

In the
Supreme Court
for the
State of Nevada

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

v.

YVONNE O'CONNELL,

Respondent and Cross-Appellant.

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

APPELLANT'S APPENDIX
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1 what you're talking about?

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

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

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

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

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

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

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

6 Q What did you do after that?

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

13 Q Why were you limping?

14 A Well, because I was in pain.

15 Q What was in pain?

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

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

22 A Well, at least a half-hour.

23 Q Then what did you do?

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

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

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

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

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

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

24 A I don't think so.

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

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

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

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

7 Q Where had you parked?

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

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

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

15 Q Is it self-parking?

16 A Self.

17 Q Self.

18 A Yeah.

19 Q S-e-l-f.

20 A Yes.

21 Q Okay, sorry.

22 A Yes.

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

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

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

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

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

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

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

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

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

19 Q And how about the day after that?

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

23 Q Do you mean a primary care physician?

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

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

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

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

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

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

15 Q Were you given any prescriptions at UMC?

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

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

21 A An x-ray of my back.

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

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

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

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

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

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

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

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

12 Q What did they do for you?

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

15 Q For what?

16 A Well, for the abdomen.

17 Q And did he do anything else for you?

18 A No.

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

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

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

1 anywhere?

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

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

4 A Not with him.

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

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

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

17 Q Did you go see Dr. Cash?

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

22 Q What pain doctor?

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

25 Q Did you get prescribed any pain medications by any

1 doctors?

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

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

7 A Yes.

8 Q When did you start using that walker?

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

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

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

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

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

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

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

7 A Yes.

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

10 A Well, specifically saying back, no.

11 Q Why not?

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

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

15 A Right.

16 Q Why not?

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

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

21 A Probably not.

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

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

1 hands are hurting.

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

4 A Oh, yes.

5 Q Why did you go see Dr. Dunn?

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

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

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

17 Q Has any doctor recommended that you have surgery?

18 A Yes.

19 Q Who has?

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

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

23 A I should. Dr. Dunn explained it.

24 Q You heard him explain it, but --

25 A Yes.

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

2 A Yes.

3 Q Okay. And you haven't had the surgery yet; is that
4 right?

5 A Not yet.

6 Q Why not?

7 A Well, I -- the specialist had sent me to four
8 different physical therapists. They didn't rush to surgery.
9 So, I saw Dr. Dunn -- I just saw Dr. Dunn last year, and I was
10 ready for the surgeries then, because I really can't -- I
11 can't take this anymore. And so he sent me to the MRIs, and I
12 had problems with that, and I have to -- so now I'm dealing
13 with other things before I can get the surgery.

14 Q Are you going to have the surgery to your neck?

15 A I have to -- I have to have the surgery to my neck.
16 I -- I can't stand this anymore because the pain gets so bad,
17 it actually goes up to my head, and that's unbearable. The
18 pain just wore me down, and I can't take the drugs, so I have
19 to try the surgery.

20 Q Do you do anything now to relieve the pain that you
21 feel in your neck?

22 A Oh, all day long. Throughout the day.

23 Q What do you do?

24 A Do you want me to go through the whole -- all of
25 that, or --

1 Q Well, I mean --

2 A -- everything I do for that? I --

3 Q What do you do for it?

4 A Well, you know, I wake up in pain. My neck hurts,
5 and the pain will go down my arms and my hands, so I have to
6 -- there's stretching exercises I do for it. And just to --
7 until -- just to make the pain subside, it takes like at least
8 half-hour to an hour. They're just stretching exercises.

9 Q And how about your back? Do you still have pain in
10 your back?

11 A Yes. When I get up -- well, I can't get up -- stand
12 up straight. I wake up with a back -- my back hurts, and my
13 buttocks still hurts. I'll wake up with pain in my knees, and
14 the pain will still get down to my foot. So I have to sit up
15 in bed and do these stretching exercises for at least an hour
16 before I can stand up straight. Otherwise, I can't even stand
17 up straight.

18 Q What about your knees? Do you still have pain in
19 your knees?

20 A Oh, I can -- it's so painful to walk, and I have
21 stairs and I -- many days, I can't even get up and down my
22 stairs because they hurt, and my leg and my knees will give
23 out on me when I walk. So, yes, they're really bad. I have
24 to get those done.

25 Q Now, I want to talk about doctors that you saw

1 before the fall.

2 THE COURT: May I just interrupt for a moment? How
3 are we doing here? I mean, it's been almost two hours. Do we
4 need a bathroom break? I do. Anybody else --

5 MS. MORRIS: Okay, I think we all do.

6 THE COURT: -- sign onto that? I tried to put it
7 off on you, but all right. So, ladies and gentlemen, we're
8 going to take a ten-minute recess until 10:30.

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

17 And Ms. O'Connell, you may not discuss your
18 testimony with your lawyer during this ten-minute break.
19 We're in recess.

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

21 (Court recessed at 10:22 A.M. until 10:33 A.M.)

22 (Outside the presence of the jury)

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

24 (In the presence of the jury)

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

1 THE COURT: Thank you. Please be seated. And the
2 record will reflect that we've been now rejoined by all
3 members -- eight members of the jury, as well as the two
4 alternates, and Ms. O'Connell is still on the stand, still
5 under oath. Defense is present, all counsel are present, and
6 all officers of the court. You may proceed.

7 MS. MORRIS: Thank you.

8 BY MS. MORRIS:

9 Q Yvonne, I was asking you about doctors that you saw
10 before the fall. Can you tell us the last time you went to
11 see a doctor before you fell at the Wynn?

12 A Oh, I was strong and healthy. I didn't see doctors.
13 The last one I saw before my husband passed away, before 2002,
14 I went to Nellis and I had a breast biopsy. That was normal.
15 And then, sometime the year before, I had had an infection,
16 like something like pink eye or something, and I needed
17 antibiotics. I didn't have a doctor, so I went to the --
18 Summerlin to get -- to get antibiotics. And then, other than,
19 you know, female appointments years before that, that was it,
20 but I didn't go to doctors.

21 Q Had you ever in the past hurt your back?

22 A In 1989, my husband at that time -- my ex-husband,
23 he pushed me and my back got hurt. And I -- I went to a
24 physical therapist a few times, and then, after that, the pain
25 went away.

1 Q How would you describe that injury to your back that
2 happened in 1989?

3 A Well, at that time, because I had been so healthy
4 and strong, I hadn't really had any injuries before. So, at
5 that time, to me, it seemed like it was severe, but now
6 compared to this -- I mean, it was -- it was minor compared to
7 this. And besides that, it cleared up and I didn't have any
8 pain for 20-some years.

9 Q Has a doctor ever diagnosed you with having
10 fibromyalgia?

11 A Well, at that time, because my back hurt, they said,
12 well, maybe you just have fibromyalgia, because they didn't
13 see a reason for it to hurt, and so they said I might have it
14 then. But then, when I went to the physical therapist for a
15 few times and my back stopped hurting, I had no pain at all,
16 and that was 20-some years ago.

17 Q So, when you keep saying "then," you're talking
18 about in 1989?

19 A 1989, yeah. 20-some years ago.

20 Q Have any of the doctors that you've seen after this
21 fall told you you have fibromyalgia?

22 A Oh. Some of them said, well, maybe you have that
23 also, in addition to the other things, the -- you know, the
24 discs, and the knees, and the hands.

25 Q Have you ever been diagnosed with any type of

1 disease before you fell?

2 A Oh. Also, when I stopped cleaning teeth mid --
3 around 1986, I stopped because I was having trouble holding
4 the instruments while I was deep scaling; deep cleaning. I
5 could do other things. I played tennis and everything, I just
6 -- it was the holding the instruments while I was doing that.
7 And they said, well, your fingers are long and they're extra
8 limber, so sometimes it's Marfan, sometimes it's
9 Ehlers-Danlos, and sometimes it's just some -- it's just
10 you're extra limber, so they said, well, that could be that.

11 Q Did they give you any kind of medical treatment for
12 it?

13 A Oh, no. It was just a matter of me not being able
14 to do the deep cleanings anymore.

15 Q Did it cause you any kind of pain?

16 A No, not at all, it was just I couldn't hold the
17 instruments.

18 Q Since you've fallen, have you and Sal ever gone
19 swing dancing again?

20 A Oh, since I fell?

21 Q Correct.

22 A Oh, no.

23 Q So, the last time you were in swing dancing, you
24 said it was before the fall?

25 A A couple of days before the fall.

1 Q You have this walker here with you; is that correct?

2 A Yes.

3 Q Is that the only walker you own?

4 A No, I have one by my door at the house, and I have
5 another easier one to manage around my house inside my house.

6 Q Now, what do you use the walker for?

7 A When I walk, I hurt, and so I start limping. And
8 so, the more I limp, the more I hurt, and then my leg and my
9 knees give out on me.

10 Q So, what do you use the walker for?

11 A So I can walk so -- without falling, and without
12 limping, and without -- and plus, I don't have as much pain
13 when I have that extra support.

14 Q And do you keep that walker with you in your car?

15 A I keep one in my car, and I keep one at my house by
16 my door in case I have to get out of there.

17 Q Can you give us an idea now what your days are like?

18 A Well, I stay at home most of the time with my
19 parrot, Sheena. We -- we talk every morning; she makes me
20 laugh. And I go out sometimes. I love to go out, but it's
21 really -- really -- it's really a big effort for me to get
22 out. And I'm really nervous when I drive because it's hard
23 for me to turn my neck for me to see, so I don't like to
24 drive. And so, I just -- I never thought that I would end up
25 like this.

1 Q Now, I'm done asking you questions at the moment,
2 and Mr. Semenza's going to ask you some questions now, okay?

3 MS. MORRIS: Thank you.

4 MR. SEMENZA: Thank you.

5 THE COURT: Cross?

6 CROSS-EXAMINATION

7 BY MR. SEMENZA:

8 Q Good morning, Ms. O'Connell.

9 A Good morning.

10 Q Now, Ms. O'Connell, you don't dispute that you
11 declined medical care and treatment at the Wynn on February
12 8th, 2010, do you?

13 A I declined their wheelchair and the -- what they
14 were offering.

15 Q Okay. So, is that a yes, that you did decline
16 medical care and treatment from the Wynn?

17 A I declined it from the Wynn.

18 Q And the only injuries identified in the Guest
19 Accident/Illness Report that you signed included injuries to
20 your right shoulder, your buttocks, and your right ankle; is
21 that correct?

22 A That form, yes.

23 Q You don't dispute that after your fall, you in fact
24 did gamble at the Wynn, do you?

25 A I gambled a little.

1 Q And by a little, what does that mean?

2 A Just -- I believe it was pretty much what they gave
3 me on my card, and it was just so that I could sit at the
4 machines along the way to my car.

5 Q And I want to make sure I understand your prior
6 testimony. Your prior testimony as I understood it was that
7 in order for you to sit in front of the gaming machines, you
8 actually had to gamble; is that correct?

9 A Oh, of course. You can't sit there on their
10 machines and not gamble.

11 Q Have you ever been asked to leave a particular slot
12 machine because you weren't gambling at it?

13 A Of course.

14 Q That's happened to you?

15 A Absolutely.

16 Q Has anyone at Wynn ever told you that you can't sit
17 in front of a slot machine if you aren't gambling?

18 A No, but I never did that. I mean, I know.

19 Q Do you recall whether you gambled on your red card,
20 or whether you actually played with cash?

21 A I don't believe that I played with cash. I believe
22 that I just used my red card.

23 Q And do you recall how many hours you gambled at the
24 Wynn prior to leaving it on that particular day?

25 A Well, it took me until about 4:30 before I got to my

1 car.

2 Q You had mentioned that you then went to the Rampart
3 Casino; is that correct?

4 A Yes.

5 Q And you were there for a long period of time?

6 A As long as I could stand it.

7 Q And you did gamble at the Rampart Casino on that
8 particular day, correct?

9 A Yes.

10 Q Did you eat anything --

11 A No.

12 Q -- at the Rampart Casino?

13 A No.

14 Q Is it fair to say that while you were at the Rampart
15 Casino, the only thing you did was sit and gamble?

16 A Well, I -- I sat a lot. I didn't gamble the whole
17 time, but I sat there. I feel good there and I'm comfortable
18 there. I felt safe there, so.

19 Q When you were sitting at the Rampart Casino and you
20 weren't gambling, were you sitting in front of slot machines?

21 A Not necessarily.

22 Q Where were you sitting if it wasn't in front of a
23 slot machine at the Rampart Casino when you weren't gambling?

24 A Well, they have a nice area for us to sit.

25 Q Okay. Were you sitting in that area for a portion

1 of your time on that particular day?

2 A Probably.

3 Q Do you recall?

4 A I don't recall. I don't recall because -- but it's
5 just something I do there.

6 Q Do you know how much money you gambled at the
7 Rampart Casino on that particular day?

8 A Oh, no, I don't.

9 Q Do you recall whether you won or lost?

10 A Well, I probably lost.

11 Q Do you have a recollection of whether you won or
12 lost?

13 A No.

14 Q Do you recall whether you were playing with comps or
15 free play, or whether you were playing with cash at the
16 Rampart Casino on that particular day?

17 A Don't recall that.

18 Q Do you have any reason to dispute that you gambled
19 approximately \$1,000 at the Wynn on February 8th of 2010 after
20 your fall?

21 A I -- on that day, I don't believe that. I don't --
22 I don't believe it.

23 Q If that \$1,000 represented coin in, the amount that
24 you actually played, not necessarily put in, would that change
25 your opinion?

1 A I don't know how they figure it, but I know I didn't
2 put in \$1,000.

3 Q Now, you did drive home from the Wynn -- well,
4 strike that. You did drive from the Wynn to the Rampart
5 Casino unassisted; is that correct?

6 A Yes, I did.

7 Q And you did drive from the Rampart Casino to your
8 home unassisted; is that correct?

9 A Yes.

10 Q And how far away is your home from the Rampart
11 Casino?

12 A Oh, it's not far. It's -- it's -- mileage, I don't
13 know, but it's not far at all.

14 Q If you were having difficulty driving and didn't
15 want to drive either from the Rampart Casino to your home, or
16 from the Wynn to the Rampart Casino, you could have taken a
17 taxi cab; is that correct?

18 A Yes.

19 Q You did in fact feel well enough at that point in
20 time to drive your vehicle; is that correct?

21 A Well, I did. I did it.

22 Q And the day following your fall at the Wynn on
23 February 8th, 2010, you did not seek medical treatment, did
24 you?

25 A I was in bed. I didn't feel like getting up.

1 Q It was only two days later from the date of the
2 incident that you did in fact go to UMC Quick Care; is that
3 correct?

4 A Yes.

5 Q Prior to your fall at the Wynn, you did have your
6 cell phone with you; is that correct?

7 A I'm so sorry.

8 Q That's fine. When you arrived at the Wynn on
9 February 8th of 2010, you had your cell phone with you?

10 A Yes.

11 Q And did you have your cell phone in your possession
12 the entire day from when you got to the Wynn until you got
13 home?

14 A Yes.

15 Q And you had previously testified that you had had
16 lunch with your cousins at the Wynn buffet?

17 A Yes.

18 Q And could you remind me what their names were?

19 A Helen and Allen Stroub.

20 Q And did you have an enjoyable lunch with them?

21 A Very much.

22 Q And how long were they in town?

23 A I'm not sure, but I'm pretty sure they were leaving
24 me to go to the airport.

25 Q Were they staying at the Wynn?

1 A I think so.

2 Q You don't know for sure?

3 A I'm pretty sure they did.

4 Q Did -- do you know if they were going immediately to
5 the airport?

6 A I wouldn't know that.

7 Q After your fall at the Wynn, did you make any effort
8 to contact either Helen or Allen Stroub by phone?

9 A Oh no, that's not -- that's not something I would
10 ever do.

11 Q Do you think that they could have provided you with
12 some care and comfort if you had called them after your fall?

13 A Absolutely not. These are cousins from California
14 that I -- if I'm lucky, I get to have lunch with them once a
15 year. And then, after that day, I didn't see them for three
16 years, so.

17 Q Are you close with them?

18 A No. I see them once a year, if I'm lucky. I mean,
19 I love them, but we're not in each other's lives.

20 Q Well, they were people that you knew previously and
21 had a familial relationship with, correct?

22 A Yeah, 40-some years ago.

23 Q But you decided not to contact them after your fall?

24 A I would never contact them.

25 Q Do they know that you fell to this day?

1 A No, they don't.

2 Q Now, on the day that you had fallen, Mr. Risco was
3 out of the country, I guess?

4 A Well, he had gone on a cruise.

5 Q Do you recall the specifics of that cruise?

6 A Oh, no.

7 Q Do you know where the cruise was going to?

8 A Well, I'm pretty sure he -- he went to Florida, so
9 it must have been the Caribbean.

10 Q Do you recall when he left to go to Florida to go on
11 the cruise?

12 A Yes. I took him to the airport the day before I
13 fell.

14 Q So, am I correct that Mr. Risco flies from Las Vegas
15 to Florida on the day before your fall?

16 A I'm pretty sure.

17 Q Okay. Do you know what time he arrived in Florida
18 on that particular day?

19 A I wouldn't know that.

20 Q Do you know what time his cruise left Florida --
21 well, do you know what day the cruise left port out of
22 Florida?

23 A I wouldn't know that.

24 Q At the time of your fall, you don't know whether Mr.
25 Risco's cruise ship had departed or not?

1 A No, I wouldn't know.

2 Q You didn't make any attempts to contact Mr. Risco on
3 the day of your fall, did you?

4 A Oh, no.

5 Q And he was the person that you were most close to in
6 your personal life at that point in time; is that correct?

7 A Yes, but he wasn't here.

8 Q There was nothing prohibiting you from contacting
9 him though by phone, was there?

10 A I probably didn't even know how to contact him.

11 Q Did he have a cell phone?

12 A No.

13 Q Do you know what hotel he was staying at?

14 A No.

15 Q You didn't know anything about where he was going to
16 be during this cruise?

17 A Probably not.

18 Q Did he invite you on this cruise?

19 A Yes.

20 Q And you declined to go with him, correct?

21 A Yes.

22 Q Now, do you know when he returned from his cruise?

23 A Yes. I picked him up -- I believe it was on
24 Valentine's Day, February 14th.

25 Q If my math's correct, that would have been six days

1 after your fall?

2 A About that, yes.

3 Q Okay, and you had arranged to pick him up at the
4 airport?

5 A Yes.

6 Q And did you talk to him at any point in time before
7 he returned -- well, let's back up. When Mr. Risco was
8 returning from his cruise, was he flying directly from Florida
9 to Las Vegas, or going somewhere else?

10 A I'm sorry?

11 Q Okay. Did you call him at any point in time during
12 his cruise?

13 A I -- I don't remember, but I doubt it, because --
14 because we went on a lot of cruises. He goes on cruises all
15 the time, and I'm not in the -- I wasn't in the habit of
16 calling him when he went on a cruise.

17 Q You were just letting him do his thing?

18 A Yeah, he does his thing.

19 Q How did you know -- or how did he know, rather, that
20 you were going to be picking him up at the airport?

21 A Oh, he knew when he was going to be arriving at the
22 airport, and we had that all set up, you know, when I'd pick
23 him up. He already had his flight.

24 Q So, you knew what return flight he was coming in on?

25 A Yes.

1 Q And you had talked about that you would pick him up
2 from the airport before he left?

3 A Right, it was all set. But like I said, if I talked
4 to him once he landed or something, I doubt it very much, but
5 I don't remember that. I just doubt it.

6 Q And you drove to the airport to pick him up, in
7 fact?

8 A Yes.

9 Q And after your fall, you were driving -- well,
10 strike that. Between the time that you had your fall and you
11 picked up Mr. Risco, you were in fact driving your automobile,
12 right?

13 A Yes, I picked him up at the airport.

14 Q Okay, but the day after your fall to the day that he
15 returned from his cruise, did you do any driving at all?

16 A I had to -- I had to drive myself to UMC two days
17 later after the fall on the 10th.

18 Q Do you recall doing any other driving?

19 A Well, that day, of course I had to go pick up the
20 medicine, and I don't recall doing any driving until I picked
21 him up from the airport.

22 Q And when you picked Mr. Risco up at the airport, you
23 told him about the fall?

24 A Yes.

25 Q Did you provide him with any specifics concerning

1 what happened?

2 A I don't recall.

3 Q Did you -- do you recall telling him about any of
4 the specifics of your injuries?

5 A Oh, I told him I hurt. I was in a lot of pain.

6 Q Did you tell him anything more specific that you
7 were hurting and in a lot of pain?

8 A I'm not sure what specifics I gave him. I just --
9 he just knew that I hurt. I think I told him I hurt all over.
10 Oh, he -- no.

11 In addition to that, the doctor at UMC two days
12 later, she had told me that I had bruises on my body, and I
13 couldn't see them, because I wasn't in a position to be able
14 to see them. So, when I picked up Sal and we went to his
15 house, I told him I had bruises, so he took some pictures of
16 some of my bruises, of just the ones that the doctor had told
17 me about. And I probably had bruises on the rest of my body,
18 but I don't know where; I couldn't see them. So, he took
19 pictures of those bruises.

20 Q Now, on the day of your fall, you didn't reach out
21 to Corey after -- after you had the fall? You didn't call him
22 with the card -- based upon the card he had given you, did
23 you?

24 A Correct, I didn't.

25 Q But Mr. Prowell did in fact offer assistance to you

1 if you did need it, didn't he?

2 A Yes, that's why he gave me his card, and he said --
3 and I told him, well, I didn't know. I didn't know if I was
4 going to be able to -- to get to my car, and if I couldn't, he
5 knew that I'd be calling him.

6 Q Did you believe that Mr. Prowell did a professional
7 job when he was interacting with you?

8 A He was nice.

9 Q Okay. You don't have any issues with his demeanor,
10 his behavior, anything like that? He acted professionally
11 with you?

12 A Yes.

13 Q Did you believe that he was sympathetic to you and
14 was attempting to care for you?

15 A Sympathetic, no.

16 Q He did offer medical attention to you though if you
17 wanted it, right?

18 A Yes.

19 Q Is it true that you didn't contact anyone about your
20 fall on the day that it took place? You didn't call anyone?

21 A Well, I tried to think of who I could call, but I
22 couldn't think of anybody that -- so, no, I didn't call
23 anybody.

24 Q You didn't have any close friends that you could
25 reach out to since Sal was out of town?

1 A Not -- not really. We -- we didn't -- no, I didn't.

2 Q Ms. O'Connell --

3 MR. SEMENZA: May I approach, Your Honor?

4 THE COURT: Yes.

5 MR. SEMENZA: I want to talk to you about some
6 documents here now.

7 (Pause in the proceedings)

8 MR. SEMENZA: Your Honor, I'd move for the admission
9 of Plaintiff's Proposed Exhibit R, 1 through 6.

10 MS. MORRIS: I think that's defendant's.

11 THE COURT: They're marked as a group of --

12 MR. SEMENZA: I'm sorry, Defendant's R, 1 through 6.

13 THE COURT: Defendant's R, and it's -- so it's one
14 exhibit; it consists of six pages?

15 MR. SEMENZA: Yes, Your Honor.

16 THE COURT: Any objection?

17 MS. MORRIS: No.

18 THE COURT: It will be admitted.

19 (Defense Exhibit R is admitted)

20 MR. SEMENZA: Thank you.

21 BY MR. SEMENZA:

22 Q Ms. O'Connell, can I have you turn to tab R on the
23 big binder, please?

24 A Okay.

25 Q You're there?

1 A Yes.

2 Q And can you take a look at the documents that are
3 comprised as R1 through 6 real quickly? Just skim them and
4 tell me if you recognize them.

5 A Are they -- are they all from the same place, or are
6 they all from different places?

7 Q Well, take a look and see if you recognize them, if
8 you would, please.

9 A I know that it's my handwriting.

10 Q Okay. I'm showing you -- or putting up on the
11 screen R1. Do you see at the top of the document there's a
12 name?

13 A Yes.

14 Q Is that your name?

15 A Yes.

16 Q And is that your handwriting at the top?

17 A Yes.

18 Q Is it dated -- what is it dated?

19 A 2/17/10.

20 Q And do you have any reason to dispute that this
21 document was created on 2/17 of '10?

22 A No.

23 Q Do you -- in looking at the complete document, do
24 you have any understanding as to what medical provider you
25 completed this for?

1 A It must be -- because of the date, I'm pretty sure
2 it was for a Dr. Thompson.

3 Q Okay, and what did you see Dr. Thompson for?

4 A I had still -- I still had the pain from the fall,
5 and so I went to him, and I told him about the fall, and I
6 told him that I was still hurting.

7 Q And prior to his treatment of you, you were asked to
8 complete this chart?

9 A Prior to him seeing me, yes.

10 Q Okay. And is this your handwriting on the body
11 here?

12 A That's my handwriting on this page.

13 Q All right. And on this page, you are identifying
14 sources of pain; is that correct?

15 A Yes.

16 Q Okay. And you've identified pain in your -- on this
17 portion on your neck, your back, your right shoulder -- let's
18 break it down. Are you identifying that you have pain in your
19 neck?

20 A My neck.

21 Q Okay, and your right shoulder?

22 A Yes.

23 Q And your back?

24 A Yes.

25 Q And your right arm?

1 A Yes.

2 Q And your right hand?

3 A Yes.

4 Q Your mid-back?

5 A Yes.

6 Q Your right buttocks?

7 A Yes.

8 Q Your right thigh?

9 A Yes.

10 Q And your right foot?

11 A Right.

12 Q Okay. You don't identify any pain that you're
13 experiencing in your left knee; is that correct?

14 A Right.

15 Q Okay. You do identify some pain on your right front
16 knee though?

17 A Yes.

18 Q You also on the left side of the picture are
19 identifying that you've got pain in the rib area?

20 A Yes.

21 Q And there appears to be a square where your heart
22 would be?

23 A Yes.

24 Q Okay, why did you put that?

25 A Well, because that's -- that's part of the pain. I

1 had that shoulder pain, and the pain gets here around my rib.

2 Q Is that -- are you attempting to indicate that you
3 were having chest pain?

4 A Yes.

5 Q And then you mentioned -- or you identified some
6 checks near your abdomen?

7 A Yes.

8 Q And then in your groin area; is that correct?

9 A Yes.

10 Q Okay. And on this document, it identifies a number
11 of levels of pain that you're experiencing; is that correct?

12 A Yes.

13 Q Okay. Under that column, "intensity;" is that
14 correct?

15 A Yes.

16 Q And for all of those, you've identified ten. Is
17 that the most extreme level of pain on the chart?

18 A I'm sorry, are you asking -- what are you asking?

19 Q That's fine, I can ask a different question. So,
20 the tens you identify represent ten of ten pain; is that
21 correct?

22 A What I was told is what ten means is the most pain
23 that I have experienced.

24 Q Okay, and you were identifying on this document that
25 this was the worst pain you had ever experienced?

1 A Yes. This was all the pain that I had after the
2 fall, too.

3 Q And I'm showing you R2. Can I have you turn the
4 page, Ms. O'Connell? And in this box -- I'm sorry. There's a
5 portion of the document that says, "Choose three words to
6 describe how usually you feel physically." And under 2,
7 you've identified, "Healthy, except for IBS." What did you
8 mean by that?

9 A Well, that I was healthy, but I had IBS. I'd had
10 constipation that I had under control.

11 Q Okay, and IBS is what?

12 A Well, for me, it's constipation.

13 Q But it's -- what do the -- what do the letters IBS
14 stand for?

15 A Irritable bowel syndrome.

16 Q And it identifies here some medication; is that
17 correct?

18 A I'm sorry.

19 Q In the lower lefthand portion of the document --

20 A Yes.

21 Q -- it says, "Name of medicine," and it's got some
22 medicines identified.

23 A I see that.

24 Q Okay. Was -- and one of them is Tramadol; is that
25 correct?

1 A Yes.

2 Q What is Tramadol?

3 A I don't know what these are. This is what -- when I
4 went to UMC two days after I fell, the doctor prescribed three
5 drugs for me, and so that's what I was taking; what she had
6 prescribed.

7 Q You don't know what these medications did though?

8 A Well, if I wrote it here. Well, I assume, you know,
9 pain -- well, I'm assuming, but it was for pain, and probably
10 inflammation, and I don't know what else for.

11 Q Did you discontinue taking these medications?

12 A I took almost all of them.

13 Q So, you completed your prescriptions? You took
14 them?

15 A I took almost all of them.

16 Q And to your knowledge, did they give you any relief?

17 A Well, what happened is I was dizzy, and I was
18 nauseous, and I'd had a -- symptoms on the left side of my
19 face, so I didn't feel relief.

20 Q Can I have you turn to the next page, R3? And this
21 appears to be a history -- past history, preexisting
22 conditions, those sorts of things? You're supposed to check
23 or circle which ones you have, correct?

24 A It says, "Any that you now have or have had in the
25 past."

1 Q Okay. And you identified here irritable bowel
2 syndrome, correct?

3 A Yes.

4 Q And you did identify fibromyalgia, didn't you?

5 A Yes.

6 Q Further on down the document, there's a portion that
7 says, "Other conditions/diagnoses you have had that are not
8 listed above;" is that correct?

9 A Yes.

10 Q And on this, you identify, "Back was badly injured
11 in 1989"?

12 A Yes.

13 Q And you also identify in this portion that the back
14 of your neck, the left side, swells and then shrinks. Do you
15 see that?

16 A Yes.

17 Q What did that relate to?

18 A Oh, the doctor told me those are my lymph glands.

19 Q And I'm showing you R4. Can I have you turn the
20 page, Ms. O'Connell?

21 A Yes.

22 Q Now, at the top of the document, it says, "Now since
23 slip and fall." Do you see that?

24 A Yes.

25 Q So, anything marked with a "now" is something that

1 you started experiencing after the slip and fall; is that
2 correct?

3 A Yes.

4 Q And you've checked here, difficult to get to sleep
5 or stay asleep?

6 A Yes.

7 Q Pain interferes with your sleep?

8 A Yes.

9 Q You have back or neck pain?

10 A Yes.

11 Q Pain that radiates down the leg?

12 A Yes.

13 Q Painful, swollen, or tender joints?

14 A Yes.

15 Q Muscle pain, aches, stiffness?

16 A Yes.

17 Q Joint or muscle weakness?

18 A Yes.

19 Q Irregular heartbeat?

20 A Yes.

21 Q Okay. Did you start experiencing an irregular
22 heartbeat after the fall on February 8th, 2010?

23 A Yes.

24 Q Do you attribute the irregular heartbeat to your
25 fall?

1 A A doctor has to tell you that, but what I can tell
2 you is that immediately after I fell, I had that pain in my
3 shoulder right here, and my chest, and, you know, in my ribs.
4 You know, I still get that pain at the ribs.

5 Q Well, do you attribute the irregular heartbeat or
6 palpitations to the fall on February 8th, 2010?

7 A Well, what I can tell you is that I didn't have
8 them, I didn't have any problems there, and after I fell, I
9 did.

10 Q Is that a "yes" then?

11 A I'm just saying I didn't have them before, and then
12 I did, and anything else, a doctor would have to tell you. I
13 can't say things like that.

14 Q Well, I'm asking what your opinion is. Do you --

15 A I -- I'm positive that I was very healthy, I had no
16 problems in that area before I fell. And after I fell, I had
17 immediate pains there in my shoulder and in that area.

18 Q Okay. So, you would attribute your heart
19 palpitations to the fall on February 8th, 2010?

20 A Well, I didn't have them, and after the fall, I had
21 them.

22 Q Okay, so is that a, yes? I mean, if you don't know,
23 you don't know, but --

24 A I can just -- all I can tell you is I -- I was very
25 healthy, I didn't have them before, and then all the sudden

1 after I fall, I had them. That's what I know. That's what I
2 can tell you.

3 Q And you identify here that you have chest pressure,
4 pain, or angina, and that's identified as now, correct?

5 A Yes.

6 Q And that was after the fall on February 8th, 2010?

7 A Right.

8 Q And do you attribute the chest pressure, pain, or
9 angina to the fall on February 8th, 2010?

10 A The same thing. I didn't have it before, and right
11 after the fall, I had it.

12 Q And next down, you identify that you had rapid or
13 racing heartbeat after the fall; is that correct?

14 A Yes.

15 Q Do you attribute your racing, rapid heartbeat to the
16 fall you had on February 8th, 2010?

17 A The same thing. I didn't have it before, and right
18 after I fell, that's what I had.

19 Q Moving along, on the right hand side, you identify
20 that you had low energy, fatigue, and feel tired. And that
21 was -- do you attribute that to the fall on February 8th,
22 2010?

23 A Well, same thing. I was very healthy, I was a swing
24 dancer, had no health issues, I was strong and healthy, and
25 then, after I fell, I had all these problems.

1 Q You also identify here that you get lightheaded upon
2 standing up now, and that was after the fall on February 8th,
3 2010, correct?

4 A I'm sorry, I --

5 Q It's on the right hand side, "Get lightheaded upon
6 standing up."

7 A Oh. Okay, I see it. And I'm sorry, what's your
8 question?

9 Q Yes. Do you attribute the lightheadedness to the
10 fall on February 8th, 2010?

11 A Oh, well, absolutely. I fell, my head hit that
12 divider, and I got -- I was dazed. I couldn't even get up.

13 Q Did you inform Mr. Prowell that you hit your head on
14 the divider.

15 A Well, at that time, I knew I hit my head; I didn't
16 know what I hit my head on. Now, I know that it was the
17 divider.

18 Q Did you ever tell Mr. Prowell though that you hit
19 your head?

20 A I'm not sure. I know he didn't write it down, so
21 I'm not sure if I told him that or not.

22 Q Moving down, you identified that you feel anxious,
23 nervous, frustrated, and irritable. All of that began after
24 your fall on February 8th, 2010; is that correct?

25 A Well, I felt really good, I was happy and healthy

1 before it happened, and then -- and then, immediately, I had
2 all that pain. And also -- I'm sorry. Yes.

3 Q Do you attribute the anxious feelings, nervousness,
4 frustrated, and irritable symptoms to the fall on February
5 8th, 2010?

6 A Well, absolutely it made me feel like that.

7 Q And after the fall, you felt depressed?

8 A Yeah, I'm very -- I'm very depressed over it. I'm
9 very depressed that this has happened to me.

10 Q Moving down, you identify that you have palpitations
11 and heart fluttering, and again, do you attribute that to the
12 fall on February 8th, 2010?

13 A And my answer's the same. I was healthy, I had no
14 problems, no issues with that before I fell, and then I had
15 the immediate pain and -- and so, it's the same.

16 Q Well, do you attribute it to the fall or not?

17 A I was healthy, and then I fell and immediately had
18 these. That's all I can say.

19 Q Can I have you turn to R6, please? And under 17,
20 you identify your severe back injury from 1989?

21 A Yes.

22 Q You felt it was important enough to mention your
23 back injury which was 25 years ago in this health
24 questionnaire; is that correct?

25 A Well, all of them ask you to -- to write your

1 history, so I also put down my tonsillectomy that I had in
2 1955.

3 Q But did you feel that it was important to identify
4 your back injury as part of your history in this document?

5 A That was part of my history, so I was trying to be
6 as accurate as possible.

7 Q And you also identified that you had injured your
8 hands; is that correct?

9 A Yes.

10 Q Okay. How did you injure your hands?

11 A Well, as I explained before, when I -- around 1986,
12 I had to stop practicing dental hygiene because my -- I
13 started having trouble holding the instruments while I was
14 doing the deep cleaning.

15 Q And how did you injure your hands though? You used
16 the term --

17 A Oh, well, it --

18 Q -- "injure your hands."

19 A It started -- it initially started -- a friend just
20 kind of went back. We had our arms -- I had my arm around --
21 behind his back, I guess, and he just went back and -- and it
22 just swelled up. But that went away, and I played tennis
23 after, and had no problems with it.

24 (Pause in the proceedings)

25 BY MR. SEMENZA:

1 Q Ms. O'Connell, can I have you turn to tab B?

2 A I'm sorry -- I'm sorry, V?

3 Q B as in boy. Tab B of Defendant's Proposed
4 Exhibits, and page B54. Are you there?

5 A I'm just about there.

6 Q Okay, take your time.

7 A I'm there.

8 Q Okay. I want you to look at B54 and B55. Do you
9 recall completing these -- this document?

10 A It's my handwriting.

11 Q And is that your signature on the bottom of page 1?

12 A I'm sorry, did you say page 1?

13 Q I'm sorry, B54. My apologies. So, at the bottom of
14 B54, is that your signature?

15 A Yes.

16 Q And is it dated?

17 A Yes.

18 Q Okay. And is it dated March 18th of 2010?

19 A Yes.

20 Q Do you have any reason to dispute that that's the
21 date you signed it?

22 A No.

23 Q And the handwritten portions of the B54 and B55 are
24 yours?

25 A Yes.

1 Q Do you have any reason to dispute that you completed
2 this document?

3 A No.

4 Q Does it appear that the document is complete, the
5 two pages?

6 A I'm sorry?

7 Q Is this a complete document, these two pages, to
8 your knowledge?

9 A Well, it seems -- I assume so.

10 MR. SEMENZA: Your Honor, I would move for the
11 admission of just at this point in time Defendant's Proposed
12 Exhibit B, pages 54 and 55.

13 THE COURT: Well, they've been marked as a joint
14 exhibit, is my understanding from --

15 MR. SEMENZA: That's correct, Your Honor.

16 THE COURT: -- the book.

17 MR. SEMENZA: I just want to use those two pages.

18 MS. MORRIS: They haven't been marked as a joint
19 exhibit. It's --

20 THE COURT: No.

21 MS. MORRIS: -- defendant's proposed.

22 THE COURT: I said they've been marked as a proposed
23 exhibit as --

24 MS. MORRIS: Sorry, I heard "joint." Sorry.

25 THE COURT: -- jointly -- all the pages as a joint

1 exhibit together. So, if you want to remove two of the
2 pages --

3 MR. SEMENZA: Yes.

4 THE COURT: -- then we'll remove them. Do you want
5 to -- how do you want to mark them? Do you want to --

6 THE CLERK: I guess I'll make it --

7 THE COURT: BA?

8 THE CLERK: What number is it? 50 --

9 THE COURT: B1.

10 MS. MORRIS: And Your Honor, I have an objection as
11 to the fact it's incomplete.

12 THE CLERK: What exhibit letter is it?

13 THE COURT: It's B like boy.

14 THE CLERK: B as in boy?

15 THE COURT: I'm sorry, what was your objection?

16 MS. MORRIS: It's -- well, authentication and
17 incomplete. It's just pulling apart documents here.

18 THE COURT: Well, your -- it's overruled on
19 authentication. Your client has authenticated the document.

20 MS. MORRIS: Okay.

21 MR. SEMENZA: Thank you, Your Honor.

22 THE CLERK: Okay, I'll think about it. I'll get it
23 before it's [inaudible].

24 MR. SEMENZA: However you'd like to mark it, I
25 appreciate it.

1 (Pause in the proceedings)

2 THE COURT: All right, we're going to mark this --
3 these two pages as Defense Exhibit B-1.

4 MR. SEMENZA: Thank you, Your Honor.

5 THE COURT: And it will be admitted.

6 (Defense Exhibit B-1 is admitted)

7 MR. SEMENZA: Okay.

8 BY MR. SEMENZA:

9 Q Is this a document that you completed on or about
10 March 18th, 2010?

11 A Yes.

12 Q And what medical provider were you completing this
13 form for?

14 A I believe this one was Dr. Subramanyam, and my -- I
15 think this is the first time I'd seen him. I didn't have a
16 primary care doctor, so I went back to UMC and I found him,
17 and he's my primary care doctor now.

18 Q Okay. And on this particular document, at the top
19 of the page, you identify that the symptomology that you are
20 experiencing is all since the slip and fall; is that correct?

21 A Yes.

22 Q And in this particular section here, you identify
23 that you had started fainting; is that correct?

24 A I see I marked it, yes.

25 Q Okay. And do you recall in fact fainting after the

1 fall and prior to March 18th of 2010 when you completed this
2 form?

3 A Well, I think what I'm referring to is, a couple of
4 days after I fell and hit my head, I had symptoms on the left
5 side of my face and my left arm went numb, and I think that's
6 what I'm referring to there.

7 Q Okay. And you also checked that you were having
8 chills after the slip and fall; is that correct?

9 A I see that, yes.

10 Q And do you attribute your chills to the slip and
11 fall that took place on February 8th, 2010?

12 A Well, I'm -- I'm just saying that that's what I was
13 feeling at the time.

14 Q Okay. So, do you attribute it to the slip and fall,
15 that you were experiencing chills?

16 A Well, at the time. I mean, I didn't have them
17 before I slipped and fell, and right then at that time, I was
18 -- that's what I was having.

19 Q Okay. And I want to direct you down a bit. Do you
20 see here on the lefthand side about halfway down where it
21 says, "Persistent cough for three to six months"? Do you see
22 that?

23 A Yes.

24 Q And you identified that you had a cough since the
25 slip and fall?

1 A Yes.

2 Q And do you attribute the cough to your fall on
3 February 8th, 2010?

4 A Well, I have a chronic cough now, but -- so I'm just
5 saying that I didn't have a cough, and now I -- I was coughing
6 a lot.

7 Q Okay. Do you know one way or the other whether you
8 attribute the cough to the fall on February 8th, 2010?

9 A Well, they -- there again, I'm just saying here that
10 I was healthy, and now I have this. That's all.

11 Q You don't know whether it's related or not?

12 A All I -- all I was saying is I was healthy before,
13 and then, after I fell, now I'm coughing. That's all I was
14 saying.

15 Q And did you seek treatment for your cough?

16 A Yes, but I still have a chronic cough, so.

17 Q And that chronic cough began in February immediately
18 after the fall; is that correct?

19 A Well, I didn't have it before; now I do, so.

20 Q And here, we are looking at some of your
21 constipation issues; is that correct?

22 A Okay.

23 Q Further down on the lefthand side. Do you see that?

24 A I see it.

25 Q Okay, and you were having trouble in that regard?

1 A Yeah, my system stopped working.

2 Q Okay, and that happened after the fall on February
3 8th, 2010?

4 A Yes. I landed -- my right buttocks landed on that
5 divider.

6 Q Do you attribute your issues relating to
7 constipation to your fall on February 8th of 2010?

8 A Oh, I -- I'd had IBS constipation before, and I --
9 but I just had it under control. And so, I'm just saying it's
10 out of control now, and --

11 Q Okay. After the fall, it became out of control?

12 A Yes, I had a hard time dealing with it.

13 Q And do you attribute that issue to the fall on
14 February 8th, 2010?

15 A Well, I just -- I just knew that it made it worse,
16 and I had a hard time at that time with it.

17 Q On the right hand side of this document, it
18 discusses stiffness or pain in the joints. Do you see that?

19 A Yes.

20 Q Okay. And you've checked finger, hands, wrist,
21 elbows, shoulders, neck, back, hip, knee, toes, foot, and jaw.
22 You've checked every box; is that correct?

23 A I'm sorry, I don't know -- oh, down here? I see it
24 now.

25 Q Yes, the little black squares.

1 A I see it now.

2 Q Yes.

3 A I see that, yes.

4 Q And that's what you assert you were experiencing on
5 March 18th of 2010?

6 A Well, those were the immediate symptoms I had right
7 there at the Wynn.

8 Q And this is the second page of the document. And in
9 this document on the lefthand side, about halfway down -- or a
10 third of the way down, you identify your back injury from
11 1989, correct? You can look at the monitor if you like. It
12 might help you.

13 A Oh, are you pointing there? I'm so sorry.

14 Q Yes. No, no, that's okay. I'm sorry.

15 A I see that.

16 Q And you identify your hand injury?

17 A I think I'm better off here.

18 Q Okay.

19 A I'm sorry, your -- what are you asking?

20 Q Okay. I -- you identify in this portion of the
21 document that you had your severe back and hand injury,
22 correct?

23 A Yes.

24 Q Okay, and that led to irritable bowel syndrome,
25 GERD, stress disorder, a diagnosis of hypermobility syndrome,

1 Marfan's or Ehlers-Danlos, and fibromyalgia.

2 A Yes.

3 Q Do you see that?

4 A Yes.

5 Q Was that your understanding of -- of -- that you
6 developed these conditions after your back injury and hand
7 injury in 1989?

8 A No. What I'm -- what I'm saying is that -- again,
9 it's the same thing. When I was -- when I had to stop
10 practicing dental hygiene and I was having trouble holding the
11 instruments, that's what I was talking about. Right here,
12 they said, well, you're extra limber, and sometimes that's
13 Marfan's, it's a hypermobility syndrome; sometimes it's
14 Ehlers-Danlos. And so that's -- that's what I was talking
15 about, the same thing.

16 And then -- and then when I had the back pain and
17 they sent me to a physical therapist in 1989 and they couldn't
18 see anything wrong with it, they said, well, you have pain, so
19 it could just be fibromyalgia. But then I went to the
20 physical therapist, and then went a few times, did the
21 exercises, and then it took away the back pain and I didn't
22 have it anymore. I was pain-free for 20-some years. That's
23 the same thing.

24 Q Okay.

25 (Pause in the proceedings)

1 MR. SEMENZA: Your Honor, I would move for the
2 admission of a portion of Defense Proposed Exhibit P, and I
3 would ask that pages P3 through P7 be admitted into evidence.

4 THE COURT: Is there any objection?

5 MS. MORRIS: None.

6 THE COURT: All right, so that will be marked as
7 Defendant's P --

8 THE CLERK: 3 through 7?

9 MR. SEMENZA: Yes, thank you.

10 THE COURT: It's pages that are Bates stamped --

11 THE CLERK: Yeah.

12 THE COURT: -- that, but they'll be marked as P1.

13 THE CLERK: 1.

14 THE COURT: And they're admitted.

15 (Defense Exhibit P1 is admitted)

16 MR. SEMENZA: Thank you, Your Honor.

17 BY MR. SEMENZA:

18 Q Can I have you turn, Ms. O'Connell, to P3? Tab P,
19 document page 3.

20 A Yes.

21 Q Okay. And do you recall seeing Dr. Cash?

22 A Yes.

23 Q Did he have you fill out a health history?

24 A Yes.

25 Q Do you recall approximately when you completed this

1 form, if you did?

2 A Well, there should be a date on it.

3 Q Okay. You don't have any reason to dispute that you
4 completed this form on March 23rd of 2010, do you?

5 A No.

6 Q And as part of obtaining your history, there was
7 this diagram of a person, correct?

8 A Yes.

9 Q And you -- is this your handwriting on the person?

10 A Yes.

11 Q And you've identified basically that you experience
12 pain -- well, the only locations that you don't experience
13 pain is in the front of your head and on the very top of your
14 head; is that fair to say?

15 A Yes.

16 Q And you attribute this pain that you've identified
17 to the fall on February 8th, 2010?

18 A What I was saying is I hurt all over. Well, no, you
19 know, I correct that. I wrote exactly what I was saying. I
20 wrote exactly what I meant.

21 Q So, a portion of that, that's fair?

22 A I'm sorry, I didn't understand your question.

23 Q That's fine. So, on this particular form, you
24 identified certain things that ached, pins and needles,
25 burning, stabbing, and numbness?

1 A Okay, so you're talking about the bodies?

2 Q Yes.

3 A Yeah. I -- I wrote down exactly what I meant, and
4 with this, I was just marking everything.

5 Q Were you marking everything because you were in pain
6 from head to toe?

7 A Well, I was very specific about -- I think, I was
8 very specific about where I hurt, and --

9 Q Well, the only -- the only locations on this diagram
10 where you're not experiencing either aches, pins and needles,
11 burning, stabbing, or numbness is the front of your face and
12 on the top of your head; is that fair to say?

13 A Yes. Well, and also, the immediate injuries that --
14 my neck, my shoulder, my arms and hands, my buttocks, my back,
15 my leg down to my foot, that's what I experienced right there
16 at the Wynn. So, now, on this one, my -- okay, I'd been
17 limping. If this was in March, I'd already been limping for
18 -- how long? I'd been limping for over a month.

19 Q Okay.

20 A And so, it was making me hurt on my left side. And
21 I'm pretty sure he even noted that, that, well now, because of
22 the compensation, that -- so now I had it on the left. That's
23 what that was there.

24 Q Okay. So, you were experiencing pain now on your
25 lefthand side?

1 A Yes, because when you limp, then it makes other
2 things hurt.

3 Q That's -- okay. And -- but would that explain the
4 pain in your left arm?

5 A Oh, no. What explains the pain in my left arm, that
6 day at the Wynn, right there, after I fell, both my arms and
7 hands hurt. That's why I couldn't take pictures. That's why
8 I asked them to take the pictures, and they said, oh, don't
9 worry, we've got all the pictures. So, both arms and hands
10 there at Wynn.

11 Q Okay. I want you to turn, if you would, to P7,
12 please.

13 A Okay.

14 Q And on the bottom half of the page, there is a
15 section that discusses review of symptoms. Do you see that?

16 A Yes.

17 Q Okay. And on that document -- or on that portion of
18 the page, you identify that you've had headaches since the
19 fall?

20 A Yes.

21 Q That you had visual changes since the fall?

22 A Yes.

23 Q That you had dizziness since the fall?

24 A Yes.

25 Q That you had chest pain since the fall?

1 A Yes.

2 Q That the pain had woken you up at night --

3 A Yes.

4 Q -- since the fall? That you have shortness of
5 breath since the fall?

6 A Yes.

7 Q That you had a cough since the fall?

8 A Yes.

9 Q That you had abdominal pain since the fall?

10 A Yes.

11 Q That you had nausea since the fall?

12 A Yes.

13 Q That you had heartburn and constipation, which was
14 out of control since the fall?

15 A Yes.

16 Q Do you attribute those things to the fall on
17 February 8th, 2010?

18 A Well, what I'm -- then again, what I'm saying here
19 is I was healthy when I went, but now -- right now, at this
20 time, this is what I have. That's what I'm -- that's what I'm
21 saying. I still get those headaches. My neck hurts, and --
22 and then if I don't do what I need to do to make that pain
23 subside, it will go up into my head.

24 (Pause in the proceedings)

25 MR. SEMENZA: Your Honor, I'd move for the admission

1 of a portion of Defense Proposed Exhibit E, and specifically,
2 pages E1 and E2.

3 THE COURT: All right. Any objection?

4 MS. MORRIS: None.

5 THE COURT: All right. So, the first two pages of
6 Exhibit E, which are Bates-stamped 1 and 2, will be admitted
7 as Defendant's E1.

8 (Defense Exhibits E1 is admitted)

9 BY MR. SEMENZA:

10 Q And Ms. O'Connell, can I have you turn to E1,
11 please? Let me know when you're there.

12 A I'm there.

13 Q Okay. Again, do you recognize these two pages?

14 A It's my handwriting.

15 Q Okay. And did you date the document at the bottom?

16 A Yes.

17 Q What's the date of this document?

18 A 6/10/10.

19 Q Okay. I don't want to spend a lot of time on this,
20 but at the top of the document on the lefthand side, you again
21 discuss your previous back injury, the stress disorder,
22 hypermobility syndrome, Marfanoid or Ehlers-Danlos,
23 fibromyalgia, IBS, and GERD; is that correct?

24 A Yes, it's all the same that I was talking about
25 before.

1 Q And moving on down to --

2 A And excuse me, I'm sorry. And also, it says 20
3 years ago.

4 Q It does.

5 A I'm not saying that I had that then. I -- it was 20
6 years before. I was just trying to be accurate.

7 Q But you did have a previous back injury, correct?

8 A 20 years before, around 1989.

9 Q And you did have a history of fibromyalgia, correct?

10 A Well, they said because -- because they couldn't see
11 anything wrong with my back, they said, well, you have pain,
12 so it's just probably fibromyalgia.

13 Q You don't dispute that you had fibromyalgia, do you?

14 A I'm sorry?

15 Q You don't dispute that you had fibromyalgia, do you?

16 A That I have it now, or had it?

17 Q No, that you had it then.

18 A They -- they didn't say, you absolutely have it.
19 They just said -- that's what they called it back then. If
20 you had pain and they couldn't find a reason for it, they just
21 called it fibromyalgia. Just meant, well, you have a lot of
22 pain.

23 So, at that time, there was -- they couldn't find
24 anything wrong with me, so they said, well, maybe it's just
25 fibromyalgia. That's what that was. But then I went to

1 physical therapy for my back a few times, and then I had no
2 problems with it. All the pain went away; had no pain for
3 over 20 years.

4 Q And do you think you have fibromyalgia now?

5 A Well, now, some doctor said I -- I -- one doctor
6 said I don't, and another doctor said, well, you have all
7 these other issues, but you could also have fibromyalgia.

8 Q Dr. Cash was of the opinion that you had
9 fibromyalgia, correct?

10 A I --

11 MS. MORRIS: Objection, Your Honor, misstates
12 testimony. Misstates any evidence, actually.

13 THE COURT: Well, is it a foundational objection?

14 MS. MORRIS: It's foundational. Dr. Cash is --

15 THE COURT: That's sustained.

16 MS. MORRIS: -- a spine doctor.

17 THE COURT: Lay a better foundation --

18 MR. SEMENZA: That's fine.

19 THE COURT: -- for the question.

20 MR. SEMENZA: I'll come back to it. Thank you, Your
21 Honor.

22 BY MR. SEMENZA:

23 Q So, some doctors have in fact identified that you
24 have fibromyalgia; is that correct?

25 A They said I could have it in addition to the -- the

1 -- the actual injuries.

2 Q Okay. And the fibromyalgia would not be related to
3 the fall on February 8th, 2010, correct?

4 A Well, I didn't have the pain before. I didn't have
5 pain for 20-some years. I fall, and have immediate pain there
6 at Wynn.

7 Q Okay. So, I guess my next question then is, do you
8 attribute the fibromyalgia, if you do indeed have it, to the
9 fall on February 8th, 2010?

10 A You'd have to ask a doctor that.

11 Q You don't know?

12 A Well, I'm not a doctor. I can't say that.

13 Q Okay. And about midway down the first page, do you
14 see where it says "drug intolerant"?

15 A Yes.

16 Q Okay. And are -- do you know whether you're drug
17 intolerant or not?

18 A Well, like I'm explaining right here -- I'm
19 explaining it. Drug intolerant. Extremely severe
20 constipation. I can't take the drugs because a lot will make
21 you constipated, and if you're constipated already and you
22 take the drugs, it's a major problem. So, this is what I'm
23 talking about.

24 Q Okay. And under that same portion, you say chest
25 pains?

1 A Yes.

2 Q Does your drug intolerance give you chest pains?

3 A I don't think -- I don't think that's what I'm
4 saying. I'm not saying that.

5 Q Okay. Well, that's --

6 A Or, I'm sorry --

7 Q That's -- I'm sorry, I don't mean to cut you off.

8 A No, I'm not -- I don't think that's what I'm saying.
9 I'm just saying I'm extremely constipated. I can't take
10 drugs.

11 Q And is the only reason why you are drug intolerant
12 as you've identified is because of the constipation issue?

13 A Yeah, that's a major issue.

14 Q Okay. Is that the only issue?

15 A As far as I know.

16 Q Okay. And are there pain medications that you're
17 aware of that don't cause constipation?

18 A I don't know. And also, I -- I would love to take a
19 lot of pain medications, I really would, but I don't want to
20 have more problems than I already have.

21 Q Okay, but my question is, are you aware of any pain
22 medications that don't have the side effect of constipation?

23 A I don't know that.

24 Q Okay. Have you researched that or sought treatment
25 from any doctors to discuss that issue?

1 A I haven't researched it, but doctors tell me -- I've
2 told them -- I say -- I've told them I have this problem. And
3 also, I ask them, well, is it going to heal me? And they say
4 no, and it's -- a lot of them just create more problems, so I
5 can't -- I can't create more problems.

6 Q Okay, and that would be with some side effects of
7 the medication; is that what you're talking about?

8 A Yes.

9 Q Do you not take pain medication because of the fear
10 of the side effects?

11 A Yes, because, believe me, I would love to take them.
12 I wish -- I wish they had them that would just make you feel
13 good and have no side effects.

14 Q Do you know whether, if you were taking pain
15 medication, that might reduce your pain level?

16 A I know a lot of people, and they have -- they do
17 take pain medications, and those stories that they say -- they
18 tell me, it -- I don't want to take the chance, because they
19 develop all these other problems.

20 Q You don't know whether pain medication might reduce
21 your symptoms of pain, do you?

22 A I took the ones that UMC gave me, and it didn't --
23 didn't take away the pain.

24 Q And you only take medications that are going to cure
25 you; is that what you said?

1 A If they're going to help me and not create more
2 problems, sure, I'll take them. Like, you know, antibiotics,
3 you have to take those.

4 Q On this same portion of the document that we've been
5 looking at, you also identify that you have a probable ulcer
6 and hernia. Do you see that?

7 A Yes.

8 Q Okay. And does that predate the fall on February
9 8th, 2010, or is that something that developed after the fall
10 on February 8th, 2010?

11 A Oh, no, that didn't predate it. I went to the GI
12 doctor and I told them about the pain from the fall on the
13 inside. And that's why Dr. Thompson had sent me for an
14 ultrasound, because I told him about that pain inside. So,
15 the GI doctor said, well, maybe you got a hernia, or maybe you
16 got an ulcer.

17 Q Okay. Did any doctor diagnose you formally with an
18 ulcer?

19 A No, nobody can. They have to do, you know, tests
20 for that.

21 Q What kind of tests?

22 A Well, you know, the -- you know, excuse me. You
23 know that I'm not -- I'm not asking you for anything for that,
24 so you really want to spend the time with that?

25 THE COURT: Ma'am, you don't get to ask the lawyer

1 questions. You just have to ask --

2 THE WITNESS: Oh, I'm sorry.

3 THE COURT: You have to answer his questions.

4 THE WITNESS: I'm sorry, I'm sorry.

5 MR. SEMENZA: That's okay.

6 BY MR. SEMENZA:

7 Q Do you -- have you ever been formally diagnosed with
8 an ulcer or hernia?

9 A They can't -- they can't diagnose me at all, because
10 they say that they have to do a colonoscopy and an endoscopy.

11 Q And, in fact, a number of doctors have recommended,
12 based upon your constipation issues, that you should in fact
13 have a colonoscopy; is that correct?

14 A Yes.

15 Q Okay, and you've declined to do that, correct?

16 A Because I can't.

17 Q Why can't you?

18 A Well, because I've had that constipation issue, and
19 they say that there's a high risk of them perforating the
20 intestines or whatever they perforate with it -- with a
21 colonoscopy, and whatever they perforate with the endoscopy.
22 So -- so, I haven't had it.

23 Q Okay. So -- but your GI doctors have in fact
24 recommended to you to have a colonoscopy; is that correct?

25 A Well, they did, and then they said, but you're high

1 risk for this.

2 Q Okay. So, they did in fact recommend that you get a
3 colonoscopy?

4 A And they left it up to me.

5 Q And you declined to do that?

6 A Yes, because I don't want them to perforate it.

7 Q Okay. And you have a fear that they are in fact
8 going to perforate your bowel if you do have a colonoscopy?

9 A Yes.

10 Q And the same -- is the same true with regard to the
11 endoscopy to determine if you have stomach issues, that you're
12 concerned --

13 A Yes.

14 MR. SEMENZA: Your Honor, I think this is a good
15 place to stop, if you'd like to.

16 THE COURT: All right. Counsel approach regarding
17 scheduling.

18 (Off-record bench conference)

19 THE COURT: I'm going to give you an hour-and-a-half
20 for lunch, so if you want to leave the building, it -- you
21 know, it will give you enough time if you want to go someplace
22 other than the sandwich place downstairs. So, ladies and
23 gentlemen, we're going to take an hour-and-a-half recess, so
24 until 1:30.

25 During this recess, it is your duty not to converse

1 among yourselves or with anyone else on any subject connected
2 with the trial, or to read, watch, or listen to any report of
3 or commentary on the trial by any person connected with the
4 trial, or by any medium of information, including, without
5 limitation, newspaper, television, radio, or internet, and you
6 are not to form or express an opinion on any subject connected
7 with the case until it's finally submitted to you.

8 And Ms. O'Connell, you're under the same admonition.
9 You may not discuss your testimony at lunch with your lawyer,
10 all right, because you're under examination.

11 THE WITNESS: Yes.

12 THE COURT: Thank you. We'll be in recess until
13 1:30.

14 (Outside the presence of the jury)

15 THE COURT: All right. Any matters outside the
16 presence now that the jury has departed the courtroom?

17 MR. SEMENZA: No, Your Honor.

18 MS. MORRIS: No.

19 THE COURT: Thank you. We'll be in recess until
20 1:30.

21 MR. SEMENZA: Thank you.

22 (Court recessed at 12:00 P.M. until 1:29 P.M.)

23 (Outside the presence of the jury)

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

25 (In the presence of the jury)

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

2 THE COURT: All right, thank you. Please be seated.
3 And the record will reflect we're back within the presence of
4 all eight members of the jury, as well as the two alternates.
5 Plaintiff's present with their counsel, and a representative
6 of the defendant is present with her counsel. All officers of
7 the court are present as well.

8 And we'll resume the cross-examination of Ms.
9 O'Connell. So, Ms. O'Connell, you'll need to retake the
10 witness stand, please.

11 THE COURT: Be seated, please. Thank you.

12 THE CLERK: She's still under oath.

13 BY MR. SEMENZA:

14 Q Good afternoon again, Ms. O'Connell.

15 A Good afternoon.

16 Q When we had left off, we were looking at Exhibit E1
17 and E2. Do you remember that? Is your --

18 A Yes.

19 Q I'm sorry. Is your binder still on those pages?

20 A Yes.

21 Q Okay. And I just want to finish up with you
22 relating to the discussion we were having on the ulcer and
23 hernia. Have you had any follow up care relating to the issue
24 of whether you have an ulcer or a hernia since you completed
25 this form?

1 A No.

2 Q Let me have you turn to the next page, Ms.
3 O'Connell, please.

4 A I'm sorry, just to be clear, I forgot when this was
5 -- when this was written. I went to three different ones --

6 Q Okay.

7 A -- for it, and they all said the same thing; they
8 can't -- that I have to have tests for them to say -- for them
9 to help me.

10 Q Okay. And you're uncomfortable having those tests;
11 is that fair to say?

12 A Yes.

13 Q Okay. Turning to the next page. Again, I don't
14 want to spend too much time on this, but at the top of the
15 page, you identify that those items listed below are all since
16 the slip and fall on February 8th of 2010; is that correct?

17 A I'm sorry, you're asking me if I see that part?

18 Q Yes.

19 A I see that, yes.

20 Q Okay. And so, the information that you've
21 identified below that, that information where you've
22 identified in the affirmative that you've experienced these
23 symptoms, those all relate to -- or came after the fall on
24 February 8th, 2010?

25 A Yes.

1 Q And the fourth one down identifies blurred vision;
2 is that correct?

3 A Yes.

4 Q And you began experiencing blurred vision after the
5 fall on February 8th, 2010?

6 A After I hit my head, yes.

7 Q And further on down from there, there's a item that
8 identifies hay fever; is that correct?

9 A Yes.

10 Q And you identify that you started experiencing hay
11 fever after the fall on February 8th, 2010?

12 A Yes. What I meant was I started having problems in
13 my -- you know, with my breathing.

14 Q Okay. And do you relate those issues to the fall on
15 February 8th, 2010?

16 A Well, as far as that, I just know that I didn't have
17 that problem, and then, as soon as I fell and hit my head,
18 then I had problems in my head and my breathing.

19 Q And further on down, you identify that you have
20 difficulty swallowing?

21 A Excuse me, yes.

22 Q Okay. And does that relate to the fall in February
23 2010?

24 A Well, I didn't have the problem before, and after --
25 after the fall, because of the nose, I was getting that drip,

1 and that's making me -- it was bothering my throat.

2 Q So, you don't know one way or the other whether it's
3 related to the fall or not?

4 A I just know that I didn't have a problem with my
5 head and -- or nose, and then, after I fell, then I had these
6 issues up here.

7 Q Further on down, you identify that you had chronic
8 or frequent cough, and we had talked a little bit about that
9 before, right?

10 A Yes.

11 Q Okay. And that's something you didn't have before
12 the fall, but you identified you had it after the fall?

13 A After the fall, I was coughing a lot.

14 Q Further on down from there, it identifies that you
15 have recurrent stomach pain. Do you see that?

16 A Yes. Oh, I'm sorry. Yes, I do.

17 Q Okay. And again, do you relate that to the fall
18 that took place on February 8th, 2010?

19 A Well, yes. I fell, and my buttocks hit that raised
20 divider, so -- yeah, so I had pain down in my stomach and
21 buttocks area.

22 Q Okay, but you hit your -- you hit your buttocks, not
23 your stomach, right?

24 A Well, that's pretty much close to it.

25 Q Okay. You also identified that, after the fall, you

1 had nausea or vomiting; is that correct?

2 A Yes.

3 Q And did -- were you nauseous at times --

4 A Yes.

5 Q -- after the fall?

6 A Yes.

7 Q And were you throwing up?

8 A Just nauseous.

9 Q Okay. And again, do you relate that to the fall on
10 February 8th, 2010?

11 A Well, that, yes. After that happened, I didn't feel
12 good.

13 Q You also identified here, waking during the night to
14 urinate. Is that --

15 A Yes.

16 Q Is that a problem you did not have before the fall?

17 A Well, I mean, normally -- you know, I'm a normal
18 person, so people do wake up and do that, but I was having
19 more problems than a normal -- I normally would.

20 Q And so if I'm correct, what you're saying is there
21 was a change in that?

22 A Yes, there was a change.

23 Q Okay, and do you relate that change to the fall on
24 February 8th, 2010?

25 A Well, what I know is -- what I'm saying here is,

1 before I fell, I was healthy and I was a certain way, and
2 after the fall, then I had all these problems. I'm not saying
3 I have all of those still now; just at that time.

4 MR. SEMENZA: Your Honor, I'd move for the admission
5 of Defendant's Proposed Exhibit I, and this time, it would be
6 the complete document.

7 THE COURT: Is that the pain center?

8 MR. SEMENZA: Yes, Your Honor.

9 THE COURT: Okay, because it's out of order in my
10 book. That's why I wanted to ask. So, it looks like 1 -- the
11 Bates stamps are 1 through 4?

12 MR. SEMENZA: Yes, Your Honor.

13 THE COURT: All right. Any objection?

14 MS. MORRIS: None, Your Honor.

15 THE COURT: That will be admitted then as
16 Defendant's Exhibit I.

17 (Defense Exhibit I is admitted)

18 BY MR. SEMENZA:

19 Q Can I have you turn to tab I, Ms. O'Connell?

20 A Okay. Excuse me.

21 Q And just go to the first page, 11. Again, is that
22 your -- well, I don't know if it's your signature or your
23 name. Which is it at the top of the page?

24 A That's my name.

25 Q Okay. And it's dated what?

1 A October -- 10/15/10.

2 Q Okay. And did you treat at the Southern Nevada Pain
3 Center for a period of time?

4 A Yes.

5 Q And directing your attention to item number 2, you
6 identified your pain on that particular day as ten of ten; is
7 that correct?

8 A Well, I put -- I circled ten, but I didn't -- it
9 wasn't -- it's not -- it wasn't 100 percent of the time, but
10 that was the most pain I'd get.

11 Q You do identify that you --

12 A For me.

13 Q I'm sorry, I didn't mean to cut you off.

14 A I'm sorry.

15 Q You do identify however that the daily average was
16 ten; is that correct?

17 A Yes.

18 Q Is that true? Is that a true statement that your
19 daily average of pain during this period of time was ten of
20 ten?

21 A Well, what I'm saying here is that I would get --
22 the most pain that I had ever had in a day, but I'm not
23 necessarily saying it's 100 percent of the time. If I let it
24 go, if I don't do what I need to do to make the pain subside,
25 the pain just keeps getting worse. And it will get to that

1 extreme now, but now I know what causes it, and I know how to
2 -- what to do to keep it from going there. So, I'm just
3 saying here that it reached that, but this is when I didn't
4 even know how to -- how to deal with it.

5 Q Okay. And so, what I just understood you to say is
6 that you've been able to deal with your pain over time; is
7 that fair to say?

8 A I've learned the things that I need to do to keep it
9 from getting out of control.

10 Q And you learned to control it; is that fair to say?

11 A Well, as much as I can. I mean, I'm in pain every
12 day, but I now know that there are certain moves that I can't
13 -- if I move wrong, or if I'm in the wrong position, that will
14 cause a lot of pain, and if I keep doing it, it just gets
15 worse. So, now I know a lot of things that I'm not supposed
16 to do.

17 Q Okay. And so you avoid those kinds of turns, or
18 bends, or those sorts of things?

19 A Yes, I avoid them.

20 Q And that has reduced your pain level over time; is
21 that fair to say?

22 A That will reduce it, but like sometimes I -- it's
23 out of my control, and I can't do what I need to do to -- like
24 I'd have to lie down, and sometimes you just can't do that.

25 Q And under item number 3, you identified that your

1 pain -- did -- you circled everything in this particular
2 section, didn't you?

3 A Yes.

4 Q Okay. You identified aching, stabbing, tender,
5 nagging, throbbing, gnawing, burning, numb, shooting, sharp,
6 exhausting, and unbearable, correct?

7 A Yes. I had had pain for quite a while then, and I
8 was worn down, and I just hurt.

9 Q Turning to page 2 of the document, do you see what
10 this document is dated?

11 A 9/3/10.

12 Q And so that's -- this predates the first page that
13 we saw, correct?

14 A Yes.

15 Q Okay. And again, you identify on here under section
16 number 2 that you have ten of ten pain, correct?

17 A Yes, same thing. Same explanation.

18 Q And that's your daily average that you identify
19 there is ten?

20 A Yes. And you'll note that they're in the same areas
21 -- when I fell that day, I had immediate pain in certain
22 areas, which, you know, I still get, and so those are the
23 areas that I was -- I was having that in.

24 Q And again, under number 3, you've circled all of
25 those entries, correct?

1 A Yes.

2 Q I want to direct your attention to number 10. And
3 that question states, what treatment -- "What treatments seem
4 to help you the most in relieving your pain?" Did I read that
5 correctly?

6 A Yes.

7 Q Could you read your handwritten response to that
8 question, please, out loud?

9 A "I had more pain after last visit and tried to
10 continue physical therapy. I fell on 7/14/10. My right leg
11 hurts so much, it gave out on me, and my right knee hit
12 furniture. Left knee, floor. Knees and hands injured more.
13 Left knee had not been injured before."

14 Q Okay. So, prior to September -- well, the date you
15 identify here is July 14th of 2010; is that correct?

16 A Yes.

17 Q Okay. You had a fall on that day, didn't you?

18 A Well, my leg gave out on me, which is why I use a
19 walker. One of the reasons is because my leg and my knees
20 give out on me. So, it -- it wasn't a complete fall, but my
21 leg gave out on me, and so --

22 Q Okay. You do identify in your own words that you
23 fell, correct?

24 A Yes, but what I'm saying is -- I explained it here
25 and also in writing. I wrote, "My leg gave out on me," and

1 that's -- that's what it does still. I walk around my house,
2 my leg and my knees give out on me, and I don't have complete
3 falls. So, it's the same thing.

4 Q Okay. And you identify here -- it says, "My right
5 leg hurts so much." Is that correct?

6 A Yes.

7 Q "It gave out on me," right?

8 A Yes, which is -- that's what it does. That's -- it
9 hurts when I walk, so I start limping, and then I start
10 hurting more, and then my leg and my knees give out on me.

11 Q And you say in here your right knee hit furniture;
12 is that correct?

13 A Yes.

14 Q Okay. And you said your left knee had not been
15 injured before; is that correct?

16 A Yes.

17 Q So, as of July 14th of 2010, your left knee had not
18 been injured?

19 A It had not been injured.

20 Q Okay.

21 A I had had the pain on the left side because I'd been
22 limping.

23 Q So I understand, what you're saying is, because you
24 were experiencing pain in your right leg, you began limping,
25 which affected your left leg?

1 A Yes.

2 Q And your left knee?

3 A Yes.

4 Q But you had never injured your left knee before July
5 10 -- I'm sorry, July 14th of 2010?

6 A Right.

7 Q And you thought that your fall on July 14th of 2010
8 was significant enough to set forth in this particular
9 document that was used for your medical care and treatment; is
10 that fair to say?

11 A I'm really sorry.

12 Q Would you like me to repeat it?

13 A Yes, please.

14 Q Okay. You thought that identifying that you had a
15 fall on July 14th of 2010 was important in completing this
16 document, didn't you?

17 A Yes, because I was telling him, I'm in a lot of pain
18 and I can't -- the point was I'd gone to physical therapy, and
19 that's what had happened. And I've had so much pain, and I
20 was telling them, I can't be doing these things because
21 they're -- they're causing more pain. And so, that's what I'm
22 saying, that now I know that I -- if I move wrong, and if I'm
23 in wrong positions, that will cause more pain.

24 Q Did you go seek any medical treatment after your
25 fall on July 14th of 2010 specifically relating to the fall?

1 A Oh, yes.

2 Q That was probably a poor question on my part. Just
3 so I'm clear, as a result of the fall on July 14th of 2010,
4 did you seek medical treatment?

5 A Oh, oh. No, no. I didn't -- it's still the same --
6 I still had all of that before that. I'm talking about as of
7 the fall February 8th, 2010.

8 Q And can you identify the date you completed this
9 document, please?

10 A It says --

11 Q Go ahead. I'm sorry.

12 A It says 9/3/10.

13 Q I'm sorry. We're moving on, and that's my fault.
14 Can I have you turn to I3, please?

15 A It says 7/9/10.

16 Q Thank you. Do you dispute that you completed this
17 document on that date?

18 A That's my handwriting.

19 Q And it identifies here that you were being referred
20 by Dr. Cash; is that fair?

21 A Yes.

22 Q It identifies that you are experiencing a pain level
23 of ten of ten, correct?

24 A I circled ten.

25 Q And at the midpoint, it asks you, "Have you retained

1 an attorney," and what did you respond?

2 A Yes.

3 Q So, as of July 9th of 2010, you had retained an
4 attorney relating to your fall on February 8th, 2010?

5 A Yes.

6 Q Let me have you turn to I4 just briefly. And at the
7 lower third of the document, it says, "Please check any of the
8 following that you have or had," and you identify a hiatal
9 hernia; is that correct?

10 A Yes.

11 Q Okay. And you attribute that hiatal hernia to your
12 fall on February 8th, 2010?

13 A Well, that's the same thing I was talking about.
14 The GI doctor said it could be an ulcer or hernia, but we
15 can't tell you what it is unless we do the test. That's the
16 same thing I'm talking about.

17 Q And what is -- do you know what a hiatal hernia is?

18 A No, and they said they couldn't even tell me if I
19 had that, so.

20 Q Okay, but as you sit here today, you don't know what
21 a hiatal hernia is?

22 A Well, I -- well -- well, I can't really tell you.
23 I'd have to look it up.

24 Q Did you know what it was when you checked the box
25 and identified "fall"?

1 A Oh, I -- what I knew was that the doctors had told
2 me that it could be a hernia, could be an ulcer, but we can't
3 tell you for sure without tests.

4 (Pause in the proceedings)

5 BY MR. SEMENZA:

6 Q Ms. O'Connell, can I have you turn to tab G, please?

7 A Okay.

8 Q Okay. And without identifying the document at this
9 point in time, does that bear your signature on the bottom of
10 the first page, G1?

11 A Yes.

12 Q Okay. Is that your handwriting on the document?

13 A Yes.

14 Q Okay. Let me have you turn to G2. Do you know if
15 that is your handwriting on the document?

16 A Well, I wouldn't know that. I don't see any
17 handwriting. I see X's, and that's it.

18 Q Okay. Do you have any reason to dispute that you
19 were the one that created the X's on this document?

20 A Oh, not if it's part of it.

21 Q Okay. Do you recall whether it is or isn't part of
22 it?

23 A Well, I'm sorry, I wouldn't know that.

24 (Pause in the proceedings)

25 MR. SEMENZA: Without identifying this document,

1 we're putting it on the Elmo.

2 (Pause in the proceedings)

3 MR. SEMENZA: Okay. Your Honor, I'd move for the
4 admission of Defense Proposed Exhibit G, and specifically,
5 just page 1.

6 THE COURT: All right. Any objection?

7 MS. MORRIS: None, Your Honor.

8 THE COURT: All right. So, that will be admitted as
9 Defense G-1.

10 (Defense Exhibit G-1 is admitted)

11 BY MR. SEMENZA:

12 Q Ms. O'Connell, here's another one that we can talk
13 about for a moment. Again, is this your handwriting on the
14 document?

15 A Yes.

16 Q And what's it dated?

17 A 2/21/12.

18 Q And again, on this document, you've checked some
19 locations where you're having pain; is that correct?

20 A Yes.

21 Q And you've identified on this document that you are
22 having unbearable pain. That's that dark mark here; is that
23 correct?

24 A Yes.

25 Q Also on this document, it identifies your leg gave

1 out and fell. You see that there?

2 A Yes.

3 Q And that relates to the July 14th, 2000 fall that
4 we've talked about --

5 A Right, right.

6 Q -- correct?

7 A I'm trying to let them know that there's certain
8 movements they can't do.

9 Q Okay. But again, this is -- this is in reference to
10 the fall you had on --

11 A Yes.

12 Q -- July 14th, 2010?

13 A Yes. And to be clear, it wasn't a fall. Big
14 difference between that and the fall in February. It was just
15 my leg gave out on me, and I went forward.

16 Q You did identify it as a -- well, not a fall, but
17 leg gave out and fell, correct?

18 A Yes, but I didn't -- what I'm saying is I didn't
19 fall to the ground.

20 Q You hit your leg, your left -- was it your left knee
21 that you hit on furniture, or your right knee?

22 A Well, whatever I said -- what I just said. Did I
23 say right? Did I write "right" on the last one? I think
24 that's what I wrote.

25 Q Well, I'm asking you, do you recall which knee it

1 was that you had that -- injured your knee on July 14th, 2010?

2 A I know I just read it. So, if it said right knee,
3 then it was that -- it was that knee.

4 Q Okay. And you never informed Dr. Tingey that you
5 had injured your knee -- your right knee on -- during a fall
6 on July 14th of 2010, did you?

7 A I -- I let him know that I injured it in February.

8 Q Right.

9 A Because that's when I injured it.

10 Q You had identified to Dr. Tingey that you had
11 injured your right knee in February --

12 A Right.

13 Q -- of 2010, right?

14 A Right.

15 Q My question is, did you ever inform Dr. Tingey that
16 you also injured your right knee on July 14th of 2010?

17 A If I recall correctly, what I did let him know, I
18 believe, because I would let everybody know after that, I
19 tried, that my leg would give out on me, and my knee -- and my
20 leg and my knees gave out on me, because ever since I fell in
21 February, that's what's been happening; my leg and my knees
22 give out on me.

23 Q Okay.

24 A And that's why I got the walker, because that's what
25 happens.

1 Q I understand. And my question specifically is, did
2 you inform Dr. Tingey that you fell on July 14th, 2010?

3 A I'm not sure, but like I said, it wasn't -- it
4 wasn't a complete fall. I -- what happened is my leg and my
5 knee gave out on me, and I believe I told him that that's what
6 happens. And that's not the only time it's happened. The leg
7 and the knees give out on me.

8 Q So, I want to understand, you -- are you saying that
9 you did in fact identify to Dr. Tingey that you had a fall,
10 injuring your right knee, on July 14th of 2010?

11 A I'm pretty -- I'm almost positive that I -- I know I
12 told a lot of doctors that -- or several doctors that my leg
13 and my knees give out on me. So, I'm pretty sure I told him
14 that, too.

15 Q But did you specifically reference to Dr. Tingey
16 that you had a fall and injured your right knee on that
17 particular day, July --

18 A On that particular day, probably not. Or I don't
19 know if he had my -- that was written for my pain doctor, I
20 think, so I believe he had those records. I believe he did.

21 Q You believe Dr. Tingey had the records -- your pain
22 records?

23 A From the pain doctor? Well, I think if Dr. Dunn had
24 them -- I think he did. I'm not sure. But if Dr. Dunn had
25 them, then Dr. Tingey had them, I think.

1 Q Did you ever identify to Dr. Tingey that you had
2 injured your left knee during your fall on July 14th, 2010?

3 A Not -- probably not specifically that day, but I
4 believe that I told him that my leg and my knees give out on
5 me.

6 Q You identified that generically to him, that your
7 knees and legs give out on you?

8 A You know, I'm really sorry. What do you mean by
9 that?

10 Q My question is -- I'm trying to be as clear as I
11 can, but did you inform Dr. Tingey at any point in time that
12 you had fallen on July 14th of 2010, injuring your left knee
13 for the first time?

14 A I don't believe that I specifically said on July,
15 but if he had the records from my pain doctor, that's where
16 that is.

17 Q Okay. Did you ever identify to Dr. Tingey that you
18 had fallen on any other day other than February 8th of 2010?

19 A Well, like I said, I don't -- I didn't consider that
20 a fall. It was just my -- the same thing. My leg gives out
21 on me -- my leg and my knees give out on me. So, I don't -- I
22 don't consider that a true fall. I've been told it isn't,
23 because it's not like I fell on the ground.

24 Q What if anything did you tell Dr. Dunn about any
25 preexisting conditions that you had before the fall on

1 February 8th, 2010?

2 A Oh, I gave him all my records. He has all those
3 records. It's -- you see. You've identified them, and many
4 different ones, so he had my records.

5 Q You had provided Dr. Dunn with your complete
6 history?

7 A Oh, sure. He has my records.

8 Q And that would include fibromyalgia?

9 A Well, you can see I included every record.

10 Q But did you provide information relating to
11 fibromyalgia to Dr. Dunn as being a preexisting condition?

12 A I'm almost positive that he got my records, and you
13 can see there, it's all throughout my records.

14 Q My specific question relates to fibromyalgia though.

15 A But I have that in all of them, don't I?

16 Q Okay.

17 A And excuse me. To be clear, I had no pain at all
18 for 20-some years.

19 Q I don't think there's a question pending, with all
20 due respect.

21 A I'm sorry, it was -- it was to complete.

22 Q Okay.

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

24 THE COURT: You may.

25 (Off-record bench conference)

1 MR. SEMENZA: Sorry for the delay.

2 BY MR. SEMENZA:

3 Q Ms. O'Connell, did you at some point see Dr. Timothy
4 Trainor?

5 A Yes.

6 Q Who is Timothy Trainor?

7 A Dr. Subramanyam, my primary care doctor, referred me
8 to Dr. Trainor for my knee, and he saw me once.

9 Q You saw Dr. Trainor just one time?

10 A Yes, and then he referred me to physical therapy for
11 my knee.

12 Q Okay. And his only treatment of you was relating to
13 your right knee?

14 A And my hip.

15 Q And your hip?

16 A Well, yeah, only because they typically only see you
17 for one thing at a time, but -- so -- so he was going to check
18 my left knee, but I didn't go further with the right knee. I
19 didn't get the MRI, so.

20 Q Okay. And do you recall when you saw Dr. Trainor?

21 A Yes, it was in 2012.

22 Q Does February of 2012 sound about right?

23 A Yes.

24 Q And do you know if Dr. Trainor made any diagnoses of
25 your condition?

1 A Well, he told me, to be sure, he'd have to get an
2 MRI, but he -- he wrote some things down. I wasn't ready to
3 get an MRI because I'd had problems with the MRI before, so I
4 didn't go for one.

5 Q Do you recall whether he made -- diagnosed you with
6 fibromyalgia?

7 A Well, he saw me one time, so it's not like he
8 checked me for fibromyalgia. So, if he put down fibromyalgia,
9 it was from the records that I had given him.

10 Q Okay. Do you know whether he did in fact diagnose
11 you with fibromyalgia though?

12 A Well, I don't believe he -- if he did, it wasn't
13 that he examined me for it. I saw him one time.

14 Q Do you know if Dr. Trainor ever diagnosed you with
15 complex regional pain syndrome?

16 A Okay, he -- I believe he wrote down that maybe I had
17 one or the other, but not definitely. He said maybe, right?
18 Because I saw him once.

19 Q Okay. So, he diagnosed you with one or the other,
20 either fibromyalgia or complex regional pain syndrome?

21 A I'm not positive, but I remember seeing that.

22 Q Did he identify whether there were any organic
23 problems with your hip or knee?

24 A Well, like I say, I didn't have the MRIs.

25 Q Did he refer you to physical therapy?

1 A Yes.

2 Q Where did he refer you to go?

3 A Well, I went -- I went to pool therapy for my -- for
4 my knee and my hip 20 times.

5 Q Did you go to a location called Sports at some point
6 in time?

7 A Yes. Can I finish my answer though, please?

8 Q Yes.

9 A You asked me -- okay. First, he referred me to Dr.
10 Suarez, and I went twice, but then I had a pain in my chest
11 with some of those movements, so then Dr. Suarez said, well,
12 you have to go to the cardiologist before I touch you again.
13 So, then -- then Dr. Trainor referred me to -- to Sports.

14 Q Okay. And did Sports -- what was Sports?

15 A Well, physical therapy, and -- but as their name
16 says, Sports, I think they focus on the younger people.

17 Q Okay. And how many times did you go to Sports?

18 A I only went once because he said that I needed to go
19 to pool therapy first, try that first to -- for the overall
20 strengthening.

21 Q Is it true that Sports told you that they couldn't
22 help you for the conditions and symptoms that you were
23 experiencing?

24 A Yes. He said go to pool therapy, and he didn't have
25 it there.

1 Q And Sports declined to treat you; is that correct?

2 A Well, because he said that I needed pool therapy,
3 and he didn't have that there.

4 Q But he did -- or that entity -- that physical
5 therapist did decline to treat you; is that correct?

6 A He -- the correct thing is he referred me to pool
7 therapy.

8 Q So, were you going to go back to Sports after pool
9 therapy?

10 A I didn't plan to, because I went at least 20 times
11 to pool therapy after that.

12 Q Now, at some point after the fall on February 8th of
13 2010, you believed that you had heart problems; is that
14 correct?

15 A Well, what happened is, I was -- because -- right
16 after the fall there, immediately I had that pain in my
17 shoulder, chest, rib area. And because I had that pain, I was
18 sent by my primary doctor once I found Dr. Subramanyam, and he
19 sent me to the GI doctor, and the GI doctor said, well, you
20 have to go to the cardiologist and check out that pain. So,
21 that's how I ended up with the cardiologist, and he took
22 tests.

23 Q Okay. And did the cardiologist conclude that you
24 had a clear echocardiogram?

25 A No.

1 Q He did not?

2 A Echocardiogram? I -- they took a lot of heart
3 tests, and most of them were clear, but just on the
4 echocardiogram, there's -- there's something in there. And to
5 complete that, so, because of that, then they followed up with
6 another echocardiogram, and there was something in there, so
7 then I have to follow up with another echocardiogram.

8 Q Do you recall seeing Dr. Anil Fotedar?

9 A Yes.

10 Q And who is he?

11 A He's a cardiologist.

12 Q Okay. And he treated you; is that correct?

13 A He saw me once.

14 Q Okay. And did he provide a report to your treating
15 physician, Dr. Subramanyam?

16 A Yes.

17 Q Around what time period was that?

18 A I believe, 2012.

19 Q And Dr. Fotedar concluded that you had a normal
20 echocardiogram, didn't he?

21 A Well, they took the echocardiograms, and it's in the
22 reports of the echocardiograms.

23 Q Would seeing the report refresh your recollection as
24 to whether Dr. Fotedar concluded that you had a normal
25 echocardiogram?

1 A You want to show me the reports of the
2 echocardiogram; is that what you're saying?

3 Q Would that refresh your recollection as to whether
4 he concluded you had a normal echocardiogram?

5 A I'm not a doctor, so I -- if you want to show me the
6 echocardiograms, I can show you what I was told.

7 MR. SEMENZA: May I approach, Your Honor?

8 THE COURT: Yes.

9 MS. MORRIS: Can I just ask what he's showing?
10 Sorry.

11 MR. SEMENZA: Sure. I'm sorry.

12 BY MR. SEMENZA:

13 Q Looking at the highlighted portion of the document,
14 do you see that?

15 A Oh, excuse me, these aren't echocardiograms. This
16 isn't an echocardiogram.

17 Q You're right, it's not.

18 A What I said is, the echocardiograms --

19 THE COURT: Ma'am, ma'am, what he wants you to do is
20 just look at the document, read that part, and then he's going
21 to ask you a question. So, just read it to yourself, and then
22 he'll ask you a question, okay?

23 THE WITNESS: Yes, Your Honor. Okay, I read it.

24 MR. SEMENZA: Okay.

25 BY MR. SEMENZA:

1 Q Does that refresh your recollection as to whether
2 Dr. Fotedar concluded that you had a normal echocardiogram?

3 A Well, he says, "In her mitral and tricuspid
4 regurgitation described on the echocardiogram were qualified
5 as physiological" -- those are not normal.

6 Q What did he say before that?

7 A Well --

8 MS. MORRIS: Your Honor, if I could --

9 MR. SEMENZA: She's already read a portion of the
10 document.

11 MS. MORRIS: Okay, as long as -- but I just want to
12 state an objection for hearsay.

13 THE COURT: All right. Well, your client is reading
14 the document aloud, and so now I'm going to allow it because
15 she opened the door. So, go ahead.

16 THE WITNESS: That's what --

17 BY MR. SEMENZA:

18 Q Let me stop you there for a moment, Ms. O'Connell.
19 Can you read the highlighted portion of the document?

20 A Echocardiogram.

21 Q Beginning here.

22 A Okay. Excuse me, you would like me to read the
23 whole --

24 Q The whole --

25 A The whole --

1 Q -- highlighted paragraph --

2 A Okay.

3 Q -- continuing on to there.

4 A Okay.

5 Q Actually, you can go ahead and read down to 2.

6 MS. MORRIS: And a standing --

7 THE WITNESS: I'm sorry, you want me to read it out
8 loud?

9 MS. MORRIS: -- objection for the record.

10 MR. SEMENZA: Yes, please.

11 MS. MORRIS: Thank you.

12 THE COURT: Overruled. Go ahead.

13 THE WITNESS: "I had a long discussion with the
14 patient, and I basically tried to assure her that she had a
15 normal echocardiogram and her mitral and tricuspid
16 regurgitation described on that echocardiogram were qualified
17 as physiological. The patient was not very happy with this
18 and thought that I was not paying a lot of attention to her
19 echocardiographic symptoms and signs.

20 "I spent more than 30 minutes with her trying to
21 explain to her that she does not have significant valvular
22 heart disease at this point in time based on echocardiogram
23 from April and on clinical examination, and maybe her symptoms
24 cannot be explained from that. I did however recommend that
25 she should have a Cardiolute stress test, given that she has

1 recurrent history of chest pain.

2 At this time, she is not ready to do a Cardiolute
3 stress test. She wants to get a little better with physical
4 therapy, and then do a plain treadmill stress test. We will
5 be glad to schedule it for her when she is ready. Meanwhile,
6 I have asked her to repeat the echocardiogram to follow up on
7 the very minimal regurgitant lesions she had."

8 BY MR. SEMENZA:

9 Q And did you in fact follow up on that stress test?

10 A Not yet.

11 Q Okay. And this was back in 2012 that Dr. Fotedar
12 created this report; is that correct?

13 A Yes.

14 Q And that's more than three years -- more than three
15 years has gone by now; is that correct?

16 A Yes.

17 Q Okay. At some point in time after the February 8th,
18 2010 fall, did you contend that you had a mini stroke?

19 A Well, two days after I fell in February 2010 -- two
20 days after I fell, I had symptoms on my left side of my face
21 and my left arm -- down my left arm. That's what I contend,
22 that I had symptoms there.

23 Q Okay. And did those symptoms resolve?

24 A They resolved.

25 Q Okay. And did you at some point assert after the

1 fall in February 2010 that you in fact had a mini stroke?

2 A Well, since I'm not a doctor, I didn't -- I didn't
3 mean that I was making that diagnosis. But what I'm saying is
4 I had symptoms on my left side of my face and down my left
5 arm. That's -- that's what I'm saying. And I couldn't drive,
6 and so I just went bed and I -- went to bed, and I took the
7 drugs that they had given me.

8 Q Who did you see relating to this mini stroke that
9 you asserted you had?

10 A Okay. Like I just said, when they happened, I
11 wasn't able to drive, so I didn't -- well, I should have
12 called the ambulance, really, but I just went to bed. I had
13 the drugs. I'd already been to the doctor, I'd already been
14 to UMC, because this happened a couple days after I fell and
15 hit my head. So, I -- I just went to bed. I took the drugs
16 they gave me, and I went to bed.

17 Q And did you see Dr. Scott Manthei related to that
18 drooping issue that you thought you were having?

19 A Yes.

20 Q Okay.

21 A Well, in addition to the cough; that drip I get now.

22 Q And when did you see Dr. Manthei relating to the
23 drooping issue that you had on your face?

24 A Well, around 2011, I'd also had like a bronchitis
25 thing. And so, when I went to see him, then I also told him

1 about that. So, I don't know if it was at the follow up in
2 2012 that I mentioned the -- the left side of my face.

3 Q Okay. And did Dr. Manthei see any of this drooping
4 that you claimed you were having?

5 A Well, that's -- that's not really my -- what I was
6 concerned with. I mean, I didn't really care about how it
7 looked. That wasn't what I was talking about. Then, so what
8 he said is, go to a neural ophthalmologist, which I did.

9 Q And he didn't appreciate -- or he didn't see any
10 drooping on the left side of your face, did he? That was his
11 conclusion?

12 A Well, he didn't see any drooping, but he said, go to
13 a neural ophthalmologist.

14 Q And when you saw him, were you adamant that your
15 eyebrows weren't matching?

16 A It wasn't that I was adamant about that. I was
17 trying to explain to him what I was talking about, and that's
18 why he said, oh, well, you need to go to a neural
19 ophthalmologist, because that's not -- that's not his field.

20 Q At some point in time, did you allege that you were
21 having -- your retinas were detaching?

22 A I had to go to a retina specialist, and I had to go
23 to an ophthalmologist, and I had to go to a neural
24 ophthalmologist.

25 Q And the reason being is because you believed that

1 your retinas were detaching?

2 A Because they -- the doctors wrote down what I have.

3 Q And why do you believe that you were having these
4 eye issues?

5 A I'm really sorry, but I'm not -- I'm not a doctor.
6 I went to the three specialists, and they wrote it down in the
7 reports.

8 Q Okay. Do you have an understanding of what the --
9 your eye problems were?

10 A Well, what I know is I'm still dealing with it.
11 They said that -- they did say, well, they're detaching, and
12 you follow them, and if this happens, then you come right back
13 in.

14 Q So, from what I understand of your testimony, your
15 doctors did say that your retinas were detaching; is that
16 fair?

17 A They have it in the reports, but my understanding is
18 they said they're detaching, and you look for these symptoms,
19 and if you get these symptoms, you just come right back in
20 right away.

21 Q And do you attribute these eye problems -- your
22 retinas detaching to anything in particular?

23 A Because I'm not a doctor, I can't tell you that.

24 Q Did you previously identify during your deposition
25 that you thought your retinas were detaching because you had

1 undergone MRIs?

2 A Well, what I said was that I had put off having the
3 MRIs because I had problems with my MRIs in 2010. But then
4 last year when I decided I have to have my surgeries now, and
5 I went back for the follow up MRIs, right after those MRIs, I
6 had the problems with my eyes. So, what I said is that I had
7 a problem with MRIs before, and then now I get more MRIs and I
8 have more problems. So, it was -- I was just saying, the
9 timing -- I got the MRI, and then I had the problem.

10 Q Do --

11 A And then I got -- and then it happened again.

12 Q Do you believe that the MRIs that you underwent
13 caused your retinas to detach?

14 A I am not a doctor. I have no idea. I just -- all I
15 can tell you is when I had the MRI before, I had a problem.
16 And then I went back for more MRIs last year, and immediately,
17 I had a problem. That's all I can tell you.

18 Q And did you have to get cleared on your heart issues
19 before you addressed your eye issues?

20 A Dr. Subramanyam, my doctor, told me that before I go
21 back for more eye tests, that I need to go to the cardiologist
22 and get cleared.

23 Q And have you been cleared by your cardiologist?

24 A I haven't gone back because I still have the issues
25 with my eyes. I still have those same symptoms, so the

1 doctors told me, while you have those symptoms, that they're
2 -- you're at risk for more problems.

3 Q Okay. So, you can't go back to your cardiologist
4 until your eye issue is corrected or resolved, and you can't
5 go back to your eye doctor until your cardiologist -- or
6 cardiac issues are resolved --

7 A My next --

8 Q -- is that fair to say?

9 A My next step is I have to go to the cardiologist and
10 get a follow up echocardiogram. That's my next step.

11 Q Okay. And Dr. Fotedar told you you should do that
12 back in 2012; is that correct?

13 A Yes. Well, but -- I'm sorry.

14 Q No, go ahead.

15 A I'm sorry, I lost it.

16 Q It's just a timing issue for you as far as when you
17 started having these eye problems, and when you went and
18 undertook the MRIs; is that correct? They're close in time,
19 and is that why you think that there might be a relationship
20 there?

21 A Yeah, that's all I can tell you. I had a problem
22 before right -- well, during the MRI, and then I put it off,
23 and then I -- when I did get some more, then I had the problem
24 right after that. So, I'm just saying that this is what
25 happened. I can't tell you why it happened; it's just what

1 happened.

2 Q Just a moment. Do you recall seeing a Dr. Carr?

3 A Yes.

4 Q And was that for your eyes?

5 A Yes.

6 Q And did Dr. Carr conclude that your eye exam was
7 normal?

8 A I'm sorry, I -- I forgot what he concluded. I got
9 -- I'm sorry, I forgot that one.

10 Q You don't remember what he concluded?

11 A I'm sorry, I don't.

12 Q Do you remember testifying during your deposition
13 that Dr. Carr concluded that your eye exam was essentially
14 normal?

15 A If that -- if that's what I said then, then that's
16 probably it.

17 Q Do you have any reason to doubt that?

18 THE COURT: Was there an answer? Did -- do you have
19 any reason to doubt that?

20 THE WITNESS: No. I don't think so, no.

21 BY MR. SEMENZA:

22 Q Would you consider yourself fearful of medical
23 procedures?

24 A Well, I -- I -- if they're necessary and they'll
25 help me, I certainly want them.

1 Q Other than diagnostic testing, have you had any
2 medical procedures, such as surgeries or anything else, from
3 February 8th of 2010 forward?

4 A Not yet. Excuse me, other than -- well, you know, I
5 went to physical therapy, right, and I got the tens, and I
6 tried --

7 Q You haven't had any surgeries since February --

8 A Surgeries specifically?

9 Q Yes.

10 A Oh, not yet.

11 Q And this is a strange question, but I noted in some
12 documents, do you have a scar -- a long scar on your back?

13 A Not that I know of.

14 Q Okay. Have you planned out your surgeries as of
15 yet?

16 A You mean do I have an appointment yet?

17 Q Yes.

18 A Not yet.

19 Q Okay. You don't have an appointment to do your
20 neck?

21 A Not yet. I first have to go to get cleared for my
22 heart.

23 Q Okay.

24 A That's the first step. And I haven't been yet. I
25 have to go -- once my eyes stop doing what they're doing, then

1 I'll go for that, but another reason is I'm -- I'm afraid to
2 go, too.

3 Q Okay. So, the order of how this will all go is your
4 eyes need to improve, then you can go to the cardiologist, and
5 then you can talk about surgery for your neck?

6 A Yes.

7 Q When was the last time you saw Dr. Dunn?

8 A Last year.

9 Q More than a year ago, or about a year ago?

10 A Well, I believe it -- it's about a year now.

11 Q When was the last time you saw Dr. Tingey?

12 A This year. I believe it was May, I think.

13 Q How many times have you seen Dr. Tingey in total?

14 A Well, I saw Dr. Tingey once.

15 Q From February 8th, 2010 to the present, do you have
16 an estimation of how many doctors -- how many different
17 doctors you've seen relating to your various conditions?

18 A I haven't counted.

19 Q Would it be over 20?

20 A I haven't counted. Do you want me to -- well --

21 Q Can you estimate for me?

22 A I haven't counted them, but I know you have all the
23 records.

24 Q Can you estimate for me?

25 A I -- I have no idea. I can tell you what I went

1 for. I went for my neck, my back, my arms and hands, my hip,
2 and my knees, and my foot, because those were all the injuries
3 that I had right there at the Wynn.

4 Q You're not currently doing any physical therapy?

5 A No, but I -- throughout the day, I do all my
6 stretching and the things that I need to do.

7 MR. SEMENZA: Just a moment, Your Honor.

8 BY MR. SEMENZA:

9 Q Okay, let's turn to your fall. When you were
10 walking through the atrium area of the Wynn prior to your
11 fall, why were you doing that?

12 A I'm sorry, I'm --

13 Q I can rephrase. When you were walking through the
14 atrium area of the Wynn on the day that you fell, were there
15 any sort of special decorations that were up?

16 A Oh, sure. Yeah, I --

17 Q What were the -- what were the decorations?

18 A You know, it was Chinese New Years, I believe, and
19 they had the beautiful lights on the trees. It's always --
20 that walkway is beautiful, and they usually have it decorated
21 really pretty.

22 Q And you were looking at the foliage and --

23 A I was looking at the decorated trees, the plants,
24 and the flowers.

25 Q Now, when you -- you were going to go out on the

1 Strip and walk, was that for exercise, or just to meander?

2 A Oh, for exercise and to go shopping.

3 Q And were you walking briskly or slowly?

4 A Well, I wasn't out there yet. I mean, I was -- I
5 was just still walking through the walkway, you know, in
6 between the -- in the gardens. I was still there, and I was
7 just coming to the end of it, and coming to the right corner
8 at the end of that.

9 Q How quickly were you walking though?

10 A Well, I was coming out of the -- I'd still been
11 looking at all the beautiful things, and so I couldn't have
12 been walking -- well, I was coming out of the corner, so I
13 don't know how to answer that.

14 Q And you don't know how fast you were walking; is
15 that fair to say?

16 A Yeah, I don't know how to answer that.

17 Q Okay. And immediately before your fall, you don't
18 know where your vision was --

19 A Oh.

20 Q -- addressed to?

21 A Oh. I know that because I was approaching the right
22 corner and I was going to be turning, or I was starting to
23 turn, there's the beautiful green and colored tile floor, so
24 that's one of the things that I always looked at, too. So, I
25 know that I had already started looking at that, because I was

1 approaching the corner, and I had been looking, of course, at
2 all the pretty scenery. But I know that I -- I was on that
3 green and colored tile floor, and I always look at that, too.
4 That's part of the beautiful walkway.

5 Q So, when you were walking in this atrium area just
6 before your fall, you were looking down at the tile floor?

7 A In addition -- in addition to the beautiful scenery.

8 Q Okay. And do you recall when I took your
9 deposition --

10 MR. SEMENZA: Can I have her deposition published,
11 please?

12 THE CLERK: You want both of them, right?

13 MR. SEMENZA: For now, just the first one.

14 THE CLERK: The March 19th one?

15 MR. SEMENZA: Yes. Thank you. May I approach the
16 witness, Your Honor?

17 THE COURT: You may.

18 BY MR. SEMENZA:

19 Q Just so I'm clear on your testimony, immediately
20 prior to your fall, you were looking at the plants and looking
21 at the tile on the ground; is that correct?

22 A Yes, because I was already on the colored tile.

23 Q Okay. And when you were looking down at the colored
24 tile, did you see any sort of green liquid substance?

25 A Well, I didn't see it at that time, and it was green

1 liquid -- slightly green liquid on green tile, so I couldn't
2 see it.

3 Q Okay. So, prior to your fall, you didn't see any
4 green liquid substance on the ground?

5 A I couldn't see it on that colored tile. You can't
6 see the green liquid on green tile. And then -- and then,
7 when I was left standing around the corner, and I looked to my
8 left where Terry had placed his sweeper machine, I still
9 couldn't see it because it was -- it was on the green and
10 colored tile.

11 Q Let me have you turn to page 74 of your deposition.
12 And specifically, line 14. Tell me when you're there.

13 A Yes.

14 Q Okay. And you stop me if I read this incorrectly,
15 but I asked the question, "When you were walking immediately
16 prior to your falling, were you looking down at where you were
17 going, or were you looking up at the plants?" And your
18 response was, "I'm not sure." Do you remember that testimony?

19 A I see that.

20 Q Okay. So, is it fair to say that you don't know
21 where you were looking prior to -- immediately prior to your
22 fall on that particular day?

23 A I'm sorry, are you still reading this?

24 Q No.

25 A Okay. I'm sorry, was that a question?

1 Q Is it fair to say based upon your testimony on March
2 19th that you don't recall or don't know what you were looking
3 at immediately prior to your fall?

4 A Well, I was there to look at the scenery, and I
5 always look at the beautiful colored tile floor also, so that
6 was my usual routine. I'd been -- I'd done this many times.

7 Q But again, your testimony was that you weren't sure;
8 is that correct?

9 A I said I'm not sure, but then you go forward, too.

10 Q I'm showing you Stipulated Exhibit 8, it identifies
11 at the bottom of the document Joint Stipulated Exhibit 10, so
12 however we're doing this. Do you recall seeing this
13 photograph?

14 A Yes.

15 Q Okay. And at the time of your fall, do you remember
16 seeing that sign there? Immediately prior to your fall, do
17 you remember seeing that sign there?

18 A I don't recall.

19 Q Now, you don't know what this green liquid substance
20 was, do you?

21 A I believed that it was water, and it's on the mop.
22 They were cleaning it up, so it's on the mop.

23 Q My question was, do you know what the green liquid
24 substance was?

25 A I believe it was water --

1 Q And you --

2 A -- from -- I'm sorry, excuse me.

3 Q Go ahead.

4 A I believe it was water for the plants. I believed
5 it then because it was right up against the planter, and I
6 know it's on their mops.

7 Q You -- do you dispute that the liquid -- green
8 liquid substance was cleaned up prior to Officer Prowell
9 arriving on the scene?

10 A I know that when he came to me, I was already off --
11 sitting off to the side. I wasn't at the scene. I was off to
12 the side, sitting at a machine. So, when I had -- so, I don't
13 know if he went to the scene.

14 Q Okay. Do you recall your interrogatory responses
15 where you identified that the green liquid substance was
16 cleaned up before Officer Prowell arrived on the scene?

17 A I'm sorry, I said that? Could you show me?

18 Q I'm asking you if you recall that.

19 A Could you please show me? I'm sorry. So that I
20 know what you're talking about.

21 MR. SEMENZA: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. SEMENZA:

24 Q I'll show you your interrogatory responses.

25 A Oh, interrogatories? Okay.

1 Q Yes. And I'm going to ask you about this portion
2 right there. And without reading it out loud, if you could,
3 let me know if that refreshes your recollection as to --

4 THE COURT: Read it to yourself.

5 MR. SEMENZA: -- as to whether you identified that
6 the spill had been cleaned up prior to Officer Prowell
7 arriving.

8 THE WITNESS: I'm sorry, where does it say Officer
9 Crole (sic)? I'm missing it.

10 MR. SEMENZA: May I approach again, Your Honor?

11 THE COURT: Yes.

12 THE WITNESS: Does it say Officer Crole there?

13 BY MR. SEMENZA:

14 Q Well, does that refresh your recollection as to
15 whether Officer Prowell arrived on the scene after the green
16 sticky substance was cleaned up?

17 A Well, Officer Crole isn't mentioned here, so you're
18 asking me if -- okay. What I can tell you is, the first time
19 I saw Officer Crole was I had left, and I'd been standing, and
20 then I limped off to the side to the first machine that I
21 could sit at, and I sat there waiting for help, and that's the
22 first time I saw Officer Crole. But he didn't come -- he's
23 not the one who came to me when I was left standing there
24 after the people picked me up. He came to me when I was off
25 to the side. So, that's when I saw him.

1 Q Okay. And I just want to know, does that refresh
2 your recollection as to whether the green liquid sticky
3 substance was cleaned up prior to Officer Prowell's arrival?

4 A What I know is that when --

5 THE COURT: Ma'am, ma'am, that's just a yes or no
6 question. Does it refresh your recollection?

7 THE WITNESS: Oh, does it refresh my recollection?

8 THE COURT: Or not. Either one.

9 THE WITNESS: No.

10 BY MR. SEMENZA:

11 Q You identified an individual male employee with a
12 dark uniform -- suit, dark mustache, and stocky. Were you
13 referring to Officer Prowell, or not?

14 A Oh, absolutely not.

15 Q Okay. And getting back to the liquid substance, you
16 assert that it was water from the planters; is that correct?

17 A I believe that it was water from the planters, and
18 I'm sure it's on the mop, so there wouldn't be any question.

19 Q What do you mean, it's on the mop?

20 A Well, the little -- the little lady came with a mop
21 when I was standing here, and the sweeper machine was more
22 than four feet away from me. She came with her mop and she
23 started cleaning up -- mopping up the spill, so that would be
24 on the mop. And I believe that -- I believed it was water
25 coming off the plants.

1 Q Okay. Do you know when the Wynn waters its plants?

2 A I don't know.

3 Q Okay. Do you know how the Wynn waters its plants in
4 that area?

5 A Oh, yeah. I read that they water it by hand, and
6 with a hose, and --

7 Q Okay.

8 A I read that.

9 Q Okay, but you didn't have -- you don't have any
10 other understanding of how they do it, other than what you
11 read?

12 A Well, and then they have the sprinklers, too.

13 Q And did you -- how do you know that they have
14 sprinklers?

15 A Well, I'm sorry, because I read that, too.

16 Q Okay, but you've never seen what time they do any of
17 their watering?

18 A I haven't noticed.

19 Q Okay. And you don't know when they water any of
20 those plants, do you?

21 A Only what I read.

22 Q And you don't know what they water those plants
23 with, whether it's simply water or some other chemical?

24 A Well, I would assume they put fertilizer in it.

25 Q Okay. You don't have any personal knowledge as to

1 whether they put anything into the solution -- or water that
2 they water the plants with, do you?

3 A I wouldn't know that.

4 Q You wouldn't know?

5 A No.

6 Q And the only reason that you believe that the liquid
7 substance that you slipped on came from the planters is
8 because of the proximity of that liquid substance to the
9 planters?

10 A That, in addition to the fact that it had a little
11 green tint to it, and also that I believe they would have
12 saved the mop to prove that it didn't come from the planters.

13 Q Okay, anything else?

14 A Right now, that's what I recall.

15 Q And because, in part, the green liquid -- the
16 substance was green, you believe that that indicates that it
17 would come from the plants or the -- where the watering took
18 place?

19 A That's possible. I thought -- I thought it had come
20 off the plants, or that it was meant for watering the plants.

21 Q But again, you don't have any personal knowledge as
22 to what they water the plants with, other than water,
23 presumably?

24 A And then I would just assume that they -- they -- I
25 mean, I water my plants with fertilizer, so.

1 Q You don't know if they do though, do you?

2 A I wouldn't know that. They would know it.

3 Q And you don't know if the Wynn had watered that area
4 where you slipped early that morning?

5 A I don't -- I personally don't know when they watered
6 it.

7 Q Okay. You don't know whether it could have been a
8 spilled drink, do you?

9 A When I was there, I didn't think it was a spilled
10 drink, and it was such a large area, and it was right up
11 against the plants, and when I was there, I believed it was
12 water. And I didn't think that there -- I didn't think it was
13 an issue because I was sure that they were going to save the
14 mop and we would know, and I believe that they were taking
15 pictures of it, and so there -- it wouldn't be an issue.

16 Q Did you ever ask them to save the mop?

17 A Well, I asked them for pictures. I -- I --

18 Q That wasn't my question.

19 A Oh. Well, and so -- and since they assured me that
20 it was all being filmed, and that -- I was sure that they
21 meant that they would preserve everything there. I mean, I
22 had no doubt.

23 MR. SEMENZA: Your Honor, may we approach for a
24 moment?

25 THE COURT: Yes.

1 (Off-record bench conference)

2 THE COURT: Need to get up for a stretch? Anybody
3 need a bathroom break? Yes. Okay, good. All right. Ladies
4 and gentlemen, we're going to take a ten-minute recess, so
5 until 3:15.

6 During this recess, it is your duty not to converse
7 among yourselves or with anyone else on any subject connected
8 with the trial, or to read, watch, or listen to any report of
9 or commentary on the trial by any person connected with the
10 trial, or by any medium of information, including, without
11 limitation, newspaper, television, radio, or internet, and you
12 are not to form or express an opinion on any subject connected
13 with this case until it's finally submitted to you; 3:15, I'll
14 see you then.

15 THE MARSHAL: Rise for the jury.

16 (Outside the presence of the jury)

17 THE COURT: All right, and the record will reflect
18 that the jury has departed the courtroom. Did we have a
19 concern that we had a sleeper?

20 MR. SEMENZA: I got the nod that there might have
21 been one. That's why I asked for the sidebar, but I don't --

22 THE COURT: Yeah.

23 MR. SEMENZA: I didn't see her other than with her
24 head down, so I don't know one way or the other.

25 THE COURT: I've been trying to keep an eye out

1 because the testimony's gone on a long time. You have a very
2 lulling voice, but -- and I thought I had one and was going to
3 have to -- so, here, you really need to keep an eye out for
4 the sleepers, because I can't quite tell. My vision is not
5 quite good enough. I wish I could whip out opera glasses, but
6 that would be --

7 MR. KIRCHER: We couldn't tell either.

8 THE COURT: -- that would not be good. So -- but
9 sometimes a person is looking down but their eyes are open,
10 and so that's what I was noticing, but then the head came back
11 up, and it wasn't a head bob, so --

12 MR. SEMENZA: Yeah.

13 THE COURT: -- I didn't think anyone was sleeping.
14 But let me know if you ever see that, I mean, because we all
15 try and stay alert for that. All right, recess until 3:15.

16 (Court recessed at 3:06 P.M. until 3:19 P.M.)

17 (In the presence of the jury)

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

19 THE COURT: All right, thank you. Please be seated.
20 And the record will reflect that we've been rejoined by all
21 eight members of the jury, as well as the two alternates. The
22 plaintiff is still on the stand and still under oath. She's
23 with her counsel. Defense is present, as are all officers of
24 the court. You may proceed.

25 MR. SEMENZA: Thank you, Your Honor.

1 BY MR. SEMENZA:

2 Q Do you recall seeing anyone watering any of the
3 plants while you were at the Wynn on February 8th, 2010?

4 A I didn't notice.

5 Q You didn't notice?

6 A I didn't -- I didn't see anybody doing that.

7 Q Okay. I'm sorry, I didn't hear you. I appreciate
8 it. And prior to the break, I had asked you questions about
9 why you think that the green liquid substance was -- came from
10 the plants, and am I correct that you identified that the
11 proximity of the liquid substance to the planter, and because
12 the -- the substance had a green tint; is that correct?

13 A Yes, because it was right up against the plants.

14 Q Okay. Is there anything else that you believe
15 indicates -- or would indicate that it came from the planter?

16 A I believe that if it didn't, that they would have
17 kept the mop with the proof on it. That's what I believe.

18 Q You don't know how long the liquid substance was on
19 the floor, do you?

20 A Oh, sure, I know how long it was on the floor. It
21 was on the floor long enough for at least a three-foot part of
22 it to almost dry, and become sticky, and accumulate
23 footprints. And the whole spill covered at least a seven-foot
24 area, and four feet of it -- at least four feet of it was --
25 still had liquid and it was slippery, but a three-foot part of

1 it was almost dry, so that was on the floor a long time.

2 Q Okay, so how many minutes was it on the floor for?

3 A Well, as many minutes as it takes for that big of a
4 spill to have that three-foot part of it almost dry and
5 accumulate footprints. We could time it, I guess.

6 Q And how long is that?

7 A I haven't timed it.

8 Q How long would it take? You testified that you know
9 how long it would take for that spill to dry, and so --

10 A That's --

11 Q Let me finish my --

12 A I'm sorry, I'm sorry.

13 Q So, I'm asking you, how long in time would it take
14 for that spill to dry?

15 A So, you're asking -- if you're asking in minutes --

16 Q Yes.

17 A -- I don't know the minutes, but it --

18 Q Okay.

19 A The time -- the time that it takes for that big of a
20 spill to have a three-foot part of it almost dry, that's how
21 much time.

22 Q Okay, but you don't know how many minutes it takes,
23 do you?

24 A I don't know how many minutes.

25 Q Thank you. You don't have any training or expertise

1 in determining how quickly liquids dry, do you?

2 A No.

3 Q You testified earlier that the footprints that you
4 saw were yours and the people that had picked you up; is that
5 fair to say?

6 A Yes.

7 Q You don't know specifically how the liquid -- or the
8 liquid substance got on the floor, do you?

9 A I thought that it came from the plants.

10 Q Okay, I understand that's your position, but
11 specifically how did it get on the floor? Was there a leak?
12 Was there -- was it hand watering? How did it get
13 specifically on the floor?

14 A I believe that if they would save the mop --

15 Q No, that's --

16 A -- they'd be able to tell us if it was the water
17 from the plants.

18 Q My question to you is how did the liquid
19 specifically get on the floor?

20 A What I believe is it came off the plants. That's
21 what I believed.

22 Q How did it come off the plants, is what I'm asking
23 you?

24 A The way it came off the plants, or it could have
25 been -- you know, they water by hand; it could have been from

1 that. Like I say, I believe they would have saved the mop to
2 prove that it wasn't water off the plants.

3 Q Okay. You don't know, in fact, how that liquid got
4 onto the floor, do you?

5 A Just what I believe.

6 Q Okay, but you don't know how it got on the floor?

7 A All I -- I can just tell you what I believe.

8 Q Okay.

9 A That's what I believe. And I think they would
10 have --

11 Q But you don't -- okay, go ahead. I didn't mean to
12 cut you off.

13 A I think they could have -- I believed that there
14 would -- this would not be an issue. I believe that they had
15 all the pictures, and that they'd save the mop, and this
16 wouldn't be an issue.

17 THE COURT: Okay, I think I've heard that enough
18 now. Can you move on?

19 MR. SEMENZA: Yes, Your Honor.

20 THE COURT: Because she's saying the same thing.

21 BY MR. SEMENZA:

22 Q You didn't see any running liquid after you fell,
23 did you?

24 A No, just the liquid up against the plants.

25 Q Okay. You didn't see any liquid coming from the

1 planters onto the marble flooring, did you?

2 A No, I didn't see that.

3 Q After your fall in February 2010, did you take a
4 cruise with Mr. Risco?

5 A I went months later.

6 Q When did you go on the cruise?

7 A I believe it was sometime in November or December of
8 2010. Excuse me, sorry.

9 Q Where was the cruise to?

10 A I believe it was the Caribbean. Yeah.

11 Q How did you get to the cruise ship?

12 A We flew.

13 Q Okay, from where to where?

14 A From Las Vegas to Florida.

15 Q And you boarded a cruise ship in Florida?

16 A Yes.

17 Q And went to the Caribbean?

18 A Yes.

19 Q How long was the cruise?

20 A I don't recall exactly. You know, probably a week,
21 but I don't recall.

22 Q And then, after the cruise was over, you returned to
23 Las Vegas?

24 A I believe we met his family there.

25 Q In Florida?

1 A In Florida.

2 Q Did you stay additional time after the cruise in
3 Florida?

4 A I believe we did.

5 Q How long --

6 A Or, I'm sorry, I don't know if we did that first.
7 We went to Disney World and met his family, and we went on a
8 cruise I believe the same -- I forget which was which -- which
9 time.

10 Q Did you have an opportunity to review Mr. Risco's
11 deposition transcript?

12 A No.

13 Q You haven't looked at it?

14 A No.

15 Q Would it surprise you to know that Mr. Risco
16 testified that the fall -- that he believed that your fall
17 brought you two closer together?

18 A I'm sorry?

19 Q Would it surprise you to learn that Mr. Risco
20 testified during his deposition that the fall that you
21 experienced in February 2010 brought the two of you closer in
22 your relationship?

23 A I would have to hear it from him to understand what
24 he's -- what he's saying. I don't know.

25 Q Would you disagree with that?

1 A Well, if he feels that way, then -- I mean, bottom
2 line is we ended up breaking up, so --

3 Q And you attribute --

4 A But if he -- if he feels that way, maybe that's what
5 he thought in the beginning, but ultimately, we broke up. So,
6 I would have to hear him say what he -- and explain to me what
7 he's saying. So, if he felt that, I wouldn't dispute it.

8 Q Did you take any other trips with Mr. Risco other
9 than the cruise prior to your break up in 2011?

10 A Well, we broke up -- right after we -- I fell, we
11 broke up, and then we -- I was able to get back together with
12 him because I really tried hard. And so we got back together,
13 and that's when we went on the cruise. And then I believe it
14 was February for his birthday, then we went to Florida and
15 spent some time with his family, and then we -- then we broke
16 up again, and that was the end of that.

17 Q When was the first time you broke up with Mr. Risco?

18 A A few months after I fell.

19 Q Did Mr. Risco break up with you, or did you break up
20 with him?

21 A Well, I couldn't keep up with him, and so I'm not
22 sure that you could call it mutual or not, but I wasn't able
23 to keep up with him.

24 MR. SEMENZA: No further questions, Your Honor.

25 THE COURT: Redirect?

1 MS. MORRIS: Yes, thank you. All right.

2 REDIRECT EXAMINATION

3 BY MS. MORRIS:

4 Q Yvonne, you're quite thorough in your medical
5 reporting, aren't you?

6 A Yes, I am.

7 Q It would say -- it looks like, if you think you have
8 something, you err on the caution of writing it down; would
9 that be fair?

10 A Yeah, I'm a very detail-oriented person.

11 Q And it looks like you've told them everything that's
12 ever happened to you since 1956; is that right?

13 A Yeah, pretty much since I was born.

14 Q Be fair to say you certainly haven't left much out?

15 A No, but -- but that's why I was able to be a dental
16 hygienist and specifically sit there all day long just
17 cleaning underneath the gums. I had to get absolutely
18 everything out, so that's --

19 THE COURT: Ma'am, ma'am.

20 THE WITNESS: Oh, I'm sorry.

21 THE COURT: No narrative responses. Answer her
22 questions.

23 THE WITNESS: I'm sorry.

24 THE COURT: We're on a time table here, okay?

25 THE WITNESS: I'm very sorry.

1 MS. MORRIS: That's okay.

2 BY MS. MORRIS:

3 Q Now, you didn't contact your cousins after you fell;
4 is that right?

5 A Right.

6 Q Okay, and why is that?

7 A Well, because that's just not something I would do.
8 I mean, we got together, had our -- our lunch, and then we
9 went our separate ways, and I didn't even see them for three
10 years after that. They're not people -- they don't live here.
11 I don't spend time with them.

12 Q You don't have that relationship with them?

13 A No.

14 Q And you didn't call Sal on the cruise ship; is that
15 right?

16 A Not that I know of. I usually never did. I mean,
17 if he was gone, I wouldn't call him.

18 Q Back in 2010, did you have any close friends?

19 A Well, I spent most of my time with Sal, and so any
20 friends that we had -- we had a lot of -- a lot of really
21 close acquaintances.

22 Q I want to clarify. You said that you had injured
23 your hand sometime in the past, in the '80s; is that right?

24 A In -- around 1986. That's why -- that's when I
25 stopped playing -- practicing dental hygiene.

1 Q And that injury to your hand, you said someone
2 backed into it or something; is that correct?

3 A Oh, yeah. He just went back up against the wall and
4 my hand was there, and it just swelled up some, but I was back
5 to playing tennis a few days later, so that was that.

6 Q Is that the injury that you're referring to when you
7 write down you injured your hand in the past?

8 A That's it.

9 Q I want to look just quickly at -- it's exhibit --
10 well, it's been entered, sorry, R01. This is your appointment
11 that you had on February 17th of 2010, so approximately nine
12 days after you fell; is that right?

13 A Yes.

14 Q Okay. And you filled all the little squares in on
15 this diagram, right?

16 A Yes.

17 Q Okay. And these are the areas that you were feeling
18 for pain in February of 2010; is that right?

19 A Yes.

20 Q And you indicated your right knee; is that correct?

21 A Yes.

22 Q I also want to show you what's been admitted as
23 P003. This is your visit with Dr. Cash in February. I'm
24 sorry. And let's see (inaudible) records. Let me just look.
25 In March of 2010; is that right?

1 A Yes.

2 Q Okay. And can you read for me that last sentence in
3 your handwritten notes at the top, which starts with
4 "Immediately"?

5 A "Immediately, it hurt to sit on my right side, and
6 my foot hurt. It still" -- do you want me to continue?

7 Q Yes, please.

8 A "It still hurts to sit, and I have been putting all
9 my weight on my left side, so now my left side aches, too."

10 Q And then you filled out another pretty detailed
11 diagram here, huh?

12 A Yes.

13 Q Okay. Looks like you were very specific in what you
14 wanted to indicate was -- what was bothering you; is that
15 right?

16 A Yes.

17 Q Okay. And did you say that your left knee was
18 hurting at that time?

19 A Well, yes, because I'd been limping for well over a
20 month already.

21 Q Well, you put X's on your right knee; is that right?
22 Am I looking at that correctly?

23 A I'm sorry, I'm -- okay. Yes, I have things on my
24 right knee, as well as my left knee.

25 Q What's on your left knee?

1 A What's on my left knee?

2 Q Yep.

3 A It's on my knee -- marks on my knee.

4 Q Are those lines?

5 A Aches. Yeah, lines. Yeah.

6 Q What do lines indicate? Can you see it says
7 "numbness"?

8 A Okay, numbness.

9 Q So, you've got lines all the way down your left leg;
10 is that right?

11 A And -- yes.

12 Q Oh, you're talking about the back?

13 A Correct.

14 Q Yes. Yeah, it was aches and numbness.

15 Q Okay, aches and numbness. And you had reported that
16 now your left side was aching because you were
17 over-compensating; is that right?

18 A Right, from limping.

19 Q Now, I want to look at what was admitted as I0002.
20 Now, this is when you are at Southern Nevada Pain Center in
21 September of 2010, and this is after you said your right knee
22 gave out; is that right?

23 A Yes.

24 Q And then you said your left knee had not been
25 injured before, so now your left knee you considered injured;

1 is that right?

2 A Right.

3 Q So, before you had your right knee give out, your
4 left knee -- well, your left side was aching; is that correct?
5 Aching and numb?

6 A Oh, yes.

7 Q But you hadn't considered it to be injured; is that
8 right?

9 A Right.

10 Q Now, when you went to the doctors and you filled out
11 all these things that we've seen, were you telling the doctors
12 what was wrong with you?

13 A No, I was just telling them that I fell, I had all
14 this pain, and I was trying to tell them I had all this pain.

15 Q When you go to see a doctor and they ask you to fill
16 something out, do you fill it out and put down everything
17 that's bothering you at the time?

18 A Unfortunately, I do. I've got that anal type
19 personality.

20 Q And if there had been more things to add to this,
21 you probably would have put that all down, wouldn't you have?

22 A I put everything I can.

23 Q And even if someone doesn't diagnose you, but tells
24 you you might have something, you write that down, too; isn't
25 that right?

1 A Oh, right. That's what I did.

2 Q So, you didn't get diagnosed with having an ulcer,
3 but someone said you might have one, so you put that down; is
4 that right?

5 A Right.

6 Q And no one diagnosed you with having a hernia. They
7 said they might have -- you might have one, so you write that
8 down, too; is that right?

9 A Everything I could think of.

10 Q You're trying to be extremely thorough?

11 A Yes.

12 Q Why are you so thorough when you're writing your
13 medical records?

14 A It's a real -- it's a bad habit, but like I say,
15 that's why I was able to do the deep scaling. It's -- I'm --
16 yeah, it -- I know it's too much, but I was good at my job.

17 Q You also said that you don't want to take pain
18 medications; is that correct?

19 A I want to take pain medications. I wish I could.
20 I'd like to take pain medications to make this all go away; I
21 can't.

22 Q Do you think pain medications might help?

23 A Maybe briefly, but they're going to cause more
24 problems than they help.

25 Q I want you to take a look at your deposition

1 transcript that's in front of you, and I'd like you to look at
2 page 58. Can you turn to that for me?

3 A Yes. Okay.

4 Q Do you remember Mr. Semenza asking you if it was
5 fair to say at the moment you fell you weren't looking down at
6 where you were walking?

7 A Okay.

8 Q Do you remember telling him, "That's not fair. I
9 was rounding the corner, so I was probably looking closer to
10 where -- the floor"?

11 A Right.

12 Q When you were walking through the atrium before you
13 fell --

14 A Yes.

15 Q -- were you in general looking where you were going?

16 A In general, I was. I was looking at the scenery and
17 at the floor. I went to also see that beautiful floor.

18 Q Were you staring at your feet before you fell?

19 A I was looking at the floor and the scenery.

20 Q Do you generally stare at your feet when you walk?

21 A Stare at my feet? No.

22 Q Now, you said it was hard to see the liquid that was
23 on the floor; is that correct?

24 A Yeah, because it was green and colored tile.

25 Q If you had seen the liquid before you stepped in it,

1 would you have intentionally stepped in it?

2 A Of course not.

3 Q If you had seen the liquid, would you have tried to
4 avoid it?

5 A Absolutely.

6 Q Now, you've told them what you think the liquid came
7 from, but you weren't in the atrium prior to your fall; is
8 that right? You'd just arrived? That was your first time in
9 the atrium that day; is that correct?

10 A Yes.

11 Q You hadn't been there 20 minutes, half-an-hour
12 before; is that right?

13 A Right.

14 Q And you are not in charge of inspecting an area
15 prior to walking into it; is that correct?

16 A Right, and they didn't have any warning signs.

17 Q But would you consider it to have been keeping a
18 safe lookout as you were walking through the atrium that day
19 before you fell?

20 A Well, within reason. I mean, I went to -- I went to
21 see the decorated trees, and the plants, and the flowers, and
22 to see the beautiful walkway. I went to see that.

23 Q Do you think that you're overly anxious about your
24 current health situation?

25 A Oh, absolutely. Now, I am. I never used to be. I

1 mean, I was -- I'm used to being -- I was used to being strong
2 and healthy. Now, I'm the complete opposite.

3 Q You keep saying that you were strong and healthy,
4 and you've written that down in a bunch of medical records; is
5 that correct?

6 A Okay.

7 Q Is that important to you?

8 A Yes.

9 Q What is the difference? What -- how are you
10 different now?

11 A Well, I was strong and healthy, I swing danced, and
12 I had a lot of fun, and I was a totally different person.
13 Now, I'm -- I stay at home most of the time because it's just
14 too hard to get around. It's hard to drive because it's
15 difficult to see, it's hard to turn my neck, and I was -- I'm
16 alone and it's hard for me to take care of myself. And I'm
17 getting older now, but much faster, and I'm in pain all the
18 time. And I don't like being like this, and I didn't think
19 I'd ever end up like this. I'm not this type of person, so
20 this is not who I was before.

21 Q How would you say this has affected you emotionally?

22 A I am worn out, I'm worn down, I'm physically and
23 emotionally just -- I've pretty much had it.

24 Q Before you fell, how were you doing emotionally?

25 A Before I fell?

1 Q Correct.

2 A Oh, I was on top of the world. I had a great life.
3 I had so much fun. Sal and I, we were always out and around
4 people, which I love to be around people, but not when I'm
5 like this, I don't.

6 MS. MORRIS: Thank you.

7 MR. SEMENZA: Just briefly.

8 THE COURT: Okay. Would you check the hall before
9 we start any recross to see if your witness is here? Because
10 that -- "briefly," lawyers say that when they just want to go
11 on. It's the saving grace. We always say that before we go
12 on forever. Still no? Okay, proceed.

13 MR. SEMENZA: Thank you, Your Honor.

14 RECCROSS-EXAMINATION

15 BY MR. SEMENZA:

16 Q I just want to briefly touch on a couple issues. We
17 had talked about this hand injury previously; you remember
18 that?

19 A Yes.

20 Q And this hand injury took place in 1986?

21 A Yes.

22 Q Okay. And this was an exceptionally minor hand
23 injury; is that correct?

24 A Yes.

25 Q Okay. It was just some swelling for a few days?

1 A And I was back to playing tennis in a week.

2 Q Why would you include that event that took place 30
3 years ago, or 25 years ago at the time of the fall at the
4 Wynn, in your medical history?

5 A For the same reason that I included 1955, I believe,
6 my tonsillectomy.

7 Q And -- and you believe that a surgical procedure and
8 a minor hand injury are sort of the equivalent as far as
9 reporting those things to your doctors?

10 A Well, it's that history, and that was my complete
11 history. I'm -- like I said, I have that personality. I'm
12 just detail-oriented, and it's too much, but I was great as a
13 dental hygienist.

14 Q And would you agree with me that you remember the
15 specific events of your fall very distinctly?

16 A I -- there's -- the things that I remember very
17 distinctly, and then some things I had to figure out later
18 based on the things I absolutely was sure about.

19 Q Okay. And but you do have a recollection of where
20 you were, where you fell, where you landed, those sorts of
21 things?

22 A Yeah, there's specific things that I'm positive
23 about.

24 Q Okay. And so, you have a pretty specific
25 recollection of what took place and your fall on that day?

1 A Well, like I said, there's certain things that I'm
2 absolutely positive about, and there's -- there's some things
3 that I had to figure out from that.

4 Q Okay. And you testified earlier that you actually
5 lost consciousness when you fell; is that correct?

6 A What I know is I hit my head. Now I know what I hit
7 it on. I hit it on that divider. And I know -- I know that
8 people woke me up, they were talking to me, and so I know
9 that.

10 Q So, is it fair to say that you lost consciousness?

11 A It's fair to say that I assume I did. I don't know,
12 but it was like people woke me up.

13 Q Okay. Did you -- did faint before you fell?

14 A Faint?

15 Q Yes.

16 A Oh, no.

17 Q Okay. So, the fall and your impact with your head,
18 that's what caused your loss of consciousness?

19 A Yes, because when I was walking through the
20 beautiful walkway, I was in great shape. I was -- I was on my
21 way for a two to three-mile walk on the Strip.

22 Q And obviously, that was very important that you lost
23 consciousness; don't you agree?

24 A I'm sorry, I don't understand what you're asking.

25 Q The fact that you lost consciousness after the fall

1 or at the time of the fall, that's an important detail, isn't
2 it?

3 A In -- in what way?

4 Q Well, it's important to knowing and understanding
5 how the fall took place, for example; is that fair?

6 A I don't know how that would have anything to do with
7 how the fall took place. I'm sorry, I really -- I don't
8 understand what you're saying.

9 Q That's fine, that's fine. You didn't report to
10 Officer Prowell that you had lost consciousness or that you
11 had hit your head?

12 A I know I was dazed, and if I -- and I can't tell you
13 for sure that I also told him that. I just -- I'm positive I
14 was dazed, I know that, and I'm positive I wasn't able -- he
15 asked me to fill out the form; I'm positive I wasn't able to
16 do that. And if I didn't tell him, I don't recall that, but
17 I'm positive I was dazed.

18 Q You were positive you were dazed, but are you now
19 unsure as to whether you lost consciousness?

20 A Oh, no, I thought you were asking if I had told him
21 I was dazed.

22 Q No. Did you ever tell him that you had lost
23 consciousness?

24 A Oh, I didn't know -- I didn't know at the time. I
25 was dazed. I hadn't figured out the whole thing yet. It

1 happened so fast, and I was -- and I was dazed, and I was
2 still trying to figure out what happened. I was in pain.

3 Q When did you come to remember that you had lost
4 consciousness?

5 A I'm not telling you that I lost consciousness. I'm
6 just saying that people woke me up and they were asking me if
7 I could get up, and I couldn't get up. That's what I
8 remember.

9 Q But --

10 A And I don't -- I don't know if you would call that
11 losing consciousness or not.

12 Q Well, you identified that you had to wake up,
13 meaning --

14 A Well --

15 Q -- that you were sleeping or unconscious.

16 A It just -- it's just, I suddenly fell, and the next
17 thing I remembered, that people were around me, asking me if I
18 could get up, and I couldn't. That's what I recall.

19 MR. SEMENZA: Okay, no further questions.

20 THE COURT: All right. Any --

21 MS. MORRIS: Nothing further. Thank you.

22 THE COURT: Thank you. You may rejoin your counsel
23 at --

24 THE WITNESS: Thank you.

25 THE COURT: -- counsel table.

1 MR. SEMENZA: Your Honor, obviously, I'll reserve my
2 right to recall her in my case-in-chief.

3 THE COURT: All right.

4 MS. MORRIS: Your Honor --

5 THE COURT: Oh, wait, jury question. Thank you for
6 reminding me. I've been watching the clock because we're
7 expecting another doctor.

8 THE MARSHAL: Anybody else?

9 THE COURT: Okay, counsel approach.

10 (Off-record bench conference)

11 (Pause in the proceedings)

12 THE COURT: All right, approach.

13 (Off-record bench conference)

14 THE COURT: All right. Ms. O'Connell, first
15 question, have you ever been a party to another lawsuit or
16 made a claim against somebody else without suing?

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 THE WITNESS: No clarification?

20 THE COURT: Well, that -- not at this time. That
21 was the question that was asked.

22 THE WITNESS: No, nothing like this.

23 THE COURT: Okay.

24 THE WITNESS: It was never anything like this. I
25 paid for insurance --

1 THE COURT: Well, wait a minute.

2 THE WITNESS: Oh, I'm sorry.

3 THE COURT: Counsel would like me to ask follow up
4 questions to that?

5 MS. MORRIS: I can ask follow up questions.

6 THE COURT: The lawyers will ask you follow up
7 questions to that.

8 THE WITNESS: Oh, okay.

9 THE COURT: All right. Okay. All right, next
10 question. Were you diagnosed with anxiety disorder in 1989?

11 THE WITNESS: No.

12 THE COURT: Did you valet park at the Rampart on the
13 day of the fall?

14 THE WITNESS: No.

15 THE COURT: Do you have a handicap parking permit?

16 THE WITNESS: Yes, it's permanent.

17 THE COURT: Which doctor gave it to you?

18 THE WITNESS: Well, Dr. Cash -- wait. Well, the
19 last one -- I got a permanent one from Dr. Dunn, but I had --
20 have had them since I fell, and the orthopedic surgeons have
21 given them to me.

22 THE COURT: Okay. So, which -- which -- so which
23 doctors? You've had -- given -- you've had them give them --

24 THE WITNESS: I've had them since I fell.

25 THE COURT: Okay, which doctors?

1 THE WITNESS: Well, Dr. Dunn gave me the last one,
2 and I'm sorry, right now, I forget who gave them to me before,
3 but Dr. Dunn gave me the last one, and it's a permanent one.

4 THE COURT: That was -- when was that?

5 THE WITNESS: He -- he gave me the last one last
6 year. And I'm sorry, I don't remember if it was my primary
7 doctor that gave me the first one or Dr. Cash, but I've had
8 them since I fell.

9 THE COURT: And is it a placard that you hang on
10 your mirror, or is it a plate on your car?

11 THE WITNESS: Well, I chose to get the -- the
12 placard.

13 THE COURT: All right. Which UMC Quick Care did you
14 drive to from your home? And its cross -- what are the cross-
15 streets?

16 THE WITNESS: There's one closest to my home, and
17 it's -- it's not -- it's like a few blocks away. It's -- it's
18 on Sahara and Fort Apache.

19 THE COURT: Okay. Okay. So, do you recall if your
20 pants were stained after the fall?

21 THE WITNESS: I didn't look.

22 THE COURT: Do you recall, was your hand that hit
23 the floor wet?

24 THE WITNESS: I don't recall that. I'm sorry.

25 THE COURT: Do you recall if you had to wipe off the

1 bottom of your shoes after the fall?

2 THE WITNESS: I -- I was left standing on that
3 drying part that was a little sticky, and when I -- when I
4 limped to the side, I was on carpet. So, there was a little
5 stickiness on my shoes, so I didn't really have to wipe
6 anything off because I wasn't left -- I was left standing on
7 that drying part; the sticky part.

8 THE COURT: And last question. Were you affected in
9 any way, physical or emotional, by Sal breaking up with you?

10 THE WITNESS: I -- I still love him, and I tried to
11 get back together with him this summer, and I tried really
12 hard, but I still wasn't able to -- to keep up with him. I
13 thought because he was older now, that -- but I wasn't able to
14 keep up with him. So, it hurts me very much.

15 THE COURT: Okay, but you don't believe that you
16 were affected physically?

17 THE WITNESS: Physically? I'm -- no. I'm
18 brokenhearted over it, but I love him, so I want him to be
19 happy.

20 THE COURT: Okay. All right. Are there any
21 questions from plaintiff's counsel as a result of these
22 questions?

23 MS. MORRIS: Just a couple of follow up.

24 //

25 //

1 THE COURT: Ladies and gentlemen, before this next
2 witness testifies, we need to do some -- something outside
3 your presence, and so I'm going to let you have a break here,
4 and we'll call you as soon as we can get back to you. And so,
5 our smokers have time to go to the smoking balcony, although I
6 think the winds might be 60 miles an hour. I'm not sure you
7 want to do that or not, but this is the time to do it.

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

16 You'll be in recess until we call you back.

17 THE MARSHAL: All rise for the jurors, please.

18 (Outside the presence of the jury)

19 THE COURT: The record will reflect that the jury
20 has departed the courtroom. Let's bring in Dr. Tingey. There
21 he is.

22 THE MARSHAL: Watch your step, remain standing, face
23 the court clerk, raise your right hand.

24 //

25 //

1 DR. CRAIG TINGEY, PLAINTIFF'S WITNESS, SWORN

2 THE CLERK: You may be seated, and would you please
3 state and spell your first and last name? You may be seated.

4 THE WITNESS: My name is Craig Tingey. T-i -- first
5 name is C-r-a-i-g. Last name, Tingey, T-i-n-g-e-y.

6 THE CLERK: Thank you.

7 THE COURT: Thank you. Mr. Semenza, you may
8 proceed.

9 MR. SEMENZA: Thank you, Your Honor.

10 (Testimony outside the presence of the jury)

11 DIRECT EXAMINATION

12 BY MR. SEMENZA:

13 Q Good afternoon, Mr. Tingey.

14 A Good afternoon.

15 Q Or Dr. Tingey. I apologize.

16 A No problem.

17 Q Where are you currently employed?

18 A Desert Orthopedic Center here in Las Vegas.

19 Q And is Dr. Dunn your partner?

20 A Yes.

21 Q Okay. And how long have you been practicing
22 medicine?

23 A Well, 11 years here in Las Vegas, plus five years of
24 residency.

25 Q Have you been with Desert Orthopedic the entire

1 time?

2 A No, I joined them in 2009.

3 Q Okay. And have you -- do you have any specialties
4 that you -- that you currently perform?

5 A I specialize in treatment of the shoulder, hip, and
6 knee.

7 Q And is that exclusively your practice at this point
8 in time?

9 A Not 100 percent, but the vast majority is shoulder,
10 hip, and knee.

11 Q Have you had occasion to treat Ms. O'Connell --
12 Yvonne O'Connell?

13 A I evaluated her on one occasion.

14 Q Okay. You've seen her one time?

15 A Yes.

16 Q Okay. And what history did Ms. O'Connell provide to
17 you either prior to or during your appointment with her?

18 A She reported that she had a slip and fall. She fell
19 onto her right side, and when she saw me, she was complaining
20 of knee pain, both -- bilateral knee pain.

21 Q And bilateral meaning both?

22 A Both knee pain, yeah.

23 Q And did you review any of her medical history, any
24 of her -- strike that. Did you review any medical records as
25 part of your examination of Ms. O'Connell?

1 A At that time, I don't believe that I did, other than
2 the MRI reports. I've reviewed some of her records since
3 then.

4 Q When did you review those other records?

5 A Last week, and then today, and that consisted of our
6 chart/records at Desert Orthopedic Center.

7 Q Did you bring any of those documents with you here
8 today?

9 A No.

10 Q Did you rely on any of those documents in forming
11 your opinions that you'll be testifying to here today?

12 A Only the documents that were included in the Desert
13 Orthopedic chart with Dr. Martin, because he also saw her for
14 her knee prior to that.

15 Q Okay. So, no -- you didn't rely on any medical
16 records outside of Dr. Martin or the MRI films?

17 A The MRI reports, yes.

18 Q And what did Dr. Martin's medical records indicate?

19 MS. MORRIS: And if I -- I'm sorry to interrupt. I
20 have Dr. Tingey's medical records here. He left his chart in
21 his car, which we can run back and get, but I have his records
22 that are Plaintiff's Proposed Exhibits for him to refer to.

23 THE COURT: Okay.

24 MS. MORRIS: If I can approach.

25 THE COURT: Well, I don't know if those are the ones

1 that he's --

2 MS. MORRIS: Which I can have him look through.
3 They're the Desert Orthopedic with the certificate of --
4 custodian of records on it.

5 THE COURT: Do you want him to look at his --

6 MR. SEMENZA: Not right now.

7 THE COURT: -- records at this point?

8 MR. SEMENZA: No.

9 THE COURT: Yeah, so we don't need him. If he needs
10 to refer to them, then --

11 MS. MORRIS: Okay.

12 THE COURT: -- we'll -- thank you.

13 BY MR. SEMENZA:

14 Q Do you recall the date that you saw Ms. O'Connell?

15 A I don't.

16 Q Do you recall what you diagnosed her with based upon
17 your review of the MRI films and the documents from Dr.
18 Martin?

19 A She had a right knee medial meniscus tear, and a
20 left knee medial and lateral meniscus tears.

21 Q And before you came here today, did you review
22 anything other than the medical records that we talked about
23 before in preparation for your testimony?

24 A No.

25 Q And do you have an opinion as to the causation of

1 Ms. O'Connell's bilateral knee pain?

2 A I do.

3 Q Okay, and what is that opinion as to causation?

4 A My opinion would be that the right knee medial
5 meniscus tear is related to the slip and fall, and the left
6 knee medial and lateral meniscus tears are not related to the
7 fall. And she does have some mild arthritis in either knee,
8 and I would not relate that to the injury.

9 Q And so, the left knee is unrelated; the right knee
10 is related?

11 A That's correct.

12 Q There are, however, arthritic changes in the right
13 knee as well?

14 A Mild, by x-ray findings, yes.

15 Q And what do you base your conclusion that the right
16 knee meniscus tear was caused by the slip and fall on February
17 8th of 2010?

18 A It's based on my understanding that the patient --
19 or that the -- I guess I'll say patient, if that's okay, is --
20 was not having symptoms in that knee prior to her injury, and
21 that the onset of those symptoms were soon thereafter, and
22 that the MRI findings were consistent with a traumatic tear of
23 the meniscus, as opposed to the findings in the left knee.

24 Q Okay. Are you aware of any injuries that Ms.
25 O'Connell may have had after February 8th of 2010 that could

1 relate to or explain that tear in her right knee meniscus?

2 A No.

3 Q Did she ever indicate or explain to you that she did
4 have any right knee injuries after February 8th of 2010?

5 A No, not that I recall.

6 Q Did she ever indicate to you that she fell on July
7 14th of 2010?

8 A She did not.

9 Q And was your conclusion that the right knee meniscus
10 tear related to her fall on February 8th, 2010 based
11 exclusively on her reporting that that's what took place?

12 A Not exclusively, but that has a large factor in my
13 opinion.

14 Q Okay. What else did you -- what else was there that
15 gave you that conclusion, other than her self-reporting?

16 A Like I said, the MRI findings were consistent with
17 that history. The left knee MRI showed tearing of the
18 meniscus on both sides, but they were extruded, meaning that
19 they were squished out of the joint, and that's more of a
20 degenerative type of finding. That's in the left knee. The
21 right knee didn't have those degenerative type findings. It
22 looked more like a typical meniscus tear that would be, you
23 know, consistent with a traumatic history.

24 Q But as for the traumatic episode that may have
25 caused this condition, you don't know whether it was on

1 February 8th, 2010, or sometime thereafter?

2 A That's correct. I mean, by an MRI alone.

3 Q Right.

4 A Yes.

5 Q And so, the conclusion that it was caused by a
6 specific fall on February 8th, 2010 was based upon Ms.
7 O'Connell's self-reporting of that?

8 A That's correct.

9 Q Are you aware of whether Ms. O'Connell has any
10 preexisting conditions that might impact your conclusion that
11 there was causation between the fall and her right knee
12 meniscus tear?

13 A Preexisting conditions of the knee, or other medical
14 conditions?

15 Q Any medical conditions.

16 A No, I'm not aware, other than, like I said, she had
17 mild arthritis of the knee, and I feel that that would likely
18 be preexisting to the fall.

19 Q Mild arthritis in the right knee that would be
20 preexisting to the fall?

21 A That's correct.

22 Q Were you ever informed that she had -- or had been
23 diagnosed with fibromyalgia?

24 A No. Actually, I -- I would need to look at my
25 record to know that. I don't know if I documented that or not

1 in my chart.

2 Q Would a fibromyalgia -- well, strike that. If Ms.
3 O'Connell did in fact have fibromyalgia, might that explain
4 some of her pain symptomology that she has in that right knee?

5 A Her right knee symptoms were consistent with a
6 meniscus tear and were not consistent with fibromyalgia.

7 Q How did Ms. O'Connell describe her pain in her right
8 knee?

9 A May I refer to my clinic note? Or -- or -- thank
10 you. I'm sorry, what was the question?

11 Q Frankly, I've moved on, so [inaudible]. Did she
12 describe -- did Ms. O'Connell describe the pain symptomology
13 she was having relating to her right knee?

14 A Yes.

15 Q Okay, and what was that?

16 A She described it as being located in the anterior
17 medial region of her knee. The pain was worse when twisting,
18 going from sitting to standing, or climbing stairs. She
19 experienced locking and swelling in the knee. She rated her
20 pain as a ten. She experienced clicking, instability,
21 locking, catching, snapping, popping, swelling, and pain with
22 activities.

23 Q Okay. And is it your opinion that none of those
24 pain symptoms would be related to a diagnosis of fibromyalgia?

25 A Taking all those symptoms together, they're very

1 consistent with a meniscus tear, and not fibromyalgia.

2 Q Are there any pain symptoms that you've identified
3 that would be consistent with fibromyalgia on their own?

4 A Not really, other than pain itself, but the locking,
5 the mechanical symptoms, pain with twisting, those are all
6 classic symptoms of a meniscus tear.

7 Q And would you expect that Ms. O'Connell has pain in
8 her right knee 100 percent of the time?

9 A I don't expect that, but that is -- that is possible
10 with a meniscus tear that she has constant pain. That's not
11 uncommon.

12 Q Now, you say you don't expect it. Is it uncommon
13 for someone to have 100 percent of the time pain in a knee
14 with a meniscus tear?

15 A There's a wide variety there with meniscus tear. It
16 could be constant, it could be intermittent, it could be
17 minimal, and a lot of pain. There's no --

18 Q And has Ms. O'Connell followed up with you relating
19 to any future appointments?

20 A No.

21 Q And was it your recommendation that Ms. O'Connell
22 have surgery in both knees?

23 A Yes.

24 Q Would the surgery be the same in both knees?

25 A The difference would be the left knee would involve

1 the medial and lateral meniscus. There's two meniscus in each
2 knee, and both of those were torn in the left knee, so it
3 would be slightly different, but it would -- both would be an
4 arthroscopic procedure.

5 Q Would it be fair to characterize the left knee
6 meniscus tear as more severe than the right knee meniscus
7 tear?

8 A No, it was more degenerative appearing.

9 Q Okay.

10 A In the left knee.

11 Q And there was also the appearance of degenerative
12 changes in the right knee as well?

13 A Not so much in the meniscus. By x-ray, there's very
14 mild findings of degenerative arthritis. That means the joint
15 space was mildly narrowed, but it was minimal, according to my
16 report.

17 Q And that may have given her some pain symptomology;
18 is that correct?

19 A That's possible.

20 Q Would a diagnosis of depression and anxiety affect
21 in your opinion a patient's symptomology of pain?

22 A It can, yes.

23 Q How did you come to treat Ms. O'Connell? Was it
24 through a referral from Dr. Martin, or something else?

25 A I believe it was a referral from Dr. Dunn.

1 Q And is it your understanding that Ms. O'Connell did
2 undertake physical therapy?

3 A Yes, that's my understanding.

4 Q And how did you come to learn that information?

5 A It's documented in my clinic note. She must have
6 reported it to me. I said that she has undergone physical
7 therapy without improvement.

8 Q Okay. As you sit here today, you don't know what
9 that physical therapy was?

10 A No.

11 Q In some of your notes -- well, I can move on.
12 Immediately after the injury, would Ms. O'Connell have
13 experienced severe right knee pain?

14 A That is -- that -- in general, that typically
15 varies. Some people when they suffer a meniscus tear will
16 have immediate pain; other times, it will be a day or two
17 after; other times, it can be a week or two later. But
18 usually, it's within, you know, a couple weeks, they have
19 onset of pain.

20 Q And if Ms. O'Connell had -- well, and your assertion
21 is she did tear a meniscus, but would Ms. O'Connell be able to
22 walk long distances with a torn meniscus in her right knee?

23 A You can, yeah. It just depends on how severe the
24 pain is.

25 Q And the severity of pain is a subjective reporting

1 by the patient?

2 A Yes.

3 THE COURT: Mr. Semenza, I've got --

4 MR. SEMENZA: I'm ready.

5 THE COURT: -- my 4:30 hearing.

6 MR. SEMENZA: Yep.

7 THE COURT: So, are you --

8 MR. SEMENZA: I think I'm done.

9 THE COURT: You're -- oh, you're done. Okay. I've
10 got to take a break, and a short hearing with some other
11 lawyers, so --

12 THE WITNESS: Okay.

13 THE COURT: And then we'll bring the jury --

14 THE WITNESS: Sure.

15 THE COURT: -- back in --

16 THE WITNESS: Oh.

17 THE COURT: -- get you done, all right? Okay. So,
18 we're taking a recess in this case, and then we're going to be
19 calling the next case for a short hearing.

20 (Court recessed at 4:30 P.M. until 4:50 P.M.)

21 (Outside the presence of the jury)

22 THE COURT: All right. So, we are back on the
23 record outside the presence of the jury. Mr. Semenza's
24 completed his voir dire of Dr. Tingey. Mr. Semenza, did you
25 have something outside the presence?

1 MR. SEMENZA: I do, Your Honor. I had a chance to
2 very briefly examine the file that Dr. Tingey had brought with
3 him today, and again, we have the same problem that we did
4 with Dr. Dunn, that there are a whole host of documents that
5 were never produced as part of the records.

6 And in contrast to what Dr. Dunn had said in that,
7 look, he just looked at the documents, he doesn't know when he
8 received additional documents, I believe Dr. Tingey had
9 testified that he had received additional documents about a
10 week-and-a-half ago, if I'm remembering correctly. So, I
11 think it would be improper to allow him to testify here based
12 on these new and additional records that haven't been provided
13 to us.

14 THE COURT: His testimony I thought was that he's
15 not basing his testimony on any of these new documents, but
16 rather, on the MRI, the -- and his evaluation of the patient,
17 Ms. O'Connell, at the time he saw her. I think that's pretty
18 clear.

19 MR. SEMENZA: And I understand that's his testimony,
20 Your Honor. However, obviously, I mean, he has reviewed those
21 additional documents. A number of those documents I haven't
22 seen before. I don't know if that's in any way going to
23 affect any of my questioning. I would like an opportunity
24 obviously to review the entire file, but obviously, we're here
25 and now. So, I would object to allowing him to testify in any

1 capacity at this point in time.

2 THE COURT: Okay. Your response?

3 MS. MORRIS: And it's my -- yeah, sorry. It's my
4 understanding that Dr. Tingey reviewed the medical records
5 which he created and he said that were in the Desert
6 Orthopedic file, which contained the -- the fact that Dr.
7 Martin had seen her before, and that was what he was basing
8 his opinion on is him seeing her, looking at the Desert
9 Orthopedic files.

10 And my understanding is that a week-and-a-half ago,
11 he looked at the file, but he (inaudible) receive new
12 information (inaudible) and was going to testify about that.
13 I didn't hear that at all, and it was not my understanding
14 from his testimony. So, I think he should be permitted to
15 testify in accordance with what he spoke to outside the
16 presence of the jury during voir dire.

17 THE COURT: Well, I'm going to allow him to testify.
18 His testimony from the voir dire, it appeared to me, was based
19 solely -- his opinions were based solely on his examination of
20 the patient, his review of the MRI films of the knees that he
21 had and, of course, her history, as he -- as it was reported
22 to him by her.

23 And beyond that, he didn't refer to anything else;
24 didn't say anything else was significant in his findings. And
25 of course, you may, and I know you will be cross-examining him

1 about the things that he apparently did not know, and you may
2 be able to pose hypothetical question to him. But I think as
3 long as he's not offering to say that he based his opinion
4 upon anything that you didn't have before, he's not offering
5 any testimony about any of those other records, then I'm going
6 to allow it.

7 MR. SEMENZA: I understand, Your Honor.

8 THE COURT: All right. All right, let's bring our
9 jury in.

10 THE MARSHAL: Rise for the jury, please.

11 (In the presence of the jury)

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

13 THE COURT: Thank you. Please be seated. The
14 record will reflect that we're back within the presence of all
15 eight members of the jury, as well as the two alternates. All
16 the parties are present with their respective counsel, and
17 then all officers of the court are present. And you may call
18 your next witness.

19 MS. MORRIS: Thank you. We call Dr. Tingey.

20 THE CLERK: Please remain standing and raise your
21 right hand.

22 (Testimony in the presence of the jury)

23 DR. CRAIG TINGEY, PLAINTIFF'S WITNESS, RESWORN

24 THE CLERK: Please be seated, and then please state
25 and spell your first and last name for the record.

1 THE WITNESS: My name is Craig, C-r-a-i-g; Tingey,
2 T-i-n-g-e-y.

3 DIRECT EXAMINATION

4 BY MS. MORRIS:

5 Q Dr. Tingey, can you tell us what you do?

6 A I'm an orthopedic surgeon.

7 Q Where do you work?

8 A At Desert Orthopedic Center here in Las Vegas.

9 Q How long have you worked at Desert Orthopedic?

10 A Since 2009.

11 Q And are you board certified?

12 A I am.

13 Q When did you become board certified?

14 A In 2006.

15 Q Do you have any speciality in your practice?

16 A I specialize in surgery of the shoulder, hip, and
17 knee.

18 Q Can you give us a little bit of background about
19 your education?

20 A Well, I graduated from high school here in Vegas,
21 and I went to college at Brigham Young University in Utah,
22 then went to medical school in -- Wake Forrest University in
23 North Carolina, and then residency for orthopedic surgery at
24 Loma Linda University in California.

25 Q Where did you -- did you work prior to working at

1 Desert Orthopedic?

2 A I was in a practice with a single other doctor from
3 2004 to 2009, and then he retired, and I joined Desert
4 Orthopedic Center at that time.

5 Q Do you have any privileges in any of the hospitals
6 in Las Vegas?

7 A Yes.

8 Q Do you know which ones?

9 A Centennial Hills Hospital, Mountain View Hospital,
10 and San Martin Hospital.

11 Q Have you ever in your medical career gotten any
12 awards?

13 A Yes.

14 Q Can you tell us about those?

15 A I received what's called the Leonard Marmor Award at
16 Loma Linda University as a senior resident for excellence in
17 orthopedic surgery, and I also received research awards both
18 my junior and senior years. My senior year was the first
19 place research award for the program.

20 Q And do you speak any other languages?

21 A I speak Spanish and Portuguese.

22 Q Now, you have treated Yvonne O'Connell; is that
23 correct?

24 A Yes.

25 Q Can you tell us when you say Yvonne?

1 A I saw her on May 11th, 2015.

2 Q And do you know why Yvonne came to see you?

3 A For bilateral knee pain, or knee pain in both knees.

4 Q And do you know who referred her to come see you?

5 A Dr. Dunn.

6 Q Do you know if Yvonne had treated with any other
7 doctor at Desert Orthopedic in relation to her knees?

8 A She had had two visits with Dr. Martin, who was my
9 partner at the time as well.

10 Q And when Yvonne came to see you, what was she
11 complaining of for pain?

12 A Knee pain in both knees.

13 Q And did you review any imaging when you saw Yvonne?

14 A Yeah. She -- when I saw her, she had an MRI of both
15 the right knee and an MRI of the left knee.

16 Q And did you look at those MRI results?

17 A I did.

18 Q Can you tell us about what the findings were in the
19 MRI of her right knee?

20 A The right knee showed a tear in the medial meniscus.

21 Q And what were the findings from the MRI in the left
22 knee?

23 A The left knee showed a tear in the medial and
24 lateral meniscus.

25 Q And how did Yvonne describe her pain on that date;

1 do you recall?

2 A She indicated that it started after she had a slip
3 and fall on February 8th, 2010. The pain was in the -- we
4 call it the anterior and medial region of the knee, which
5 means on the front and on the inside of the knee. She
6 indicated that she had pain when twisting, pain when climbing
7 stairs, when going from sitting to standing, and then she --
8 she also noted a lot of what we call mechanical symptoms, like
9 popping, locking, catching in the knee.

10 Q Are those complaints consistent with having a
11 meniscus tear?

12 A Yes.

13 Q Did you look at any x-rays of Yvonne's knees?

14 A Yes. Dr. Martin had taken x-rays several months
15 prior, and I looked at those x-rays.

16 Q What did those x-rays show?

17 A For the most part, normal. There was some mild
18 narrowing of the joint space, which means there was some mild
19 arthritis in the knees.

20 Q Can you describe what was going on in Yvonne's left
21 knee?

22 A The left knee looked different from the right knee.
23 The left knee had what we call extrusion of the meniscus, and
24 that's more of a degenerative type of condition. The meniscus
25 actually gets squeezed out of the joint space, and then it

1 will frequently tear.

2 So, she did have tearing of both the medial and
3 lateral meniscus. There's two meniscus in each knee. So,
4 both were torn, but they were also extruded, which leads me to
5 believe that it was more of a degenerative condition of the
6 knee, rather than a traumatic condition.

7 Q And you were able to see that in her MRI; is that
8 correct?

9 A Yes.

10 Q And the arthritis that you could see, you can see
11 that through the x-ray; is that accurate?

12 A Both on x-ray and MRI.

13 Q I want to talk about Yvonne's right knee. Was the
14 imaging different from her left knee than her right knee?

15 A The imaging was -- and MRI, it was the same, but the
16 findings were different.

17 Q Can you tell me what the findings were for her right
18 knee?

19 A The right knee showed a tear in the back part of the
20 medial meniscus, and that's the most common location of where
21 you'll get a traumatic tear is in the -- what we call the
22 posterior horn of the medial meniscus.

23 Q Now, you said in the left knee, there was findings
24 that may lead you to believe it was a degenerative condition;
25 is that correct?

1 A Correct.

2 Q Were those findings in the MRI of her right knee?

3 A No.

4 Q Now, how many patients approximately do you think
5 you've treated who have meniscus tears in your practice?

6 A Many thousands. That's the most common thing I see.
7 It would be -- I probably do -- I probably see 15 or 20 a
8 week.

9 Q And after someone suffers a meniscus tear, when do
10 you first expect them to report complaints of pain?

11 A It varies. Sometimes they have immediate pain after
12 an injury; sometimes it will be a day or two later; sometimes
13 it's a week or two later. I've seen any -- any of those.

14 Q Anything longer than a week or two later?

15 A Well, yeah. I mean, it happens, but typically,
16 it's, you know, within a couple weeks, they start to feel pain
17 in the knee.

18 Q What did you recommend Yvonne do for her knees?

19 A Well, of course we talk about various options, and I
20 believe I reviewed those with her, but the recommended
21 treatment for that and what I recommended for that was
22 arthroscopy, and that's a surgery where you treat the meniscus
23 tear.

24 Q Can you tell us what that surgery entails?

25 A Yeah. It's a surgery -- they're under general

1 anesthesia, but it's an arthroscopy, meaning that you're
2 putting a camera into the knee. So, there's two small
3 incisions on the front of the knee. You put a camera in there
4 so you can see what's going on. And typically with a meniscus
5 tear of this type, you'll do what's called a meniscectomy, and
6 that means removing the torn part of the meniscus, and there's
7 certain instruments that we use to actually take out the
8 cartilage that's torn.

9 Q And is physical therapy required after the surgery?

10 A Sometimes. Often, it is.

11 Q Now, when Yvonne came to you, how did she -- did she
12 rate her pain?

13 A She rated it as a ten on a scale of ten.

14 Q And did that cause you any concern that she was
15 rating her pain at a ten?

16 A No.

17 Q Did you find any indications that Yvonne was lying
18 about her pain?

19 A No.

20 Q Did you see any indications in Yvonne's imaging
21 showing fibromyalgia?

22 A No.

23 Q Is that something that you would see in an MRI?

24 A No, it's not.

25 Q What does the MRI show?

1 A The MRIs show a lot of things. It shows, you know,
2 not only the bone, but soft tissue, cartilage, ligaments. It
3 can show tears. It shows inflammation in the soft tissues.
4 There's a lot of things that you can find on MRI.

5 Q So, if I --

6 A But not -- not fibromyalgia.

7 Q So, if I understand correctly, in her right knee,
8 you found there to be a traumatic tear; is that correct?

9 A There is a tear that's consistent with a history of
10 trauma.

11 Q And why is that tear consistent with a history of
12 trauma? What about it?

13 A A degenerative tear of the meniscus or a
14 degenerative condition will have a different appearance on
15 MRI. You can't say with 100 percent certainty that this
16 happened because of this just looking at the MRI, but you can
17 find -- you can look at findings that are consistent with the
18 trauma.

19 For example, in the left knee, I looked at the MRI,
20 and I felt like it was not consistent with the trauma because
21 of the extrusion of the meniscus. That's a clue that I can
22 look at, and that helps me make my determination.

23 Q Now, you recommended that she have surgery to both
24 knees; is that correct?

25 A Yes.

1 Q And did you schedule an appointment for her to have
2 the surgery?

3 A She said that she would want to consider her options
4 and would contact us if she decided to go forward with the
5 surgery.

6 Q Did Yvonne tell you what kind of medical treatment
7 she had received prior to coming to see you?

8 A Yes. She had said that she had had physical therapy
9 and that didn't give her adequate improvement, and I was aware
10 that she had seen my partner, Dr. Martin, as well.

11 Q And did Yvonne describe to you how the fall occurred
12 in February?

13 A She did, and the way I documented it was that she
14 was walking, and slipped and fell on a liquid. She fell
15 backwards, and she twisted on the right, and fell, striking
16 her body on a raised divider. I'm not sure what type of
17 divider it was.

18 Q Was the fact that when she fell, it was in a
19 twisting motion, have any impact on --

20 A Yes. A kind of typical way of tearing the meniscus
21 is a twisting injury. Not all meniscus tears occur because of
22 a twisting injury, but often, that is the case. So, that also
23 correlates with her history of meniscus tear.

24 Q Can you -- or are you able to describe the type of
25 pain that a patient will experience after they experience a

1 meniscus tear -- having a meniscus tear?

2 A Usually, it hurts in the knee. And a medial
3 meniscus tear will typically hurt in the location she
4 described; in the front and on the medial side. Meniscus
5 tears will often have mechanical symptoms, and that, like I
6 said earlier, was popping, clicking, catching, even locking
7 sometimes, and -- and she described that. That was consistent
8 with a meniscus tear as well.

9 Q If you have a meniscus tear in your knee, does it
10 tend to weaken the knee?

11 A Indirectly. If you have pain in any body part, you
12 tend to use it less, and that leads to atrophy of muscles, and
13 it can lead to weakness.

14 Q Now, you described, I think, the surgery that would
15 occur to her right knee, but you also recommended she have
16 surgery to her left knee; is that correct?

17 A Yes.

18 Q Is it different -- a different type of surgery?

19 A The only difference is that she had the tears of
20 both the medial and lateral meniscus in the left knee, so it
21 would involve treating both sides of the knee.

22 Q But it's your opinion that the left knee was
23 essentially a degenerative tear; is that correct?

24 A That's correct.

25 Q Did you come to opinion as to the causation of the

1 meniscus tear in Yvonne's right knee?

2 A My opinion is that it was related to the slip and
3 fall on February 8th, 2010.

4 Q And is that to a reasonable degree of medical
5 probability?

6 A Yes.

7 Q The surgery that you recommended to her right knee,
8 where would that take place?

9 A Typically, I do it at our surgery center that's at
10 our office on Desert Inn.

11 Q And in the past when you have done a procedure such
12 as the one you recommended to Yvonne's right knee, has it --
13 has it cured the patient's complaints of pain?

14 A Yes.

15 Q Do you have any reason to believe if that -- if
16 Yvonne got the surgery, she wouldn't have relief in her right
17 knee?

18 A That she would not have relief? No.

19 Q Sorry.

20 A I think I --

21 Q Lots of negatives.

22 A I think I understood that correctly.

23 Q Is undergoing the surgery to her right knee -- would
24 that cause her any pain?

25 A Sure.

1 Q What type?

2 A Usually, there's postoperative pain, just related to
3 the surgical procedure itself. The incisions and the
4 procedures can cause some pain that usually lasts a few weeks
5 to a few months after surgery.

6 Q Now, is there any other cure for a meniscus tear
7 such as the one she has in her right knee?

8 A Cure, no. Treatment, yes, but there's no way to fix
9 the tear other than surgery.

10 Q Did you recommend that Yvonne get any other
11 treatment aside from surgery to her right knee?

12 A Well, what I do is discuss the -- the -- all the
13 treatment options, both surgical and non-surgical. So, I will
14 usually review options like physical therapy, cortisone
15 injections, Ibuprofen or some sort of anti-inflammatory
16 medication. Those are all helpful, and I review those, and
17 then I also discuss the surgical options, and then let the
18 patient decide.

19 Q How long does the surgery take?

20 A About a half-an-hour to an hour.

21 Q Aside from the MRI study that you looked at and the
22 x-ray, did you look at any other imaging of Yvonne?

23 A No.

24 Q Would you have needed to do any other testing on her
25 to determine what was ailing her knees?

1 Q And you've testified as an expert witness both
2 relating to -- well, relating to knee pain; is that correct?

3 A Have I before?

4 Q Yes.

5 A Yes, I do.

6 Q And you've seen Ms. O'Connell one time?

7 A Yes.

8 Q And that was in May of 2015?

9 A That's correct.

10 Q How long did you spend with her during that
11 appointment?

12 A I don't remember the appointment itself. I don't
13 know.

14 Q And at that appointment, Ms. O'Connell identified
15 she had ten of ten pain; is that correct?

16 A Yes.

17 Q Did Ms. O'Connell differentiate between what pain
18 she was experiencing in her left knee versus her right knee?

19 A Not that I documented.

20 Q And you were treating her for both her left knee and
21 her right knee during this appointment?

22 A That's right.

23 Q And your conclusion based upon your review of the
24 films, both x-ray and MRI, was that the left knee did not have
25 anything -- that the tear in the meniscus on the left knee was

1 not caused by the fall on February 8th, 2010?

2 A Yes, that's correct.

3 Q And you did note arthritic changes in that left
4 knee?

5 A Very mild in both knees.

6 Q And you did different and note arthritic changes in
7 her right knee?

8 A As well. I documented minimal arthritic changes.

9 Q Do you know whether Ms. O'Connell was experiencing
10 pain related exclusively to the arthritic condition in her
11 right knee?

12 A That's not my opinion. Her pain wasn't -- I mean,
13 it can be difficult to differentiate arthritis pain from a
14 meniscus tear, but again, her -- the findings of arthritis on
15 both the x-ray and the MRI were very mild, and I wouldn't
16 expect that to cause very severe pain at all. Her complaints
17 with the mechanical symptoms and the severe pain are much more
18 consistent with a meniscus tear.

19 Q Is it possible that Ms. O'Connell was in fact
20 experiencing right knee pain as a result of the arthritic
21 condition in her right knee?

22 A It's possible that she had both factors contributing
23 to her pain, but I would say the more severe issues was the
24 meniscus tear. Again, the arthritis was mild.

25 Q And your conclusion that the right knee meniscus

1 tear was a result of the fall on February 8th, 2010 was based
2 upon Ms. O'Connell's assertion that that's when she was
3 injured?

4 A Yes. Well, based on her history that she gave to
5 me.

6 Q And that history included a fall on February 8th,
7 2010?

8 A Yes, but importantly, what she -- that she reported
9 that she wasn't having symptoms before the fall, and that the
10 symptoms started soon after the fall.

11 Q In your history of -- in taking your history -- Ms.
12 O'Connell's history, did she identify any preexisting
13 conditions?

14 A To her knee?

15 Q To anywhere on her body.

16 A According to the chart note, she indicated she had
17 depression, and that she had a mini stroke two days after the
18 fall.

19 Q And as you sit here today, do you know whether Ms.
20 O'Connell had a mini stroke as identified in her history?

21 A Only that she reported it to me.

22 Q She did identify that she had depression as well?

23 A Yes.

24 Q And can depression play a role in the presentation
25 of pain symptoms?

1 A It can.

2 Q Do you have your notes from her visit with you in
3 May --

4 A Yes, I have it right here.

5 Q Okay. Can I have you turn to page 2?

6 A Okay.

7 Q It identifies below the problem recorded as
8 diagnosis codes; do you see that? It says, "Information
9 obtained by patient via web portal"?

10 A Yes.

11 Q It identifies depression. It also identifies
12 neuropathy; is that correct?

13 A Yes.

14 Q Okay. And could neuropathy exhibit pain symptoms --

15 A It can.

16 Q -- in the -- in the lower limbs?

17 A Lower extremities. Not typically in the knee,
18 isolated.

19 Q It identifies stroke, then mini stroke after
20 accident, not stroke. Do you know what that means?

21 A This is information the patient put into the
22 computer, so I only know what it means from what we're reading
23 here. So, this is what the patient put in; not me.

24 Q Do you know whether Ms. O'Connell might have had
25 injuries to her knees prior to February 8th, 2010?

1 A She did not report any injuries prior to that date.

2 Q And do you know whether Ms. O'Connell had any
3 injuries to her knees after February 8th, 2010?

4 A No.

5 Q You weren't informed of any injuries after February
6 8th, 2010; is that correct?

7 A Well, I mean, we -- I had a question about that
8 earlier, so I'm informed now, but as -- at that time and
9 before today, I wasn't informed of any injuries --

10 Q Okay.

11 A -- other than the one that we documented.

12 Q Do x-rays show meniscus tears?

13 A No.

14 Q It's exclusively an MRI?

15 A Not exclusively, but MRI is the best way to diagnose
16 a meniscus tear. In x-rays, you cannot see the meniscus at
17 all.

18 Q Would you expect that Ms. O'Connell would have had
19 some sort of immediate right knee pain if she had torn her
20 meniscus?

21 A I -- like I said earlier, some people will have
22 immediate pain, and sometimes it comes on after a few days or
23 weeks.

24 Q So, there are circumstances when an individual would
25 tear a meniscus and not know about it for a period of two

1 weeks?

2 A Yes.

3 Q Is that common?

4 A Yes.

5 Q Have you treated Ms. O'Connell at all for her -- for
6 her hips?

7 A No.

8 Q And -- strike that. Outside of your practice,
9 Desert Orthopedics, do you know who Ms. O'Connell saw prior to
10 your treatment of her?

11 A No, I don't.

12 Q And Ms. O'Connell reported that she had undergone
13 physical therapy prior to coming to you?

14 A Yes.

15 Q Okay. Do you know the specifics of that physical
16 therapy?

17 A No.

18 Q You don't know what it entailed?

19 A No.

20 Q Your understanding from her though was that it was
21 unsuccessful?

22 A That she didn't get any improvement with it, so,
23 yes.

24 MR. SEMENZA: Just a moment, Your Honor.

25 BY MR. SEMENZA:

1 Q Is it fair to say that Ms. O'Connell experiences
2 pain in both knees?

3 A Yes. At the time I saw her, yes.

4 Q And the severity of Ms. O'Connell's pain relating to
5 her right knee, your understanding of what that pain is is
6 exclusively based upon what she reports?

7 A Yes.

8 Q Has Ms. O'Connell scheduled an appointment to
9 conduct the surgery on her knees?

10 A I don't believe so.

11 Q And would there be two separate surgeries? Do you
12 do both knees at the same time, or do you do one knee and then
13 the other?

14 A You could do both knees at the same time.

15 Q Do you know when Ms. O'Connell first sought medical
16 treatment relating to the fall that took place on February
17 8th, 2010?

18 A No.

19 Q Do you know if that first visit -- okay, I --

20 A I -- I -- no, I'm sorry, I don't. I just know when
21 she saw Dr. Dunn for the first time, but I don't know the
22 first visit.

23 Q Do you know whether during that first medical visit
24 after her fall, whether she complained of any knee pain?

25 A I don't.

1 Q Is it unusual for a patient to be diagnosed with a
2 meniscus tear four years after it takes place?

3 A No, it's not.

4 Q It's common?

5 A It's common for people to have meniscus tears -- or
6 knee complaints for a long time, and then they have the -- an
7 MRI, and then it's diagnosed as a meniscus tear.

8 Q Could fibromyalgia play a role in a patient's pain
9 symptomology?

10 A Sure.

11 Q And could that fibromyalgia play a role in a pain's
12 -- a patient's pain symptomology in a knee?

13 A Not typically. Fibromyalgia does not mimic a
14 meniscus tear, and it's usually not on the list of diagnoses
15 that we consider when we're looking at knee pain. It's not --
16 it rarely involves the knee.

17 Q But sometimes it does, correct?

18 A I assume -- I would suppose, yes.

19 MR. SEMENZA: Okay, thank you. No further
20 questions.

21 THE COURT: Redirect?

22 MS. MORRIS: Just a couple quick ones.

23 REDIRECT EXAMINATION

24 BY MS. MORRIS:

25 Q Did you have to take time away from your practice to

1 come here today?

2 A I did.

3 Q Is the -- the fee that you charge to appear in
4 court, is that a fee that you charge everyone?

5 A Yes.

6 Q And you don't charge by the hour; is that correct?
7 You have a mandatory amount for a half-day?

8 A Half-day, yes.

9 Q Why is that?

10 A Because for me to be here, I have to give up seeing
11 patients in the clinic, or give up doing surgeries, and that's
12 -- and I'm still paying my staff right now -- well, it's after
13 5:00, so they're home, but I have overhead that I need to
14 maintain, and I have loss of income if I give up surgeries and
15 give up clinic time.

16 Q Does the fact that you were paid to appear here in
17 court affect your medical opinion in any way?

18 A No.

19 Q Now, you said that Yvonne could get surgery to both
20 knees at the same time; is that right?

21 A Yeah, I would have that discussion with her. The
22 patient needs to be aware of the pros and cons, but it's
23 possible to do both knees.

24 Q Is it difficult -- or any more difficult to recover
25 from having both knees operated on at the same time?

1 A Sure, yeah.

2 Q Why is that?

3 A Well, it's difficult to get around. You know, if
4 you do a meniscus surgery on one knee, you can rely on the
5 other knee for support, but when you do both at the same time,
6 it's going to be more difficult. She'll probably need some
7 sort of support and help at home if that -- if that's the
8 case.

9 Q Now, the tear that Yvonne has in her right knee,
10 would that cause her in any way to over-compensate while
11 walking?

12 A Over-compensate?

13 Q Or compensate on the other side?

14 A If you're -- yes. If you have a meniscus tear, you
15 can -- sometimes you'll limp; sometimes you'll put more of
16 your weight on the opposite limb.

17 Q If you put more of your weight on the opposite limb,
18 and there's degeneration in that limb, could that cause
19 symptoms in the other limb?

20 A It could.

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

22 MR. SEMENZA: Just a couple.

23 THE COURT: Questions -- oh, re -- recross.

24 //

25 //

1 RE-CROSS-EXAMINATION

2 BY MR. SEMENZA:

3 Q You were asked about over-compensating. Do you
4 traditionally find patients over-compensating to one limb or
5 the other when they have double meniscus tears?6 A When you have a meniscus tear, your gait is going to
7 be altered. So, can it exasperate pain in the contralateral
8 limb? Yes, and I see that frequently. But if you have
9 bilateral meniscus tears, you're not -- you're going to be --
10 I mean, it just depends on the situation.11 Q A meniscus tear, regardless of whether it's
12 bilateral or just one limb, is going to cause some mobility
13 issues; is that correct?14 A Mobility issues, limping, gait abnormalities, and
15 that's going to stress both knees.16 Q So, the left knee meniscus tear could have an impact
17 on the right knee meniscus tear?

18 A Sure.

19 Q And vice versa?

20 A Sure.

21 MR. SEMENZA: Thank you.

22 MS. MORRIS: No other questions. Thank you.

23 THE COURT: Questions from the jury?

24 THE MARSHAL: Anybody else?

25 THE COURT: Counsel approach.

1 (Off-record bench conference)

2 THE COURT: All right. Doctor, could a traumatic
3 tear of the medial meniscus occur from an activity like swing
4 dancing?

5 THE WITNESS: Yes.

6 THE COURT: And then I had a question. The -- the
7 MRIs that you reviewed, when were those MRIs taken?

8 THE WITNESS: The MRI of the right knee was done on
9 August 29th, 2014, and the MRI of the left knee, September
10 22nd, 2014.

11 THE COURT: Any questions as a result of my
12 questions?

13 MR. SEMENZA: No, Your Honor.

14 MS. MORRIS: I just have one -- one follow up
15 question. Thank you.

16 FURTHER REDIRECT EXAMINATION

17 BY MS. MORRIS:

18 Q If a person had a meniscus tear, is it possible that
19 they would have pain to the point that they were not able to
20 swing dance?

21 A It is possible, yes.

22 MR. SEMENZA: Thank you.

23 THE COURT: All right. May this witness be excused?

24 MR. SEMENZA: Yes, Your Honor.

25 THE COURT: Thank you very much for your testimony.

1 All right. Ladies and gentlemen, you're getting out. So,
2 it's 5:30, and so we finished an hour earlier than I had
3 originally anticipated. So, as you know, tomorrow is
4 Veteran's Day and a court holiday, so the courthouse is closed
5 tomorrow. We'll resume on Thursday. And counsel approach for
6 a start time.

7 (Off-record bench conference)

8 THE COURT: We're going to start at 8:30. Dr. Dunn
9 is coming back to finish his testimony, so we'll see you at
10 8:30 on Thursday.

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

20 Of course, no research on anything about the case,
21 including, you know, medial meniscus, or anything of that
22 nature. Everything you learn gets -- you hear in the
23 courtroom. We'll be in recess until Thursday morning at 8:30.

24 THE MARSHAL: All rise for the jury.

25 (Outside the presence of the jury)

1 THE COURT: All right, and the record will reflect
2 that the jury has departed the courtroom. I wanted to make a
3 record that I marked all of the last set of jury questions as
4 one court exhibit together, and now I'm handing the clerk the
5 last jury question, which she'll mark as Court Exhibit 3,
6 right?

7 THE CLERK: Yeah.

8 THE COURT: 3, which is the next in order. Any
9 matters outside the presence before we recess?

10 MS. MORRIS: None.

11 THE COURT: All right. Enjoy your day off.

12 MR. SEMENZA: Thank you.

13 MR. KIRCHER: Thank you.

14 (Court recessed at 5:34 p.m. until Thursday,
15 November 12, 2015, at 8:28 a.m.)

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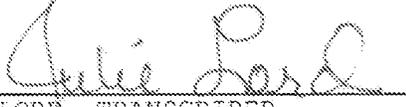
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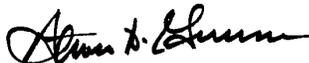
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

**YVONNE O'CONNELL,
PLAINTIFF(S)
VS.
WYNN RESORTS LIMITED,
DEFENDANT(S)**

**CASE NO.: A-12-655992-C

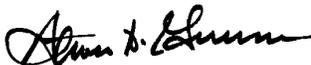
DEPARTMENT 5**

AMENDED JURY LIST

- | | |
|-----------------------|------------------|
| 1. Amanda Wallace | 5. Laurie Prince |
| 2. Jacklyn Schumacher | 6. Susan Berg |
| 3. Benjamin Godfrey | 7. Kenneth Mapoy |
| 4. Brandon Snyder | 8. Susan Kovach |

ALTERNATES

1. Bridget Hamilton


CLERK OF THE COURT

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9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 YVONNE O'CONNELL, an individual,
13
14 Plaintiff,

CASE NO. A-12-655992-C
DEPARTMENT NO. V

15 vs.

**PLAINTIFF'S BRIEF AS TO
CONSTRUCTIVE NOTICE**

16 WYNN LAS VEGAS, LLC, a Nevada
17 Limited Liability Company, doing business
18 as WYNN LAS VEGAS; DOES I through
X; and ROE CORPORATIONS I through X,
19 inclusive,

20 Defendants.

21
22 Plaintiff, Yvonne O'Connell, by and through her counsel, Brian D. Nettles, Esq. and
23 Christian M. Morris, Esq., of the Nettles Law Firm, submits *Plaintiff's Brief as to Constructive*
24 **Notice.**

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This is made and based upon the attached memorandum of points and authorities, all papers and pleadings on file herein and such oral argument as the court may allow at hearing on this matter.

DATED this 12th day of November, 2015.

NETTLES LAW FIRM

/s/ Christian M. Morris
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The present case arises out of an incident on or about February 8, 2010, where Plaintiff Yvonne O’Connell was a guest at Wynn Las Vegas. When Plaintiff was passing through the Atrium Walkway, an area with a high amount of foot traffic, she slipped and fell in a pool of liquid present on the multi-colored tile floor. As a result of the fall the Plaintiff sustained injuries.

Plaintiff has provided evidence that a liquid spill caused her to slip and fall. Evidence has been produced to show that the spill was approximately seven (7) feet long and had been on the floor long enough that it had begun to dry, leaving a sticky residue. Testimony from a Wynn employee has indicated that it was “like a drink.” A statement made by a former Wynn employee indicated that he blocked off the area with a large sweeper machine, further supporting Plaintiff’s testimony that the spill was large, and posed a dangerous condition. The substance was observed

1 by Plaintiff and multiple employees of Wynn. Following Plaintiff’s fall, Defendant Wynn’s
2 employees observed the liquid, cleaned the area with a mop and possible a sweeper machine, but
3 did so without first taking photographs, a violation of their standard procedures.

4 **II.**

5 **ARGUMENT**

6 Plaintiff has presented ample evidence to support a reasonable jury in concluding that
7 Defendant knew or should have discovered the spill, and thus were under constructive notice. To
8 establish constructive notice, a plaintiff shows that the defendant, in the exercise of due care,
9 should have discovered the dangerous condition. This is a fact-intensive analysis, generally left
10 to the trier of fact. Sprague v. Lucky Stores, 109 Nev. 247, 250 (1993). It requires consideration
11 of all relevant factors including, for example, what recurring risks are posed by how the business
12 operates, the seriousness of potential injuries, the cost of mitigating the risk. See, e.g., id. Stated
13 another way, the trier of fact must decide how, in light of the risks posed at the business, the
14 reasonable and prudent business owner would behave. After making this analysis, the trier of fact
15 looks to the evidence to see if, under the circumstances, the business owner should have
16 discovered the condition if it (through its employees) was acting reasonably and prudently.

17 In Shakespear v. Wal-Mart Stores, Inc., the court denied a defendant’s motion for costs
18 after a jury award for plaintiff in a slip and fall case fell below a prior offer for judgment from
19 defendant. 2015 U.S. Dist. LEXIS 128339 at *4 (D. Nev. September 24, 2015).¹ The jury in the
20 case found for the plaintiff after determining the defendant had constructive notice of a cherry pit
21 on the floor. Id. The court described the evidence including that (1) defendant did not maintain a
22 sweep log, (2) defendant instituted a “policy that requires employees to do continuous sweep of
23 debris as they see them,” (3) that a manager remembered conducted a sweep 20 minutes before
24 the fall but did not make document it anywhere, and (4) another employee had recently inspected
25 the area but could not recall doing the safety sweep. Id. at *4–*5.

26 _____
27 ¹ Consideration of unpublished federal district court cases as persuasive is proper. See Schuck v.
28 Signature Flight Support of Nev., Inc., 126 Nev. ___, ___ n.2, 245 P.3d 542, 546 n.2 (2010) (The
court may rely on unpublished federal district court opinions as persuasive, though nonbinding
authority).

1 In Linnell v. Carrabba’s Italian Grill, LLC, the court denied a motion for summary
2 judgment on constructive notice. 833 F. Supp. 2d. 1235, 1237–38 (D. Nev. 2011). The court held
3 that a reasonable jury could properly infer constructive notice of spilled water in a customer
4 bathroom when plaintiff pointed to evidence that (1) there was water on the floor, and (2) the
5 plaintiff’s son-in-law recalled seeing an employee walking over toward the bathroom with a mop
6 and bucket, even though (3) defendant had regular, documented inspections. 833 F. Supp. 2d.
7 1235 (D. Nev. 2011).

8 In Maddox v. K-Mart Corp., the Supreme Court of Alabama held a plaintiff had
9 sufficient facts to support a finding of constructive notice and thus reversed the lower court’s
10 summary judgment for the defendant. 565 So.2d 14, 15–16 (Ala. 1990). The plaintiff entered
11 defendant’s store with his mother and sister, went to the customer service counter and slipped in
12 a liquid in front of the counter. Id. The plaintiff’s sister testified that the liquid appeared to be a
13 cola and was wet, slippery and sticky. Id. The sister also testified that the liquid “looked like it
14 was trying to dry.” Id. The plaintiff’s mother and sister also testified that there was a sticky
15 substance on his clothes. Id. However, none of them knew how long the substance had been on
16 the floor. Id. Despite the lack of direct evidence regarding how long it had been there, the court
17 held that the circumstantial evidence of drying supported an inference that the substance had
18 been on the floor long enough that it should have been discovered by defendant. Id. at 16–17.

19 However, in Tidd v. Walmart Stores, Inc., the federal district court came to a different
20 conclusion in a slip and fall case for reasons that are instructive. 757 F.Supp. 1322, 1323 (Ala.
21 1991). In this case, summary judgement was granted because the plaintiff had not produced
22 evidence indicating how long the liquid in which he slipped and fell had been on the ground
23 prior to his fall. Id. A witness testified that she saw the liquid immediately prior to the fall,
24 verifying there was a foreign substance, but saw that it was clear water and did not say that it was
25 dirty and could not provide any other description of the water that would support an inference
26 that it had been there for anything other than a short time. Id. The court distinguished the case
27 from Maddox emphasizing that

28

1 Here, evidence exists to support a reasonable conclusion that Defendant should have
2 discovered the spill before Plaintiff slipped and fell. Plaintiff testified that the spill as a liquid
3 with a green color that had begun to dry and get sticky in areas. She also testified that after she
4 fell two Wynn employees came over, one of which blocked on the area with a large sweeper
5 machine while the other began to clean up the spill. This testimony is corroborated by the
6 statement from Wynn Employee, Terry Ruby. Moreover, that the employee decided that the spill
7 warranted moving a large sweeper machine to block off the area supports an inference that the
8 spill was large.

9 Testimony from Yanet Elias also corroborates Plaintiff's testimony. Miss Elias testified
10 that there was a sticky substance on the floor. She also testified that it was "like a drink." Finally,
11 Ms. Elias' courtroom testimony that she did not see liquid is consistent with Plaintiff's testimony
12 that the liquid was cleaned up by the earlier-responding unidentified Wynn employee. This
13 testimony is further corroborated by Mr. Prowell's report that Ms. Elias has ordered a porter to
14 clean the liquid. Although Ms. Elias has denied seeing a liquid, it is not clear that this denial is
15 fully consistent with testimony that an employee came earlier and had begun to mop it up.

16 Testimony from Wynn employees Elias and Prowell as indicated that the atrium was a
17 high-traffic area with a slippery floor. Moreover, the area is designed to be place of great beauty
18 where patrons are expected to look at the decorations and not watch every step they take.
19 Testimony also indicated that a porter might not return to the atrium for 30 minutes to an hour
20 has passed, if not longer. Testimony indicated that Wynn does not keep sweep logs and does not
21 require or verify how often an area is checked. Testimony indicated that an assistant manager in
22 PAD walks around to verify places are clean, but again, there is no set time for inspecting each
23 area and no procedure for ensuring an area is adequately inspected. Testimony from Ms. Elias
24 also indicated that the casino was so big that it was impossible to keep it 100% clean all the time.

25 Together this testimony supports the inference that a drink was spilled by a patron and
26 been on the ground long enough that it had begun to dry and get sticky. This testimony is
27 sufficient to warrant a reasonable conclusion based on our common life experiences that the
28 liquid had been there for a long time. The testimony supports a conclusion that the atrium

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warrants special, frequent, and close attention because it is a high traffic area, very slippery when wet, and designed to attract views toward decorations. The testimony supports the conclusion that Wynn’s wander-as-you-will policy for porters and assistant managers is inadequate to ensure regular inspection of the South Atrium. The testimony supports a reasonable conclusion that if a porter or assistant manager had been through the area they would have noticed the spill if they conducted an adequate inspection. The testimony supports a conclusion that Wynn either did not have adequate procedures in place, because they did not have enough staff to keep the casino clean and/or because they did not ensure regular inspection, it resulted in staff covering too large an area and unable to clean the spills that will inevitably happen in a high-traffic area where people are drinking alcohol and in general focusing more on having a good time then looking out for the well-being of their fellow patrons.

DATED this 12th day of November, 2015.

NETTLES LAW FIRM

/s/ Christian M. Morris
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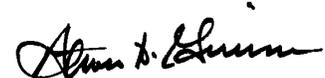
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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 12th day of November, 2015, I served the foregoing ***Plaintiff's Brief as to Constructive Notice*** to the following party by electronic transmission through the Wiznet system:

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Wynn Las Vegas

/s/ Kim L. Alverson
An Employee of the
NETTLES LAW FIRM


CLERK OF THE COURT

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Attorneys for Defendant Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas

DISTRICT COURT
CLARK COUNTY, NEVADA

YVONNE O'CONNELL, an individual,

Plaintiff,

vs.

WYNN LAS VEGAS, LLC, a Nevada
Limited Liability Company, doing business as
WYNN LAS VEGAS; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-12-655992-C
Dept. No. V

**DEFENDANT'S BENCH BRIEF
REGARDING EXPERT MEDICAL
TESTIMONY TO APPORTION
DAMAGES**

Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas ("Wynn"), by and through its attorneys of record, Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq., of Lawrence J. Semenza, III, P.C., hereby submits the following Bench Brief regarding Plaintiff Yvonne O'Connell's ("Plaintiff") failure to provide, during trial, the requisite expert medical evidence apportioning her damages between the alleged injuries she sustained as a result of the incident at issue and her preexisting or contributing health conditions.

The plaintiff bears the burden of proving both the fact and the amount of damage. *See Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 955 P.2d 661, 671 (1998). Moreover, the plaintiff bears the burden of proof on medical causation. *Morsicato v. Sav-On Drug Stores, Inc.*,

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1 121 Nev. 153, 157-58, 111 P. 3d. 1112 (2005).

2 "In a case where a plaintiff has a pre-existing condition, and later sustains an injury to
3 that area, the Plaintiff bears the burden of apportioning the injuries, treatment and damages
4 between the pre-existing condition and the subsequent accident." *Schwartz v. State Farm Mut.*
5 *Auto. Ins. Co.*, 2009 U.S. Dist. LEXIS 64700, *15-16, 2009 WL 2197370 (D. Nev. July 22, 2009)
6 (citing *Kleitzi v. Raskin*, 103 Nev. 325, 327, 738 P.2d 508 (Nev. 1987), citing Restatement
7 (Second) of Torts §433(B), and relying on *Phennah v. Whalen*, 28 Wn. App. 19, 621 P.2d 1304,
8 1309 (Wash. Ct. App. 1980) (stating that the burden to allocate should not be shifted to the
9 defendants where the situation involves the allocation of damages between a plaintiff with a
10 previous injury and a single, subsequent tortfeasor); *see also Valentine v. State Farm Mut. Auto.*
11 *Ins. Co.*, 2015 U.S. Dist. LEXIS 54722, *15-16 (D. Nev. Apr. 27, 2015).

12 Beginning with Plaintiff's alleged neck and back injuries, Plaintiff's treating physician
13 witness, Dr. Thomas Dunn, conceded during his testimony that Plaintiff has suffered from a
14 degenerative disk disease of the lumbar and cervical spine that predates the incident at Wynn's
15 property on February 8, 2010. Dr. Dunn further testified that there was not any indication of an
16 acute injury to Plaintiff's neck or back from the incident. In addition, Plaintiff testified to having a
17 previous back injury before the incident at Wynn's property.

18 Regarding Plaintiff's alleged right knee injury, Plaintiff conceded during her testimony that
19 she suffered a subsequent knee injury on July 10, 2010, when she fell.¹ In addition, Plaintiff's
20 treating physician witness, Dr. Craig Tingey, testified that Plaintiff has arthritic and/or
21 degenerative changes in her right knee that were unrelated to the incident at Wynn's property.

22 Furthermore, the uncontroverted evidence at trial proves that Plaintiff suffers from
23 additional preexisting health issues and conditions, such as fibromyalgia, IBS, anxiety,
24 depression, Ehler Danlos and Marfan syndrome. While testifying, Dr. Dunn and Dr. Tingey both
25 conceded that some of these health issues, such as fibromyalgia, anxiety and depression, can

26 _____
27 ¹ Despite asserting before trial that she was seeking damages related to her left knee, Dr. Tingey testified
28 that her purported injury to her left knee is completely unrelated to the incident at Wynn's property on
February 8, 2010. Accordingly, Wynn does not address the left knee herein.

1 affect and contribute to Plaintiff's pain symptomology and alleged injuries.

2 Because Plaintiff indisputably suffered from these numerous preexisting/contributing
3 conditions and had a subsequent fall, she has the burden of apportioning her injuries, treatment
4 and damages between, on the one hand, the incident at Wynn's property and, on the other hand,
5 her preexisting and contributing health conditions and the fall on July 10, 2010. She has not.
6 Plaintiff's treating physician witnesses merely testified (unconvincingly) that Plaintiff's right knee,
7 neck and back injuries were all related to the incident at Wynn because she told them so. To be
8 clear, Dr. Dunn and Dr. Tingey did not apportion her claimed injuries, treatment and damages
9 between the incident at Wynn's property and her numerous preexisting/contributing conditions
10 and subsequent injuries.²

11 Accordingly, the jury cannot consider Plaintiff's alleged injuries to her right knee, neck
12 and back if and when determining an award of damages. Plaintiff has the burden to apportion
13 damages between the incident at Wynn's property and her fibromyalgia, other preexisting
14 conditions and July 10, 2010 fall, but she failed to do so with expert medical testimony during her
15 case-in-chief. Without the requisite expert testimony, the jury cannot make any determination as
16 to the amount of damages she allegedly suffered as a result of the incident at Wynn's property
17 related to her right knee, neck and back short of entirely speculating.³ Simply put, Nevada law
18 does not permit such a result.

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22 ² Even if Plaintiff had attempted to apportion her damages during her testimony, which she did not, it
23 would not be competent evidence to support her claim of damages. See *Behr v. Diamond*, 2015 Nev. App.
Unpub. LEXIS 504, *2-4 (Nev. Ct. App. 2015) (a plaintiff's own testimony is not competent evidence to
support damages for subjective injuries).

24 ³ Expert testimony is required because the "trier of fact must separate pre-existing injuries from the new
25 injury and award damages only for the injury." *Emert v. City of Knoxville*, 2003 Tenn. App. LEXIS 813,
*8-9, 2003 WL 22734619 (Tenn. Ct. App. Nov. 20, 2003) (citing *Baxter v. Vandenheovel*, 686 S.W.2d
26 908, 912 (Tenn. Ct. App. 1985), *Haws v. Bullock*, 592 S.W.2d 588 (Tenn. Ct. App. 1979)). The fact-
finder should focus on whether the "subsequent incident caused the original condition to worsen
27 physically, not merely whether it merely caused additional pain to manifest itself." *Grover C. Dils Med.*
Ctr. v. Menditto, 121 Nev. 278, 288 112 P.3d 1093, 1100 (2005). In cases such as the one at hand, a
28 layperson cannot apportion damages because, among other things, they lack the requisite skill, training and
experience.

1 In conclusion, the Court should instruct the jury to completely disregard the testimony
2 from Dr. Dunn and Dr. Tingey because they failed to apportion her alleged injuries.

3 DATED this 11th day of November, 2015.

4 LAWRENCE J. SEMENZA, III, P.C.

5 /s/ Christopher D. Kircher

6 Lawrence J. Semenza, III, Esq., Bar No. 7174

7 Christopher D. Kircher, Esq., Bar No. 11176

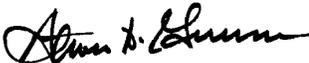
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

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

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

THURSDAY, NOVEMBER 12, 2015

APPEARANCES:

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

COURT RECORDER:

LARA CORCORAN
District Court

TRANSCRIPTION BY:

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(303) 798-0890

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

INDEXWITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REXCROSS</u>
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PLAINTIFF'S WITNESSES:

Dr. Thomas Dunn	6	28	39, 43, 45, 46	42, --, 45, --
Salvatore Risco	47	70	80	--

DEFENSE'S WITNESSES:

Araceli Macias	99	112	118, --	122, 126
Trish Matthieu	127	141	164, 165	165 --
Dr. Victor Klausner (<i>Voir Dire by Ms. Morris</i>)	190*			
Dr. Victor Klausner (<i>Direct by Mr. Semenza</i>)	212	269	328	--

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

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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1 LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 12, 2015, 8:28 A.M.

2 (In the presence of the jury)

3 THE COURT: Case number A-655992, Yvonne O'Connell
4 vs. Wynn Resorts Limited. We're back in the continuation of
5 the trial. We're outside the presence of the jury.

6 This morning, I was informed that Juror number -- in
7 seat number 6, Kelly Harms, had a personal emergency. Her
8 grandmother had an aneurism, and she's at the hospital and has
9 been there since 5:00 this morning, and will not be in. So,
10 we're replacing her with Alternate number 1, Susan Berg, and
11 the marshal's already told -- you know, is already going to
12 tell Susan Berg that she'll take seat number 6 to replace
13 Kelly Harms. That's why we have alternates.

14 All right. What about jury instructions, folks?
15 Have you met and conferred about your jury instructions yet?

16 MR. SEMENZA: I haven't seen the plaintiff's jury
17 instructions, Your Honor.

18 MS. MORRIS: We have a set of them.

19 THE COURT: Have you sent your jury instructions to
20 them?

21 MR. SEMENZA: Yes, they've had them for quite a
22 while.

23 THE COURT: Okay.

24 MS. MORRIS: So, we have discussed them. When he
25 was in my office, I went through, and I told them certain

1 problems or certain issues that I had with his, and said I had
2 certain ones that I'd like to insert. We just haven't had a
3 final meeting about those.

4 THE COURT: Okay. Well, you need to send him your
5 proposed jury instructions, and then you need to confer about
6 that, because you're supposed to be done tomorrow --

7 MS. MORRIS: Correct.

8 THE COURT: -- and I haven't seen any jury
9 instructions that --

10 MS. MORRIS: And we've got copies right here we can
11 certainly hand to them.

12 MR. SEMENZA: And Your Honor --

13 THE COURT: Actually, I did get yours, I believe,
14 because --

15 MR. SEMENZA: Yes.

16 THE COURT: -- they were even on the bright-colored
17 paper, which is new.

18 MR. SEMENZA: We did our best.

19 THE COURT: Thank you.

20 THE CLERK: Colored paper?

21 THE COURT: Yeah, it was my JEA's idea.

22 THE CLERK: Oh.

23 THE COURT: That -- and it works really well, you
24 know, when you're looking through all of them to kind of keep
25 -- get straight as to who has proposed what, and so it was --

1 if you had it, it was great, and if you didn't, you know, we
2 could get by without it, but thank you.

3 MR. SEMENZA: Yes. And Your Honor, I do believe,
4 and I think plaintiff's counsel will agree with me, that we
5 should be done with testimony today.

6 THE COURT: Oh, okay.

7 MS. MORRIS: I don't know. I don't know who he's
8 calling, so I couldn't comment on that.

9 MR. SEMENZA: I would anticipate we'll be done with
10 testimony today. So, as we get further along in the day, then
11 I think we can sit down and talk scheduling as far as ironing
12 out the jury instructions, and closings, and those sorts of
13 things.

14 THE COURT: Okay, very good. So, you're ready to
15 bring the jury in? No other matters outside the presence?
16 Got everybody? All right, let's go.

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

18 (In the presence of the jury)

19 THE COURT: Good morning. Please be seated. And
20 the record will reflect that we've now been rejoined by what
21 is now all eight members of the jury and one alternate.

22 Sadly, one of our -- one of our regular jurors, Ms.
23 Harms in seat number 6, had a family tragedy with her
24 grandmother and is in the hospital attending to her, and so
25 that's what alternates are for, and that's why they're so

1 important. And so, we've replaced Susan Berg, our first
2 alternate, into seat number 6, and we'll proceed with the
3 trial. And where are we now?

4 MS. MORRIS: Dr. Dunn will be here -- well, he
5 should be here, so.

6 THE MARSHAL: He's here.

7 MS. MORRIS: He's here. We call Dr. -- recall Dr.
8 Dunn.

9 THE COURT: Calling Dr. Dunn.

10 THE CLERK: And he'll still be under oath.

11 THE COURT: Take the stand, Doctor, and you're still
12 under oath from before, all right? Have a seat. You may
13 proceed.

14 MS. MORRIS: Thank you.

15 DIRECT EXAMINATION (RESUMED)

16 BY MS. MORRIS:

17 Q Good morning, Dr. Dunn.

18 A Morning.

19 Q When we left off talking, I think you had told us
20 that you had been practicing for 26 years; is that correct?

21 A In private practice since 1992, so that would be 23
22 years.

23 Q And in your time practicing in private practice, do
24 you know approximately how many fusion surgeries you've
25 performed?

1 A Oh, well, I think the best way to say that is,
2 consistently, I think when I looked at my numbers, I perform
3 anywhere -- a little over 200 to 250 spine surgeries a year,
4 and about half of those would be fusions.

5 Q And so, would it be fair to say that you've seen
6 thousands of patients?

7 A Yes.

8 Q Have you seen patients who have come complaining to
9 you for pain as a result of a fall?

10 MR. SEMENZA: Your Honor, I'm going to object that
11 this is outside the scope of the medical chart.

12 THE COURT: Well, approach.

13 (Off-record bench conference)

14 THE COURT: All right. So, the objection is
15 overruled, but I need you to lay the foundation. In other
16 words, we're not -- just what we discussed at the bench --

17 MS. MORRIS: Correct.

18 THE COURT: -- back into it.

19 MS. MORRIS: Yes.

20 THE COURT: Okay.

21 BY MS. MORRIS:

22 Q Dr. Dunn, I'd like to talk to you about your
23 experience in your practice of medicine and --

24 THE COURT: No.

25 MS. MORRIS: -- treating patients.

1 THE COURT: No, no. He has an opinion; what's the
2 basis for his opinion.

3 BY MS. MORRIS:

4 Q Dr. Dunn, you've been practicing for 23 years; is
5 that correct?

6 A Yes.

7 Q And you've seen thousands of patients; is that
8 right?

9 A Yes.

10 Q Have you treated patients who have come to you with
11 complaints of pain as a result of a fall?

12 A I have.

13 Q When a patient -- when a person falls, can they get
14 hurt?

15 A Yes.

16 Q Does age factor into the amount of damage that can
17 happen when a person falls?

18 A Yes.

19 Q Tell me how.

20 A Well, I believe we may have discussed this a bit
21 earlier, but as we age, the musculoskeletal system experiences
22 degenerative changes as a result of that aging. Common terms
23 for that are arthritis; degenerative arthrosis.

24 As it involves the articular structures of the
25 spine, we're talking about two structures, really. The

1 intervertebral discs, which serves as a shock absorber between
2 the vertebrae. And with each intervertebral disc, whether it
3 be in your neck or back, or the thoracic spine, your mid-back,
4 there is an associated pair of joints called the facet joints,
5 otherwise known as swivel joints, and that's what allows the
6 complex motion we have in our necks and backs. And you can
7 compare that to the knee, which is a simple hinge joint.

8 So, these articular structures are susceptible to
9 degeneration. And depending on genetics, occupational
10 activities, accidents throughout one's lifetime, we can
11 develop a wear and tear phenomenon of these structures, and
12 the structure specifically has to do with cartilage, which,
13 unfortunately, in our bodies, does not replenish itself. Some
14 of us, it's hair cells; others, it's neurologic cells; and
15 then cartilage cells don't replenish or heal well.

16 As we age, there's a term that we use called
17 frailty. Our structures become weaker, in a sense, and
18 therefore, more susceptible to injury. And I think it's
19 somewhat intuitive, if you take a fall in a 20-year-old,
20 versus a 30, versus a 40, versus a 50, there are changes that
21 make that older person more susceptible to injury, and hence,
22 that goes along with the term frail or frailty.

23 Q Can you explain to us how a fall in a 58-year-old
24 can injure the spine, especially a degenerative spine?

25 A Yes.

1 MR. SEMENZA: Your Honor, I'm going to object. This
2 is outside the scope of the medical chart.

3 THE COURT: Okay, that's sustained. I think I told
4 you that I need you to talk about Ms. O'Connell, because
5 that's what he needs to talk about as to what his opinion was
6 and why he came to that opinion. But just this overall, I
7 told you not to do that, and you continue. So, don't do it.

8 BY MS. MORRIS:

9 Q How old was Ms. O'Connell when she fell?

10 A 58.

11 Q And at the time she fell, did she have a
12 degenerative spine?

13 A Yes.

14 Q How can a 58-year-old injure a degenerative spine
15 when they fall?

16 A Well, the forces --

17 MR. SEMENZA: Again, Your Honor, this is outside the
18 scope of the medical chart.

19 THE COURT: All right. Doctor, do you have an
20 opinion as to why Ms. O'Connell might have injured her spine
21 in this fall?

22 THE WITNESS: Yes.

23 THE COURT: Okay. What -- what is that?

24 THE WITNESS: I believe that she sustained
25 micro tears to the aged intervertebral discs in her neck.

1 BY MS. MORRIS:

2 Q And why do you believe that?

3 A One, because of the nature and quality of her
4 symptomatology. She relates in her history to me on the
5 initial evaluation that she has been experiencing a consistent
6 quality of neck pain with variable symptoms into her
7 extremities, meaning, sometimes it's in the right arm,
8 sometimes it's in the left arm. But overall, the consistent
9 quality has been what I would describe as chronic axial
10 mechanical neck pain that has persisted at the time that I saw
11 her for almost four-and-a-half years.

12 Q Can you tell us, do you expect the pain to the neck
13 to be immediate upon a fall?

14 MR. SEMENZA: Objection, Your Honor. Again, outside
15 the scope of the medical chart.

16 THE COURT: I'm going to overrule that. Go ahead.

17 THE WITNESS: No.

18 BY MS. MORRIS:

19 Q Why not?

20 A Well, often, an accident results in -- it's a
21 traumatic event to people, and they register pain differently,
22 and although they may experience discomfort in one area,
23 often, it's overridden by injuries to other areas. We call
24 that the Gate Theory of Pain.

25 And the best way to understand that would be, for

1 instance, if you came in and you had some neck pain or
2 soreness, and I took a hammer and I bashed your finger, you're
3 really not going to pay -- your brain is not going to pay much
4 attention to the afferent information from the sensory fibers
5 from the neck; it's going to be overridden by the pain that
6 you're experiencing when I hit your thumb with that hammer.

7 So, many times, when people are injured, they're
8 focused on their main area of complaint, which may be the
9 back, the hip, the knee, whatever it might be, and they might
10 not recognize the full extent of their injuries. So, over the
11 course of days, or even weeks, there becomes a full
12 realization or recognition of pain to the different areas that
13 were injured, so it's not always immediate.

14 Q Is there a certain time frame in which you would
15 expect to see an onset of pain?

16 A I mean, it varies from individual to individual, and
17 it varies on the extent of injuries. I mean, someone who
18 comes in with a pelvis fracture or head injury, you may not
19 recognize it for months. So, it's a very generalized
20 question, but I say, overall, most people who don't have a
21 closed head injury or a serious injury that requires emergent
22 transport and surgery, typically within a couple weeks.

23 Q Now, do you recall Yvonne O'Connell coming in to see
24 you?

25 A Well, my recollection of the details of her visit

1 has to be from my medical records, but I do specifically
2 remember her, yes.

3 Q And when she came in to see you, do you recall her
4 demeanor?

5 A I do remember her, yes.

6 Q And what was her demeanor like?

7 A Well, I remember her uniquely upon seeing her here
8 in court because her personality is not uncommon on many
9 patients I see, and she is very similar to one of my close
10 relatives in that they're very much interested in their
11 ailments and they go to the world wide web. It's called
12 physician by Google.

13 MR. SEMENZA: Your Honor, I'm going to object as
14 outside the scope.

15 THE COURT: All right, sustained. You need to keep
16 this just to Ms. O'Connell so we're -- you know, this isn't
17 about your relatives.

18 BY MS. MORRIS:

19 Q Let's talk about Ms. O'Connell. So, when she came
20 in to see you, she reported she'd had a mini stroke a couple
21 days after the fall; is that correct?

22 A Yes.

23 Q Was that significant in any way to you?

24 A No.

25 Q You said that she was very interested in her health.

1 Can you describe that?

2 A Yes. She's a common patient -- and I'll just refer
3 this to Ms. O'Connell -- who goes to Google and puts in their
4 symptoms. And --

5 MR. SEMENZA: Objection, lack of personal knowledge.

6 THE COURT: Well, there's no foundation, so, I mean,
7 find out if he -- lay a proper foundation for this to -- what
8 did she tell him?

9 BY MS. MORRIS:

10 Q What was it about Ms. O'Connell that led you to
11 understand that she was very interested in her health?

12 A Because she was very knowledgeable, and I know she
13 hasn't gone to medical school and doesn't have a formal
14 medical education, so I know it came by way of the computer.
15 And she was very knowledgeable about many of her medical
16 conditions, but was also very respectful regarding my
17 evaluation of her as it involved her neck and back.

18 Q When she came in to you, was she asking for neck
19 surgery?

20 A Well, she came to me -- I'm a surgeon, so when
21 patients come to me, they're typically wanting to know what
22 their surgical options are. So, yes.

23 Q Did she demand neck surgery?

24 A No.

25 Q Was she in any way demanding toward you about the

1 medical care you were giving her?

2 A No.

3 Q Have you ever treated patients who have multiple
4 complaints or are overly anxious about their health?

5 MR. SEMENZA: Your Honor, I'm going to object.
6 Outside the scope of the medical chart.

7 THE COURT: Sustained.

8 BY MS. MORRIS:

9 Q The demeanor that Ms. -- Ms. O'Connell showed when
10 she came in to see you, did that lead you to think she was
11 overly anxious about her health?

12 A No.

13 Q Is there anything about Ms. O'Connell that you saw
14 that would make you hesitant to perform surgery upon her?

15 A You know, I established a rapport with Ms. O'Connell
16 over three visits and spent a considerable amount of time with
17 her, and that's important as a surgeon, in my opinion, because
18 we're dealing with a subjective complaint of pain, so the
19 objective of the surgery would be to improve that pain.

20 And so, if I'm going to take this patient in a
21 relationship where I'm going to operate on them, I want to be
22 confident at least in my own assessment and abilities to
23 assess this patient that she is being forthright about her
24 complaints of subjective pain.

25 And I noted that there was a history of depression,

1 and that can affect an outcome of surgery. And so, therefore,
2 I would say, upon reevaluation, I may obtain a preoperative
3 psychological clearance, which spine surgeons utilize from
4 time to time. And beyond that, I have no reservations about
5 proceeding to surgery if she requested it.

6 Q And you evaluated Yvonne for her truthfulness; is
7 that correct?

8 MR. SEMENZA: Objection, outside the scope.

9 THE COURT: Sustained. No --

10 BY MS. MORRIS:

11 Q You performed a Waddell -- a Waddell test on her; is
12 that correct?

13 A Yes.

14 Q And the purpose of the Waddell --

15 MR. SEMENZA: Your Honor --

16 MS. MORRIS: -- test is what?

17 MR. SEMENZA: -- I'm going to object to any
18 questions relating to the Waddell, because I don't think
19 they're in the medical chart.

20 THE COURT: Approach.

21 (Off-record bench conference)

22 MS. MORRIS: And can that be the sustained
23 objection?

24 THE COURT: Sustained. This question's been asked
25 and answered about Waddell's last time he testified.

1 BY MS. MORRIS:

2 Q So, the psychological clearance that you would
3 require Yvonne to have before surgery, what does that entail?

4 A Typically --

5 MR. SEMENZA: Objection, Your Honor. That's outside
6 the --

7 THE COURT: Sustained.

8 MR. SEMENZA: -- scope of medical chart.

9 THE COURT: He's not designated as an expert. We've
10 already gone into this, that his -- his testimony's restricted
11 to his medical chart, so he's --

12 MS. MORRIS: But he's testifying as an expert in
13 orthopedic surgery from his 23 years --

14 THE COURT: Yes.

15 MS. MORRIS: -- of practice.

16 THE COURT: And you're asking him about a
17 psychological work-up.

18 MS. MORRIS: I'm asking if he knows what that
19 entails since that's something he requires --

20 THE COURT: No.

21 MS. MORRIS: -- his patients to have.

22 THE COURT: Right. He wasn't designated for that
23 purpose, so the objection's sustained.

24 BY MS. MORRIS:

25 Q Is it within your practice to refer patients for

1 psychological clearance before they have surgery if you
2 believe it to be necessary?

3 MR. SEMENZA: Your Honor, same objection.

4 THE COURT: That's -- that's fine. He's already --
5 it's already been asked and answered. He said he does that,
6 so you can ask him again, but let's not -- let's move along
7 and not ask the same questions.

8 MS. MORRIS: Okay.

9 BY MS. MORRIS:

10 Q So, in an individual like Yvonne where she has a
11 degenerative spine which has been injured, would you expect
12 her pain to resolve --

13 MR. SEMENZA: Your Honor, I'm going to object.

14 THE COURT: Let her finish the question, please. Go
15 ahead.

16 BY MS. MORRIS:

17 Q Would you expect the pain to resolve itself on its
18 own without surgery?

19 MR. SEMENZA: And again, Your Honor, my objection
20 is, "in a patient like Ms. O'Connell." That's improper. It
21 goes outside the scope of the medical chart.

22 THE COURT: With Ms. O'Connell.

23 BY MS. MORRIS:

24 Q With Ms. O'Connell and her spine in the condition
25 that it is, would you expect her pain to resolve without any