experts to render opinions regarding the cause of  
10 Plaintiff's. Both experts render duplicative or substantially similar opinions. Both experts  
11 opine that Plaintiff, Gavin Cox, experienced a trip and fall event, rather than a slip and fall  
12 during his November 12, 2013 accident. Permitting Defendants to present two expert  
13 witnesses to opine as to the same exact information has no absolutely no probative value and  
14 will only lead to undue delay and the needless presentation of cumulative opinions. In  
15 *Townsend v. State*, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987), the Supreme Court noted  
16 that the threshold test for the admissibility of expert testimony turns on whether the expert's  
17 specialized knowledge will assist the trier of fact in understanding the evidence or an issue in  
18 dispute. The Supreme Court further stated in *Townsend* that the admissibility of such  
19 evidence must also satisfy the prerequisites of all relevant evidence, *i.e.*, that its probative  
20 value is not substantially outweighed by its prejudicial effect." *Yamaha Motor Co., U.S.A. v.*  
21 *Arnoult*, 114 Nev. 233, 243, 955 P.2d 661, 667 (1998) citing *Townsend v. State*, 103 Nev. at  
22 118, 734 P.2d at 708.  
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1 In this case, Mr. Baker and Mr. Yang were both retained to render opinions as to the  
2 cause of Plaintiff's November 12, 2013 accident. As set forth below, both proposed experts  
3 were given the same task and reached the same conclusions. Given the substantial similarity  
4 of their opinions, permitting both experts to testify at trial will result in cumulative testimony  
5 and will cause unnecessary delay in the proceedings. In addition, every one of the Defendants  
6 are aligned on this issue, making such duplicative testimony even more unnecessary. As such,  
7 Plaintiffs request this Court exclude all cumulative and duplicative testimony of Mr. Baker  
8 and Mr. Yang.  
9

10 Telling the same thing to a jury twice is the definition of cumulative evidence. The  
11 expert reports and testimony of Mr. Baker and Mr. Yang are duplicative, cumulative, will not  
12 assist the trier of fact and should be excluded at trial. Such duplicative opinions, even when  
13 relevant, should be excluded at trial under *NRS 48.035*.  
14

15 Dated this 11 day of April, 2018.

16 **HARRIS & HARRIS**

17  
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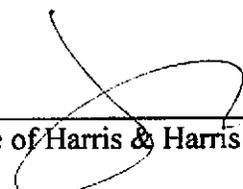
1  
2 **CERTIFICATE OF SERVICE**

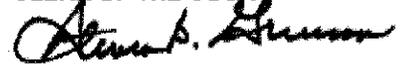
3  
4 The undersigned certifies that on this 11<sup>th</sup> day of April, 2018, service of the  
5 foregoing **PLAINTIFFS' TRIAL BRIEF TO EXCLUDE CUMULATIVE EXPERT**  
6 **TESTIMONY OF DEFENDANTS' PROPOSED EXPERT WITNESSES JOHN E.**  
7 **BAKER & NICHOLAS YANG** was served by electronic service in accordance with  
8 Administrative Order 14-2.

9  
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28 An employee of Harris & Harris



1 CASE NO. A705164

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5

DISTRICT COURT

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CLARK COUNTY, NEVADA

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\* \* \* \* \*

8 GAVIN COX and MINH-HAHN COX, )  
husband and wife, )

9 Plaintiffs, )

10 vs. )

11 MGM GRAND HOTEL, LLC; DAVID )

12 COPPERFIELD aka DAVIS S. )

13 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 )

through 20, inclusive, )

Third-Party Defendants )

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

WEDNESDAY APRIL 11, 2018

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

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1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 11, 2018;

2 11:03 A.M.

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

5 \* \* \* \* \*

6  
7 (The following proceedings were held  
8 outside the presence of the jury.)

9 THE MARSHAL: Come to order. All rise.

10 Eighth Judicial District Court, Department 13, Judge  
11 Mark Denton presiding.

12 THE COURT: Good morning. Good morning. Be  
13 seated.

14 We're reconvening in Cox, et al., v. MGM  
15 Grand Hotel, LLC, et al. We're outside the presence of  
16 the jury venire.

17 Please state appearances of counsel, identify  
18 parties and party representatives who are present  
19 today.

20 MR. MORELLI: Benedict Morelli for the  
21 plaintiff Gavin and Minh Cox.

22 MR. DEUTSCH: Good morning, Your Honor. Adam  
23 Deutsch, also for the plaintiff. And Mr. Fallick just  
24 stepped out as well.

25 MR. POPOVICH: Jerry Popovich, for MGM Grand

1 Hotel, with Mike Infuso. On behalf of MGM, we have  
2 Kelly Davis, Mark Habersack, Will Martin.

3 MS. FRESCH: Good morning, Your Honor.  
4 Elaine Fresch for David Copperfield Disappearing, Inc.,  
5 as well as David Copperfield, and Eric Freeman from my  
6 office as well.

7 MR. RUSSELL: Good morning, Your Honor.  
8 Howard Russell and Lee Roberts on behalf of Backstage  
9 Employment.

10 MR. STRASSBURG: Good morning, Judge. Roger  
11 Strassburg and Gary Call for Team Construction  
12 Management.

13 THE COURT: Okay. Very well. Thank you.  
14 It's -- I have received two media requests. I have  
15 granted the media requests, and that's -- they will be  
16 handled in the same way as the prior ruling that I had  
17 made relative to what will be allowed from the  
18 standpoint of cameras. All right?

19 Now, I note that there are two cameras here  
20 in the courtroom at this time. One was from the media  
21 request that was processed some time ago. And then  
22 there's another one here -- I'm not -- all right.

23 The requirement will be that there will not  
24 be more than these two cameras. All right? So any  
25 other media that will be seeking to utilize or take

1 pictures or whatever will be required to utilize one or  
2 the other of the two that are already present. Okay?

3           Also, the same order that I previously  
4 rendered relative to what can be excluded from being  
5 taken by camera will remain in effect. That has to do  
6 with jury selection. In other words, there's not to be  
7 any picking of -- or utilization of cameras during jury  
8 selection. And there was also -- I think the witnesses  
9 were -- were going to be allowed to object to -- during  
10 their own testimony if that was their want.

11           And, also, we have to develop various other  
12 things relative to what may be precluded from being the  
13 subject of camera. Okay? But that remains for  
14 development. Okay?

15           At this point, though, we're in jury  
16 selection, so use of cameras is not permitted at this  
17 time for that purpose. All right?

18           It's also been determined we're going to  
19 continue on with the jury selection and that we will  
20 have proceedings this afternoon relative to various  
21 motions that are being made. I believe the idea would  
22 be that the cameras will not be utilized until we  
23 actually start trial. Is that -- is that basically  
24 what -- what we've discussed?

25           MR. POPOVICH: That's correct for the record,

1 Your Honor.

2 MS. FRESCH: Yes.

3 MR. DEUTSCH: We have no objection to that,  
4 Your Honor.

5 THE COURT: All right. Very well. And that  
6 would be -- with opening statements, that would be the  
7 commencement of the trial. And we still have to tailor  
8 some of the aspects of the -- of the Court's ruling  
9 relative to opening statements; right? So, anyway,  
10 that's where we were at that point.

11 MS. FRESCH: Yes.

12 THE COURT: Now, the jury venire is outside.

13 THE MARSHAL: They're all here.

14 THE COURT: They're all here now?

15 Should we get underway with continued jury  
16 selection, and then this afternoon we can take care of  
17 some of these other items that we discussed; right?

18 MS. FRESCH: Yes.

19 MR. DEUTSCH: Yeah.

20 THE COURT: Okay.

21 Cameras will be off now because we're going  
22 back on jury selection. And -- and I also want it  
23 clear that the fact that cameras aren't utilized  
24 doesn't mean that people from the media aren't -- can't  
25 come into the courtroom. Okay? That's a totally

1 different issue. Okay? So we'll deal with that too.

2 All right?

3 So let's have the jury venire come in.

4 (The following proceedings were held in  
5 the presence of the jury.)

6 THE COURT: Good morning, ladies and  
7 gentlemen. You may be seated.

8 Do counsel stipulate that the jury venire is  
9 now present?

10 MR. ROBERTS: Yes, Your Honor.

11 MR. MORELLI: So stipulated, Your Honor.

12 MS. FRESCH: Yes, Your Honor.

13 THE COURT: All right. Counsel, you may  
14 resume your voir dire.

15 MR. STRASSBURG: Thank you, Judge.

16

17 VOIR DIRE EXAMINATION

18 MR. STRASSBURG: Good morning.

19 IN UNISON: Good morning.

20 MR. STRASSBURG: You're getting good at that.

21 We were talking about the ring of truth and

22 corroborating what witnesses say with other stuff,

23 corroboration by other witnesses, corroboration by

24 documents and other things. And I think we just

25 touched upon the surveillance; right?

1           Now, if -- if it's shown that there is a  
2 surveillance tape that is of -- a little grainy --  
3 right? -- and some of the things, the big things, it  
4 shows -- you know, like, generally what's happening;  
5 small things like faces and individual people, not so  
6 clear. If -- if we choose you for this jury, are you  
7 able to give the consideration to which this kind of  
8 evidence is due?

9           Where it's clear, you give it consideration  
10 as to big stuff; and where it's not so clear, you --  
11 you take that into account as well. Is there anybody  
12 here that has some questions about that, like how you'd  
13 do that or anything we should talk about concerning  
14 this surveillance tape?

15           All right. Thank you.

16           Now, if it's shown that there's an  
17 obstruction of some of the surveillance tape, some of  
18 the scene -- 'cause there's a tree; right? -- and if  
19 it's also proven to you that there is a way to  
20 accurately do a computer --

21           MR. DEUTSCH: Objection, Your Honor.

22           MR. STRASSBURG: There they go again, Judge.

23           THE COURT: Go ahead.

24           MR. STRASSBURG: And if it's shown to you  
25 that there's a way to accurately do a -- a computerized

1 facsimile of what's on the tape --

2 THE COURT: Counsel, we're talking about  
3 evidence here. I don't think that's --

4 MR. STRASSBURG: It's hypothetical, Judge.

5 THE COURT: I don't think hypotheticals are  
6 appropriate. Okay? I think that's one of the things  
7 that I indicated early on. Okay?

8 "The following areas of inquiry are not  
9 properly within the scope of your voir dire examination  
10 by counsel: questions that aren't substantive;  
11 questions touching upon the verdict the jury will  
12 determine based upon hypothetical facts."

13 Okay? Of course, I understand you're not  
14 asking for their verdict, but still it's -- you're  
15 getting into hypotheticals. I think we're just talking  
16 about the state of mind that the jurors have. So --

17 MR. STRASSBURG: All right. That's fair,  
18 Judge. All right. I'll make it clear.

19 All right. Are you open to consideration of  
20 computerized evidence, or would you tend to think  
21 that -- you know, like you'd go to the movies? Do any  
22 of you -- like, my grandson loves superhero movies;  
23 right? And it's all CGI. And they look so real.

24 I mean, would you be inclined to be  
25 dismissive of computerized enhancements just because,

1 you know, it's, like, movies, or can you take it for  
2 what it's worth? Anyone want to talk about that?  
3 Okay. Fair enough.  
4 Ms. Longdo?  
5 PROSPECTIVE JUROR NO. 821: Yes. 821.  
6 MR. STRASSBURG: Captain America or Iron Man?  
7 PROSPECTIVE JUROR NO. 821: Iron Man.  
8 MR. STRASSBURG: Why?  
9 PROSPECTIVE JUROR NO. 821: Because it's --  
10 it's Robert Downey Jr. He seems to have more fun  
11 stuff.  
12 MR. STRASSBURG: Okay.  
13 Ms. Briones, Captain America or Iron Man?  
14 PROSPECTIVE JUROR NO. 818: 818. I would  
15 have to agree with Ms. Longdo.  
16 MR. STRASSBURG: Okay. Okay.  
17 Ms. Mosallaei; right?  
18 PROSPECTIVE JUROR NO. 622: Yes.  
19 MR. STRASSBURG: Not Morelli, Mosallaei.  
20 Captain America/Iron Man?  
21 PROSPECTIVE JUROR NO. 622: Iron Man, for the  
22 same reason.  
23 MR. STRASSBURG: Wow. Okay.  
24 All right. Ms. Hernandez.  
25 PROSPECTIVE JUROR NO. 443: 443. Iron Man.

1 MR. STRASSBURG: Okay. Okay.  
2 Ms. Richards.  
3 PROSPECTIVE JUROR NO. 876: 876. Iron Man.  
4 MR. STRASSBURG: Wow.  
5 Mr. Torres?  
6 PROSPECTIVE JUROR NO. 704: 704. Wonder  
7 Woman.  
8 MR. STRASSBURG: I can't top that. Very  
9 good. Very good. Very good.  
10 You want to trade places?  
11 MR. MORELLI: He just did.  
12 MR. STRASSBURG: Yeah, you kind of just did.  
13 Good for you.  
14 Anyone else? Ms. Prescott?  
15 PROSPECTIVE JUROR NO. 696: Iron Man. 696.  
16 MR. STRASSBURG: Okay. Okay.  
17 So you're not averse to technology,  
18 obviously; right?  
19 Okay. Fair enough.  
20 Ms. Longdo.  
21 PROSPECTIVE JUROR NO. 821: Yes. 821.  
22 MR. STRASSBURG: Thank you.  
23 You work with the plumbers local?  
24 PROSPECTIVE JUROR NO. 821: I do.  
25 MR. STRASSBURG: Okay. Now, do you have

1 any -- any dealings with the laborers, 872, or the  
2 carpenters, 1977?

3 PROSPECTIVE JUROR NO. 821: Not very often.

4 MR. STRASSBURG: Okay.

5 PROSPECTIVE JUROR NO. 821: Almost rare.

6 MR. STRASSBURG: Do you know anybody in our  
7 unions or not?

8 PROSPECTIVE JUROR NO. 821: Maybe guys that  
9 come in that want to switch what they're doing. That's  
10 about it.

11 MR. STRASSBURG: Okay.

12 PROSPECTIVE JUROR NO. 821: Not a contractor  
13 per se, just individuals.

14 MR. STRASSBURG: Uh-huh. And -- and -- and  
15 have you had any doings with Team Construction?

16 PROSPECTIVE JUROR NO. 821: Not that I'm  
17 aware of.

18 MR. STRASSBURG: Any, like --

19 PROSPECTIVE JUROR NO. 821: Nothing --  
20 nothing, me personally.

21 MR. STRASSBURG: Union guys that have  
22 experience with Team Construction that you might have  
23 come across?

24 PROSPECTIVE JUROR NO. 821: No.

25 MR. STRASSBURG: Now, in your work for the

1 plumbers union, do you have any involvement in advocacy  
2 or organizing?

3 PROSPECTIVE JUROR NO. 821: Yes.

4 MR. STRASSBURG: Tell me about that, would  
5 you, please?

6 PROSPECTIVE JUROR NO. 821: I'm the secretary  
7 to the organizing department. So they -- my boss will  
8 work to get nonunion companies to go union or bring in  
9 guys that are nonunion to become members of our local  
10 in the union.

11 MR. STRASSBURG: And do these activities ever  
12 involve disputes with management or a strike?

13 PROSPECTIVE JUROR NO. 821: Our business  
14 agents handle that, that end of things. We just pretty  
15 much bring in construction -- you know, construction  
16 companies, contractors. But if there is someone  
17 working for one of our contractors and there's an  
18 issue, then that goes to our business agents.

19 MR. STRASSBURG: Okay. And how do you feel  
20 about company managements that dispute with unions in  
21 the organizing of their workplaces? Do you have -- has  
22 that left a bad taste in your mouth about managements  
23 or no?

24 PROSPECTIVE JUROR NO. 821: No, no. I mean,  
25 no, every three years, they redo our major contracts.

1 So, you know, they -- they hash that out separately, so  
2 we don't have -- the office staff doesn't have any  
3 involvement.

4 MR. STRASSBURG: Okay. Have you formed any  
5 impressions of management based on your experience in  
6 the union either pro or con?

7 PROSPECTIVE JUROR NO. 821: No. I mean, just  
8 kind of take things as they come and -- you know.

9 MR. STRASSBURG: No, and do you feel that  
10 you'd be able to assess testimony from witnesses who  
11 are members of -- of management fairly and impartially?

12 PROSPECTIVE JUROR NO. 821: I believe I can.

13 MR. STRASSBURG: Okay. Now, you've been  
14 asked "Can you be fair and impartial?" many times. And  
15 those of you who remain, many of you have given good  
16 answers to that, and we all appreciate that.

17 And by what I'm going to say, I don't mean  
18 to, in the slightest, take away from any of that. But  
19 I want to ask you, you know, really, wouldn't you be  
20 tempted at least to favor people and individuals over  
21 companies? Wouldn't you at least be tempted? Anybody?

22 Ms. Hernandez, how about you?

23 PROSPECTIVE JUROR NO. 443: 443.

24 No.

25 MR. STRASSBURG: Now, you're interested in

1 joining the helping professions; right?

2 PROSPECTIVE JUROR NO. 443: Yes.

3 MR. STRASSBURG: And it sounds like you're  
4 interested in devoting your life to helping people, one  
5 people at a time.

6 PROSPECTIVE JUROR NO. 443: Yes.

7 MR. STRASSBURG: Is that fair?

8 PROSPECTIVE JUROR NO. 443: (Nods head.)

9 MR. STRASSBURG: And do you at least feel  
10 that you might be tempted to feel more accommodating to  
11 individuals rather than corporations?

12 PROSPECTIVE JUROR NO. 443: No.

13 MR. STRASSBURG: Why not?

14 PROSPECTIVE JUROR NO. 443: Because it's a  
15 different type of situation. I think you have to  
16 listen to the evidence, what they provide, and  
17 definitely make our decision -- we have to make  
18 decisions based on the evidence that they provide.  
19 And, you know, the case, it's a complete different  
20 situation compared to helping people in hospitals or  
21 stuff like that.

22 MR. STRASSBURG: I mean, are you open to at  
23 least consider that -- companies are just people too;  
24 right?

25 PROSPECTIVE JUROR NO. 443: Yes.

1 MR. STRASSBURG: And people trying to do good  
2 jobs; yes?

3 PROSPECTIVE JUROR NO. 443: Yes.

4 MR. STRASSBURG: And are you open to the idea  
5 that reputation for good work really matters in this  
6 town; right?

7 PROSPECTIVE JUROR NO. 443: Yes.

8 MR. STRASSBURG: Are you open to that?

9 PROSPECTIVE JUROR NO. 443: Yes.

10 MR. MORELLI: Mr. Daniel, do you agree with  
11 that, that, in the construction trades, particularly on  
12 the Strip, that this really is kind of a small town  
13 where business reputation is concerned?

14 PROSPECTIVE JUROR NO. 031: 031.

15 I sure do.

16 MR. STRASSBURG: And what makes you say that?

17 PROSPECTIVE JUROR NO. 031: Being in the  
18 industry for so long, it's really -- it's -- there's  
19 only a handful of companies out there that are really  
20 the main growth of this city.

21 MR. STRASSBURG: Uh-huh. And, you know, a  
22 whispered word in the wrong ear can hurt a business  
23 reputation; right?

24 PROSPECTIVE JUROR NO. 031: Sure.

25 MR. STRASSBURG: Can really hurt the ability

1 of companies in that line of work to provide those  
2 jobs, union and management alike; right?

3 PROSPECTIVE JUROR NO. 031: Absolutely.

4 MR. STRASSBURG: Ms. Longdo, same question to  
5 you. And, again, I don't mean to suggest that there  
6 was anything -- I had any questions about your answer.  
7 But, as a -- a human being -- right? -- caring human  
8 being, I mean, you don't -- you did take a vacation in  
9 South Dakota during the winter. Wasn't that you?

10 PROSPECTIVE JUROR NO. 821: Yes.

11 MR. STRASSBURG: Why would you do that?

12 PROSPECTIVE JUROR NO. 821: Because that's  
13 where my best friend lives, so ...

14 MR. STRASSBURG: Good for you. See? You're  
15 loyal to your friends.

16 PROSPECTIVE JUROR NO. 821: I am.

17 MR. STRASSBURG: And we can -- would you be  
18 at least tempted to lean one way towards individuals  
19 instead of -- well, collections of individuals?

20 PROSPECTIVE JUROR NO. 821: No, because I  
21 think it all ends up down to what's presented to us  
22 for -- for facts and -- and seeing the whole situation  
23 to determine, but I don't think it's a -- an individual  
24 group contest.

25 MR. STRASSBURG: It's really what we talked

1 about yesterday. It's justice; right?

2 PROSPECTIVE JUROR NO. 821: Uh-huh.

3 MR. STRASSBURG: Under the law; right?

4 PROSPECTIVE JUROR NO. 821: Right.

5 MR. STRASSBURG: Mr. MacFawn, how about you?

6 If you were a pastor -- and it seems like that was a

7 satisfying activity to you?

8 PROSPECTIVE JUROR NO. 815: Absolutely.

9 MR. STRASSBURG: And you did it -- you made a

10 sacrifice for your boy; yes?

11 PROSPECTIVE JUROR NO. 815: Yes.

12 MR. STRASSBURG: Uh-huh. And how -- he's a

13 golfer, I see. And how's he doing?

14 PROSPECTIVE JUROR NO. 815: He's under par.

15 MR. STRASSBURG: Are you and Torres working

16 together?

17 PROSPECTIVE JUROR NO. 815: We know people.

18 No, he's good. He's good.

19 MR. STRASSBURG: That's a helping profession;

20 right? I mean, it sounds like you were more in the

21 pastoral care end instead of the preaching end?

22 PROSPECTIVE JUROR NO. 815: No, everything.

23 MR. STRASSBURG: The whole deal?

24 PROSPECTIVE JUROR NO. 815: Senior.

25 MR. STRASSBURG: Do you think that you would

1 tend to lean towards individuals instead of companies,  
2 even though they're just collections of individuals?

3 PROSPECTIVE JUROR NO. 815: No, I just look  
4 at everything equal. At the starting point, everyone's  
5 equal. And at the end of everything, all the evidence  
6 is in, then, I'll have to make my decision. I don't  
7 look at one being better or worse than the other. In  
8 my mind, everyone starts off equal. That's it. And at  
9 the end of it (indicating), you know, I'll have to make  
10 my determination on that.

11 MR. STRASSBURG: So are you open to bearing  
12 in mind that, you know, a business reputation in a  
13 limited market like the Strip or TI work, that's very  
14 vulnerable to false charges of shoddy work; right?

15 PROSPECTIVE JUROR NO. 815: Well, again,  
16 until I hear all the facts, I don't -- I'm not looking  
17 at one better than the other.

18 MR. STRASSBURG: That's an excellent answer.  
19 I appreciate that. Let me -- I'm sorry, Mr. Daniel,  
20 are you putting your hand up or are you just --

21 PROSPECTIVE JUROR NO. 031: No, I'm putting  
22 my hand up. 031.

23 Going back to your question directly towards  
24 me as far as reputation goes, one just went off in my  
25 head. Unfortunately, there is a blacklist,

1 particularly in my industry that one could get on  
2 that -- regarding relationship, you said. So ...

3 MR. STRASSBURG: All right.

4 MR. DEUTSCH: Your Honor, may we approach?

5 THE COURT: Sure.

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

8 MR. STRASSBURG: Mr. Daniel, thank you for  
9 contributing that. Was there anything more that --

10 PROSPECTIVE JUROR NO. 031: No, I just wanted  
11 to follow up with your question.

12 MR. STRASSBURG: Thank you, sir. Thank you.

13 Do any of you, like me, have any problems  
14 with color blindness, red-green color blindness?

15 Anybody struggle to see various shades of pink?

16 Anyone?

17 Are we good? All right.

18 Now, corroboration. Do any of you have a  
19 problem with entertaining arguments, evidence about  
20 corroborating evidence by thinking about what did not  
21 take place?

22 MR. DEUTSCH: Objection, Your Honor. He's  
23 talking about the evidence and whether they --

24 MR. STRASSBURG: I'm talking about their  
25 states of mind.

1 THE COURT: Overruled.

2 Go ahead.

3 MR. STRASSBURG: Thank you, Judge.

4 Where was I?

5 In the way that you process information with  
6 your common sense -- that's all I'm asking about -- do  
7 you have any problem considering if there's evidence of  
8 what didn't happen that would be expected to happen --

9 MR. DEUTSCH: Objection, Your Honor. It's a  
10 hypothetical.

11 MR. STRASSBURG: -- as a matter of common  
12 sense?

13 THE COURT: I'll allow it.

14 MR. STRASSBURG: Anyone?

15 Anybody? Questions?

16 All right. I just wanted to ask you, in the  
17 event -- in the event that we get to the medical  
18 issues -- now, you've heard questions about depression.  
19 If there is evidence to be considered of -- of  
20 depression, are you open to consider whether there are  
21 different understandings of what is called depression?  
22 Are you open to looking at depression as habits of  
23 mind?

24 For example, people who maybe catastrophize  
25 things, you know, they always look on the worst side;

1 right? Anybody have a father like that, or was it just  
2 me? Or people who look at things just black and white;  
3 right? It's always one way or the other. Anybody have  
4 any experience with people like that?

5 Ms. Humphries, uh-huh?

6 PROSPECTIVE JUROR NO. 829: Yes. My  
7 mother -- 829. My mother is that way. Everything's a  
8 big deal. Everything is chaos, you know. Chaos  
9 creation.

10 MR. STRASSBURG: All right. And are you open  
11 to considering that whether -- what's really -- what's  
12 called depression is simply a manner of processing  
13 information? Right?

14 PROSPECTIVE JUROR NO. 829: Yes.

15 MR. STRASSBURG: And that what has happened  
16 to Mr. Cox is another experience to be processed? Are  
17 you open to seeing depression in that light?

18 Anyone? Anyone have any questions as to what  
19 I'm talking about? Okay. Fair enough.

20 Now, you have been asked about do you agree  
21 that, like, everything, all conditions, don't show up  
22 on an MRI or an x-ray. Remember all that conversation?

23 Are you comfortable considering that  
24 age-related changes do show up on an MRI and that we  
25 need physicians to decide whether these are normal wear

1 and tear or whether there's something else? Are you at  
2 least open -- or do you think that, you know,  
3 everything that shows up on an MRI is sinister? What  
4 do you think?

5 Ms. Mosallaei, are you familiar with the  
6 difference between sensitivity and specificity?

7 PROSPECTIVE JUROR NO. 622: No.

8 MR. STRASSBURG: In your scientific work, do  
9 you do -- do you review the results of scientific  
10 testing?

11 PROSPECTIVE JUROR NO. 622: No.

12 MR. STRASSBURG: Okay. Fair enough. Thank  
13 you.

14 Anyone? Sorry.

15 PROSPECTIVE JUROR NO. 622: Sorry. 622. And  
16 just to expand on that question, I do look at  
17 scientific data, but not human. So I don't know what  
18 you're asking.

19 MR. STRASSBURG: That's fair. I mean, do you  
20 do sensitivity analysis or specificity --

21 PROSPECTIVE JUROR NO. 622: No. No.

22 MR. STRASSBURG: Fair enough.

23 Is anybody familiar with those terms maybe  
24 from your work experience?

25 Ms. Dupree.

1 PROSPECTIVE JUROR NO. 573: Yes. 573.  
2 Specificity but not sensitivity or the difference  
3 between. I don't -- it might be termed differently.  
4 Like, if I'm, you know, training someone in soccer,  
5 then that's specificity training on particular muscle  
6 groups and different skills pertaining to that sport.  
7 MR. STRASSBURG: Well, are you open to the  
8 idea that MRIs are highly sensitive so they show a lot?  
9 Right? But as to specificity, you kind of need an  
10 expert to interpret them?  
11 PROSPECTIVE JUROR NO. 573: I would be open,  
12 yeah, to both.  
13 MR. STRASSBURG: And sometimes, essentially,  
14 the brain, like any other organ, undergoes wear and  
15 tear with age?  
16 MR. DEUTSCH: Objection, Your Honor.  
17 THE COURT: Sustained.  
18 MR. STRASSBURG: Are you open to that?  
19 MR. DEUTSCH: Objection, Your Honor.  
20 THE COURT: I sustained the objection.  
21 Rephrase.  
22 MR. STRASSBURG: All right. Fair enough.  
23 Now, how many of you have lived here more  
24 than 20 years? Okay.  
25 Have any of you -- do any of you remember

1 news accounts in the Las Vegas area about the Medical  
2 Mafia?

3 MR. DEUTSCH: Objection, Your Honor.

4 THE COURT: Overruled.

5 PROSPECTIVE JUROR NO. 559: Melodie Simon, I  
6 think, was the plaintiff in that one. And I actually  
7 worked with her husband. And it was something -- it  
8 was a long time ago. It was something about the  
9 anesthesiologist and the lawyer were in cahoots and she  
10 had to sue one of them or something to that affect.

11 So it was something with lawyers and doctors  
12 and who she was supposed to sue. It wasn't actually  
13 responsible for her back.

14 (Clarification by the reporter.)

15 PROSPECTIVE JUROR NO. 559: 559.

16 MR. STRASSBURG: All right. Does that jog  
17 anybody else's memory about all the coverage about  
18 lawyers and doctors being in cahoots? Anyone?

19 Ms. Lutey, is there anything about those  
20 newspaper reports that you read that would cause you to  
21 lean one way or the other?

22 PROSPECTIVE JUROR NO. 559: No.

23 MR. STRASSBURG: You would be able to set  
24 that aside?

25 PROSPECTIVE JUROR NO. 559: Yes. Until you

1 mentioned it, I kind of had forgotten all about it.

2 MR. STRASSBURG: Okay. All right. I don't  
3 think I need to prolong this any longer. I want to  
4 thank you for the time you've taken to answer these  
5 questions again. None of us mean to pry or cause you  
6 any discomfort. And thank you very much for your time  
7 and your service.

8 IN UNISON: Thank you.

9 MR. POPOVICH: Your Honor, can we have a  
10 sidebar about the next step?

11 THE COURT: Yes.

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

14 THE COURT: All right. Ladies and gentlemen,  
15 at this time, there being no further challenges for  
16 cause, counsel are going to exercise or waive their  
17 peremptory challenges, and you'll be excused from the  
18 courtroom for that period of time. That will take some  
19 time, so I'm going to ask you to go to lunch now and be  
20 back at 1:15. All right? And at that time, the Court  
21 will identify the members of the jury.

22 UNIDENTIFIED SPEAKER: Yes.

23 THE COURT: Okay?

24 MR. MORELLI: No betting on it. This is  
25 Las Vegas.

1 THE COURT: As I said, this goes to the  
2 people who were seated in the gallery portion of the  
3 courtroom as well. You need to be back just in case,  
4 or whatever.

5 In any event, be back outside the courtroom  
6 at 1:15.

7  
8 During the recess once again, you are  
9 admonished not to talk or converse among yourselves or  
10 with anyone else, including, without limitation, the  
11 lawyers, parties, and witnesses on any subject  
12 connected with the trial or read, watch, or listen to  
13 any report of or commentary on the trial or any person  
14 connected with the trial by any medium of information  
15 including, without limitation, newspapers, television,  
16 the internet, and radio or form or express any opinion  
17 on any subject connected with the trial until the case  
18 is finally submitted to you.

19 Be outside the courtroom at 1:15.

20 Counsel, remain, and we will proceed.

21 (The following proceedings were held  
22 outside the presence of the jury.)

23 THE COURT: All right. You may be seated.

24 Counsel, this is Andrew, my law clerk. All  
25 right?

1 MR. MORELLI: We met.

2 THE COURT: He will be handing the jury list  
3 back and forth, beginning with plaintiffs' attorneys  
4 and then to defendants' attorneys, to exercise or waive  
5 six peremptory challenges. Okay? The fifth and sixth  
6 are to be alternates only; one through four are to the  
7 regular seats. Right?

8 MR. MORELLI: Yes. Exactly.  
9 Should we start caucusing?

10 MR. DEUTSCH: So, Your Honor, can we just --  
11 I know we have gone over it once before, but I just  
12 want to clarify the rules. We're going to -- the  
13 challenges are exercised on the entire board --

14 THE COURT: Yes, it can be.

15 MR. DEUTSCH: -- first? They can be.

16 MR. POPOVICH: Except the alternates.

17 THE COURT: You can't exercise regular  
18 challenges to alternate seats.

19 MR. DEUTSCH: So all the board except the  
20 alternates. And then if someone is challenged from the  
21 first eight, No. 13 would be put into that seat?

22 THE COURT: Right. And then the next one  
23 would be 14 and the next 15 or whatever after --

24 MR. DEUTSCH: Got you. Okay.

25 THE COURT: -- 12. Got that?

1 (Discussion was held off the record.)

2 THE MARSHAL: Counsel, come to order.

3 THE COURT: Okay. I'm going to -- we're back  
4 on the record. What I'll be doing when the venire  
5 comes back, I'll be reading names of people who will  
6 comprise the jury. Okay? And the way I do that is I  
7 ask them to stand and remain standing if they heard  
8 their names. Okay? After that, the others are  
9 excused, and then Bob will show the members of the jury  
10 where they will be seated during the trial.

11 We thought we would put the members of the  
12 jury in the first -- I'm sorry -- the back row and the  
13 middle row in those seats.

14 MR. MORELLI: Right.

15 THE COURT: Does anybody think they should be  
16 situated differently?

17 MR. MORELLI: Well, they could be in the  
18 first row and the second row here, because you don't  
19 need them to be way out there.

20 THE COURT: We're going to take those seats  
21 away that are in the front.

22 MR. MORELLI: Just the first two so we can  
23 be --

24 THE COURT: Do you want them in the back row  
25 and the middle row, or do you want them in the back row

1 and, say, the third row there?

2 MR. MORELLI: The front row and the middle  
3 row.

4 THE COURT: Okay. Is that what -- is that --  
5 does everybody agree with?

6 MR. MORELLI: Anybody disagree with that?

7 MR. POPOVICH: I would give the jurors more  
8 space. We've kind of been in their faces during jury  
9 selection, and I would say the back two rows.

10 MR. MORELLI: Well, they're going to have  
11 more space because the front rows -- generally a jury  
12 is right behind the railing, not in the next room,  
13 generally. I mean, I've only done this a few times,  
14 but generally. Okay?

15 MR. DEUTSCH: And it's easier for them to  
16 hear the witnesses also.

17 MR. MORELLI: This way they can hear the  
18 witnesses, be closer to the witness box when they have,  
19 you know, lying experts on the stand. They can see  
20 them.

21 MR. POPOVICH: Mr. Morelli tends to get very  
22 close to our jurors, and I think a little space might  
23 be a good idea.

24 MR. MORELLI: I don't think that's a fair  
25 comment. You don't know that.

1 MR. POPOVICH: I've seen it.

2 MR. MORELLI: Really? You have been watching  
3 my trials again? I told you to stop doing that.

4 MR. POPOVICH: Court's call.

5 THE COURT: How about if we have one in the  
6 front row there -- the first six of them in the front  
7 row and six up in the back row. Does that make -- that  
8 gives them a little bit more room.

9 MR. MORELLI: That's fine.

10 THE COURT: Will that work?

11 MR. MORELLI: That's fine.

12 MR. POPOVICH: I mean, that doesn't resolve  
13 the concern I had, but ...

14 THE COURT: Well, I mean the bar is there.  
15 The bar --

16 MR. POPOVICH: True.

17 THE COURT: -- is there, as that's where  
18 jurors are expected to sit. So I'll --

19 MR. MORELLI: I think -- I think the -- the  
20 jurors in the last row are going to think how come  
21 we're all the way back here when two of us are on the  
22 regular jury? Well, they don't think that. They all  
23 think they're on the jury. I mean, I don't understand  
24 why --

25 THE COURT: You don't understand why we have

1 three rows; right?

2 MR. MORELLI: No, they should be in the  
3 conversation.

4 THE COURT: I was in another courtroom  
5 before, and we only had, as I recall, two rows.

6 MR. DEUTSCH: It seems the closer to the  
7 witnesses and able to hear the witnesses seems to be  
8 the utmost importance.

9 THE COURT: All right. All right.

10 MR. ROBERTS: Your Honor, to the extent you  
11 need a tiebreaker, we think that moving back is  
12 appropriate.

13 MR. MORELLI: Of course.

14 MR. ROBERTS: I mean --

15 MR. DEUTSCH: Perry, speak up.

16 Perry votes for the front two rows.

17 MR. ROBERTS: And we don't have to watch his  
18 other trials. We saw Mr. Morelli get right up to the  
19 jurors during voir dire, right up to them. They've  
20 already got the advantage of seating over there closer  
21 to them --

22 MR. MORELLI: We also have the burden of  
23 proof. Did you ever hear of that?

24 MS. FRESCH: Well, but also the way this is  
25 configured, Your Honor, if I may, if they're in the

1 back two rows, it gives all of us a better visual  
2 because the first two -- the first row is very  
3 difficult. I actually can't see the first four jurors  
4 when I'm sitting down.

5 MR. ROBERTS: I'm blocked by the podium also  
6 on that first row, Your Honor.

7 MS. FRESCH: So that's why I think the last  
8 two rows.

9 MR. CALL: We're blocked by --

10 THE COURT: I'll go with my original  
11 thinking. The back two rows will be where they'll sit.  
12 Okay?

13 Now, I'm going to read the names now.  
14 Everyone's on the same page on this list; right?

15 MR. POPOVICH: We think so.

16 THE COURT: These people will not be informed  
17 until I tell them. So this is not something that --  
18 all right.

19 So No. 1, 876, Badge No. 876, is Kelly  
20 Richards; 2, Badge 462, Susan Millhouse; 3, Badge 622,  
21 Sheila Mosallaei; 4, Badge 829, Kaitlyn Humphries; 5,  
22 Badge 818, Ilyn Briones -- is it Ilyn Briones? -- 6,  
23 894, Kevin Paredes; 7, 696, Germaine Prescott; 8, 690,  
24 Gerald Schaffner; 9, 822, Paulina Hernandez; 10, Badge  
25 710, Luzangelica Gomez; 11, Badge 702, David Allen; 12,

1 Badge 815, Derick MacFawn. Correct?  
2 MR. POPOVICH: Yes.  
3 MR. ROBERTS: Yes.  
4 THE COURT: The record will so reflect, and  
5 we'll resume at 1:15.  
6 MR. ROBERTS: And jurors -- Judge, just to  
7 confirm our numbered alternates, Alternate 1 is  
8 Schaffner, seat --  
9 THE COURT: Hold on just a second. Okay.  
10 That's in Seat 8, Gerald Schaffner; right?  
11 MR. DEUTSCH: Yes.  
12 MR. MORELLI: He's right.  
13 THE COURT: Then Seat 7 is the next one, and  
14 that's Germaine Prescott; right? Seat 12 is Derick  
15 MacFawn?  
16 MR. DEUTSCH: Yes.  
17 MR. MORELLI: Right.  
18 THE COURT: And Seat 11 is David Allen;  
19 correct?  
20 MR. ROBERTS: Correct. Thank you, Your  
21 Honor.  
22 THE COURT: We're all on the same page. See  
23 you at 1:15.  
24 THE MARSHAL: All rise.  
25 (Whereupon a short recess was taken.)

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

3 THE MARSHAL: All rise. Come to order.  
4 Department 13 is now in session.

5 THE COURT: Good afternoon. Please be  
6 seated. We are back on the record outside the presence  
7 of the jury venire.

8 I wanted to take up something outside their  
9 presence. I have received an inquiry from our court  
10 information officer, Maryann Price. She had received a  
11 note from David Segal. I'll just read it to you.

12 It says, "Hi, Ms. Price. We're learning  
13 today that, apparently, Judge Denton will not allow  
14 coverage of any witness who objects to coverage in the  
15 Cox v. MGM trial. Is there any written order from the  
16 judge restricting media coverage of this trial that  
17 your office can provide a copy of? Thanks, David."

18 Okay. That would be --

19 THE CLERK: Court exhibit.

20 THE COURT: Make another copy. This is on  
21 scratch paper.

22 I don't believe that a written order was  
23 submitted to me when I originally got it.

24 MR. FREEMAN: Yeah, Your Honor. You just  
25 signed the media request.

1 THE COURT: Right. But was there any order  
2 that had to do with the restrictions that might be  
3 applicable?

4 MR. FREEMAN: I thought that had been written  
5 in. But I got a copy of it today and looked at it, and  
6 there wasn't anything written in it.

7 THE COURT: Let me see that back again. So I  
8 also have the conference earlier today relative to the  
9 other media requests. And the order -- there was going  
10 to be an order submitted on those that was going to be  
11 reflective of the orders that the Court had previously  
12 made; right? Similar rulings.

13 I think it needs to be clarified relative to  
14 objections of witnesses that the Court will entertain  
15 the objection and then make a ruling on the objection.  
16 Does that make sense?

17 MR. MORELLI: Yes.

18 MS. FRESCH: I thought the witness had the --  
19 had the election, so it wasn't something to be ruled  
20 on. If a witness does not want to have the media cover  
21 their testimony, they --

22 THE COURT: Well, I'll certainly allow that  
23 to be expressed; and then on a case-by-case basis, I'll  
24 make a determination. Okay?

25 MR. POPOVICH: My memory is the supreme court

1 rules that govern this actually provide in one of the  
2 subsections that the Court can make a ruling -- and we  
3 even raise the case from last year where the Nevada  
4 Supreme Court approved a trial court judge using that  
5 section and invoking that section, giving the witness  
6 an election. And I think we even had that discussion  
7 and Your Honor had agreed that that subsection would  
8 apply here.

9 THE COURT: Okay. Well, if it does, it does.  
10 If that's -- I just am taking a look at the -- are we  
11 looking at SCR220 -- I'm sorry -- 230? No, that's.

12 MR. FREEMAN: 240.

13 MS. FRESCH: 240, maybe?

14 THE COURT: 240. I'm sorry. Right. 240,  
15 "The consent of participants to coverage is not  
16 required. The judge, however, in the exercise of sound  
17 discretion, may prohibit the filming or photographing  
18 of any participant who does not consent to being filmed  
19 or photographed. This is in recognition of the  
20 authority reposing on the judge, upon the exercise of  
21 sound discretion, to hold certain judicial proceedings,  
22 or portions thereof, in camera and in recognition of  
23 the fact that certain proceedings or portions thereof  
24 are made confidential by law. This provision does not  
25 apply to jurors during the pendency of the proceedings

1 as they are covered elsewhere in these rules."

2           So it appears to contemplate exercise of  
3 sound discretion; right?

4           MR. MORELLI: Right.

5           THE COURT: Wouldn't that be on a  
6 witness-by-witness basis?

7           MR. DEUTSCH: We believe so, Your Honor.

8           MR. POPOVICH: My memory of what I had argued  
9 for was that the Court would give that election to the  
10 witnesses, and I -- my understanding, when we walked  
11 out, was that that had been done; but if there was a  
12 reason why it should not apply to an individual, it  
13 could be raised at that time rather than a possibility  
14 of arguing that it should not apply rather than every  
15 one of these witnesses that said no would be considered  
16 at that time.

17           MR. DEUTSCH: Our recollection, Your Honor,  
18 was that, because of the First Amendment protections of  
19 open courtrooms, that the initial inclination is that  
20 it could be filmed; and, unless there's some good cause  
21 shown why it couldn't be, Your Honor would take that up  
22 on a witness-by-witness basis.

23           THE COURT: I'm required by the rule to  
24 exercise discretion, so that's what I'll do. And I'll  
25 consider strongly any objection made by a witness and

1 the reason for it.

2 MS. FRESCH: Okay. So then maybe I didn't  
3 understand that correctly then at the time. I've  
4 already briefed the other issue, and I would just  
5 inform everyone, which we haven't had the argument on  
6 the objections and the motion, that that applied to  
7 witnesses as well. I'm just -- we centered on other  
8 things because we thought that was clear. So I  
9 misunderstood, Your Honor. I apologize.

10 THE COURT: I mean, there is some nuance  
11 there, so that's what I want to --

12 MS. FRESCH: Yeah. Thank you.

13 THE COURT: Okay. Very well.

14 So what I'll do now is I'll have the venire  
15 brought in. I'll identify the members of the jury.  
16 I'll excuse the rest of the venire. I will then  
17 admonish the members of the jury. At the conclusion of  
18 that, they will be excused for the day and until  
19 Friday. And then I'll hear various things that are  
20 going to come before me. Correct?

21 MR. DEUTSCH: Yes, Your Honor.

22 MR. MORELLI: Yes.

23 THE COURT: So let's have the jury venire  
24 brought in.

25 THE MARSHAL: All rise.

1 (The following proceedings were held in  
2 the presence of the jury.)  
3 THE COURT: Good afternoon, ladies and  
4 gentlemen. You may be seated.  
5 Counsel stipulate that the jury venire is now  
6 present?  
7 MR. MORELLI: So stipulated.  
8 MR. POPOVICH: So stipulated, Your Honor.  
9 THE COURT: All right. Ladies and gentlemen,  
10 if and when I read your name, please stand and remain  
11 standing until I give you further direction. All  
12 right?  
13 Badge 876, Kelly Richards; Badge 462, Susan  
14 Millhouse; Badge 622, Sheila Mosallaei?  
15 PROSPECTIVE JUROR NO. 622: Mosallaei.  
16 THE COURT: Okay. Badge 829, Kaitlyn  
17 Humphries; Badge 818, Ilyn Briones; Badge 894, Kevin  
18 Paredes; Badge 696, Germaine Prescott; Badge 690,  
19 Gerald Schaffner; Badge 822, Paulina Hernandez;  
20 Badge 710, Luzangelica Gomez; Badge 702, David Allen;  
21 Badge 815, Derick MacFawn.  
22 Okay. How many do we have standing?  
23 All right. Ladies and gentlemen, those of  
24 you standing will comprise the jury in this case.  
25 Please be seated where you are. The rest of you who

1 were not standing -- and that includes those of you  
2 situated in the gallery portion of the courtroom, you  
3 may now stand. All right.

4           You who are standing will be excused from  
5 further service in this case. You're directed to go  
6 back to the jury office for any further instruction  
7 that they may have for you. We thank you very, very  
8 much for your participation in this rather tedious  
9 process.

10           To give meaning to jury selection, we have to  
11 summon more people to the courthouse than will actually  
12 comprise the jury. The fact that you weren't selected  
13 does not bear in any way, shape, or form on your  
14 ability or willingness or desire to perform your jury  
15 service in the State of Nevada here.

16           So we thank you very, very much. And please  
17 go through the door there and go back to the jury  
18 office and with the thanks of court and counsel.

19           (Whereupon jury venire exited courtroom.)

20           THE COURT: Okay. This is Andrew, my law  
21 clerk. I mentioned him earlier when we started this,  
22 that he would be coming out to assist counsel in  
23 seating the jury. And I'll ask him now and Bob to show  
24 the members of the jury where they'll be seated during  
25 the balance of the trial. Thank you.

1 THE MARSHAL: Last two rows, stand up, come  
2 on down here.

3 THE LAW CLERK: You all know the one and how  
4 it goes. Okay? So I guess Ms. Richards will be  
5 sitting in Seat 1.

6 THE MARSHAL: Top row and to the right.

7 THE LAW CLERK: Ms. Millhouse, 2; I will say  
8 Sheila, 3; Ms. Humphries, 4; Ms. Briones, 5; and  
9 Mr. Paredes -- Paredes is Seat No. 6. So that will  
10 fill up the far back row.

11 And then we got -- Ms. Prescott, you'll sit  
12 in Seat No. 7. And then Mr. Schaffner, Seat No. 8.

13 THE MARSHAL: Go that way. It's easier.

14 THE LAW CLERK: Ms. Hernandez, 9. And then  
15 we have Ms. Gomez, Seat No. 10. And then Mr. Allen,  
16 you are No. 11. And then Mr. MacFawn, Seat 12.

17 JUROR NO. 12: Same seat. Thank you, guys.  
18 It's still warm.

19 THE COURT: Do counsel stipulate that the  
20 members of the jury are properly situated in the jury  
21 box?

22 MS. FRESCH: So stipulated.

23 MR. MORELLI: I believe they are, Your Honor.

24 MR. ROBERTS: Yes, Your Honor.

25 MR. POPOVICH: Yes.

1           THE COURT: Very well. It appearing to the  
2 Court that all peremptory challenges have either been  
3 exercised or waived, the clerk will now administer the  
4 oath of service to the jury.

5           Please stand.

6           THE CLERK: You and each of you do solemnly  
7 swear that you will well and truly try the case at  
8 issue and a true verdict render according to the  
9 evidence, so help you God?

10          IN UNISON: I do.

11          THE COURT: Thank you.

12          All right. Ladies and gentlemen, four among  
13 you -- four among you are what we call alternate  
14 jurors. All right? We do not identify the alternates  
15 until the case has been finally presented and just  
16 before jury deliberations.

17          We want the alternates to listen with the  
18 same attention as the regular jurors do, keeping in  
19 mind too that it sometimes happens that alternates have  
20 to step into the shoes of a regular juror who has  
21 become -- has had a problem or become ill or something  
22 like that. You can imagine what we'd have to do if we  
23 had to start all over again. So we have alternates who  
24 can step into the shoes of excused regular jurors when  
25 that happens. Fortunately, that does not happen

1 frequently, but it does happen from time to time.

2           And so that's why we have alternates. So  
3 what I'm going to be doing at this time is just giving  
4 you a general introduction to the nature of these  
5 proceedings and how they will proceed. Okay?

6           Ladies and gentlemen, you are admonished that  
7 no juror may declare to a fellow juror any fact  
8 relating to this case as of his or her own knowledge.  
9 And if any juror discovers during trial or after the  
10 jury has retired that he or she or any other juror has  
11 personal knowledge of any fact in controversy in this  
12 case, he or she shall disclose such situation to me in  
13 the absence of the other jurors.

14           This means that if you learn during the  
15 course of the trial that you are acquainted with the  
16 facts of the case or the witnesses, and you have not  
17 previously told me of this relationship, you must then  
18 declare that fact to me. You communicate with me  
19 through Bob, the marshal.

20           During the course of the trial, the attorneys  
21 for both sides and the court personnel other than the  
22 marshal are not permitted to converse with members of  
23 the jury. These individuals are not being antisocial;  
24 they are bound by ethics and the law not to talk to you  
25 because to do so might contaminate your verdict. We're

1 in close quarters here, so it's inevitable that the  
2 parties and their attorneys will occasionally have some  
3 kind of contact with members of the jury such as eye  
4 contact or brief encounters while on the premises or  
5 nearby.

6           The fact that counsel and the parties  
7 endeavor to refrain from communication should not be  
8 held against them, but a smile or a nod of the head in  
9 passing or simple everyday utterance or expression to  
10 be polite are to be expected in such close quarters.  
11 The point is that substantial communications are to be  
12 avoided.

13           You're admonished additionally that you are  
14 not to visit the scene of any of the acts or  
15 occurrences made mention of during this trial unless  
16 specifically directed to do so by the Court.

17           Ladies and gentlemen, what I will now say is  
18 intended to serve as an introduction to the trial in  
19 the case. It's not a substitute for the detailed  
20 instructions on the law which I will give to you at the  
21 close of the case before you retire to consider your  
22 verdict.

23           This is a civil action -- action commenced by  
24 Gavin Cox and Minh-Hahn Cox, who are referred to as the  
25 plaintiffs, against MGM Grand Hotel, LLC; David

1 Copperfield a.k.a. David S. Kotkin; Backstage  
2 Employment and Referral, Inc; David Copperfield's  
3 Disappearing, Inc.; Team Construction Management, Inc.  
4 They're referred to as the defendants.

5 Plaintiffs' case is based upon a complaint.  
6 It's a pleading called a complaint to which the  
7 defendants have filed responses which we call answers.

8 Do counsel waive reading of the pleadings?

9 MR. MORELLI: Yes, Your Honor.

10 MR. ROBERTS: Yes, Your Honor.

11 MR. POPOVICH: Yes, Your Honor.

12 MS. FRESCH: Yes, Your Honor.

13 THE COURT: Those items, the complaint and  
14 the answers, are called "the pleadings." They will not  
15 be read to you. The evidence will be presented during  
16 the course of the trial, and the contentions of the  
17 parties will be presented during the course of the  
18 trial.

19 The trial will proceed in the following  
20 order:

21 The parties have the opportunity to make  
22 opening statements. What is said in opening statements  
23 is not evidence. The statements simply serve the  
24 purpose of an introduction to the evidence which the  
25 party making the statement intends to produce.

1           The plaintiffs will introduce evidence in  
2 support of the plaintiffs' complaint. This is called  
3 the plaintiffs' case in chief.

4           After the plaintiffs present evidence, the  
5 defendants may present evidence but are not obligated  
6 to do so. This would be the defendants' case in chief.

7           If the defendants present evidence, the  
8 plaintiffs may present rebuttal evidence. If the  
9 plaintiffs present rebuttal evidence, the defendants  
10 may present surrebuttal evidence.

11           After the evidence, I will instruct you on  
12 the applicable law. You must not be concerned with the  
13 wisdom of any rule of law stated in my instructions or  
14 in the instructions which I will read to you after the  
15 evidence, regardless of any opinion you may have as to  
16 what the law ought to be.

17           It would be a violation of your oath to base  
18 a verdict upon any other view of the law than that  
19 given to you by me.

20           After the instructions on the law are read to  
21 you, each party has the opportunity to present oral  
22 argument in support of their case. What is said in  
23 closing argument is not evidence, just as what is said  
24 in opening statements is not evidence. The arguments  
25 are designed to present to you the contentions of the

1 parties as to what the evidence has shown and what  
2 inferences may be drawn from the evidence.

3           Your purpose as jurors is to find and  
4 determine the facts. Under our system of civil  
5 procedure, you are the sole judge of the facts. You  
6 determine the facts from the testimony you hear and the  
7 other evidence, including exhibits introduced in court.  
8 It is up to you to determine the inferences which you  
9 feel may be properly drawn from the evidence.

10           It is especially important that you perform  
11 your duty of determining the facts diligently and  
12 conscientiously, for ordinarily there is no means of  
13 correcting an erroneous determination of facts by a  
14 jury.

15           The parties may sometimes present objections  
16 to some of the testimony or other evidence. It is the  
17 duty of a lawyer to object to evidence which he or she  
18 believes may not properly be offered, and you should  
19 not be prejudiced in any way against the lawyer who  
20 makes objections on behalf of the party he or she  
21 represents.

22           At times I may sustain objections or direct  
23 that you disregard certain testimony or exhibits. You  
24 must not consider any evidence to which an objection  
25 has been sustained or which I have instructed you to

1 disregard.

2           Anything you may have seen or heard outside  
3 the courtroom is not evidence and must also be  
4 disregarded. Remember, statements, arguments, and  
5 opinions of counsel are not evidence in the case.  
6 However, if the attorneys stipulate or agree as to the  
7 existence of a fact, you must accept the stipulation as  
8 evidence and regard that fact as proof.

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

13           You must not be influenced in any degree by  
14 any personal feeling of sympathy for or prejudice  
15 against the plaintiffs or defendants. Both sides are  
16 entitled to the same fair and impartial consideration.

17           In considering the weight and value of the  
18 testimony of any witness, you may take into  
19 consideration the appearance, attitude, and behavior of  
20 the witness; the interest of the witness in the outcome  
21 of the case, if any; the relation of the witness to the  
22 defendants or plaintiffs; the inclination of the  
23 witness to speak truthfully or not; and the probability  
24 or improbability of the witness's statements and all of  
25 the facts and circumstances in evidence. Thus, you may

1 give the testimony of any witness just such weight and  
2 value as you believe the testimony of the witness is  
3 entitled to receive.

4           There are two kinds of evidence: direct  
5 and circumstantial. Direct evidence is testimony by a  
6 witness about what that witness personally saw or heard  
7 or did. Circumstantial evidence is testimony or  
8 exhibits which are proof of a particular fact from  
9 which, if proven, you may infer the existence of a  
10 second fact.

11           You may consider both direct and  
12 circumstantial evidence in deciding this case. The law  
13 permits you to give equal weight to both, but it is for  
14 you to decide how much weight to give to any evidence.

15           No statement, ruling, remark, comment,  
16 gesture, or facial expression which I may make during  
17 the course of the trial is intended to indicate my  
18 opinion as to how you should decide the case or to  
19 influence you in any way in your determination of the  
20 facts.

21           At times I may even ask questions of  
22 witnesses. If I do so, it's for the purpose of  
23 bringing out matters which I feel should be brought out  
24 and not in any way to indicate my opinion about the  
25 facts or to indicate the weight I feel you should give

1 to the testimony of the witness.

2 I may also find it necessary to admonish the  
3 lawyers. And if I do, you should not show prejudice  
4 against a lawyer or his or her client because I have  
5 found it necessary to admonish him or her.

6 Until this case is submitted to you, you must  
7 not discuss it with anyone, even with your fellow  
8 jurors. After it is submitted to you, you must discuss  
9 it only in the jury room with your fellow jurors.

10 It is important that you keep an open mind  
11 and not decide any issue in the case until the entire  
12 case has been submitted to you under instructions from  
13 me.

14 If you cannot hear a witness, please raise  
15 your hand as an indication. Also, if you need to go to  
16 the restroom or if you feel ill, please also raise your  
17 hand as an indication.

18 I may, during the trial, take notes of  
19 witnesses' testimony. You are not to make any  
20 inference from that action. I am required to prepare  
21 for legal arguments of counsel during this trial and,  
22 for that reason, I may take notes.

23 Again, let me remind you that until the case  
24 is submitted to you, do not talk to each other about it  
25 or about anyone who has anything to do with it until

1 the end of the case when you go to the jury room to  
2 decide on your verdict.

3 Do not talk with anyone else about the case  
4 or about anyone who has anything to do with it until  
5 the trial has ended and you have been discharged as  
6 jurors.

7 Anyone else includes members of your family  
8 and your friends. You may tell them that you are a  
9 juror in a civil case, but don't tell them anything  
10 else about it until after you have been discharged by  
11 me.

12 Do not let anybody talk to you about the case  
13 or about anyone who has anything to do with it. If  
14 somebody should try to talk to you, please report it to  
15 me immediately by contacting Bob, the marshal.

16 Do not read any news stories or articles or  
17 listen to any radio or television reports about the  
18 case or about anybody who has anything to do with it.

19 Also, until you have been discharged from  
20 service in this case, you may not perform any  
21 investigation, research, or experiment of any kind on  
22 your own, either individually or as a group about this  
23 case.

24 Do not consult any dictionaries for the  
25 meaning of words or any encyclopedias for general

1 information on the subject of this trial. Do not look  
2 up anything on the internet concerning this case or any  
3 of the people involved, including the parties, the  
4 witnesses, the lawyers, and the judge.

5 Do not go to the scene where any of the  
6 events that are the subject of this trial are alleged  
7 to have taken place or use internet maps or Google  
8 Earth or any other program or device to search for or  
9 view any place discussed during the case.

10 And do not have any discussions about the  
11 case or make any entry on Facebook, MySpace, LinkedIn,  
12 or other internet social media site, and that includes  
13 all other forms of oral, written, and electronic  
14 communications, including Twitter, e-mail, blogging,  
15 and texting.

16 Do not communicate with anybody about the  
17 case on your cell phone, through e-mail, BlackBerry,  
18 iPhone, text messaging, or on Twitter, through any blog  
19 or website, through any internet chat room, or by way  
20 of any other social networking websites, including,  
21 without limitation, Facebook, MySpace, LinkedIn, and  
22 YouTube.

23 Please understand that I'm giving these  
24 instructions as part of my responsibility to ensure  
25 fairness to all parties in this case. That fairness

1 would be compromised, and your actions could jeopardize  
2 the results of this trial, if you violate these  
3 instructions.

4           Now, you will be given the opportunity to ask  
5 written questions of any of the witnesses called to  
6 testify in this case. You are not encouraged to ask  
7 large numbers of questions because that is the primary  
8 responsibility of counsel.

9           Questions may be asked only in the following  
10 manner: After both sides have finished questioning the  
11 witness, and only at this time, if there are additional  
12 questions that you would like to ask a witness, you may  
13 then seek permission to ask that witness a written  
14 question.

15           Should you desire to ask a question, write  
16 your question down with your juror number on a full  
17 sheet of paper and raise your hand. The marshal will  
18 pick up your question and give it to me. All questions  
19 must be directed to the witness, not to the lawyers or  
20 to the judge.

21           After consulting with counsel, I will  
22 determine if your question is legally proper. If I  
23 determine that your question may properly be asked, I  
24 will ask it. No adverse inference should be drawn if  
25 the Court does not allow a particular question.

1           You may take notes; however, you're not to  
2 rely upon your respective notes in case of a conflict  
3 among them because the recorder's notes contain the  
4 complete and authentic record of the trial.

5           Is the exclusionary rule to be invoked in  
6 this case?

7           MR. POPOVICH: Yes, Your Honor.

8           MS. FRESCH: Yes, Your Honor.

9           THE COURT: Okay. What that means is that  
10 any nonparty who expects to be called as a witness is  
11 to remain outside the courtroom and is -- should not  
12 come into the courtroom until summoned to testify.  
13 Okay?

14           Now, at this point, ladies and gentlemen,  
15 it's been determined that we are going to resume with  
16 you on Friday. I already told you that we're not going  
17 to be in session on Thursday. Okay? But the Court and  
18 counsel have several things that we have to do to get  
19 this case ready for the opening statements which will  
20 be made on Friday. Okay?

21           And instead of starting -- or instead of  
22 keeping you hanging around while we do those things and  
23 instead of then starting opening statements and then  
24 having to break, we'd like to start the opening  
25 statements on Friday morning. Okay?

1           So, that being so -- and that was going to be  
2 Friday morning at 9:00 a.m.; correct, Counsel?

3           MS. FRESCH: Yes, Your Honor.

4           MR. DEUTSCH: Yes, Your Honor.

5           THE COURT: So that being so, in the  
6 meantime, you're admonished not to converse among  
7 yourselves or with anyone else, including, without  
8 limitation, the lawyers, parties, and witnesses, on any  
9 subject connected with this trial, or to read, watch,  
10 or listen to any report of or commentary on the trial  
11 by any person connected with this case or by any medium  
12 of information, including, without limitation, papers,  
13 television, the internet, or radio.

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

17           You're directed once again to return to the  
18 outside of this courtroom, 3D, Friday, April 13th,  
19 2018, no later than 8:50 a.m., ten to 9:00, so that we  
20 can resume here at 9:00 a.m. Okay?

21           Thank you very much, ladies and gentlemen,  
22 I'll see you on Friday.

23           Counsel will remain.

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

1 THE COURT: All right. You may be seated.  
2 Now, there are things to be taken up;  
3 correct? Anybody need a recess before we start with  
4 that or just go into it?

5 MR. DEUTSCH: There's a number of things,  
6 Your Honor. There's a handful of motions that were  
7 made by the defendants, there's a motion that we had  
8 filed, and then there's the issue with the PowerPoints,  
9 whatever Your Honor would like to start with.

10 THE COURT: Whatever consensus there is, if  
11 there is one.

12 MR. DEUTSCH: You want to start with the  
13 PowerPoints?

14 MR. CALL: Well, I thought we had discussed  
15 starting with Howard's motion on the answer of the  
16 Court -- how it impacts --

17 MR. DEUTSCH: You want to start with that,  
18 Howard?

19 MR. RUSSELL: That's fine.

20 MR. MORELLI: Your Honor, I'm going to leave  
21 this to Mr. Deutsch. I will see you on Friday.

22 THE CLERK: This is as to -- I couldn't hear  
23 what he said.

24 THE COURT RECORDER: The incident report?

25 THE COURT: Okay. Very well.

1 MR. MORELLI: No, tomorrow.

2 THE COURT: Tomorrow, right. You'll be here  
3 tomorrow?

4 MR. MORELLI: No, tomorrow afternoon.

5 MR. DEUTSCH: That part, he's not going to  
6 leave to me, Judge.

7 Howard, you going to do all three or just  
8 one?

9 MR. RUSSELL: Howard Russell for Backstage  
10 Employment, Your Honor.

11 We had two trial briefs we filed. We just  
12 wanted to clear up some things. Before opening, there  
13 were issues that sort of raised red flags during voir  
14 dire in some of the exhibits that I know plaintiffs  
15 intend to -- intend to admit.

16 The first one had to -- first trial brief we  
17 filed had to do with what we would call unrelated  
18 incidents. As the Court is aware, to admit evidence of  
19 other accidents, other incidents, there needs to be a  
20 showing of substantial similarity.

21 There's only two right now that I know of  
22 that I believe plaintiffs are going to talk about. One  
23 was an accident which happened at the David Copperfield  
24 show but not involving the actual procession of the  
25 participants during the illusion.

1           As you may remember, the illusion -- the  
2 illusion starts with Mr. Copperfield throwing out beach  
3 balls to the audience. And the people who catch the  
4 beach balls are the ones who get to come up on the  
5 stage and actually be -- go through the disappearing.

6           There was a -- a claim filed by a woman, last  
7 name Sun, who, when she was -- when the balls were  
8 being thrown out in the audience, she dove for a ball  
9 to try to become a participant. She broke her  
10 collarbone in the process of doing that.

11           So the claims here have to do with the actual  
12 procession of the illusion from the point the  
13 participants disappear and have to traverse the path to  
14 the back of the building. So Ms. Sun's accident  
15 obviously doesn't have anything to do with this  
16 particular case.

17           The other one, plaintiffs have informed us  
18 that they've subpoenaed and intend to call a gentleman  
19 by the name of Shane Engle. Shane is a former  
20 employee. During his deposition, he talked about an  
21 incident where -- where a woman lost a shoe during the  
22 procession of the illusion. He didn't see it. He was  
23 on the radio at that time. He worked the spotlight.

24           And so these are the only two incidents that  
25 I think they intend to bring up, but neither one of

1 them would satisfy the substantial similarity test. So  
2 I was concerned in opening we're going to be giving the  
3 jury the impression there are a whole bunch of other  
4 incidents, when there's just not going to be evidence  
5 of that.

6 The second issue was --

7 MR. DEUTSCH: Can we do one at a time,  
8 Howard? Because I can only think of one at a time.  
9 Can we do one at a time?

10 MR. RUSSELL: Yeah. Sure.

11 MR. DEUTSCH: Thank you, Judge.

12 With respect to this issue, we're okay  
13 with -- with regard to the -- to the ball-throwing  
14 issue. That's -- that is not similar enough, and we're  
15 not going to raise the issue with the person that got  
16 injured with throwing the balls.

17 The other issue is -- is very relevant to  
18 this, especially in light of what we believe is going  
19 to be testimony from them, or at least a large of part  
20 of their defense, that this has been going on forever  
21 and no one has ever had any incidence of it.

22 We have evidence from Mr. Engle that someone  
23 had stumbled, lost a shoe, while doing this runaround.  
24 And we believe that goes very clearly to the issues in  
25 this case in terms of what was going on during this

1 runaround. So we believe that one clearly meets the  
2 substantial similarity requirement, and -- and that one  
3 should be allowed.

4 The one with the balls, we agree that we  
5 won't bring that one up.

6 THE COURT: Okay.

7 MR. RUSSELL: Nothing further on that one,  
8 Your Honor.

9 THE COURT: Okay. I agree with plaintiffs'  
10 counsel. I think the shoe one is relevant. And  
11 plaintiffs' counsel has agreed they will not adduce  
12 evidence regarding the ball-throwing aspect.

13 MR. RUSSELL: The other issue that came up,  
14 and the reason we filed the trial brief on this, is,  
15 when I heard Mr. Morelli asking the jurors about, well,  
16 we have surveillance video, but we have some problems  
17 with the surveillance video.

18 I'm not exactly sure what they might be  
19 approaching. So this may be a nonissue, but I have a  
20 concern that there's going to be criticism and critique  
21 of the witnesses during the liability phase which  
22 relates to the investigation done after Mr. Cox's  
23 accident. We've provided the Court with some case law  
24 that says that's not fair game because it doesn't  
25 address liability.

1           As you recall, our whole motion to bifurcate,  
2 which the Court granted, was based on the fact that the  
3 timeline of issues related to liability stopped at the  
4 moment Mr. Cox's foot leaves the ground and he begins  
5 his fall. That's kind of where it stops.

6           Now, there are certainly factual issues that  
7 are arrived at in the investigation. I mean, the --  
8 the incident report that Mr. Cox filled out. We're  
9 not -- we're not saying that the facts involved in the  
10 investigation shouldn't come in, to the extent they  
11 have to do with liability.

12           But, for example, they questioned some of the  
13 Backstage employees about, well, after you went back to  
14 the breakout room, the illusion is over, Mr. Cox has  
15 already had his fall, you talk to him, what does he  
16 say? He talks about his shoulder being hurt. Mr. Cox  
17 testified that, well, when he talked to David  
18 Copperfield, he received this wry smile.

19           So what we're looking to address is criticism  
20 and questioning of witnesses that has to do with the  
21 postincident conduct, which has nothing to do with  
22 establishing liability. There's no punitive claim  
23 here. So, really, the -- at least the liability phase  
24 of this case should stop at the moment, again, Mr. Cox  
25 falls.

1           Later, to the extent that information comes  
2 in on damages to describe how he was complaining of his  
3 injuries, that's -- we can cross that bridge when we  
4 come to it.

5           Thank you.

6           MR. DEUTSCH: Well, Your Honor, first off, I  
7 don't think the defendants can have it both ways I  
8 don't think they can put in an investigation report and  
9 say this is what was found and then not be permitted --  
10 us not be permitted to have a discussion about what  
11 they looked for. It's in the news right now with  
12 Congress people talking about the House looking for  
13 collusion, but they didn't really look for anything.  
14 And that's the same here.

15           On the second note, Your Honor, they're  
16 bringing in an expert or -- or potentially two experts  
17 to look at a video, which, at least to my best  
18 estimate, you can't see anything, and recreate with  
19 x-ray vision, what has happened in this.

20           And in cross-examining those experts, there  
21 might be questions of what information those experts  
22 utilized in being able to come to their opinions, if  
23 there was other information that they could have had  
24 that would have helped them come to their opinions,  
25 including whatever other investigation should have been

1 done or could have been done based upon their own  
2 protocols and procedures.

3           And if they're going to put in an incident  
4 report that says that they didn't see any dust on the  
5 floor or they didn't -- there were no witnesses, we're  
6 entitled to question them about what went into finding  
7 out all of those things.

8           So I don't think that, just because it stops  
9 at the time someone falls, does not mean that there's  
10 things that happen after that become very relevant.  
11 One of the defendants' PowerPoint presentations, in  
12 fact, has that incident report in it which they quote  
13 from. So, obviously, they recognize that the incident  
14 report and the investigation is very relevant to this  
15 case. And, therefore, we're entitled to question the  
16 witnesses about what investigation was done and how it  
17 was done.

18           MR. RUSSELL: Nothing further.

19           THE COURT: The motion is way too broad, as  
20 far as I'm concerned. I'll have to consider the  
21 evidence in context and the objections in context so I  
22 know exactly what's being talked about in context.

23           MR. RUSSELL: Very good. As an aside --

24           THE COURT: The ruling is about prejudice as  
25 to objections that are made.

1 MR. RUSSELL: I appreciate that.

2 As an aside, at one point, Your Honor, we had  
3 proposed some preinstructions to the jury. Now that  
4 the jury venire has heard about bifurcation, understand  
5 about bifurcation, we don't need anything further than  
6 what the Court's already given. I know you had  
7 objections to that, but we don't -- we don't need those  
8 at this point.

9 THE COURT: I need orders -- you know, as we  
10 go along, I'll need orders to be submitted on each of  
11 these.

12 MR. DEUTSCH: Yes.

13 MR. RUSSELL: That'll be fine, Your Honor.  
14 Thank you, Your Honor.

15 THE COURT: Next.

16 MR. DEUTSCH: I guess I can go. We had made  
17 a motion, Your Honor, specifically at this point  
18 dealing with expert -- two of the liability experts.  
19 We will make the motion on a broad scope when we get  
20 the damages, but for just this purpose, the issue of  
21 cumulative nature of the expert testimony, it's  
22 clear -- and Your Honor has already sort of indicated  
23 this by permitting the defendants to have the  
24 challenges for the jury amongst them, and that's  
25 because they're all aligned in interest here. They've

1 waived all of their other claims -- or stayed -- excuse  
2 me -- all of their other claims until later.

3           So for the purposes of this trial, they're  
4 all aligned in interest. Some of the defendants  
5 have -- the MGM defendants, the Copperfield defendants,  
6 and Backstage have proffered a Dr. Baker who's some  
7 sort of biomechanical engineer. And the opinion that  
8 they seek to get from him is the fact that this was a  
9 trip and not a slip.

10           Defendant Team Construction hired an expert,  
11 Dr. Yang, to give the identical opinion. And, in fact,  
12 in Dr. Baker's supplemental report, he concludes and  
13 highlights that "Nicholas Yang, PhD, PE, has arrived at  
14 virtually identical opinions to mine regarding  
15 Mr. Gavin Cox's precipitating fall event."

16           So we don't -- we believe it's extremely  
17 prejudicial for a group of defendants, who are  
18 completely aligned in interest, to call two experts to  
19 basically just bolster each other, to basically say,  
20 hey, Dr. Baker says he tripped and not slipped, and  
21 then Dr. Yang gets on the stand and says, "I agree with  
22 what that guy said." It's the same exact opinion.  
23 It's completely cumulative. Allowing them to bolster  
24 each other like that is just improper and prejudicial.  
25 So we think that they should have to choose between one

1 or the other in who they call.

2 MR. POPOVICH: I will initially say that I  
3 have not seen a written motion.

4 MR. DEUTSCH: We filed it.

5 MR. FALLICK: We filed it yesterday. This  
6 morning.

7 MR. POPOVICH: Maybe I'm behind.

8 MR. DEUTSCH: Or this morning.

9 MR. POPOVICH: So maybe it happened. But,  
10 anyway, you can't have a cumulative argument until the  
11 first one testifies so we know what's cumulative. And  
12 if we work together and structure so that we can have  
13 one expert handle certain things and another expert  
14 handle certain things, shouldn't be a problem. But the  
15 first one has to testify first.

16 MR. DEUTSCH: Well, I disagree with that,  
17 Your Honor, because, first of all, their PowerPoint  
18 presentations both talk about the two experts. They  
19 talk about Dr. Baker; Team Construction talks about  
20 Dr. Yang. And there is only one opinion offered. They  
21 might have a lot of testimony, but there's only one  
22 opinion offered. And the opinion is that he tripped  
23 instead of slipped.

24 That's the only opinion that was offered in  
25 either of their expert reports for the purposes of

1 this. There were some other -- Dr. Baker offered some  
2 issues with respect to causation and of injuries and  
3 stuff. But in terms of liability, the only opinion is  
4 whether he tripped or he slipped. And they don't --  
5 they're not entitled to two experts to say that same  
6 opinion.

7 MR. CALL: Your Honor, MGM and Team are two  
8 different entities here. We hired Dr. Yang to go ahead  
9 and look at the case, you know, from Team's perspective  
10 as a contractor that had a dumpster out there on the  
11 pavement.

12 He also went out there and tested the  
13 coefficient of friction to decide whether this area was  
14 slippery or not, something Dr. Baker did not do.

15 And they -- he also came to -- he came to a  
16 conclusion about how this actual trip-and-fall actually  
17 occurred. Prior to that, Dr. Baker was saying he had a  
18 trip-and-fall, but there was no, I guess, discussion  
19 about how that eventually occurred. Dr. Yang is a lot  
20 more in depth with that, and we would ask that Team be  
21 allowed to use Dr. Yang.

22 It's not cumulative. In fact, plaintiffs had  
23 every opportunity to depose both those experts, to  
24 narrow it down. They failed to do so. And now we're  
25 here.

1           MR. DEUTSCH: Your Honor, I -- we have no  
2 need to depose them because we have their reports. The  
3 opinion that they both give in this trial -- I know  
4 this because I was provided their PowerPoint  
5 presentations -- is that he tripped and not slipped.  
6 It's the same thing.

7           We also have a motion -- and I don't know if  
8 I should raise it now; we haven't filed it yet -- with  
9 respect to the admissibility of the coefficient of  
10 friction argument that he raised, which is that the  
11 sidewalk or the ground that, when he tested it, was not  
12 the same as it was on the day of the accident; and,  
13 therefore, we don't believe that's admissible anyway.

14           MR. FREEMAN: It was the same, though.

15           MR. DEUTSCH: We don't believe it was.

16           THE COURT: Once again, context is important.  
17 I'll consider whether something is cumulative at the  
18 time that it's proffered.

19           MR. DEUTSCH: So they're going to be entitled  
20 to open on two experts?

21           THE COURT: Once again, I will say it. It  
22 wasn't recorded the last time I said it. People make  
23 opening statements. They're telling the jury what they  
24 believe the evidence is going to show. They have to  
25 live with telling them that because it just may not

1 show that.

2 MR. DEUTSCH: Okay.

3 THE COURT: So I would -- I think counsel  
4 will govern themselves accordingly.

5 MR. DEUTSCH: Understood, Your Honor.

6 THE COURT: Because you make good points,  
7 but, obviously, your motion is denied without  
8 prejudice --

9 MR. DEUTSCH: Understood.

10 THE COURT: -- with objections. Okay?

11 All right. What's the next thing?

12 MR. DEUTSCH: PowerPoints, I guess, Your  
13 Honor.

14 MR. CALL: PowerPoints. You want me to go  
15 first?

16 MR. DEUTSCH: Well, no. Why don't I -- since  
17 I'm making objections to your slides, why don't I --

18 MR. CALL: Okay. Go ahead.

19 MR. DEUTSCH: Gary, if there's something that  
20 I say that you agree to, just let me know.

21 MR. CALL: Okay.

22 MR. DEUTSCH: Do you think we should -- can  
23 you -- do you have an extra copy to provide to judge?  
24 Or can we put it up on the screen.

25 MR. CALL: Do you want to put it up on the

1 screen?

2 MR. DEUTSCH: I can maybe just use this.

3 MR. CALL: Why don't we use the ELMO and do  
4 that.

5 THE COURT RECORDER: Just have to power it on  
6 on the right. On the right side, there's a power  
7 button.

8 MR. DEUTSCH: So this, Your Honor, is the  
9 PowerPoint that we have been provided by Team  
10 Construction, and we have a number of objections.

11 As Your Honor mentioned in the back this  
12 morning when we discussed this issue, the purpose of  
13 opening statements is to tell the jury what the  
14 evidence is supposed to prove. If things are  
15 stipulated that they're going to come into evidence --  
16 documents, photographs -- and they stipulate, then I  
17 believe that it's okay for the jury to be shown those  
18 during opening statements.

19 If there is no stipulation, if there are  
20 foundations that have to be laid or other questions  
21 that may be asked before something is going to be  
22 admissible in evidence, we don't believe it's  
23 appropriate to show it to the jury. We believe that  
24 also goes to any demonstrative exhibits that may never  
25 come into evidence, I don't believe have any place in

1 an opening statement. And a lot of what is included in  
2 Team Construction's PowerPoint, we believe, fits that  
3 bill completely.

4           The first page, page No. 2, is a -- sort of a  
5 3-D model that was done by one of their experts  
6 identifying a travel path where he is. We, obviously,  
7 don't believe that this is accurate. We believe that  
8 there's going to be -- have to be a foundation laid of  
9 some sort before this is even able to be shown to the  
10 jury. And we don't believe that it's appropriate for  
11 an opening statement in terms of telling the jury what  
12 to --

13           THE COURT: What if they had a blackboard and  
14 they just drew that on a blackboard?

15           MR. DEUTSCH: I would be okay with that, Your  
16 Honor.

17           THE COURT: So what's the big difference,  
18 really?

19           MR. DEUTSCH: Well, because this has -- this  
20 has -- it's kind of hard to see on here, but this has  
21 the measurements. This has -- you know, we don't  
22 believe that this is accurate. And we believe that  
23 we're going to have some serious questions before this  
24 becomes admissible in terms of how the guy went about  
25 and even created this.

1           So we don't believe this is ever going to be  
2 evidence in the case. At best, it's going to be a  
3 demonstrative exhibit. And, therefore, we don't  
4 believe it's appropriate to show a jury a demonstrative  
5 exhibit during opening statements.

6           MR. CALL: I think it helps the jury, you  
7 know, to actually --

8           THE COURT: Are there a whole bunch of these  
9 pages?

10          MR. DEUTSCH: There's about 30 --

11          MR. CALL: There's several of them, Your  
12 Honor.

13          THE COURT: Okay.

14          MR. DEUTSCH: So the objection is  
15 basically -- I mean, this one has a guy running around  
16 the corner. I don't know exactly how their expert came  
17 about that that is exactly where he is or that's the  
18 travel path that he took. We have no idea where any of  
19 this comes from.

20                 So for them to say, you know, we believe that  
21 he ran around the corner and he fell and he slipped  
22 and -- they're entitled to say that. But to show a  
23 jury a professionally done sort of diagram that has an  
24 exact path and exactly where he is with measurements  
25 and stuff is -- is not really -- and it's clearly not

1 saying that we stipulate into evidence. So we believe  
2 those are all inappropriate.

3 MR. CALL: As we go through these, Your  
4 Honor, can we address each one as we go through rather  
5 than go through them all and then come back and go  
6 through them again?

7 MR. DEUTSCH: There's about a dozen of these  
8 repeated over and over again, these -- these kind of  
9 3-D documents. So if you want to do them as a group or  
10 whatever Your Honor wants.

11 THE COURT: I'd like to see them all.

12 MR. DEUTSCH: So this was page No. 2, Your  
13 Honor. Again, it's not going to be in evidence. At  
14 best, it's going to be a demonstrative exhibit. And,  
15 therefore, it's not appropriate, we don't think, for  
16 the jury. That's page No. 2.

17 Page No. 3 is the same thing, but it adds  
18 another figure in here. And, again, we think that  
19 there's going to have to be some sort of foundation  
20 laid before this is even used in the first place and,  
21 therefore, not appropriate for on opening statement.

22 Page No. 4, the defendant -- this is a  
23 bifurcated trial. The defendants have -- Team has put  
24 in notations from medical records in here. And the  
25 problem is that we see that sort of opening up

1 Pandora's box, you know, because they're going to show  
2 two medical records that say two very specific things  
3 about slipping in dust. There's dozens and dozens of  
4 other medical records that say things that are either  
5 different in this or the same to this, and we just  
6 don't think that's appropriate to even get into that at  
7 this point.

8           So we think that these two -- the mentions of  
9 the medical records should not be in this liability  
10 case considering that they were the ones who asked to  
11 bifurcate it. So that's page 4, Your Honor.

12           And 5 I said is okay. Page 6 is okay.  
13 Page 7 was okay.

14           You know, I had objected to the incident  
15 report, but in light of Your Honor's ruling, it's going  
16 to come into evidence, so I don't have a problem with  
17 that anymore.

18           I don't have a problem with page 9.

19           Page 10. Page -- page 10 is -- is a video of  
20 the fan illusion.

21           MS. FRESCH: Um --

22           MR. STRASSBURG: No.

23           MR. DEUTSCH: Yes, it is. So I don't -- may  
24 I have a second, Your Honor, to discuss?

25                           (Discussion was held off the record.)

1 MR. DEUTSCH: Okay. So. So there's no --  
2 there's no objection to -- to No. 10 for now. There  
3 may be, Your Honor, based on some other discussions  
4 that we have.

5 THE COURT: In other words, the plaintiff has  
6 no objections.

7 MR. DEUTSCH: At this point, I don't believe  
8 I do.

9 THE COURT: But one of the defendants may?  
10 Is that --

11 MR. DEUTSCH: No.

12 THE COURT: Okay.

13 MS. FRESCH: It relates to that other motion.

14 MR. DEUTSCH: It depends.

15 MS. FRESCH: Thank you, Your Honor.

16 MR. CALL: We're at 13; right?

17 MR. DEUTSCH: Yeah. This one I just have an  
18 objection to because --

19 MR. STRASSBURG: Excuse me. May I ask an  
20 inquiry?

21 MR. DEUTSCH: Sure.

22 MR. STRASSBURG: I -- in what I gave you of  
23 the PowerPoint, I thought 10 was the incident file  
24 report.

25 MR. DEUTSCH: No. That was page -- that was,

1 like, way back on page 8.

2 MR. CALL: Yeah, that was 8.

3 MR. DEUTSCH: That was page 8.

4 MR. STRASSBURG: Okay. I just want to make  
5 sure that we're talking -- yeah. Right.

6 MR. DEUTSCH: So that was page 8.

7 MR. STRASSBURG: Right.

8 MR. DEUTSCH: So what am I missing?

9 MR. STRASSBURG: Well, we got this --

10 MR. DEUTSCH: That's page 1.

11 MR. STRASSBURG: No, here's page --  
12 Pardon us, Judge.

13 THE COURT: No, no problem.

14 MR. DEUTSCH: That's page 1.

15 MR. STRASSBURG: That's 2.

16 MR. DEUTSCH: Yeah.

17 MR. STRASSBURG: See, there's a page down  
18 here.

19 MR. DEUTSCH: I know. That's page 3.

20 MR. STRASSBURG: 3. All right.

21 MR. DEUTSCH: That's page 4. We went through  
22 that. That was page 5. No, I don't have that.

23 MR. STRASSBURG: You didn't object.

24 MR. DEUTSCH: I wasn't given that page.

25 MR. STRASSBURG: Yeah, you are. It's on the

1 thumb drive.

2 MR. DEUTSCH: I didn't know the thumb drive  
3 was different than this one. You didn't tell me that.  
4 You just said here it is on the thumb drive.

5 MR. STRASSBURG: Okay. So, here, why  
6 don't -- let's do this. Let's put it on the ELMO. I  
7 bet this works.

8 MR. DEUTSCH: Why don't you just plug it into  
9 this right here.

10 MR. STRASSBURG: Why don't we do this?

11 MR. DEUTSCH: Okay. That works too.

12 MR. STRASSBURG: I mean, it's a little --  
13 it's a little crude, but we save some time.

14 MR. DEUTSCH: We could plug your computer  
15 right in --

16 MR. STRASSBURG: Why don't we just do it this  
17 way, and I'll --

18 MR. DEUTSCH: Here, look.

19 MR. CALL: See, Adam's young. He knows all  
20 this technology stuff.

21 MR. DEUTSCH: It's okay.

22 MR. STRASSBURG: Yeah, that will work. See?

23 THE COURT: See what?

24 MR. STRASSBURG: See, I know how to  
25 cooperate. Let's see. We got it?

1 MR. FALLICK: Easy with that sound.

2 MR. POPOVICH: We're being told that we  
3 shouldn't be doing this.

4 UNIDENTIFIED SPEAKER: Roger, that cable by  
5 your feet, that's the cable you need to plug in.

6 MR. DEUTSCH: Can this gentleman step up and  
7 help us out with this?

8 MR. STRASSBURG: Oh, sure. Sorry. See what  
9 I get for listening to you? I'm better off objecting.

10 THE COURT: I could see it when you were  
11 holding it up, when you did it initially.

12 MR. CALL: That was easy.

13 MR. DEUTSCH: Oh, there we go. Okay. We're  
14 going to give that guy a conniption back there.

15 MR. STRASSBURG: Can you shut off the ELMO  
16 and give me the --

17 MR. DEUTSCH: The other input?

18 MR. STRASSBURG: Give me the other input.  
19 Okay. I know how to do this. Hold on.

20 MR. DEUTSCH: There we go. Nice job, Roger.

21 MR. CALL: Very good.

22 MR. DEUTSCH: Do you want to do it as a slide  
23 show? All right. It doesn't matter.

24 So I did not get this page, Your Honor. So  
25 let me --

1 MS. FRESCH: We are looking at this one right  
2 here.

3 MR. STRASSBURG: Gary, go ahead.

4 MR. CALL: This is Adam's deposition.

5 MR. DEUTSCH: Right. You know --

6 MR. STRASSBURG: I'll just caddy for you  
7 here.

8 MR. DEUTSCH: You know, it's his deposition.  
9 They can use it for any purpose. I don't know if it's  
10 appropriate to read specific deposition testimony out  
11 here. In New York, that doesn't fly. So I would  
12 object to it. Mr. Russell has suggested that that is  
13 okay out here. You know, it's not in evidence yet. So  
14 I don't think it's appropriate until it is in evidence  
15 yet to read it. If they would like to suggest -- tell  
16 the jury this is what I anticipate, that's fine. But  
17 to put in quotes directly from a deposition with page  
18 and line is putting evidence before the jury before  
19 anything is actually in evidence.

20 So I don't think any of these quotes from  
21 depositions like this are appropriate at all. And that  
22 goes to Mr. Russell had indicated that in theirs as  
23 well they were actually going to play some of the  
24 videotaped deposition of Mr. Cox.

25 THE COURT: Okay. I don't allow that. I

1 don't allow quotes or -- you know, unless there's a  
2 stipulation.

3 MR. DEUTSCH: Right.

4 MR. RUSSELL: But it's really interesting,  
5 Your Honor. Oh, is that not proper?

6 THE COURT: It's basically evidence. I don't  
7 allow evidence to be presented. I allow you to tell  
8 the jury the elements.

9 MR. DEUTSCH: So I would have objection to  
10 all the quotes.

11 MR. CALL: We'll take that out.

12 MR. DEUTSCH: That would also go to page 4 as  
13 well, which is the quotes from the deposition on page 4  
14 as well.

15 MR. CALL: What page was that?

16 THE COURT: Something about a videotaped  
17 something or other.

18 MR. DEUTSCH: That was from Mr. Russell's  
19 opening statement. He was going to --

20 MR. RUSSELL: I will take that --

21 THE COURT: No videotapes.

22 MR. RUSSELL: I'll take that out.

23 MR. DEUTSCH: So that was an objection.

24 MR. CALL: Go back to page 4, Adam.

25 MR. DEUTSCH: I had objected to the medical

1 records and also all the other stuff, which is quotes  
2 from deposition testimony.

3 THE COURT: I agree with the plaintiffs on  
4 the medical records.

5 MR. CALL: On the medical records?

6 THE COURT: You tell them what evidence is  
7 going to show, but don't show them records.

8 MR. STRASSBURG: Can I read to them what the  
9 records say?

10 MR. DEUTSCH: It's a bifurcated trial, Judge.

11 THE COURT: What's that?

12 MR. DEUTSCH: It's a bifurcated trial. If  
13 they're going to start to point to things in medical  
14 records that talk about how the accident occurred --

15 THE COURT: Is the plaintiff going to be  
16 getting into anything about the nature of the  
17 injuries --

18 MR. DEUTSCH: Zero. It's bifurcated trial.

19 MR. CALL: We're not talking about injuries.  
20 We're talking about the actual way the accident  
21 happened. He says he slipped on concrete.

22 THE COURT: Tell them what you think the  
23 evidence is going to show. Don't read to them things.

24 MR. DEUTSCH: My only -- my issue is not only  
25 was it the quote issue; my issue was also the fact that

1 there shouldn't be discussion of medical records. And  
2 once you start bringing in medical records for one or  
3 two, there's a thousand --

4 THE COURT: If they're relevant to the  
5 liability phase -- I mean, if you have an objection,  
6 make it at that time. I'm not going to say they can't  
7 address something.

8 MR. CALL: I think that's all we were asking.  
9 Very narrow reason to use it.

10 MR. DEUTSCH: So now what page are we on  
11 here?

12 MR. CALL: I think we're on 13.

13 MR. DEUTSCH: No, because the pagination  
14 changed.

15 MR. STRASSBURG: You tell me.

16 MR. DEUTSCH: So we'll go from yours. 7, I  
17 have no problem with 7.

18 THE COURT: Is that what's on there now?

19 MR. DEUTSCH: Yes. I got no page with No. 8.  
20 Okay. I got no problem with whatever the new  
21 number -- this No. 9.

22 MR. CALL: No problem.

23 MR. DEUTSCH: You know, this, I agree. I  
24 think that this shouldn't be up there. In light of  
25 Your Honor's ruling, I don't believe -- I think they

1 can tell them that it says, but to show a picture of  
2 specific evidence, I don't think it's appropriate.

3 THE COURT: I agree. Don't show them the  
4 incident report.

5 MR. DEUTSCH: Okay. I have no problem with  
6 No. 11.

7 These are videos, Your Honor. I don't  
8 believe that it's appropriate to show these videos  
9 in --

10 THE COURT: Yeah, don't show any videos.

11 MR. DEUTSCH: -- opening statement. So that  
12 goes for all these videos?

13 THE COURT: Yeah.

14 MR. DEUTSCH: I have no problem with No. 17.

15 THE COURT: Okay.

16 MR. DEUTSCH: I have no problem with No. 18,  
17 I guess.

18 I do have a problem with No. 19. I mean -- I  
19 don't know --

20 THE COURT: I agree. I have a problem with  
21 that.

22 MR. DEUTSCH: 19. I have a problem with --

23 MR. CALL: We agree to take it out.

24 MR. DEUTSCH: I have a problem with this one.

25 THE COURT: I do too.

1 MR. DEUTSCH: I have a problem with that.  
2 MR. CALL: We agree to take it out.  
3 MR. DEUTSCH: Hold on. Slow down.  
4 MR. STRASSBURG: I think I know what the  
5 ruling is.  
6 MR. CALL: Okay. We agree to take --  
7 MR. STRASSBURG: I mean, I'm starting to see  
8 a pattern.  
9 MR. DEUTSCH: Okay.  
10 MR. CALL: We agreed to keep it in.  
11 MR. DEUTSCH: That's okay. I don't want to  
12 argue that. That's fine.  
13 THE COURT: It says "visible features of  
14 video." You're saying that's okay?  
15 MR. CALL: Yeah, he agreed to it.  
16 Unless you've changed your mind.  
17 MR. DEUTSCH: No. I mean, that's fine.  
18 That's okay, I guess.  
19 This, I have an issue with.  
20 THE COURT: Okay. I'll tell you right now, I  
21 don't have any issue with those types of things.  
22 They're basically just -- you know, those are the first  
23 two, I think, that were shown.  
24 MR. DEUTSCH: Correct.  
25 THE COURT: Yeah, I think you're just showing

1 the jury what you expect the evidence to show, and  
2 you're giving them sort of a picture so that they can  
3 take it into account in their --

4 MR. CALL: It's like 10, 20 years ago. You'd  
5 have a drawing that a graphic artist --

6 THE COURT: Yeah, I don't see any problem.

7 MR. DEUTSCH: Right, but I --

8 THE COURT: It's what your contention is.  
9 It's not evidence. I've told the jury that what's said  
10 in opening statements is not evidence.

11 MR. DEUTSCH: Okay. That's the video or just  
12 the still?

13 MR. STRASSBURG: The still.

14 MR. DEUTSCH: Okay.

15 That's the video again I would object to.  
16 These are now virtual videos. So they were -- they're  
17 videos that their expert put together virtually, where  
18 they -- miraculously, in the next one, the tree is  
19 going to disappear and we're going to be able to see  
20 what was happening behind the tree that nobody could  
21 possibly -- could ever see no matter what they were  
22 looking at.

23 MR. CALL: This is another animation, similar  
24 to the one that was before. It's a facsimile of what  
25 the video is going to show, except, you know, it's --

1 MR. DEUTSCH: We --

2 MR. CALL: -- a representation, an  
3 illustration for the jury to grasp exactly what's going  
4 on here.

5 MR. DEUTSCH: Your Honor, this is an  
6 animation that was created by an expert. We have no  
7 idea how. I don't even know what his credentials are  
8 to make such an animation.

9 THE COURT: Is there going to be a  
10 utilization -- or an effort to utilize these videos as  
11 evidence during the trial with a witness?

12 MR. STRASSBURG: Either evidence, Judge, or  
13 illustrations of testimony.

14 THE COURT: In conjunction with testimony  
15 that's being presented?

16 MR. CALL: Correct.

17 THE COURT: So I think it's better used then.  
18 Okay? Don't use it in the opening statements. If --  
19 now, I'm thinking. I suppose if you want to use a  
20 still picture from one of these virtual  
21 representations, just don't run a video. If there's  
22 some of these still ones that you want to show to show  
23 what you're contending --

24 MR. CALL: Okay.

25 THE COURT: Okay? But don't --

1 MR. STRASSBURG: Understood, Judge.

2 THE COURT: Okay?

3 MR. DEUTSCH: The problem I have, Your Honor,  
4 is that -- and, again, you've said this before, that  
5 it's at their peril if it doesn't come in. But the  
6 problem is that if it doesn't come in with an expert,  
7 even for the purpose of demonstrative, for whatever  
8 reason, whatever objection we have to foundation,  
9 they've now used a demonstrative exhibit that doesn't  
10 even come in because there's no foundation laid --

11 THE COURT: All right.

12 MR. DEUTSCH: -- and shown it to the jury.

13 THE COURT: Well, I think it's just -- it's  
14 just to give meaning to what's being told the evidence  
15 will show or believed.

16 I'll allow stills of these but not -- not --

17 MR. DEUTSCH: Okay. So 28 is --

18 MR. STRASSBURG: Understood, Judge.

19 MR. DEUTSCH: Go to the next one. That's a  
20 video again. They're not going to show that. This  
21 is --

22 MR. CALL: It's another video.

23 MR. DEUTSCH: This is another video. And  
24 even with a still, Your Honor, I -- I -- it's -- you  
25 know, this is -- this is all very questionable expert

1 testimony that's going to come out in the trial. And  
2 for them to show something where there's been no  
3 foundation laid, that they intend to be able to prove  
4 that that's how he was laying, is just not appropriate  
5 for opening statements, Your Honor.

6 THE COURT: I'll permit that still. Okay?

7 MR. RUSSELL: Your Honor, before we go much  
8 farther on the videos, I just want a point of  
9 clarification. I know some of the videos we've  
10 addressed, but there's at least one video that  
11 everybody has stipulated to and has not been objected  
12 to.

13 THE COURT: If something is stipulated to --

14 MR. RUSSELL: Okay. So there's objection to  
15 the actual original video.

16 MR. DEUTSCH: We are objecting to everything  
17 being put in --

18 MR. RUSSELL: No, you didn't --

19 MR. DEUTSCH: -- during openings.

20 MR. RUSSELL: Oh. Okay. Well --

21 MR. STRASSBURG: Wait a minute. You either  
22 stipulate it as evidence and then it's evidence for all  
23 purposes, or you don't.

24 THE COURT: Anything that's been stipulated  
25 into evidence --

1 MR. CALL: And he's stipulated the actual  
2 video was --

3 MR. DEUTSCH: The video of the trick itself,  
4 you're talking about, of that trick?

5 MR. RUSSELL: Yeah, yeah.

6 MR. CALL: Of him running through and  
7 falling --

8 MR. RUSSELL: Of the actual running, his  
9 actual --

10 MR. DEUTSCH: Of his run-through, right.

11 MR. RUSSELL: His fall and the original, not  
12 the enhancement, just the --

13 MR. DEUTSCH: Just the original? No problem.

14 MR. RUSSELL: Okay. All right. Thank you.  
15 That's all I wanted to know.

16 MR. DEUTSCH: No problem. Just the original,  
17 not the enhanced one, the original one of his trick.

18 MR. CALL: Right. Him running through and  
19 everybody else.

20 MR. DEUTSCH: We've stipulated to that.

21 MR. CALL: Okay. This, we agree to take it  
22 out.

23 MR. STRASSBURG: Wait, wait. Judge, I'm --  
24 he's stipulated to the original --

25 MR. DEUTSCH: Video.

1 MR. STRASSBURG: -- surveillance video --  
2 MR. DEUTSCH: -- of the actual trick.  
3 MR. STRASSBURG: -- of the trick?  
4 MR. DEUTSCH: Yeah, not of before --  
5 MR. STRASSBURG: Not the surveillance video?  
6 MR. DEUTSCH: Yeah.  
7 MR. FALLICK: You keep saying "of the  
8 trick" --  
9 MR. DEUTSCH: No, no. The surveillance video  
10 that shows Gavin fall and -- under the tree.  
11 MR. STRASSBURG: You've stipulated to that?  
12 MR. DEUTSCH: We've agreed to that.  
13 MR. STRASSBURG: Okay. So if it's stipulated  
14 to --  
15 MR. DEUTSCH: You can put in the opening.  
16 MR. STRASSBURG: -- as evidence, I can play  
17 it in the opening?  
18 MR. DEUTSCH: Yes.  
19 MR. CALL: Yes.  
20 MR. STRASSBURG: Got it.  
21 THE COURT: Yes. Anything that's agreed to  
22 be in evidence can be used in opening.  
23 MR. STRASSBURG: I got it. I got it. But if  
24 I start, like, enhancing it like this thing, those are  
25 stills only.

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MR. CALL: Yes.

MR. STRASSBURG: That's your ruling; right?

THE COURT: Yes.

MR. STRASSBURG: Okay. I got it. I'm good.  
I mean, I'm crushed, Judge, but I'm okay.

MR. DEUTSCH: Just so we're clear for the  
record, Judge, I have an objection to 30 and 31,  
because -- even as stills, because --

MR. CALL: Well, we'll just use them as  
stills.

MR. DEUTSCH: Well, I object to them. I just  
want it noted for the record that I object to 31 as a  
still. What's 32?

THE COURT: I'll allow them as stills.

MR. DEUTSCH: This, you agreed to take out.

MR. STRASSBURG: We withdraw 33.

MR. DEUTSCH: 32 is withdrawn.

MR. CALL: We've --

MR. DEUTSCH: 33, we've agreed, comes out.

MR. CALL: Agree that's out.

MR. DEUTSCH: 34 is coming out. 35 --

MR. CALL: There's several of these, Your  
Honor.

MR. DEUTSCH: Your Honor, they're baseball  
videos of examples of trip-and-falls. The evidence is

1 not going to show that whoever that is rounding third  
2 tripped. It's totally irrelevant for an opening  
3 statement. It's argument, at best. So, for  
4 summations, if they want to try to use it, that's one  
5 thing, but there's going to be no evidence talking  
6 about baseball-playing at all.

7 THE COURT: Oh, I know, but they can  
8 conceptualize what a trip-and-fall means, as long as  
9 it's not -- it's a still; it's not a video?

10 MR. DEUTSCH: It's a video. No, it's a video  
11 of a guy rounding the base and tripping and falling.

12 MR. CALL: Well, we can enter a still.

13 THE COURT: I'll allow it as stills, not as  
14 video.

15 MR. CALL: Right there. We can end with a  
16 still.

17 THE COURT: I don't want --

18 MR. CALL: The video.

19 THE CLERK: What slide number is --

20 MR. DEUTSCH: That's Slide No. 35.

21 MR. CALL: Okay. But we're allowed to use a  
22 still of him actually tripping?

23 THE COURT: Just to conceptualize what you're  
24 contending is -- the evidence will show about the trip.

25 MR. DEUTSCH: So these are all videos, 36.

1 MR. STRASSBURG: You object?  
2 MR. DEUTSCH: I object.  
3 MR. STRASSBURG: Understood.  
4 MR. CALL: We'll take it out.  
5 MR. STRASSBURG: 37, same. 38, same.  
6 MR. DEUTSCH: 38, objection. 37, objection.  
7 MS. FRESCH: Wait.  
8 MR. DEUTSCH: Your Honor --  
9 MS. FRESCH: Wait.  
10 MR. DEUTSCH: 37, 38, objection. This one is  
11 39. This is a still of somehow -- where the tree is  
12 blocking everything, and somehow their expert was able  
13 to see what was going on, based on this video, where  
14 these people were.  
15 MR. CALL: We can take --  
16 MR. DEUTSCH: I mean -- I mean, if they think  
17 that -- I mean, I have an objection to it, but --  
18 MR. CALL: We'll go ahead and remove that.  
19 MR. STRASSBURG: Wait a minute. We can use  
20 it as a still.  
21 THE COURT: Let's have the record clear. I  
22 think you said you were going to remove it.  
23 MR. CALL: Yeah, let's -- you know, we're not  
24 going to use it as a video. You know, if we can use it  
25 as a still showing exactly what happens on the left in

1 the facsimile as opposed to the actual video that's now  
2 allowed --

3 MR. DEUTSCH: Your Honor, this is a prime  
4 example of something where, you know -- and if it  
5 requires me to make a motion in limine now before  
6 Friday with respect to why all this stuff should be  
7 precluded before we even start, I -- I can. We didn't  
8 make it prior when the motions in limine were filed  
9 because we were just given this after those days, I  
10 believe.

11 So -- but -- but I don't see how, at any  
12 point in trial, with any foundation, how that picture  
13 on the left is going to be able to be testified to by  
14 anybody based on the picture on the right where you  
15 can't see anything through a tree.

16 MR. CALL: In the video, you can actually  
17 see, you know, partially, his body falling. And we  
18 wanted to show --

19 MR. DEUTSCH: Right. But how about the guy  
20 in the yellow with the flashlight. Can you see him?  
21 In that tree, can you see the guy in the yellow with  
22 the flashlight? How about Gavin before he falls? Can  
23 you see him --

24 MR. CALL: You can see the guy --

25 THE COURT: Sounds like you got some great

1 arguments, but I'll permit you to utilize it for --  
2 MR. CALL: As a still?  
3 THE COURT: As a still.  
4 MR. DEUTSCH: Okay. Go back.  
5 THE COURT: That's okay.  
6 MR. CALL: That's okay. All right.  
7 THE COURT: Not -- was it --  
8 MR. CALL: Not as a video. Not as a video.  
9 We'll use it as a still.  
10 MR. DEUTSCH: Hold on. Go back. 39 --  
11 MR. FALLICK: What numbers is that?  
12 MR. DEUTSCH: 39 is we objected to. The  
13 judge said they could use it.  
14 MR. STRASSBURG: As a still.  
15 MR. DEUTSCH: As a still.  
16 40, we object to that as well. It has the --  
17 it has the video, you know, door timing stamp on the  
18 bottom, giving it some air of something. So I would  
19 object to that. I mean, it's -- I just -- I just don't  
20 see how they're going to be able to show that. And it  
21 just seems very prejudicial to allow them to use as a  
22 demonstrative a professionally done 3-D video of  
23 something that's so clearly not going to ever come in  
24 front of the jury, to put ideas in front of them.  
25 If they brought this out, Your Honor -- any

1 of these -- during trial to use as a demonstrative,  
2 just as a demonstrative -- not even as evidence, as a  
3 demonstrative -- we would object to its use as a  
4 demonstrative. And I believe we will be successful in  
5 that objection.

6 And, therefore, if it's going to potentially  
7 not come in because it's not in any way helpful to the  
8 jury in deciding this case, then for -- to allow them  
9 to see it during opening statements, when it might  
10 never be used during the trial, is really prejudicial.

11 THE COURT: I think it's just an illustration  
12 of what they're contending. I'll allow it, a still.

13 MR. DEUTSCH: That's coming out? 41 is  
14 coming out.

15 MR. CALL: Yeah.

16 MR. DEUTSCH: Again, this is testimony about  
17 rest position conflicts with the security video, with  
18 these pictures of -- of characters that I have no idea  
19 where they're from.

20 THE COURT: I will exclude that.

21 MR. DEUTSCH: 42 is excluded.

22 MR. STRASSBURG: As a slide as well?

23 THE COURT: Yeah.

24 MR. STRASSBURG: Okay.

25 MR. DEUTSCH: 43 is --

1 MR. CALL: 43, we agree to exclude.  
2 MR. DEUTSCH: 44 is the same thing.  
3 MR. CALL: So we'll go exclude that also.  
4 MR. DEUTSCH: Okay. 44 is out.  
5 MR. CALL: Yes.  
6 MR. DEUTSCH: 45 --  
7 MR. CALL: Yeah, that's out.  
8 MR. DEUTSCH: That's out.  
9 46, I mean, I have the same objection, Your  
10 Honor.  
11 MR. CALL: This one is a representation of  
12 where we contend Mr. Cox fell as opposed to where his  
13 testimony --  
14 THE COURT: Now, is that going to include the  
15 description of it that's up there too, "location based  
16 on video compared to self-reports," is that --  
17 MR. CALL: Yes.  
18 MR. STRASSBURG: 46.  
19 MR. CALL: Because of the video, it shows  
20 where he fell. And his testimony differs from that.  
21 And so we want to say, you know, this is what the  
22 evidence will show.  
23 THE COURT: What does self-reports mean?  
24 What he said?  
25 MR. CALL: He said in his deposition that he

1 ran onto the corner, his feet slipped out to the left,  
2 and he fell down onto his right. And that's what it  
3 shows.

4 THE COURT: Okay.

5 MR. CALL: So that's okay?

6 THE COURT: Now it says "based on video  
7 compared to self-reports." So --

8 MR. DEUTSCH: I'm sorry.

9 THE COURT: So, in other words, the video's  
10 not into evidence, so it may not come in; right?

11 MR. CALL: The -- well, the video, they have  
12 stipulated to that. That's the one of him running  
13 around.

14 THE COURT: Okay. Oh, I see. Go ahead. Go  
15 ahead. That's okay.

16 MR. DEUTSCH: I'm sorry. I didn't catch  
17 that, Your Honor.

18 THE COURT: I said it's okay. Because  
19 it's -- the video that's referenced there is coming  
20 into evidence; right?

21 MR. DEUTSCH: Well, the video is, but --

22 THE COURT: It's the video of the --

23 MR. DEUTSCH: Accident.

24 THE COURT: Yeah. That's --

25 MR. DEUTSCH: Okay. I --

1 THE COURT: That's in evidence, so, yeah,  
2 okay.

3 MR. DEUTSCH: Over my objection, but okay.  
4 46.

5 MR. CALL: I think we are down to the last  
6 one. And that's a -- more of an overview from, you  
7 know, a height view.

8 THE COURT: I think that's okay.

9 MR. CALL: Okay.

10 MR. DEUTSCH: And, Your Honor, we would just  
11 ask that -- because you're allowing these, that there  
12 be a -- some sort of instruction given to the jury  
13 before that all of these pictures and diagrams and  
14 documents are demonstrative purpose. I know Your Honor  
15 tells them that nothing they say is evidence, nothing  
16 that any of the attorneys say is evidence, but we would  
17 like it made clear that all of these -- you know, any  
18 photographs that are shown are just for demonstrative  
19 purposes only in helping them explain this and may not  
20 have any ability --

21 MR. CALL: I think -- I think, Your Honor,  
22 you already did that. It's, I believe --

23 MR. DEUTSCH: It said anything we say during  
24 opening statements, but I don't think it specifically  
25 referenced any of the things that they were shown. You

1 have other ones too, don't you? You have boards.

2 Let's put up the boards.

3 MR. STRASSBURG: Want me to do it?

4 THE COURT: Hold on just a second. I'm just  
5 trying to -- what I said was "the parties have the  
6 opportunity to make opening statements. What is said  
7 in opening statements is not evidence. The statements  
8 simply serve the purpose of an introduction to the  
9 evidence which the party making the statement intends  
10 to produce."

11 MR. DEUTSCH: Right. So I would just like  
12 that clarified before openings that that also goes to  
13 not only what they say, but any photographs or diagrams  
14 that they show are solely meant to help explain it and  
15 that they are not evidence in the case.

16 MR. CALL: And we don't have any objection to  
17 that.

18 THE COURT: Okay. I'll fashion something.

19 MR. DEUTSCH: And there were also a bunch of  
20 boards of some sort that I believe that were going to  
21 be put up or brought in.

22 The first one is this -- is this -- it's hard  
23 for me to tell -- this one is not coming in; correct?  
24 The one that has the stipulation with the stated  
25 cross-claims?

1 MR. CALL: That's the third or fourth one,  
2 Roger.

3 MR. DEUTSCH: Well, let's start at the top,  
4 Roger. So the first one is parties chart -- parties  
5 chart. I got no problem with that one.

6 MR. POPOVICH: Actually, MGM does, because  
7 the third-party defendant part of it we've stayed by  
8 order. So that's something that is not before this  
9 jury in this trial. It's the third-party defendant  
10 part I have --

11 THE COURT: I agree. Take that out.

12 MR. STRASSBURG: Judge, we have -- the jury  
13 has heard about Beacher's, the tenant, already.

14 THE COURT: Are you going to explain to the  
15 jury what a third-party action is?

16 MR. STRASSBURG: Yes.

17 MR. MORELLI: We agree with Mr. Popovich,  
18 Your Honor, that it just confuses the jury about why  
19 they're not here and who they are and a potential party  
20 that they could blame. And we don't think it's  
21 appropriate when they stayed those.

22 THE COURT: Was everybody a party to that  
23 stipulation?

24 MR. DEUTSCH: I don't know if we signed it or  
25 were asked to, but -- or if we had to, but we don't

1 have any claims against Beacher's. They're not a party  
2 to this case. They're not --

3 THE COURT: Team Construction is a party to  
4 the stipulation?

5 MR. DEUTSCH: Yes, they were.

6 MR. STRASSBURG: Yes, sir.

7 MS. FRESCH: Yes, Your Honor.

8 THE COURT: So let's leave that out.

9 MR. ROBERTS: What is the arrow going to Team  
10 Construction supposed to represent, Roger?

11 MR. STRASSBURG: Cross-claims.

12 MR. ROBERTS: This shows a Backstage  
13 cross-claim, and we don't have one.

14 MR. RUSSELL: We don't have one.

15 MR. DEUTSCH: It shows all the liability  
16 flowing down to them.

17 MR. RUSSELL: We don't have any cross-claims  
18 against anybody.

19 MR. ROBERTS: We can fix that.

20 MR. DEUTSCH: That's between you guys.

21 MR. CALL: It's too late.

22 MR. DEUTSCH: I'm not getting involved with  
23 this, Roger.

24 MR. STRASSBURG: You watch. You watch.

25 MR. DEUTSCH: So I don't know what Your

1 Honor's ruling was, but I don't have any --

2 THE COURT: I said take it out.

3 MR. POPOVICH: All I care about is the party  
4 defendant is not before --

5 MR. STRASSBURG: I think I know what the  
6 rulings on this one.

7 THE COURT: Let's take that. Let's take out  
8 the whole Beacher's thing.

9 MR. DEUTSCH: Hold on. Also, I think  
10 Mr. Russell had an objection to that arrow as well,  
11 Your Honor, because it points to something that doesn't  
12 accurately reflect --

13 MR. RUSSELL: Yeah, we don't have a claim  
14 against Team. We don't have a claim against anybody.

15 MR. ROBERTS: We'd request that the little  
16 gray line on the right-hand side of our name into the  
17 mainstream of cross-claims be deleted.

18 THE COURT: So ordered.

19 MR. STRASSBURG: So I can use it with that  
20 deletion?

21 MR. POPOVICH: Well, and the Beacher's and  
22 the cross-claims and the third-party claim stuff.

23 MR. DEUTSCH: The one you're showing now is  
24 totally different.

25 MR. POPOVICH: It's still talking about

1 Beacher's as third party.

2 MR. DEUTSCH: Let's go back to the first one,  
3 which is what we're looking at. And the problem, I  
4 think, that they had is that we all agree that  
5 Beacher's shouldn't be there.

6 THE COURT: Take out third-party defendant  
7 and take out the bracket there with the arrow that  
8 points to Beacher's.

9 MR. DEUTSCH: That's this. And then -- right  
10 here. And then, Howard, you guys had an objection to  
11 this arrow here?

12 MR. RUSSELL: To us being included right  
13 after our name. Look at Backstage.

14 MR. DEUTSCH: That V right there?

15 MR. ROBERTS: That V and that line.

16 MR. RUSSELL: We shouldn't be connected to  
17 the arrow.

18 MR. DEUTSCH: In reality, because all of  
19 those cross-claims are stayed, shouldn't there really  
20 be no discussion of any of those cross-claims?  
21 Shouldn't it just be plaintiffs versus defendants and  
22 all of these Vs should be gone?

23 MS. FRESCH: Yes.

24 MR. CALL: Let's look at the next slide  
25 there.

1 MR. DEUTSCH: So I think it's just plaintiffs  
2 versus defendants, the fight between you guys.

3 MS. FRESCH: Yes, I agree. Yeah. There's no  
4 need for that.

5 MR. STRASSBURG: So to summarize, on No. 1,  
6 we make the deletion as to Backstage, we delete  
7 Beacher's, and we can use what's left?

8 MS. FRESCH: No. I would object and say that  
9 all the versus on the right-hand side should all be  
10 removed as well as Beacher's. The cross-claims are  
11 not -- we've stipulated -- you agreed to stipulate that  
12 all those cross-claims are stayed and they're not  
13 before this jury. It's no different than, to me, the  
14 second phase of this trial. It's not part of this.

15 MR. STRASSBURG: Oh, and like that's never  
16 been mentioned.

17 MS. FRESCH: It's a different thing.

18 MR. STRASSBURG: It is not different. You're  
19 going to dump this all on us at the end. That's a lot  
20 different. And the jury should know that. Right? But  
21 it's stayed for now. But some other jury gets to do  
22 that.

23 THE COURT: Is that what you're  
24 contemplating, another jury down --

25 MS. FRESCH: No, Your Honor. We believe that

1 it would be an indemnity action and it's a legal issue  
2 that would be decided by Your Honor.

3 THE COURT: So everybody apparently was on  
4 the same page when they signed this --

5 MS. FRESCH: Yes.

6 THE COURT: -- stipulation to stay it. So  
7 let's get rid of it, then. Just have the parties that  
8 are involved in this case.

9 MR. STRASSBURG: Understood, Judge. So I  
10 think we can skip down to this one.

11 MR. DEUTSCH: So you skipped over one.

12 MR. STRASSBURG: Yeah, but --

13 MR. CALL: We're not going to use it.

14 MR. DEUTSCH: This one was like -- we were so  
15 good. We all look so nice in this one.

16 MR. POPOVICH: Oh, don't --

17 MR. DEUTSCH: You're not using that one;  
18 right.

19 MR. STRASSBURG: Come on. Don't toy with  
20 him.

21 THE COURT: This one here is going to be  
22 used?

23 MR. DEUTSCH: I'm just going through -- I  
24 want to make sure that the ones I was provided. You're  
25 not using the ones with all the pictures of all the

1 lawyers?

2 MR. STRASSBURG: No.

3 MR. DEUTSCH: Good.

4 THE COURT: This one here is something that  
5 you want to use?

6 MR. STRASSBURG: Yes, sir.

7 THE COURT: It looks okay to me.

8 MR. DEUTSCH: I mean --

9 THE COURT: Giving some background.

10 MR. DEUTSCH: I guess.

11 MR. STRASSBURG: Next is.

12 MR. DEUTSCH: So that's -- Perry, that one  
13 was called Team photo Exhibit No. 4.

14 MR. FALLICK: It's 4. Got it.

15 MR. DEUTSCH: What number is that, you guys?

16 MR. STRASSBURG: This is called "5 MGM  
17 Flowchart."

18 MR. DEUTSCH: I have a feeling Mr. Popovich  
19 would object to this one.

20 MR. POPOVICH: Because MGM Grand is bigger  
21 than everything else. Yes.

22 MS. FRESCH: And it misconstrues that somehow  
23 MGM is the primary party and everybody flows down from  
24 there. That's not the way it is. It just happens to  
25 be MGM, just by chance, was put as the first-party

1 defendant. That's -- that's the only difference  
2 between MGM and the rest.

3 THE COURT: What's the problem?

4 MR. FREEMAN: Copperfield and Backstage is  
5 all stemming from MGM, coming out of MGM.

6 MS. FRESCH: That's -- that's not right  
7 either.

8 MR. CALL: We have contractual relationships  
9 with MGM.

10 MR. RUSSELL: We do not.

11 MR. STRASSBURG: Judge, it's just  
12 illustrating the contracts.

13 THE COURT: I will allow it. It shows who  
14 everybody is.

15 MR. CALL: I don't think we're even on this.

16 MR. DEUTSCH: Who are these -- there's other  
17 parties that aren't even parties to this on here.  
18 Noble Specialties?

19 THE COURT: There may be something during --  
20 is the evidence going to say anything about Noble  
21 Specialties, other subs?

22 MR. STRASSBURG: Absolutely. They're part of  
23 Team.

24 MR. DEUTSCH: We've never heard of them, none  
25 of us --

1 MR. STRASSBURG: Well, then you haven't read  
2 the exhibits because their contracts are in there.

3 MR. DEUTSCH: There's a bunch of exhibits  
4 that you've provided here in this fire stick that have  
5 never been disclosed ever in this litigation.

6 MR. STRASSBURG: Not so. That is --

7 MR. DEUTSCH: Okay. We'll get to them.

8 THE COURT: Mr. Popovich.

9 MR. POPOVICH: If the Court's going to allow  
10 this, may we at least ask that the MGM be the same font  
11 as the other parties?

12 THE COURT: Okay.

13 MR. POPOVICH: Thank you.

14 THE COURT: Sounds good.

15 MR. STRASSBURG: Okay. This is -- this is 6.

16 MR. DEUTSCH: This, again, Your Honor, is not  
17 only is the flowchart, but there's -- there's all of  
18 this language from a document that -- I don't know --  
19 we don't know what document it is.

20 THE COURT: I agree. That can't be used.

21 MS. FRESCH: What's this one?

22 MR. DEUTSCH: You can't read it anyway.  
23 You're not going to be able to read it anyway.

24 MR. FALLICK: So the whole thing is out or  
25 just the inserts?

1 MR. POPOVICH: Just the language, as I  
2 understand it.

3 MS. FRESCH: Why can't you just --

4 MR. STRASSBURG: Whatever you want. Just  
5 tell me how you want it to read.

6 MR. DEUTSCH: Wait a second.

7 MR. STRASSBURG: And, Judge, this is just an  
8 abstract of voluminous evidence.

9 THE COURT: Of what?

10 MR. STRASSBURG: Of voluminous evidence.

11 MR. DEUTSCH: Wait. Hold on a second. This,  
12 judge -- what number is this? This is No. 7. So I  
13 have a bunch of objections to this, Your Honor, because  
14 this includes a bunch of things that -- you know, on  
15 top of the fact that it's impossible to read and  
16 identify what anything is, some of these video clips,  
17 like these, are of -- of some sort of -- of an  
18 edited -- the surveillance video was edited by someone  
19 in some manner that we don't know exactly how or who  
20 did it or what they utilized to edit, and we don't  
21 believe the edited version will ever be admissible  
22 because there's no foundation for it.

23 So all of these come from that edited video,  
24 which we don't think is appropriate. All of these  
25 black squares, I guess -- I mean, it doesn't show much,

1 but as long as there's stills, Your Honor sort of ruled  
2 that those were okay.

3           This is a picture -- a picture of a -- of  
4 a -- I don't know what that is. It's -- it's part of  
5 their expert's presentation of a still of someone  
6 taking a picture or something to suggest that there  
7 was, like, a flashlight there.

8           This is -- there's no testimony in the case  
9 that there was ever a guy standing where this gentleman  
10 is in this 3-D animation, facing that direction,  
11 holding up a big flashlight. There's nothing even in  
12 any of the testimony to suggest anything of the sort.

13           So to put a made-up picture animation in  
14 there for something that's not supported by any of the  
15 evidence is just confusing, prejudicial.

16           MR. STRASSBURG: Judge, I'll take this out,  
17 what I contend is a demonstrative illustration. I'll  
18 take the camera thing out, I'll take that photo out,  
19 and I'll change these to the original stipulated.

20           THE COURT: Okay. What about all -- what  
21 about all the things that are stated there that you  
22 can't read?

23           MR. STRASSBURG: These are what we contend  
24 the evidence will show. They're not quotes. They're  
25 what I contend.

1 THE COURT: Okay. Go ahead.

2 MR. STRASSBURG: Thank you, Judge.

3 THE COURT: Make the deletion.

4 MR. STRASSBURG: Understood.

5 MR. DEUTSCH: Hold on one second, Judge.

6 Hold on. You know --

7 MR. FALLICK: There's a quote at 952.

8 MR. DEUTSCH: There's a quote at the bottom

9 from deposition testimony.

10 THE COURT: Take any --

11 MR. DEUTSCH: All the quotes need to come

12 out.

13 THE COURT: Take any actual quotes out too.

14 MR. DEUTSCH: And a suggestion -- oh, it

15 looks like the same day, but it's not the same day.

16 MR. STRASSBURG: Fine. I'll take that out.

17 MR. DEUTSCH: Mr. Cox returned with his

18 attorney to fill out an accident report. That's not

19 the same day.

20 MR. CALL: It was the next day, wasn't it?

21 MR. DEUTSCH: It looks like another day. I

22 see. But out here it's listed as the -- oh, the 13th.

23 I see.

24 MR. STRASSBURG: It's the 14th.

25 MR. DEUTSCH: Right. I got it. But that's

1 not what it says here.

2 MR. STRASSBURG: We got that right, didn't  
3 we?

4 MR. DEUTSCH: It says the 13th.

5 MR. STRASSBURG: No, it says 20131114.

6 MR. DEUTSCH: No, it doesn't. But the arrow  
7 is pointing down to 11 13 2013. "Attorney fills out  
8 accident report," pointing to that day.

9 MR. STRASSBURG: All right. I'll move it so  
10 it's clearly the 14th.

11 MR. DEUTSCH: And, Your Honor -- yeah, "later  
12 that day, Mr. Cox makes arrangements for the lawyer to  
13 sue." That's -- that's -- I don't think that's --

14 MR. STRASSBURG: I will prove that, Judge.

15 THE COURT: Okay.

16 MR. FREEMAN: That's what happened?

17 MR. DEUTSCH: It's privileged.

18 MR. STRASSBURG: No.

19 MR. CALL: How is it privileged?

20 MR. DEUTSCH: If you met with an attorney  
21 that day to make arrangements of any kind, it's not  
22 privileged?

23 MR. CALL: No, not privileged.

24 MR. ROBERTS: The fact that they met --

25 MR. DEUTSCH: The fact the -- how does he

1 know? The fact that she met with the attorney, no  
2 problem. The fact that they made arrangements to sue?  
3 How are we supposed --

4 MR. STRASSBURG: I'll take that out.

5 THE COURT: "Met with attorneys."

6 MR. STRASSBURG: I'll take that out.

7 MR. ROBERTS: That's fair.

8 MR. DEUTSCH: There we go. I got one right.

9 MR. STRASSBURG: One? You're doing  
10 wonderfully well.

11 MR. DEUTSCH: Otherwise, I'm going to get  
12 fired for the third time in this trial. We've only  
13 been here for seven days. I'm trying to get fired so I  
14 can go home.

15 MR. STRASSBURG: We'll make a Nevada lawyer  
16 out of you yet.

17 MR. DEUTSCH: Yeah, right.

18 MR. FALLICK: Just put that on the record.

19 MR. DEUTSCH: Oh, yes. It's okay. It's  
20 good. He knows that.

21 All right. What's next?

22 MR. STRASSBURG: All right. Judge, this is  
23 the illustration of what we contend the evidence is  
24 talking about as to our haul-out. And so these are  
25 summaries of -- this is just an illustration of the

1 area involved.

2 THE COURT: Looks okay to me.

3 MR. STRASSBURG: And then, Judge, the next  
4 one is this one, which is --

5 MR. DEUTSCH: Wait. The one with the  
6 haul-out, I don't have --

7 THE COURT: Yeah.

8 MR. DEUTSCH: -- objection to.

9 THE COURT: Said that was okay.

10 MR. DEUTSCH: Yeah.

11 THE COURT: The next one looks like what?

12 MR. DEUTSCH: Hold on. I think MGM just  
13 wanted to take a look at this one. This one goes down.  
14 The color is not in the original plans. They're the  
15 ones that they were provided.

16 (Discussion was held off the record.)

17 MR. STRASSBURG: It's from our subcontracts.  
18 It's Exhibit G and F to our subcontracts.

19 MR. DEUTSCH: I only have one copy of this  
20 contract, and that's what it looks like.

21 THE COURT: What are you looking at?

22 MR. POPOVICH: Are you saying this is outside  
23 David Copperfield's?

24 (Discussion was held off the record.)

25 MR. POPOVICH: Your Honor, can we reserve any

1 objection and we will meet and confer?

2 THE COURT: Okay. Very well. That's on the  
3 haul-out route; right?

4 MR. POPOVICH: Haul-out route.

5 THE COURT: And the next one was some kind  
6 of --

7 MR. DEUTSCH: What's the next one?

8 THE COURT: That's not permissible.  
9 That's -- unless it's stipulated.

10 MR. DEUTSCH: I can't even tell what -- I  
11 don't even know what -- is this this one? Is that it?

12 THE COURT: Time sheets.

13 MR. STRASSBURG: Yeah, that's part of it.  
14 Here's --

15 MR. DEUTSCH: I don't know --

16 MR. STRASSBURG: What we've done here is we  
17 have taken our field notes from the construction.  
18 Right? We've taken from our 37 days of construction  
19 the -- our guys write in their time cards what they  
20 were doing. And you can't see it here, so we mounted  
21 it on a board that you can read. And we've indicated  
22 all the instances where they did cleanup to show our  
23 level of care we exercised on the job.

24 THE COURT: It may be admissible in evidence,  
25 but I don't think it could be done -- shown during

1 opening statements.

2 MR. STRASSBURG: Got it. Okay. You know, I  
3 hadn't planned to.

4 THE COURT: I thought that's what we were  
5 talking about.

6 MR. STRASSBURG: You know, I thought I'd just  
7 try to get this out of the way.

8 And then this is -- oops.

9 MR. DEUTSCH: There's two of those. There's  
10 this one. There's this one that I'm looking at.

11 MR. STRASSBURG: See, this is the one for the  
12 week before the accident to show the -- the nature of  
13 the work that was done and the fact that, on the day  
14 before the accident, before we knocked off, our guys  
15 did clean up both inside and out.

16 THE COURT: I'll make the same ruling. It  
17 may be admissible in evidence but not useable during  
18 opening statements.

19 MR. STRASSBURG: But I can -- I can represent  
20 to them --

21 THE COURT: Yeah.

22 MR. STRASSBURG: -- that I will prove it?

23 THE COURT: Yeah, sure.

24 MR. DEUTSCH: This, Your Honor, we object to  
25 because it's trying to put some legal standard into the

1 case that doesn't necessarily exist. I mean, I  
2 don't -- legal minimum practices? That's the law --  
3 Your Honor's going to instruct the jury as to what the  
4 law is.

5 THE COURT: Why don't you take out the words  
6 "illegal practices" and then just put "negligence"  
7 there.

8 MR. DEUTSCH: Yeah, but how about --

9 MR. STRASSBURG: Yes, sir, I will.

10 MR. DEUTSCH: Your Honor, this is a  
11 negligence case, and the defendants are -- had filed a  
12 brief to try to get this to be something other than a  
13 negligence case where we need to prove some sort of  
14 standard of care of a professional organization.

15 We're talking about sweeping up dust. It  
16 doesn't require -- there's no standard of care for  
17 that. It's a straight negligence case against  
18 everybody.

19 MR. STRASSBURG: But see, Judge --

20 MR. DEUTSCH: This is putting in law in  
21 opening statements that might not be applicable. And  
22 even if it was, they're not entitled to tell the jury  
23 what the law is. Only you can.

24 MR. STRASSBURG: Judge, we are a licensed  
25 Nevada contractor. We are entitled to have our conduct

1 and the scope of our work judged by the customary  
2 practice of licensed professionals like contractors.  
3 Lawyers, doctors, all their -- they're all entitled to  
4 that. This is no different.

5 MR. DEUTSCH: What a reasonable contractor --

6 MR. STRASSBURG: Their problem is they don't  
7 have an expert that can establish what the standard of  
8 care is for a licensed contractor, because we say that  
9 our performance of the contract meets the standard of  
10 care for a licensed Arizona contractor. Without  
11 they're able to show the content of that duty, this  
12 case against Team must be dismissed.

13 THE COURT: You're talking the law, though.  
14 You're not talking about facts.

15 MR. STRASSBURG: Well, Judge, a very astute  
16 observation. The difference between standards of care  
17 for professionals is is that's a matter of custom.  
18 Professionals are judged by the standard that is  
19 customary practice --

20 THE COURT: But I instruct the jury on that;  
21 right?

22 MR. STRASSBURG: Yes, you do. But custom is  
23 a matter of fact. It has to be proven, we say, with  
24 expert evidence. And they don't have any.

25 MR. DEUTSCH: Your Honor, our position is

1 that, even if -- which I'm not conceding -- but even if  
2 we were to concede for the sake of the argument that  
3 there was some level of care that a contractor was --  
4 had to meet in order to make sure that the dust was  
5 cleaned from the premises, even that doesn't require an  
6 expert to tell a jury how to sweep. It's something  
7 that's within the purview of any normal juror's  
8 ability, to identify whether something was swept or not  
9 swept appropriately.

10 MR. STRASSBURG: Judge --

11 Sorry. I didn't mean to interrupt.

12 MR. DEUTSCH: So we don't have to have this  
13 argument at this point, Your Honor, but this slide is  
14 instructing them on some legal issue that is --  
15 regardless if it's opening or closing or at any other  
16 time during the case -- is never for a party to be  
17 instructing the jury on what the law is.

18 MR. STRASSBURG: But, Judge, what he's not  
19 telling you is, is that our contract with Beacher's,  
20 the tenant, specified broom clean, that we were to  
21 leave the site broom clean. Our contention is, is that  
22 we did that and that compliance with the contract  
23 satisfies the applicable standard of care for a  
24 licensed professional contractor.

25 MR. DEUTSCH: What does that have to do with

1 this slide, Judge?

2 THE COURT: I'm not sure. I think it's  
3 confusing.

4 MR. STRASSBURG: This shows what we're trying  
5 to say is just because you could have figured out a  
6 different way to do it -- say you could have  
7 shrink-wrapped the dumpster so no dust could ever get  
8 out. Say you could have washed down the walkway, you  
9 could have scrubbed it with Mr. Clean, whatever. Just  
10 because you can think of some better or best way to do  
11 it, that's not the issue here. The issue here is did  
12 we fall below the standard of care for which our  
13 conduct was unlawful?

14 THE COURT: Okay. Why don't you change it,  
15 take out those things that you have there in the green.  
16 Just put "compliance with standard of care" on the top  
17 and put "negligence" on the bottom.

18 MR. STRASSBURG: Yes, sir.

19 THE COURT: Okay?

20 MR. STRASSBURG: Okay.

21 THE COURT: And "negligence" shouldn't be in  
22 parenthesis unless you put "compliance with standard of  
23 care" in parenthesis.

24 MR. STRASSBURG: No, that's fair.

25 Now, these are a --

1 MR. DEUTSCH: These were never provided,  
2 ever.

3 MR. STRASSBURG: Yeah, they were.

4 MR. DEUTSCH: No, they were never provided  
5 until this thing -- unless someone can show me --

6 MR. STRASSBURG: Oh, I think that's right.

7 MR. DEUTSCH: Right. These are photos that  
8 we've never seen in the five years or four years that  
9 this case has been going on until just now.

10 MR. STRASSBURG: Judge, these are just  
11 substitutes for me drawing this on the chalkboard.  
12 We're going to be talking about a Georgia buggy.  
13 Nobody's going to know what that is unless I show them  
14 what we're talking about. We're also going to be  
15 talking about shovels and brooms --

16 MR. DEUTSCH: Judge, these photos --

17 MR. STRASSBURG: -- other equipment --  
18 booties that we use on the Georgia buggies. This is so  
19 we can wheel this stuff out across MGM's expensive  
20 carpet to get to the dumpster. This is the care that  
21 we exercise as a licensed contractor. Our vacuums,  
22 again, we put lids on the -- the Georgia buggies.  
23 Nobody's going to know what we're talking about unless  
24 I can show them.

25 THE COURT: Okay. Go ahead.

1 MR. DEUTSCH: I'm speechless, I think.

2 THE COURT: No, I think that he can say this  
3 is just exemplary of what we're talking about. This is  
4 a Georgia buggy. You know? It's not evidence.

5 MR. DEUTSCH: Maybe we would have deposed  
6 Team Construction if we were given these photographs.  
7 We chose not to depose them. Maybe I could have  
8 deposed them about all these photographs and about all  
9 their buggies and stuff. And I now chose not to do  
10 that because I didn't know. I couldn't ask them  
11 questions about whether they had these on this job  
12 site, whether these are from that job site, whether  
13 they're from another job site. I didn't get to  
14 question them on that because I wasn't provided them.

15 THE COURT: So this is all new?

16 MR. DEUTSCH: This is all new. This is brand  
17 new. I've never seen any of these before.

18 MR. STRASSBURG: Judge, they never deposed  
19 one witness for Team Construction and they were suing  
20 us for sloppy cleanup; right? And our witnesses are  
21 going to say we were careful, we used our Georgia  
22 buggies, we used our customary booties on them.

23 THE COURT: I will allow it. Go ahead.

24 MR. STRASSBURG: Thank you, Judge.

25 And that's it.

1 THE COURT: Okay. That's it from Team  
2 Construction; right?

3 MR. CALL: Yes.

4 THE COURT: Okay. Any -- now, there's some  
5 others?

6 MR. DEUTSCH: Elaine?

7 MS. FRESCH: Yeah, my photos. Can you give  
8 me my photos?

9 MR. DEUTSCH: I -- I have a guess of -- of  
10 this, but there were a bunch of photos of sports  
11 stadiums, but -- that we were objecting to just based  
12 on any relevancy in this case, but ...

13 THE COURT RECORDER: I'm turning it back. It  
14 will just take one second.

15 MR. DEUTSCH: Just show one. You don't have  
16 to show all five of them. They're all the same.

17 They're basically just, Your Honor, photos of  
18 different sport arenas. There's one of the Rose Bowl.  
19 There's one of the Thomas & Mack Center, I think.  
20 There's one of -- you just going to show it to them?

21 MS. FRESCH: Sorry. I'm bad at ELMOs.

22 MR. DEUTSCH: So I don't see any relevance.

23 MS. FRESCH: Your Honor, it's just a visual  
24 aid with respect to my opening about --

25 UNIDENTIFIED SPEAKER: Can you leave it still

1 so we can focus?

2 MR. DEUTSCH: We get the picture.

3 MS. FRESCH: Well, I want to make sure  
4 it's -- and then there's one more -- well, there's two  
5 more.

6 MR. DEUTSCH: They're basically just pictures  
7 of sports stadiums. I don't quite see the relevance.

8 THE COURT: Well, I'm sure counsel will show  
9 the relevance to this.

10 MS. FRESCH: They're visual aids about the  
11 number of participants in the past with respect to this  
12 show.

13 MR. FREEMAN: This illusion.

14 MS. FRESCH: The illusion.

15 THE COURT: In other words, they'll fill a  
16 stadium, and this is one a few --

17 MS. FRESCH: That's how many --

18 MR. DEUTSCH: They're going to use it to say,  
19 Your Honor, my guess, that that's how many people have  
20 done this illusion before and nobody's gotten hurt.

21 THE COURT: Why do you have to use all of  
22 those to make that point?

23 MR. DEUTSCH: Did I guess right, Elaine?

24 MS. FRESCH: I was just showing because the  
25 ones that are local, they -- none of them add up to the

1 right numbers, so that's why --

2 MR. DEUTSCH: We don't know how many any of  
3 those stadiums hold.

4 MS. FRESCH: Yes, we have --

5 MR. DEUTSCH: So unless the Court is going to  
6 take judicial notice of that --

7 MS. FRESCH: Well -- and that's -- that's  
8 subject to judicial notice.

9 MR. DEUTSCH: I don't necessarily -- we would  
10 object to that, Your Honor.

11 MR. FREEMAN: But it's demonstrative. It's  
12 just an approximation.

13 THE COURT: Using -- how many are you going  
14 to use there? You're saying that five stadiums is the  
15 number of people you're going to be able to demonstrate  
16 have been involved in this show?

17 MS. FRESCH: Yes. It adds up to  
18 approximately 96,000 people. And then -- so if you  
19 take the photos --

20 MR. DEUTSCH: Just -- Your Honor, just so  
21 we're clear, they're making a motion that this is a  
22 trade secret and this is how many people already know  
23 how it's done.

24 MR. RUSSELL: Touche.

25 THE COURT: Here's what I'll permit: I'll

1 permit you to use one of the stadium pictures. And  
2 then in your argument, you can say -- not your  
3 argument, your opening statement -- not argument,  
4 opening statement -- you can say this is just a  
5 portion. It would be this times whatever. Okay?

6 MS. FRESCH: All right. Thank you, Your  
7 Honor.

8 THE COURT: The evidence will show. Okay?  
9 So choose whichever one stadium you want to use. You  
10 can only use one. Okay?

11 MR. POPOVICH: So pick one. Did you hear  
12 that?

13 MS. FRESCH: Yeah.

14 MR. DEUTSCH: The Rose Bowl looks the  
15 biggest, Elaine.

16 MR. POPOVICH: You would be correct.

17 MR. DEUTSCH: I think.

18 THE COURT: What's that?

19 MR. DEUTSCH: Was there anything else?  
20 Anyone?

21 THE COURT: Hold on just a second. Does  
22 anybody need --

23 MR. RUSSELL: I was going to go just for --  
24 for -- for the purpose of the clerk, I was going to go  
25 through --

1 THE COURT: The clerk?  
2 MR. RUSSELL: Yeah.  
3 THE COURT: She's taking a break.  
4 MR. RUSSELL: I'm sorry. Taking a break.  
5 MR. POPOVICH: Can we all take one?  
6 THE COURT: She'll be right back.  
7 Why don't we take a ten-minute recess,  
8 reconvene at 3:15.  
9 MS. FRESCH: Thank you, Your Honor.  
10 (Whereupon a short recess was taken.)  
11 THE CLERK: All right. We are back on the  
12 record.  
13 THE COURT: Okay. I would like the record to  
14 reflect that the Court has received a couple more media  
15 requests, one from KTNV, or just Channel 13, and one  
16 from KSNV, which is Channel 3. Okay? I'll make the  
17 same ruling on those. Okay?  
18 And it's, again, utilizing the same camera  
19 and whatever and the same ruling. So --  
20 MS. FRESCH: Your Honor, we'll be just  
21 filing, for -- for formal purposes, formal objections  
22 to the media requests just as we had done for other  
23 ones. Just --  
24 MR. POPOVICH: Can't we just incorporate ours  
25 by reference?

1 MS. FRESCH: Well, yeah.

2 MR. ROBERTS: Your Honor, this -- this may be  
3 an appropriate time for Backstage to raise a concern.

4 THE COURT: Okay.

5 MR. ROBERTS: Channel 3 was here earlier --  
6 at least the Channel 3 was on the equipment I saw --  
7 and they were setting up in the hallway outside the  
8 courtroom for an interview with plaintiffs' counsel.  
9 And they were holding that interview in the presence of  
10 two of the veniremen. Now --

11 MR. DEUTSCH: We -- we just -- not -- I don't  
12 mean to interrupt, but we specifically made sure that  
13 there was no interview on this floor or anywhere near.  
14 And we asked them to move specifically away from the  
15 potential of any jurors. It went downstairs, all the  
16 way to the end of the hall. And there was nobody  
17 there.

18 MR. ROBERTS: Okay. And that was my concern,  
19 Your Honor. I saw them setting up outside --

20 MR. DEUTSCH: We told them that was  
21 unacceptable and that we needed to move, Judge.

22 MR. ROBERTS: Because if they do choose to  
23 conduct interviews in the courtroom, and if jurors hear  
24 an interview accidentally, we're going to move for a  
25 mistrial.

1 MR. DEUTSCH: And we completely understand  
2 that, Your Honor.

3 THE COURT: Absolutely. To be expected.

4 MR. ROBERTS: Thank you, Your Honor.

5 THE COURT: Now, the form that was submitted  
6 to me by KTNV is the same one that I've utilized  
7 previously. Okay? The others that I -- that I did  
8 earlier. The ones that's been submitted by KSNV is a  
9 different form.

10 MS. FRESCH: I haven't seen that form, Your  
11 Honor, then. Sorry. I just --

12 THE COURT: It has me making certain  
13 determinations. I think what I need to do is --

14 MR. DEUTSCH: Was it filed by an electronic  
15 filing? Do we know?

16 THE COURT: I think I have to leave the  
17 determination on a case-by-case basis as to whether  
18 something would or would not distract participants in  
19 the view of the Court, et cetera. I think I need to --  
20 so I will grant it subject to -- I mean, I'm granting  
21 both of them, but I want to make it clear on the form  
22 that I sign relative to KSNV that it's granted subject  
23 to the prior determinations of the Court. I guess it's  
24 Phillip Moyer.

25 MS. FRESCH: Your Honor, after we -- I

1 haven't had an opportunity to review that other form.  
2 So when we submit our objections, I might have  
3 additional objections. I'm not sure.

4 THE COURT: For the record, that's noted.

5 Okay. On this item that's been submitted by  
6 KSNV-TV, I haven't checked either the would or would  
7 not blocks. What I've said is "Therefore, the Court  
8 hereby grants permission for camera access to Phillip  
9 Moyer of KSNV-TV, as requested, for each and every  
10 hearing in the above-entitled case." Now, I put in --  
11 and on and on. Then, at the end, I put "subject to  
12 prior determinations on similar requests," period.  
13 Okay? So that's the way we'll deal with that.

14 MS. FRESCH: Thank you, Your Honor.

15 THE COURT: All right. And I will get these  
16 to court administration.

17 Okay. So now where are we?

18 MR. RUSSELL: Your Honor, we were going to go  
19 through, just so the -- just so the clerk could premark  
20 some of the exhibits that were stipulated, through the  
21 exhibit list and joint pretrial memorandum.

22 And these are the -- Madam Clerk, the  
23 defense -- these are the defense exhibit numbers.

24 MR. DEUTSCH: Hold on. Hold on.

25 MR. RUSSELL: Tell me when you get there,

1 Adam.

2 MR. DEUTSCH: All right. Let's see. You're  
3 starting at 401? Or 402, yeah.

4 MR. RUSSELL: So 402, which is the  
5 surveillance video we talked about.

6 MR. DEUTSCH: And just so we're clear,  
7 that --

8 THE COURT: So this is basically what you're  
9 going to be doing is reading now exhibits that are  
10 stipulated?

11 MR. RUSSELL: Correct, Your Honor, please.

12 MR. DEUTSCH: Howard, just so we're -- that's  
13 the original of just this accident, or that's the whole  
14 six hours? Or what is that? just to be clear.

15 MR. RUSSELL: That is the -- that should be  
16 the entire -- the whole thing, the whole thing.

17 403, photos of the hotel.

18 408, the Team Construction fixed-amount  
19 contract.

20 409, the Team Construction toolbox talks.

21 410, the Beacher's schedule.

22 412, the Team Construction safety manual.

23 413, the flash drive with Team's job file.

24 415, a hand-drawn diagram from a deposition.

25 416, also a hand-drawn diagram from a

1 deposition.

2 419, which is a set of six photos.

3 423, the 13 show techniques.

4 425, the 13 room speeches for the audience  
5 participation.

6 MR. DEUTSCH: Howard, the -- 424, 426, and  
7 427, there were certain pages, I think, that everyone  
8 agreed on. Do you just want to do those later?  
9 Because I thought that the only reason there was some  
10 objections to those was because some of the pages on  
11 those just didn't involve this trick.

12 MR. RUSSELL: Correct. So if you want to --  
13 if you want to just pick out the pages before -- if you  
14 want to use them during opening, pick them out so --

15 MR. DEUTSCH: We're not going to use them.

16 MR. RUSSELL: You're not going to use them  
17 during opening? This is just so we know what can be  
18 used and that sort of thing.

19 Then the next one -- I think that's probably  
20 the last one.

21 Then the last one, I think, is 536, although  
22 that's the -- that's Beacher's lease with the MGM  
23 Grand. So that probably would not be part of this --  
24 part of the trial since the cross-claims have been  
25 stayed.

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536?

MR. DEUTSCH: Yeah.

MR. POPOVICH: Given the fact that the stay came in later, we would now have a problem with this, so relevance.

MR. CALL: Is -- what is it? The lease agreement?

MR. DEUTSCH: Yeah, Beacher's lease.

MR. CALL: I might have some issues with -- as far as what our duties were on the property as far as cleanup.

MR. RUSSELL: That's -- I'll --

MR. FREEMAN: Beacher's lease with MGM.

MR. CALL: Right, but we're supposed to go ahead and adhere to MGM's rules and that's part of the contract.

MR. POPOVICH: We can -- we can revisit it, but at this moment, I don't think I can stip.

MR. ROBERTS: All right. So no stipulation on 536 right now. Take that out.

546, the Hollywood Theater four-wall license agreement, we previously had 552, but that might -- Jerry, I don't know if you have an issue with that now. That's the Beacher's property rules, the contractor property rules.

1 MR. FREEMAN: MGM contractors?  
2 MR. POPOVICH: That's Beacher's.  
3 MR. DEUTSCH: Give we one second, Howard.  
4 MR. POPOVICH: Can we hold off? We need to  
5 take another look at this.  
6 MR. RUSSELL: All right. So we'll hold off  
7 on that.  
8 THE CLERK: That was 546 we're holding off  
9 on?  
10 MR. POPOVICH: 552.  
11 MR. RUSSELL: 552.  
12 And then the last one, are you also working  
13 out the haul route? You guys -- you working that out  
14 still?  
15 MS. FRESCH: Yeah.  
16 MR. POPOVICH: Yeah.  
17 MR. RUSSELL: All right. So that would be  
18 it, then.  
19 MR. DEUTSCH: And, Howard, do you want to do  
20 the one just for tomorrow morning, which is not going  
21 to be part of the liability, but --  
22 MR. RUSSELL: Oh, right, right.  
23 Yeah, for Dr. Ashley tomorrow morning, 455.  
24 And we'll provide you with a hard copy, because  
25 previously we only provided a disk, so we'll get a hard

1 copy of that.

2 THE CLERK: Is 455 admitted into the trial  
3 evidence or just for purposes of the deposition?

4 MR. RUSSELL: For purposes of the deposition,  
5 yeah, correct.

6 THE CLERK: So I'm not going to add it, then.

7 MR. RUSSELL: That's fine. And I will just  
8 make an oral request to preadmit the -- for  
9 publication, the deposition of Gavin Cox.

10 MR. DEUTSCH: We're going to object to that.

11 THE COURT: Okay. So you're making that -- I  
12 guess I'll deny it without prejudice.

13 MR. RUSSELL: Yeah, we would move to preadmit  
14 it so we could use portions of the deposition during  
15 opening.

16 THE COURT: No, I won't allow that.

17 MR. RUSSELL: Okay. Thank you, Your Honor.

18 THE COURT: Okay. Next?

19 MR. POPOVICH: Anything?

20 Going once?

21 Going twice?

22 We are done.

23 MR. INFUSO: Your Honor, I had one issue I  
24 wanted to bring up just regarding the settlement  
25 conference.

1 THE CLERK: Counsel, can I have your name?

2 MR. INFUSO: Yeah, Mike Infuso for MGM Grand.

3 Given the short notice, we're trying to get  
4 everybody to the settlement conference, but I want to  
5 advise the Court because I didn't want to run afoul of  
6 the order.

7 So MGM's going to be there. Mr. Will Martin  
8 from MGM is going to be there, and also coverage  
9 counsel is going to be there, but two of the carriers  
10 can only be available by phone. So if anything  
11 changes, I'll let you know, but we're doing our best.

12 MR. FREEMAN: Which carriers?

13 MR. INFUSO: Zurich and AIG.

14 MR. DEUTSCH: I kind of think -- you know,  
15 obviously, I just think it kind of defeated the whole  
16 purpose of why we were putting this together was to  
17 bring everyone together in a room to discuss it. So  
18 I'm kind of perplexed.

19 MR. INFUSO: Well, I'm doing my best, but  
20 there's a lot of issues here.

21 THE COURT: Who will be there?

22 MR. INFUSO: Will Martin and coverage counsel  
23 John Ellison, and Zurich and AIG will be available by  
24 phone. I still haven't had an opportunity to speak  
25 with Zurich today to see if anything has changed.

1           MR. DEUTSCH: My understanding, Your Honor,  
2 was that there was an order from the Court that they  
3 had to be here.

4           I thought that the order that was entered  
5 into was that the settlement conference is because  
6 everyone was coming here. I mean, that was what the  
7 Court had ordered. The Court had ordered all the  
8 carriers to have a representative here except the one  
9 that raised it beforehand, which was Roger's person,  
10 saying that they would be by phone and there was that  
11 request. I mean, if everyone --

12           MR. INFUSO: Well, that's why I'm making the  
13 request now. I mean --

14           MR. DEUTSCH: Right. But if everyone is not  
15 going to be here, it changes the whole dynamic of the  
16 settlement conference.

17           MR. INFUSO: I'll do my best, but I have to  
18 raise this --

19           THE COURT: Tell them there is an order in  
20 place.

21           MR. INFUSO: And I have. I said that, you  
22 know --

23           THE COURT: All right. Thank you.

24           Then tomorrow morning is at 10:00; right?

25           MS. FRESCH: The deposition.

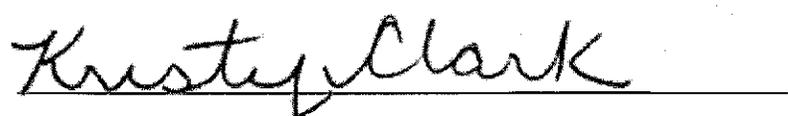
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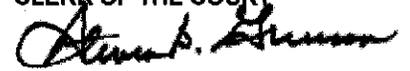
MR. DEUTSCH: Yeah, 10:00.  
MS. FRESCH: And then settlement at 1:30.  
THE COURT: Okay. I'll see you tomorrow.  
MS. FRESCH: Thank you, Your Honor.  
THE COURT: Have a nice night.  
THE MARSHAL: All rise.

(Thereupon, the proceedings  
concluded at 3:32 p.m.)

-oOo-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
PROCEEDINGS.

  
KRISTY L. CLARK, CCR #708



1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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\* \* \* \* \*

8

GAVIN COX and MINH-HAHN COX, )  
husband and wife, )

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Plaintiffs, )

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vs. )

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MGM GRAND HOTEL, LLC; DAVID )

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COPPERFIELD aka DAVIS S. )

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KOTKIN; BACKSTAGE EMPLOYMENT )

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AND REFERRAL, INC.; DAVID )

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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., )

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Third-Party Plaintiff, )

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vs. )

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BEACHER'S LV, LLC, and DOES 1 )  
through 20, inclusive, )

26

Third-Party Defendants. )

27

28

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,

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CA CSR #13529

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

FRIDAY, APRIL 13, 2018

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