

Case No. 78701

**In the Supreme Court of Nevada**

MOTOR COACH INDUSTRIES, INC.,

Appellant,

vs.

KEON KHIABANI; ARIA KHIABANI, MINORS, by  
and through their Guardian MARIE-CLAUDE  
RIGAUD; SIAMAK BARIN, as Executor of the  
Estate of KAYVAN KHIABANI, M.D.; the Estate of  
KAYVAN KHIABANI; SIAMAK BARIN, as  
Executor of the Estate of KATAYOUN BARIN,  
DDS; and the Estate of KATAYOUN BARIN, DDS,

Respondents.

Electronically Filed  
Dec 04 2019 05:44 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable ADRIANA ESCOBAR, District Judge  
District Court Case No. A-17-755977-C

**APPELLANT'S APPENDIX  
VOLUME 18  
PAGES 4251-4500**

D. LEE ROBERTS (SBN 8877)  
HOWARD J. RUSSELL (SBN 8879)  
WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Ste. 400  
Las Vegas, Nevada 89118  
(702) 938-3838

DANIEL F. POLSENBERG (SBN 2376)  
JOEL D. HENRIOD (SBN 8492)  
JUSTIN J. HENDERSON (SBN 13,349)  
ABRAHAM G. SMITH (SBN 13,250)  
LEWIS ROCA  
ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Pkwy, Ste. 600  
Las Vegas, Nevada 89169  
(702) 949-8200

DARRELL L. BARGER (*pro hac vice*)  
MICHAEL G. TERRY (*pro hac vice*)  
HARTLINE BARGER LLP  
800 N. Shoreline Blvd.  
Suite 2000, N. Tower  
Corpus Christi, Texas 78401  
JOHN C. DACUS (*pro hac vice*)  
BRIAN RAWSON (*pro hac vice*)  
HARTLINE BARGER LLP  
8750 N. Central Expy., Ste. 1600  
Dallas, Texas 75231

*Attorneys for Appellant*

**CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX**

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
1	Complaint with Jury Demand	05/25/17	1	1–16
2	Amended Complaint and Demand for Jury Trial	06/06/17	1	17–33
3	Reporter’s Transcript of Motion for Temporary Restraining Order	06/15/17	1	34–76
4	Notice of Entry of Order Denying Without Prejudice Plaintiffs’ Ex Parte Motion for Order Requiring Bus Company and Bus Driver to Preserve an Immediately Turn Over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone	06/22/17	1	77–80
5	Defendants Michelangelo Leasing Inc. dba Ryan’s Express and Edward Hubbard’s Answer to Plaintiffs’ Amended Complaint	06/28/17	1	81–97
6	Demand for Jury Trial	06/28/17	1	98–100
7	Defendant Motor Coach Industries, Inc.’s Answer to Plaintiffs’ Amended Complaint	06/30/17	1	101–116
8	Defendant Sevenplus Bicycles, Inc. d/b/a Pro Cyclery’s Answer to Plaintiffs’ Amended Complaint	06/30/17	1	117–136
9	Defendant Sevenplus Bicycles, Inc. d/b/a Pro Cyclery’s Demand for Jury Trial	06/30/17	1	137–139
10	Defendant Bell Sports, Inc.’s Answer to Plaintiff’s Amended Complaint	07/03/17	1	140–153
11	Defendant Bell Sports, Inc.’s Demand for Jury Trial	07/03/17	1	154–157
12	Notice of Entry of Order	07/11/17	1	158–165
13	Notice of Entry of Order Granting Plaintiffs’ Motion for Preferential Trial Setting	07/20/17	1	166–171

14	Reporter's Transcription of Motion for Preferential Trial Setting	07/20/17	1	172–213
15	Notice of Entry of Order (CMO)	08/18/17	1	214–222
16	Notice of Entry of Order	08/23/17	1	223–227
17	Stipulated Protective Order	08/24/17	1	228–236
18	Reporter's Transcription of Motion of Status Check and Motion for Reconsideration with Joinder	09/21/17	1 2	237–250 251–312
19	Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery's Motion for Determination of Good Faith Settlement	09/22/17	2	313–323
20	Defendant's Notice of Filing Notice of Removal	10/17/17	2 3	324–500 501–586
21	Civil Order to Statistically Close Case	10/24/17	3	587–588
22	Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)	10/27/17	3	589–597
23	Transcript of Proceedings	11/02/17	3	598–618
24	Second Amended Complaint and Demand for Jury Trial	11/17/17	3	619–637
25	Order Regarding "Plaintiffs' Motion to Amend Complaint to Substitute Parties" and "Countermotion to Set a Reasonable Trial Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting"	11/17/17	3	638–641
26	Motion for Summary Judgment on Punitive Damages	12/01/17	3	642–664
27	Volume 1: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	3 4	665–750 751–989
28	Volume 2: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	4 5	990–1000 1001–1225

29	Volume 3: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	5 6	1226–1250 1251–1490
30	Motor Coach Industries, Inc.’s Motion for Summary Judgment on All Claims Alleging a Product Defect	12/04/17	6 7	1491–1500 1501–1571
31	Defendant’s Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	12/07/17	7	1572–1583
32	Appendix of Exhibits to Defendant’s Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	12/07/17	7 8	1584–1750 1751–1801
33	Defendants’ Motion in Limine No. 13 to Exclude Plaintiffs’ Expert Witness Robert Cunitz, Ph.d., or in the Alternative, to Limit His Testimony	12/07/17	8	1802–1816
34	Appendix of Exhibits to Defendants’ Motion in Limine No. 13 to Exclude Plaintiffs’ Expert Witness Robert Cunitz, Ph.D., or in the Alternative, to Limit His Testimony	12/07/17	8 9	1817–2000 2001–2100
35	Motion for Determination of Good Faith Settlement Transcript	12/07/17	9	2101–2105
36	Defendants’ Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	12/08/17	9	2106–2128
37	Plaintiffs’ Joint Opposition to MCI Motion for Summary Judgment on All Claims Alleging a Product Defect and to MCI Motion for Summary Judgment on Punitive Damages	12/21/17	9	2129–2175
38	Appendix of Exhibits to Plaintiffs’ Joint Opposition to MCI Motion for Summary Judgment on All Claims	12/21/17	9 10 11	2176–2250 2251–2500 2501–2523

	Alleging a Product Defect and to MCI Motion for Summary Judgment on Punitive Damages			
39	Opposition to “Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians of Bicyclists (Including Sudden Bicycle Movement)”	12/27/17	11	2524–2580
40	Notice of Entry of Findings of Fact Conclusions of Law and Order on Motion for Determination of Good Faith Settlement	01/08/18	11	2581–2590
41	Plaintiffs’ Joint Opposition to Defendant’s Motion in Limine No. 3 to Preclude Plaintiffs from Making Reference to a “Bullet Train” and to Defendant’s Motion in Limine No. 7 to Exclude Any Claims That the Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	01/08/18	11	2591–2611
42	Plaintiffs’ Opposition to Defendant’s Motion in Limine No. 13 to Exclude Plaintiffs’ Expert Witness Robert Cunitz, Ph.D. or in the Alternative to Limit His Testimony	01/08/18	11	2612–2629
43	Plaintiffs’ Opposition to Defendant’s Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	01/08/18	11	2630–2637
44	Reply to Opposition to Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)”	01/16/18	11	2638–2653
45	Plaintiffs’ Addendum to Reply to Opposition to Motion for Summary Judgment on Foreseeability of Bus	01/17/18	11	2654–2663

	Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)”			
46	Reply to Plaintiffs’ Opposition to Motion for Summary Judgment on Punitive Damages	01/17/18	11	2664–2704
47	Motor Coach Industries, Inc.’s Reply in Support of Its Motion for Summary Judgment on All Claims Alleging a Product Defect	01/17/18	11	2705–2719
48	Defendant Bell Sports, Inc.’s Motion for Determination of Good Faith Settlement on Order Shortening Time	01/17/18	11	2720–2734
49	Plaintiffs’ Joinder to Defendant Bell Sports, Inc.’s Motion for Determination of Good Faith Settlement on Order Shortening Time	01/18/18	11	2735–2737
50	Plaintiffs’ Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing Inc. d/b/a Ryan’s Express and Edward Hubbard Only on Order Shortening Time	01/18/18	11	2738–2747
51	Calendar Call Transcript	01/18/18	11 12	2748–2750 2751–2752
52	Motor Coach Industries, Inc.’s Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)	01/19/18	12	2753–2777
53	Defendant’s Reply in Support of Motion in Limine No. 7 to Exclude Any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	01/22/18	12	2778–2787
54	Defendants’ Reply in Support of Motion in Limine No. 13 to Exclude Plaintiffs’ Expert Witness Robert Cunitz, Ph.D., or in the Alternative to Limit His Testimony	01/22/18	12	2788–2793

55	Defendant's Reply in Support of Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	01/22/18	12	2794–2814
56	Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Joinder to Plaintiffs' Motion for Determination of Good Faith Settlement with Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard	01/22/18	12	2815–2817
57	Recorder's Transcript of Hearing on Defendant's Motion for Summary Judgment on All Claims Alleging a Product Defect	01/23/18	12	2818–2997
58	Motions in Limine Transcript	01/29/18	12 13	2998–3000 3001–3212
59	All Pending Motions Transcript	01/31/18	13 14	3213–3250 3251–3469
60	Supplemental Findings of Fact, Conclusions of Law, and Order	02/05/18	14	3470–3473
61	Motor Coach Industries, Inc.'s Answer to Second Amended Complaint	02/06/18	14	3474–3491
62	Status Check Transcript	02/09/18	14 15	3492–3500 3501–3510
63	Notice of Entry of Order	02/09/18	15	3511–3536
64	Jury Trial Transcript	02/12/18	15 16	3537–3750 3751–3817
65	Reporter's Transcription of Proceedings	02/13/18	16 17	3818–4000 4001–4037
66	Reporter's Transcription of Proceedings	02/14/18	17 18	4038–4250 4251–4308
67	Bench Brief on Contributory Negligence	02/15/18	18	4309–4314
68	Reporter's Transcription of Proceedings	02/15/18	18	4315–4500

69	Reporter's Transcription of Proceedings	02/16/18	19	4501–4727
70	Motor Coach Industries, Inc.'s Response to "Bench Brief on Contributory Negligence"	02/16/18	19	4728–4747
71	Defendant's Trial Brief in Support of Level Playing Field	02/20/18	19 20	4748–4750 4751–4808
72	Reporter's Transcription of Proceedings	02/20/18	20 21	4809–5000 5001–5039
73	Reporter's Transcription of Proceedings	02/21/18	21	5040–5159
74	Reporter's Transcription of Proceedings	02/22/18	21 22	5160–5250 5251–5314
75	Findings of Fact, Conclusions of Law, and Order	02/22/18	22	5315–5320
76	Bench Brief in Support of Preinstructing the Jury that Contributory Negligence is Not a Defense in a Product Liability Action	02/22/18	22	5321–5327
77	Reporter's Transcription of Proceedings	02/23/18	22 23	5328–5500 5501–5580
78	Reporter's Transcription of Proceedings	02/26/18	23 24	5581–5750 5751–5834
79	Reporter's Transcription of Proceedings	02/27/18	24 25	5835–6000 6001–6006
80	Reporter's Transcription of Proceedings	02/28/18	25	6007–6194
81	Reporter's Transcription of Proceedings	03/01/18	25 26	6195–6250 6251–6448
82	Reporter's Transcription of Proceedings	03/02/18	26 27	6449–6500 6501–6623
83	Reporter's Transcription of Proceedings	03/05/18	27 28	6624–6750 6751–6878
84	Addendum to Stipulated Protective Order	03/05/18	28	6879–6882
85	Jury Trial Transcript	03/06/18	28 29	6883–7000 7001–7044



86	Reporter's Transcription of Proceedings	03/07/18	29 30	7045–7250 7251–7265
87	Jury Trial Transcript	03/08/18	30	7266–7423
88	Reporter's Transcription of Proceedings	03/09/18	30 31	7424–7500 7501–7728
89	Reporter's Transcription of Proceedings	03/12/18	31 32	7729–7750 7751–7993
90	Motor Coach Industries, Inc.'s Brief in Support of Oral Motion for Judgment as a Matter of Law (NRCP 50(a))	03/12/18	32 33	7994–8000 8001–8017
91	Plaintiffs' Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Loss Income	03/12/18	33	8018–8025
92	Jury Trial Transcript	03/13/18	33	8026–8170
93	Jury Trial Transcript	03/14/18	33 34	8171–8250 8251–8427
94	Jury Trial Transcript	03/15/18	34 35	8428–8500 8501–8636
95	Jury Trial Transcript	03/16/18	35 36	8637–8750 8751–8822
96	Motor Coach Industries, Inc.'s Opposition to Plaintiff's Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Loss Income	03/18/18	36	8823–8838
97	Notice of Entry of Order	03/19/18	36	8839–8841
98	Jury Trial Transcript	03/19/18	36 37	8842–9000 9001–9075
99	Reporter's Transcription of Proceedings	03/20/18	37 38	9076–9250 9251–9297
100	Reporter's Transcription of Proceedings	03/21/18	38 39	9298–9500 9501–9716
101	Reporter's Transcription of Proceedings	03/21/18	39 40	9717–9750 9751–9799
102	Reporter's Transcription of Proceedings	03/21/18	40	9800–9880

103	Reporter's Transcription of Proceedings	03/22/18	40 41	9881–10000 10001–10195
104	Reporter's Transcription of Proceedings	03/23/18	41	10196–10206
105	Proposed Jury Instructions Not Given	03/23/18	41	10207–10235
106	Amended Jury List	03/23/18	41	10236
107	Special Jury Verdict	03/23/18	41	10237–10241
108	Jury Instructions	03/23/18	41 42	10242–10250 10251–10297
109	Proposed Jury Verdict Form Not Used at Trial	03/26/18	42	10298–10302
110	Jury Instructions Reviewed with the Court on March 21, 2018	03/30/18	42	10303–10364
111	Notice of Entry of Judgment	04/18/18	42	10365–10371
112	Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of the Custodian of Records of the Board of Regents NSHE	04/24/18	42	10372–10374
113	Plaintiffs' Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	04/24/18	42	10375–10381
114	Appendix of Exhibits in Support of Plaintiffs' Verified Memorandum of Costs (Volume 1 of 2)	04/24/18	42 43 44 45 46	10382–10500 10501–10750 10751–11000 11001–11250 11251–11360
115	Appendix of Exhibits in Support of Plaintiffs' Verified Memorandum of Costs (Volume 2 of 2)	04/24/18	46 47	11361–11500 11501–11735
116	Amended Declaration of Peter S. Christiansen, Esq. in Support of Plaintiffs' 4/24/18 Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	04/25/18	47	11736–11742
117	Motion to Retax Costs	04/30/18	47 48	11743–11750 11751–11760

118	Opposition to Motion for Limited Post-Trial Discovery	05/03/18	48	11761–11769
119	Appendix of Exhibits to: Motor Coach Industries, Inc.’s Motion for New Trial	05/07/18	48	11770–11962
120	Motor Coach Industries, Inc.’s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	05/07/18	48 49	11963–12000 12001–12012
121	Supplement to Motor Coach Industries, Inc.’s Motion for a Limited New Trial	05/08/18	49	12013–12018
122	Plaintiffs’ Supplemental Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	05/09/18	49	12019–12038
123	Opposition to Defendant’s Motion to Retax Costs	05/14/18	49	12039–12085
124	Notice of Appeal	05/18/18	49	12086–12097
125	Case Appeal Statement	05/18/18	49	12098–12103
126	Plaintiffs’ Opposition to MCI’s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants	06/06/18	49	12104–12112
127	Combined Opposition to Motion for a Limited New Trial and MCI’s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	06/08/18	49 50	12113–12250 12251–12268
128	Reply on Motion to Retax Costs	06/29/18	50	12269–12281
129	Motor Coach Industries, Inc.’s Reply in Support of Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	06/29/18	50	12282–12309
130	Plaintiffs’ Supplemental Opposition to MCI’s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants	09/18/18	50	12310–12321

131	Motor Coach Industries, Inc.'s Response to "Plaintiffs' Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid to Other Defendants"	09/24/18	50	12322–12332
132	Transcript	09/25/18	50	12333–12360
133	Notice of Entry of Stipulation and Order Dismissing Plaintiffs' Claims Against Defendant SevenPlus Bicycles, Inc. Only	10/17/18	50	12361–12365
134	Notice of Entry of Stipulation and Order Dismissing Plaintiffs' Claims Against Bell Sports, Inc. Only	10/17/18	50	12366–12370
135	Order Granting Motion to Dismiss Wrongful Death Claim	01/31/19	50	12371–12372
136	Notice of Entry of Combined Order (1) Denying Motion for Judgment as a Matter of Law and (2) Denying Motion for Limited New Trial	02/01/19	50	12373–12384
137	Notice of Entry of Findings of Fact, Conclusions of Law and Order on Motion for Good Faith Settlement	02/01/19	50	12385–12395
138	Notice of Entry of "Findings of Fact and Conclusions of Law on Defendant's Motion to Retax"	04/24/19	50	12396–12411
139	Notice of Appeal	04/24/19	50	12412–12461
140	Case Appeal Statement	04/24/19	50	12462–12479
141	Notice of Entry of Court's Order Denying Defendant's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants Filed Under Seal on March 26, 2019	05/03/19	50	12480–12489

***Filed Under Seal***

142	Findings of Fact and Conclusions of Law and Order on Motion for Determination of Good Faith Settlement	03/14/18	51	12490–12494
143	Objection to Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of the Custodian of Records of the Board of Regents NSHE and, Alternatively, Motion for Limited Post-Trial Discovery on Order Shortening Time	05/03/18	51	12495–12602
144	Reporter’s Transcript of Proceedings	05/04/18	51	12603–12646
145	Motor Coach Industries, Inc.’s Motion to Alter or Amend Judgment to Offset Settlement Proceed Paid by Other Defendants	05/07/18	51	12647–12672
146	Motor Coach Industries, Inc.’s Motion for a Limited New Trial	05/07/18	51	12673–12704
147	Exhibits G–L and O to: Appendix of Exhibits to: Motor Coach Industries, Inc.’s Motion for a Limited New Trial	05/08/18	51 52	12705–12739 12740–12754
148	Reply in Support of Motion for a Limited New Trial	07/02/18	52	12755–12864
149	Motor Coach Industries, Inc.’s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants	07/02/18	52	12865–12916
150	Plaintiffs’ Supplemental Opposition to MCI’s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants	09/18/18	52	12917–12930
151	Order	03/26/19	52	12931–12937

**ALPHABETICAL TABLE OF CONTENTS TO APPENDIX**

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
84	Addendum to Stipulated Protective Order	03/05/18	28	6879–6882
59	All Pending Motions Transcript	01/31/18	13 14	3213–3250 3251–3469
2	Amended Complaint and Demand for Jury Trial	06/06/17	1	17–33
116	Amended Declaration of Peter S. Christiansen, Esq. in Support of Plaintiffs’ 4/24/18 Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	04/25/18	47	11736–11742
106	Amended Jury List	03/23/18	41	10236
114	Appendix of Exhibits in Support of Plaintiffs’ Verified Memorandum of Costs (Volume 1 of 2)	04/24/18	42 43 44 45 46	10382–10500 10501–10750 10751–11000 11001–11250 11251–11360
115	Appendix of Exhibits in Support of Plaintiffs’ Verified Memorandum of Costs (Volume 2 of 2)	04/24/18	46 47	11361–11500 11501–11735
32	Appendix of Exhibits to Defendant’s Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	12/07/17	7 8	1584–1750 1751–1801
34	Appendix of Exhibits to Defendants’ Motion in Limine No. 13 to Exclude Plaintiffs’ Expert Witness Robert Cunitz, Ph.D., or in the Alternative, to Limit His Testimony	12/07/17	8 9	1817–2000 2001–2100

38	Appendix of Exhibits to Plaintiffs' Joint Opposition to MCI Motion for Summary Judgment on All Claims Alleging a Product Defect and to MCI Motion for Summary Judgment on Punitive Damages	12/21/17	9 10 11	2176–2250 2251–2500 2501–2523
119	Appendix of Exhibits to: Motor Coach Industries, Inc.'s Motion for New Trial	05/07/18	48	11770–11962
76	Bench Brief in Support of Preinstructing the Jury that Contributory Negligence is Not a Defense in a Product Liability Action	02/22/18	22	5321–5327
67	Bench Brief on Contributory Negligence	02/15/18	18	4309–4314
51	Calendar Call Transcript	01/18/18	11 12	2748–2750 2751–2752
125	Case Appeal Statement	05/18/18	49	12098–12103
140	Case Appeal Statement	04/24/19	50	12462–12479
21	Civil Order to Statistically Close Case	10/24/17	3	587–588
127	Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	06/08/18	49 50	12113–12250 12251–12268
1	Complaint with Jury Demand	05/25/17	1	1–16
10	Defendant Bell Sports, Inc.'s Answer to Plaintiff's Amended Complaint	07/03/17	1	140–153
11	Defendant Bell Sports, Inc.'s Demand for Jury Trial	07/03/17	1	154–157
48	Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on Order Shortening Time	01/17/18	11	2720–2734
7	Defendant Motor Coach Industries, Inc.'s Answer to Plaintiffs' Amended Complaint	06/30/17	1	101–116
8	Defendant Sevenplus Bicycles, Inc. d/b/a Pro Cyclery's Answer to Plaintiffs' Amended Complaint	06/30/17	1	117–136

9	Defendant Sevenplus Bicycles, Inc. d/b/a Pro Cyclery's Demand for Jury Trial	06/30/17	1	137–139
19	Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery's Motion for Determination of Good Faith Settlement	09/22/17	2	313–323
31	Defendant's Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts"	12/07/17	7	1572–1583
20	Defendant's Notice of Filing Notice of Removal	10/17/17	2 3	324–500 501–586
55	Defendant's Reply in Support of Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	01/22/18	12	2794–2814
53	Defendant's Reply in Support of Motion in Limine No. 7 to Exclude Any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts"	01/22/18	12	2778–2787
71	Defendant's Trial Brief in Support of Level Playing Field	02/20/18	19 20	4748–4750 4751–4808
5	Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Answer to Plaintiffs' Amended Complaint	06/28/17	1	81–97
56	Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Joinder to Plaintiffs' Motion for Determination of Good Faith Settlement with Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard	01/22/18	12	2815–2817
33	Defendants' Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness	12/07/17	8	1802–1816



	Robert Cunitz, Ph.d., or in the Alternative, to Limit His Testimony			
36	Defendants' Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	12/08/17	9	2106–2128
54	Defendants' Reply in Support of Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D., or in the Alternative to Limit His Testimony	01/22/18	12	2788–2793
6	Demand for Jury Trial	06/28/17	1	98–100
147	Exhibits G–L and O to: Appendix of Exhibits to: Motor Coach Industries, Inc.'s Motion for a Limited New Trial (FILED UNDER SEAL)	05/08/18	51 52	12705–12739 12740–12754
142	Findings of Fact and Conclusions of Law and Order on Motion for Determination of Good Faith Settlement (FILED UNDER SEAL)	03/14/18	51	12490–12494
75	Findings of Fact, Conclusions of Law, and Order	02/22/18	22	5315–5320
108	Jury Instructions	03/23/18	41 42	10242–10250 10251–10297
110	Jury Instructions Reviewed with the Court on March 21, 2018	03/30/18	42	10303–10364
64	Jury Trial Transcript	02/12/18	15 16	3537–3750 3751–3817
85	Jury Trial Transcript	03/06/18	28 29	6883–7000 7001–7044
87	Jury Trial Transcript	03/08/18	30	7266–7423
92	Jury Trial Transcript	03/13/18	33	8026–8170
93	Jury Trial Transcript	03/14/18	33 34	8171–8250 8251–8427
94	Jury Trial Transcript	03/15/18	34 35	8428–8500 8501–8636
95	Jury Trial Transcript	03/16/18	35	8637–8750

			36	8751–8822
98	Jury Trial Transcript	03/19/18	36 37	8842–9000 9001–9075
35	Motion for Determination of Good Faith Settlement Transcript	12/07/17	9	2101–2105
22	Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)	10/27/17	3	589–597
26	Motion for Summary Judgment on Punitive Damages	12/01/17	3	642–664
117	Motion to Retax Costs	04/30/18	47 48	11743–11750 11751–11760
58	Motions in Limine Transcript	01/29/18	12 13	2998–3000 3001–3212
61	Motor Coach Industries, Inc.’s Answer to Second Amended Complaint	02/06/18	14	3474–3491
90	Motor Coach Industries, Inc.’s Brief in Support of Oral Motion for Judgment as a Matter of Law (NRCP 50(a))	03/12/18	32 33	7994–8000 8001–8017
146	Motor Coach Industries, Inc.’s Motion for a Limited New Trial (FILED UNDER SEAL)	05/07/18	51	12673–12704
30	Motor Coach Industries, Inc.’s Motion for Summary Judgment on All Claims Alleging a Product Defect	12/04/17	6 7	1491–1500 1501–1571
145	Motor Coach Industries, Inc.’s Motion to Alter or Amend Judgment to Offset Settlement Proceed Paid by Other Defendants (FILED UNDER SEAL)	05/07/18	51	12647–12672
96	Motor Coach Industries, Inc.’s Opposition to Plaintiff’s Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Loss Income	03/18/18	36	8823–8838
52	Motor Coach Industries, Inc.’s Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)	01/19/18	12	2753–2777

120	Motor Coach Industries, Inc.'s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	05/07/18	48 49	11963–12000 12001–12012
47	Motor Coach Industries, Inc.'s Reply in Support of Its Motion for Summary Judgment on All Claims Alleging a Product Defect	01/17/18	11	2705–2719
149	Motor Coach Industries, Inc.'s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants (FILED UNDER SEAL)	07/02/18	52	12865–12916
129	Motor Coach Industries, Inc.'s Reply in Support of Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	06/29/18	50	12282–12309
70	Motor Coach Industries, Inc.'s Response to “Bench Brief on Contributory Negligence”	02/16/18	19	4728–4747
131	Motor Coach Industries, Inc.'s Response to “Plaintiffs’ Supplemental Opposition to MCI’s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid to Other Defendants”	09/24/18	50	12322–12332
124	Notice of Appeal	05/18/18	49	12086–12097
139	Notice of Appeal	04/24/19	50	12412–12461
138	Notice of Entry of “Findings of Fact and Conclusions of Law on Defendant’s Motion to Retax”	04/24/19	50	12396–12411
136	Notice of Entry of Combined Order (1) Denying Motion for Judgment as a Matter of Law and (2) Denying Motion for Limited New Trial	02/01/19	50	12373–12384
141	Notice of Entry of Court’s Order Denying Defendant’s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other	05/03/19	50	12480–12489

	Defendants Filed Under Seal on March 26, 2019			
40	Notice of Entry of Findings of Fact Conclusions of Law and Order on Motion for Determination of Good Faith Settlement	01/08/18	11	2581–2590
137	Notice of Entry of Findings of Fact, Conclusions of Law and Order on Motion for Good Faith Settlement	02/01/19	50	12385–12395
111	Notice of Entry of Judgment	04/18/18	42	10365–10371
12	Notice of Entry of Order	07/11/17	1	158–165
16	Notice of Entry of Order	08/23/17	1	223–227
63	Notice of Entry of Order	02/09/18	15	3511–3536
97	Notice of Entry of Order	03/19/18	36	8839–8841
15	Notice of Entry of Order (CMO)	08/18/17	1	214–222
4	Notice of Entry of Order Denying Without Prejudice Plaintiffs’ Ex Parte Motion for Order Requiring Bus Company and Bus Driver to Preserve an Immediately Turn Over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone	06/22/17	1	77–80
13	Notice of Entry of Order Granting Plaintiffs’ Motion for Preferential Trial Setting	07/20/17	1	166–171
133	Notice of Entry of Stipulation and Order Dismissing Plaintiffs’ Claims Against Defendant SevenPlus Bicycles, Inc. Only	10/17/18	50	12361–12365
134	Notice of Entry of Stipulation and Order Dismissing Plaintiffs’ Claims Against Bell Sports, Inc. Only	10/17/18	50	12366–12370
143	Objection to Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of the Custodian of Records of the Board of Regents NSHE and, Alternatively, Motion for Limited Post-Trial	05/03/18	51	12495–12602

	Discovery on Order Shortening Time (FILED UNDER SEAL)			
39	Opposition to “Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians of Bicyclists (Including Sudden Bicycle Movement)”	12/27/17	11	2524–2580
123	Opposition to Defendant’s Motion to Retax Costs	05/14/18	49	12039–12085
118	Opposition to Motion for Limited Post-Trial Discovery	05/03/18	48	11761–11769
151	Order (FILED UNDER SEAL)	03/26/19	52	12931–12937
135	Order Granting Motion to Dismiss Wrongful Death Claim	01/31/19	50	12371–12372
25	Order Regarding “Plaintiffs’ Motion to Amend Complaint to Substitute Parties” and “Countermotion to Set a Reasonable Trial Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting”	11/17/17	3	638–641
45	Plaintiffs’ Addendum to Reply to Opposition to Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)”	01/17/18	11	2654–2663
49	Plaintiffs’ Joinder to Defendant Bell Sports, Inc.’s Motion for Determination of Good Faith Settlement on Order Shortening Time	01/18/18	11	2735–2737
41	Plaintiffs’ Joint Opposition to Defendant’s Motion in Limine No. 3 to Preclude Plaintiffs from Making Reference to a “Bullet Train” and to Defendant’s Motion in Limine No. 7 to Exclude Any Claims That the Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	01/08/18	11	2591–2611

37	Plaintiffs' Joint Opposition to MCI Motion for Summary Judgment on All Claims Alleging a Product Defect and to MCI Motion for Summary Judgment on Punitive Damages	12/21/17	9	2129–2175
50	Plaintiffs' Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard Only on Order Shortening Time	01/18/18	11	2738–2747
42	Plaintiffs' Opposition to Defendant's Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D. or in the Alternative to Limit His Testimony	01/08/18	11	2612–2629
43	Plaintiffs' Opposition to Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	01/08/18	11	2630–2637
126	Plaintiffs' Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants	06/06/18	49	12104–12112
130	Plaintiffs' Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants	09/18/18	50	12310–12321
150	Plaintiffs' Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants (FILED UNDER SEAL)	09/18/18	52	12917–12930
122	Plaintiffs' Supplemental Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	05/09/18	49	12019–12038

91	Plaintiffs' Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Loss Income	03/12/18	33	8018–8025
113	Plaintiffs' Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	04/24/18	42	10375–10381
105	Proposed Jury Instructions Not Given	03/23/18	41	10207–10235
109	Proposed Jury Verdict Form Not Used at Trial	03/26/18	42	10298–10302
57	Recorder's Transcript of Hearing on Defendant's Motion for Summary Judgment on All Claims Alleging a Product Defect	01/23/18	12	2818–2997
148	Reply in Support of Motion for a Limited New Trial (FILED UNDER SEAL)	07/02/18	52	12755–12864
128	Reply on Motion to Retax Costs	06/29/18	50	12269–12281
44	Reply to Opposition to Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)"	01/16/18	11	2638–2653
46	Reply to Plaintiffs' Opposition to Motion for Summary Judgment on Punitive Damages	01/17/18	11	2664–2704
3	Reporter's Transcript of Motion for Temporary Restraining Order	06/15/17	1	34–76
144	Reporter's Transcript of Proceedings (FILED UNDER SEAL)	05/04/18	51	12603–12646
14	Reporter's Transcription of Motion for Preferential Trial Setting	07/20/17	1	172–213
18	Reporter's Transcription of Motion of Status Check and Motion for Reconsideration with Joinder	09/21/17	1 2	237–250 251–312
65	Reporter's Transcription of Proceedings	02/13/18	16 17	3818–4000 4001–4037
66	Reporter's Transcription of Proceedings	02/14/18	17 18	4038–4250 4251–4308

68	Reporter's Transcription of Proceedings	02/15/18	18	4315–4500
69	Reporter's Transcription of Proceedings	02/16/18	19	4501–4727
72	Reporter's Transcription of Proceedings	02/20/18	20 21	4809–5000 5001–5039
73	Reporter's Transcription of Proceedings	02/21/18	21	5040–5159
74	Reporter's Transcription of Proceedings	02/22/18	21 22	5160–5250 5251–5314
77	Reporter's Transcription of Proceedings	02/23/18	22 23	5328–5500 5501–5580
78	Reporter's Transcription of Proceedings	02/26/18	23 24	5581–5750 5751–5834
79	Reporter's Transcription of Proceedings	02/27/18	24 25	5835–6000 6001–6006
80	Reporter's Transcription of Proceedings	02/28/18	25	6007–6194
81	Reporter's Transcription of Proceedings	03/01/18	25 26	6195–6250 6251–6448
82	Reporter's Transcription of Proceedings	03/02/18	26 27	6449–6500 6501–6623
83	Reporter's Transcription of Proceedings	03/05/18	27 28	6624–6750 6751–6878
86	Reporter's Transcription of Proceedings	03/07/18	29 30	7045–7250 7251–7265
88	Reporter's Transcription of Proceedings	03/09/18	30 31	7424–7500 7501–7728
89	Reporter's Transcription of Proceedings	03/12/18	31 32	7729–7750 7751–7993
99	Reporter's Transcription of Proceedings	03/20/18	37 38	9076–9250 9251–9297
100	Reporter's Transcription of Proceedings	03/21/18	38 39	9298–9500 9501–9716
101	Reporter's Transcription of Proceedings	03/21/18	39 40	9717–9750 9751–9799



102	Reporter's Transcription of Proceedings	03/21/18	40	9800–9880
103	Reporter's Transcription of Proceedings	03/22/18	40 41	9881–10000 10001–10195
104	Reporter's Transcription of Proceedings	03/23/18	41	10196–10206
24	Second Amended Complaint and Demand for Jury Trial	11/17/17	3	619–637
107	Special Jury Verdict	03/23/18	41	10237–10241
112	Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of the Custodian of Records of the Board of Regents NSHE	04/24/18	42	10372–10374
62	Status Check Transcript	02/09/18	14 15	3492–3500 3501–3510
17	Stipulated Protective Order	08/24/17	1	228–236
121	Supplement to Motor Coach Industries, Inc.'s Motion for a Limited New Trial	05/08/18	49	12013–12018
60	Supplemental Findings of Fact, Conclusions of Law, and Order	02/05/18	14	3470–3473
132	Transcript	09/25/18	50	12333–12360
23	Transcript of Proceedings	11/02/17	3	598–618
27	Volume 1: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	3 4	665–750 751–989
28	Volume 2: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	4 5	990–1000 1001–1225
29	Volume 3: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	5 6	1226–1250 1251–1490

1 think I would be in the position to deliberate  
2 upon that with the group of jurors that were  
3 selected. It's not my first trial, so I  
4 understand that it would be a deliberation.

5 But the question was posed also that  
6 would I be fair to both sides, and I didn't feel I  
7 was going to be fair to both sides. And that  
8 played -- that's what played on my mind, that I'm  
9 not fair to both sides.

10 MR. ROBERTS: As you sit here, you don't  
11 think you can be fair to the plaintiffs?

12 PROSPECTIVE JUROR NO. 11-0855: I don't  
13 think I can.

14 MR. ROBERTS: Okay. Thank you, sir.

15 MR. CHRISTIANSEN: No further questions,  
16 Judge. Challenge for cause.

17 THE COURT: Okay.

18 MR. ROBERTS: We'll stipulate, Your  
19 Honor.

20 THE COURT: All right. Mr. Green, I'm  
21 going to excuse you. And I want to thank you for  
22 your candor. And I hope you have a great evening.  
23 Please go to jury services on the third floor.

24 MR. BARGER: Heads up, the next,  
25 Mr. Luo, he's a Buddhist.

1           MR. KEMP: You wanted to call him in  
2 first.

3           THE COURT: Mr. Luo is going to be in  
4 28; correct? And then we've just lost No. 7.  
5 He's just been excused for cause.

6           THE CLERK: That would be Ms. Larsen.

7           THE COURT: And her number?

8           THE CLERK: 11-1137.

9           MR. CHRISTIANSEN: Ms. Clerk, did we  
10 skip Ms. Chavez?

11           THE CLERK: She got here on the wrong  
12 day, and she was let go on the 12th.

13           MR. CHRISTIANSEN: Sorry.

14           THE CLERK: She was here on the wrong  
15 day.

16           MR. KEMP: Larsen is going where?

17           MR. ROBERTS: Larsen is next.

18           THE COURT: Ms. Larsen is going to be in  
19 Seat 7 and Mr. Luo -- is Franky a female?

20           THE CLERK: I think it's a man.

21           THE COURT: That's going to be Seat 28.

22           THE CLERK: Yes, Your Honor.

23           THE COURT: Do you want to bring?

24           MR. KEMP: Whatever they want to do,  
25 Your Honor.

1           MR. ROBERTS: I know counsel needs a  
2 comfort break.

3           MR. BARGER: Whatever the Court wants to  
4 do.

5           THE COURT: No, let's take a break.  
6 About 10 minutes.

7           MR. ROBERTS: Thank you, Your Honor.

8           MR. CHRISTIANSEN: Thank you, Your  
9 Honor.

10                   (Whereupon, a recess was taken.)

11           MR. BARGER: Besides being a Buddhist,  
12 he's going to say he can't speak, very well,  
13 English. He's also going to say he has a hardship  
14 of a two-year-old son at home too.

15           MR. CHRISTIANSEN: All true. I have the  
16 same things marked.

17           THE MARSHAL: All rise. Have a seat in  
18 one of those metal chairs.

19                   Please be seated. Come to order.

20           THE COURT: Good afternoon. Will you  
21 please state your name and your badge number?

22           PROSPECTIVE JUROR NO. 11-1133: Franky  
23 Luo, Badge No. 11-1133.

24           THE COURT: Okay. Mr. Luo, I wanted to  
25 ask you -- and counsel, I think, have a few

1 questions for you as well -- about some of the  
2 things on your questionnaire.

3 First, let's talk about your proficiency  
4 in English. Can you explain -- you checked that  
5 you do not speak English well.

6 PROSPECTIVE JUROR NO. 11-1133: Yeah,  
7 not too, like, proficient. Because there was  
8 some --

9 THE COURT: How long have you lived  
10 here?

11 PROSPECTIVE JUROR NO. 11-1133: I've  
12 lived here since, like, 2002.

13 THE COURT: Do you employ English every  
14 day?

15 PROSPECTIVE JUROR NO. 11-1133: Like, at  
16 home, I usually speak, like, Chinese with my  
17 family. So ...

18 THE COURT: What about work?

19 PROSPECTIVE JUROR NO. 11-1133: Yeah, I  
20 talk English at work.

21 THE COURT: In school?

22 PROSPECTIVE JUROR NO. 11-1133: In  
23 school ...

24 THE COURT: Did you study here?

25 PROSPECTIVE JUROR NO. 11-1133: Yeah, I

1 studied.

2 THE COURT: What grades were you here?

3 PROSPECTIVE JUROR NO. 11-1133: Like,  
4 the highest education I graduated was high school,  
5 but I was in, like, Nebraska, a different state.

6 THE COURT: You must have spoken English  
7 in Nebraska.

8 PROSPECTIVE JUROR NO. 11-1133: Yeah.

9 THE COURT: So how many school years did  
10 you -- when did you start school in the United  
11 States?

12 PROSPECTIVE JUROR NO. 11-1133: That  
13 would be, like, back in January of 1990.

14 THE COURT: Okay. So you finished and  
15 you graduated from high school and your courses  
16 were all in English?

17 PROSPECTIVE JUROR NO. 11-1133: Yeah.

18 THE COURT: Okay. And your work is in  
19 English?

20 PROSPECTIVE JUROR NO. 11-1133: Yes.

21 THE COURT: Okay. All right. Also,  
22 you've indicated that you're a Buddhist?

23 PROSPECTIVE JUROR NO. 11-1133: Yes.

24 THE COURT: Okay. And with respect to  
25 Buddhism, how do you feel about making judgment or

004255

004255

1 making a decision on this -- in -- in this type of  
2 a proceedings?

3 PROSPECTIVE JUROR NO. 11-1133: It would  
4 probably be a little bit difficult in making a  
5 decision on it.

6 THE COURT: Okay. I need you to speak a  
7 little bit louder. Just because sometimes it  
8 doesn't reach the recorder.

9 PROSPECTIVE JUROR NO. 11-1133: Yeah, it  
10 will be a little bit of difficult, I guess, to  
11 decide, like, whether to choose or which.

12 THE COURT: Why?

13 PROSPECTIVE JUROR NO. 11-1133: I guess  
14 it's because there's, like, a lot of, like, stuff.  
15 Like, you have to kind of know, like, the facts  
16 and stuff.

17 THE COURT: Okay. How active are you in  
18 the Buddhist philosophy -- or I'm not sure if --  
19 is it a religion for you or --

20 PROSPECTIVE JUROR NO. 11-1133: 'Cause,  
21 like, my family, they're also Buddhist. So that's  
22 why we kind of practice, like, that religion.

23 THE COURT: All right. I'm going to let  
24 the counsel ask you more questions -- some other  
25 questions. Okay. Thank you.

1 MR. CHRISTIANSEN: Mr. Luo, my name is  
2 Pete Christiansen. I represent the plaintiffs.

3 In your religion, it's not appropriate  
4 to make findings against a person or judgment  
5 against a person; is that right?

6 PROSPECTIVE JUROR NO. 11-1133: Yes.

7 MR. CHRISTIANSEN: It's also not  
8 appropriate to award money to persons who have  
9 been injured.

10 That's also a fair thing that you  
11 believe in in your religion; correct?

12 PROSPECTIVE JUROR NO. 11-1133: Correct.

13 MR. CHRISTIANSEN: And so in a case  
14 where you're going to have to make a judgment  
15 against the defendant one way or another and  
16 potentially make an award of damages, just based  
17 on your religion, that's not something you can do;  
18 correct?

19 PROSPECTIVE JUROR NO. 11-1133: Correct,  
20 yes.

21 MR. CHRISTIANSEN: So you wouldn't be a  
22 good juror for this case?

23 PROSPECTIVE JUROR NO. 11-1133: No, I  
24 wouldn't.

25 MR. CHRISTIANSEN: Nothing further, Your



1 Honor.

2 MR. ROBERTS: Mr. Luo, can you write  
3 Mandarin?

4 PROSPECTIVE JUROR NO. 11-1133: Not  
5 really. I could talk -- I could speak, but I  
6 couldn't really write.

7 MR. ROBERTS: And Cantonese, can you  
8 write that?

9 PROSPECTIVE JUROR NO. 11-1133: A little  
10 bit but not -- I could, like, speak fluent  
11 Cantonese, yeah, but write not.

12 MR. ROBERTS: So what's the best  
13 language that you can actually write?

14 PROSPECTIVE JUROR NO. 11-1133: I could  
15 probably, like, write, like -- if it's just, like,  
16 basic English, I could write that. But if it's,  
17 like -- like, I guess, like, if it's like, a  
18 longer, like, word, then I might have to go, like,  
19 understanding it, right.

20 MR. ROBERTS: Did you graduate from an  
21 American high school?

22 PROSPECTIVE JUROR NO. 11-1133: Yes, I  
23 did, yes.

24 MR. ROBERTS: And you had to take your  
25 tests in writing?

1 PROSPECTIVE JUROR NO. 11-1133: Yes.

2 MR. ROBERTS: And you passed?

3 PROSPECTIVE JUROR NO. 11-1133: I would  
4 say I barely passed high school because my grades  
5 wasn't, like, really too good.

6 MR. ROBERTS: When you say that you're  
7 worried about being a juror, are you more worried  
8 about being a juror because of your concern about  
9 understanding all the facts and how tough it might  
10 be to make a decision or are you worried about  
11 your Buddhist beliefs and it impacting your  
12 Buddhist beliefs?

13 PROSPECTIVE JUROR NO. 11-1133: The  
14 Buddhist beliefs and also -- the other thing is I  
15 have a minor child; he's 2. And also I have a  
16 9-year-old at the house and I have to, like, you  
17 know, watch them when I get off work. So that  
18 would be another --

19 MR. ROBERTS: Do you have -- you care  
20 for the children during the day?

21 PROSPECTIVE JUROR NO. 11-1133: Yes.

22 MR. ROBERTS: How often do you practice  
23 the Buddhist faith?

24 PROSPECTIVE JUROR NO. 11-1133: Usually,  
25 like, at the -- at nighttime. Usually, like,

1 before dinner just because we kind of just do it  
2 as a family. So, yeah.

3 MR. ROBERTS: If you were selected as a  
4 juror and you heard the evidence and you believed,  
5 based on the evidence, that the plaintiff was  
6 entitled to a monetary award, could you give the  
7 monetary award that you thought they were entitled  
8 to, or would your beliefs prevent you from giving  
9 them what you believe they were entitled to?

10 PROSPECTIVE JUROR NO. 11-1133: That, I  
11 would probably have to look at the facts first to  
12 see -- and determine whether or not.

13 MR. ROBERTS: But let's assume the facts  
14 showed that, under the law as Her Honor explained  
15 it, the plaintiff was entitled to a monetary  
16 award.

17 If you believe that the facts prove  
18 that, could you vote for the monetary award?

19 PROSPECTIVE JUROR NO. 11-1133:  
20 Probably, yeah.

21 MR. ROBERTS: Okay. Thank you, sir.

22 I don't have anything further, Your  
23 Honor.

24 THE COURT: Thank you.

25 Counsel, anything else?

1 MR. CHRISTIANSEN: Not unless the Court  
2 desires me asking more questions of him.

3 THE COURT: Okay. So your answer is you  
4 think you can?

5 PROSPECTIVE JUROR NO. 11-1133: Oh, to  
6 be a juror? I don't think I would be -- be able  
7 to.

8 THE COURT: No. I'm following up to the  
9 question Mr. Roberts just asked you.

10 First Mr. Christiansen started with  
11 asking you about your beliefs, the Buddhist  
12 beliefs and passing judgment and -- but the last  
13 thing you said is that you could give an award.

14 So I really want to understand.

15 PROSPECTIVE JUROR NO. 11-1133: Because,  
16 like, for, like, our Buddhist -- I guess, like --  
17 because I guess we started to practice it -- well,  
18 for me, I guess I started to practice, so I'm not  
19 like a big, big believer in that. Because I just  
20 started, like, practice that, so -- but my other  
21 family members, they're -- I guess they're more  
22 believing.

23 THE COURT: Okay. So we discussed your  
24 proficiency in English, the fact that you are  
25 starting to practice Buddhism again, and -- I hope

004261

1 I'm not misstating that. And, third, you have two  
2 minor children.

3 PROSPECTIVE JUROR NO. 11-1133: Yeah.  
4 Once --

5 MR. BARGER: Judge, can we approach for  
6 a second if you don't mind?

7 THE COURT: Yes.

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

10 THE COURT: Mr. Luo, I'm going to excuse  
11 you. Okay. I'd like you to go back to jury  
12 services. Thank you.

13 PROSPECTIVE JUROR NO. 11-1133: Okay.  
14 Thank you.

15 THE COURT: Have a good day.

16 Okay. Next we are going to speak to --  
17 who is the one that thinks she knows --

18 THE CLERK: Larsen, 11-1137.

19 THE COURT: Jerry, will you bring  
20 Ms. Larsen in, please. Thank you.

21 THE MARSHAL: All rise. Grab the mic  
22 and sit in that chair -- the metal chair.

23 Please be seated. Come to order.

24 THE COURT: Good afternoon. If you  
25 could please state your name and your badge

004262

004262

1 number.

2 PROSPECTIVE JUROR NO. 11-1137: Lana  
3 Larsen, 11-1137.

4 THE COURT: Okay. Ms. Larsen, I just  
5 wanted to ask you a few questions.

6 You indicated that you thought perhaps  
7 you knew specifically Mr. Christiansen's family?

8 PROSPECTIVE JUROR NO. 11-1137: I know  
9 some Christiansens. I don't know if they're his  
10 family.

11 THE COURT: Okay. So would you like to  
12 ask some questions?

13 MR. CHRISTIANSEN: Sure.

14 Ms. Larsen, Pete Christiansen. I  
15 represent the plaintiffs.

16 PROSPECTIVE JUROR NO. 11-1137: I'm  
17 sorry, your first name?

18 MR. CHRISTIANSEN: Pete.

19 PROSPECTIVE JUROR NO. 11-1137: I don't  
20 know your family.

21 Is this on?

22 MR. CHRISTIANSEN: I don't know if it's  
23 on.

24 THE COURT: Who do you know?

25 I'm sorry.

1           MR. CHRISTIANSEN: I was just going to  
2 ask her the same thing, Judge.

3           PROSPECTIVE JUROR NO. 11-1137: It's on.

4           THE COURT: What -- who are the people  
5 with the same last name as Mr. Christiansen that  
6 you know? What individuals?

7           PROSPECTIVE JUROR NO. 11-1137: Oh,  
8 Robert and Valerie Christiansen.

9           THE COURT: Okay. Are you familiar,  
10 Mr. Christiansen, with Robert and Valerie?

11          MR. CHRISTIANSEN: Am I -- they're my  
12 aunt and uncle, Your Honor.

13          THE COURT: Okay. And how long have you  
14 known them?

15          PROSPECTIVE JUROR NO. 11-1137: I'm  
16 sorry?

17          THE COURT: How long have you known  
18 them?

19          PROSPECTIVE JUROR NO. 11-1137: 30  
20 years.

21          THE COURT: 30 years. Okay.

22          And I'll go ahead and let counsel ask  
23 any questions that they have concerning --

24          MR. CHRISTIANSEN: Ms. Larsen, how do  
25 you know Bob and Valerie?

1 PROSPECTIVE JUROR NO. 11-1137: Through  
2 church and mutual friends.

3 MR. CHRISTIANSEN: And you've known them  
4 since they lived over in the Jones and Odin Court  
5 area?

6 PROSPECTIVE JUROR NO. 11-1137: Yes.

7 MR. CHRISTIANSEN: They don't live there  
8 anymore; right?

9 PROSPECTIVE JUROR NO. 11-1137: No.  
10 They're out at Rhodes Ranch.

11 MR. CHRISTIANSEN: Yeah, out in the  
12 northwest.

13 And you socialize with them as well?

14 PROSPECTIVE JUROR NO. 11-1137:  
15 Sometimes.

16 MR. CHRISTIANSEN: You know their  
17 children, Lisa, Robert, and Zach?

18 PROSPECTIVE JUROR NO. 11-1137: I know  
19 Lisa.

20 MR. CHRISTIANSEN: And her children?

21 PROSPECTIVE JUROR NO. 11-1137: I know  
22 Lauren is on our board -- on our church board.

23 MR. CHRISTIANSEN: I think Lauren has  
24 two kids now; right?

25 PROSPECTIVE JUROR NO. 11-1137: Two.



1 MR. CHRISTIANSEN: Two.

2 PROSPECTIVE JUROR NO. 11-1137: And two  
3 on the way.

4 MR. CHRISTIANSEN: Two more on the way?

5 PROSPECTIVE JUROR NO. 11-1137: Twins.

6 MR. CHRISTIANSEN: Got it. Bob is my  
7 father's older brother. They're all from Ely.

8 Did you know that?

9 PROSPECTIVE JUROR NO. 11-1137: No.

10 MR. CHRISTIANSEN: Okay. Have you ever  
11 met me?

12 PROSPECTIVE JUROR NO. 11-1137: No.

13 MR. CHRISTIANSEN: Have you ever met my  
14 dad, Pete?

15 PROSPECTIVE JUROR NO. 11-1137: No.

16 MR. CHRISTIANSEN: Or my mother, Nora?

17 PROSPECTIVE JUROR NO. 11-1137: No.

18 MR. CHRISTIANSEN: The fact that you  
19 know my aunt and uncle going to cause you to  
20 believe any of my questions more than any other  
21 lawyers' questions?

22 PROSPECTIVE JUROR NO. 11-1137: No. No  
23 problems.

24 MR. CHRISTIANSEN: So you could be fair  
25 and impartial either way?

1 PROSPECTIVE JUROR NO. 11-1155: Right.

2 MR. CHRISTIANSEN: Thank you.

3 THE COURT: Mr. Roberts, do you have any  
4 questions?

5 MR. ROBERTS: You mentioned that you've  
6 socialized with Mr. Christiansen's aunt and uncle.

7 THE WITNESS: Yes.

8 MR. ROBERTS: Did you know they had a  
9 nephew who was a lawyer?

10 PROSPECTIVE JUROR NO. 11-1137: No.

11 MR. ROBERTS: Do you have any other  
12 contact with them, you know, community  
13 organizations, church, anything like that?

14 PROSPECTIVE JUROR NO. 11-1137: Church.

15 MR. ROBERTS: Are you a member of the  
16 same parish?

17 PROSPECTIVE JUROR NO. 11-1137: Yes.

18 MR. ROBERTS: Same church?

19 PROSPECTIVE JUROR NO. 11-1137: Same  
20 church.

21 MR. ROBERTS: And how regularly would  
22 you see them at church?

23 PROSPECTIVE JUROR NO. 11-1137: Well,  
24 just social occasions at church. Maybe once a  
25 month or so.

1 MR. ROBERTS: And would it affect your  
2 thinking about the case in any way knowing that  
3 Mr. Christiansen is involved for one of the  
4 parties?

5 PROSPECTIVE JUROR NO. 11-1137: No.

6 MR. ROBERTS: Just a second, judge.

7 May I approach, Your Honor?

8 THE COURT: Yes.

9 MR. ROBERTS: Thank you.

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

12 THE COURT: Ms. Larsen, I want to thank  
13 you for your time, and I'm going to excuse you.  
14 And if you'd please go back to the third floor to  
15 jury services and let them know you're excused.

16 PROSPECTIVE JUROR NO. 11-1137: Thank  
17 you.

18 THE MARSHAL: Your Honor, we do have one  
19 other.

20 THE COURT: Another?

21 MR. CHRISTIANSEN: Thank you, ma'am.

22 THE COURT: Thank you very much.

23 MR. KEMP: Can we fill that seat first  
24 before we consider the next problem, Your Honor?

25 THE COURT: Yes.

1 THE CLERK: Fill Seat 28 first.

2 THE COURT: Who's going to be in

3 Seat 28?

4 THE CLERK: I think Emilie Mosqueda. Is  
5 that what you have?

6 MR. ROBERTS: That's what I have,

7 11-1155.

8 THE CLERK: Yes.

9 THE COURT: Okay. And what about in  
10 Seat No. 7?

11 THE CLERK: 11-1164, Kimberly Flores.

12 THE COURT: Thank you.

13 Jerry, did you say we have something  
14 else?

15 THE MARSHAL: Yes. One of the jurors  
16 brought to my attention, on the 7th of March -- on  
17 page No. 4, Badge No. 11-1192, Philamer Robinson,  
18 she said she has surgery scheduled on the 7th.

19 THE COURT: Is this the one that has --

20 THE MARSHAL: And I do believe a  
21 follow-up appointment.

22 You want to address it now?

23 THE COURT: We can. I know that a  
24 couple of people have sent things in.

25 THE MARSHAL: She says she has paperwork

1 also.

2 THE COURT: Okay.

3 MR. ROBERTS: If she has paperwork, we'd  
4 stipulate.

5 THE COURT: Okay. I think she's having  
6 a colonoscopy. Is that correct?

7 THE MARSHAL: I didn't want the details.  
8 I didn't ask.

9 MR. ROBERTS: If it's a routine  
10 colonoscopy, that would be different.

11 THE COURT: The only thing is -- yes.

12 MR. BARGER: What number was the person  
13 that has the issue?

14 THE CLERK: 11-1192, Philamer Robinson.

15 (Discussion off the record.)

16 THE MARSHAL: Please be seated. Come to  
17 order. Have a seat, please.

18 Your name and badge number?

19 PROSPECTIVE JUROR NO. 11-1192: My name  
20 is Philamer Robinson. And my real last name is  
21 Hollenback. I got remarried.

22 THE COURT: Little bit louder, please.

23 PROSPECTIVE JUROR NO. 11-1192: My name  
24 is Philamer Robinson. But my real name, last  
25 name, is Hollenback. And my badge number is

004270

004270

1 11-1192.

2 THE COURT: Okay. You indicated that  
3 you've sent information --

4 PROSPECTIVE JUROR NO. 11-1192: Yes,  
5 ma'am.

6 THE COURT: -- to chambers?

7 PROSPECTIVE JUROR NO. 11-1192: I'm  
8 scheduled for eye surgery.

9 THE COURT: Oh, eye surgery.

10 PROSPECTIVE JUROR NO. 11-1192: Yes, in  
11 my left eye. It will be on March 7, 2018.

12 THE COURT: Okay. What type of surgery?  
13 What are you having done?

14 PROSPECTIVE JUROR NO. 11-1192: The  
15 doctor is going to put a high lens on my left eye  
16 because I have a cataract.

17 THE COURT: Okay. Did you provide my  
18 office with information confirming that?

19 PROSPECTIVE JUROR NO. 11-1192: No. No.  
20 This is the first time.

21 THE COURT: Okay. I wasn't aware of  
22 this. I've seen other things but not this.

23 PROSPECTIVE JUROR NO. 11-1192: I  
24 apologize. I was thinking that, because this  
25 scheduled at 9 o'clock, I was thinking that

004271

004271

1 there's no court scheduled at 9:00. So I'm sorry.

2 THE COURT: The 7th is --

3 PROSPECTIVE JUROR NO. 11-1192: It was  
4 my fault.

5 THE CLERK: It's a Wednesday.

6 THE COURT: Well, we start at 9:30 on  
7 Wednesday, the 7th.

8 PROSPECTIVE JUROR NO. 11-1192: But the  
9 doctor said that the surgery only takes place ten  
10 minutes. And, physically, I can go wherever I  
11 want but I just cannot move my face, you know,  
12 back and forth or drive.

13 THE COURT: Okay. Would you have  
14 someone that is able to drive you?

15 PROSPECTIVE JUROR NO. 11-1192: Yes,  
16 ma'am.

17 THE COURT: And do you have  
18 documentation of your surgery?

19 PROSPECTIVE JUROR NO. 11-1192: Yes,  
20 ma'am.

21 THE COURT: Okay. Thank you.

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

24 THE COURT: Thank you. I'm going to  
25 excuse you. Okay.

1           PROSPECTIVE JUROR NO. 11-1192: Oh, so  
2 I'm allowed to be absent the whole day on March --  
3 3/7?

4           THE COURT: No, I'm going to excuse you  
5 from the -- from this pool for this case. Okay.  
6 So if you take your documentation and take it back  
7 to the jury commissioner on the third floor, just  
8 let them know.

9           Good luck with your surgery.

10          PROSPECTIVE JUROR NO. 11-1192: Thank  
11 you.

12          THE COURT: Anyone else?

13          THE MARSHAL: There's plenty of others,  
14 but I think that's the only one that's urgent.

15          THE COURT: I'd just like an updated  
16 calendar. All right.

17          MR. KEMP: Day three and four turn into  
18 what I call Phantom of the Opera time. Do you  
19 know that one scene where note to note to note to  
20 note?

21          THE COURT: Right.

22          MR. KEMP: Yeah, they had -- all the  
23 jurors wanted to get out, so the notes start  
24 coming in.

25          THE COURT: I've received some this

004273

004273



1 morning. I haven't had a chance to take a look at  
2 it yet.

3 (Discussion off the record.)

4 THE COURT: I just want to show you now  
5 that I am in the right year.

6 (Discussion off the record.)

7 MR. CHRISTIANSEN: Judge, in light of --  
8 informally, Your Honor, in light of the time after  
9 you question these two new ladies and maybe I  
10 question them just generically, would you want to  
11 take the break then for the evening as opposed to  
12 me trying to finish up the tort reform stuff? I  
13 mean, that's probably going to be best.

14 MR. ROBERTS: Mr. Christiansen wants  
15 people to be on time for their Valentine's  
16 dinners.

17 MR. CHRISTIANSEN: That's right.

18 THE COURT: I forgot, you know, because  
19 I'm working this evening. So I'll celebrate it  
20 this weekend.

21 I think that's a reasonable request.

22 MR. CHRISTIANSEN: Thank you, Your  
23 Honor. That gives Mr. Kemp a chance to shorten  
24 the questions for tomorrow.

25 THE COURT: Good. Very good.

1 (Discussion off the record.)

2 THE COURT: Counsel, you're not  
3 requesting roll now, are you -- for us to take  
4 roll at this point?

5 MR. ROBERTS: No, I think that we do --  
6 we do have to stipulate it on the record. We'll  
7 stipulate on the record the presence of the jury,  
8 assuming everyone appears to be in their seat.

9 (Discussion off the record.)

10 THE MARSHAL: All rise.

11 All the jurors are present, Your Honor.  
12 Please be seated and come to order.

13 THE COURT: Do the parties stipulate to  
14 the presence the jury?

15 MR. ROBERTS: Yes, Your Honor.

16 THE COURT: Okay. Thank you. Call your  
17 next juror.

18 THE CLERK: Yes, Your Honor.  
19 Badge 11-1155, Emilie Mosqueda, in Seat No. 28.

20 And Badge No. 11-1164, Kimberly Flores,  
21 in Seat 7.

22 THE COURT: Good afternoon, Ms. Flores  
23 and Ms. Mosqueda. I'm going to read you the  
24 general questions that you've already heard  
25 several times.

1           Okay. Do any of you have difficulty  
2 understanding English?

3           PROSPECTIVE JUROR NO. 11-1164: No.

4           PROSPECTIVE JUROR NO. 11-1155: No.

5           THE COURT: Are any of you acquainted  
6 with or recognize any of the attorneys in this  
7 case?

8           PROSPECTIVE JUROR NO. 11-1164: No.

9           PROSPECTIVE JUROR NO. 11-1155: No.

10          THE COURT: No?

11          PROSPECTIVE JUROR NO. 11-1164: No.

12          PROSPECTIVE JUROR NO. 11-1155: No.

13          THE COURT: Both have said no.

14          Okay. Are you acquainted or recognize  
15 the names of any of the witnesses who are  
16 identified?

17          PROSPECTIVE JUROR NO. 11-1164: No.

18          PROSPECTIVE JUROR NO. 11-1155: No.

19          THE COURT: Are any of you acquainted  
20 with or recognize any of the parties in the case?

21          PROSPECTIVE JUROR NO. 11-1164: No.

22          PROSPECTIVE JUROR NO. 11-1155: No.

23          THE COURT: Okay. Are you in any way  
24 obligated to any of the parties or the attorneys  
25 in this case?

1 PROSPECTIVE JUROR NO. 11-1164: No.

2 PROSPECTIVE JUROR NO. 11-1155: No.

3 THE COURT: Or are they obligated to  
4 you?

5 PROSPECTIVE JUROR NO. 11-1164: No.

6 PROSPECTIVE JUROR NO. 11-1155: No.

7 THE COURT: Do any of you know or think  
8 you recognize anyone else in the jury panel or  
9 anywhere in the room?

10 PROSPECTIVE JUROR NO. 11-1164: No.

11 PROSPECTIVE JUROR NO. 11-1155: No.

12 THE COURT: No? All right.

13 Do either of you know myself or any of  
14 the members of Department 14?

15 PROSPECTIVE JUROR NO. 11-1164: No.

16 PROSPECTIVE JUROR NO. 11-1155: No.

17 THE COURT: All right. Understanding  
18 that this case is going to probably last another  
19 four weeks after this week, okay, and  
20 understanding the schedule that I indicated  
21 previously -- I don't know.

22 Do you remember it?

23 PROSPECTIVE JUROR NO. 11-1164: Yes.

24 PROSPECTIVE JUROR NO. 11-1155: Yes.

25 THE COURT: Okay. Very good. Would

004277

004277

1 either of you -- would this present a physical or  
2 medical hardship for either of you?

3 PROSPECTIVE JUROR NO. 11-1164: No.

4 PROSPECTIVE JUROR NO. 11-1155: No.

5 THE COURT: No? Okay.

6 Do you feel that, for some reason,  
7 serving on this jury would present you with a  
8 severe or undue hardship?

9 PROSPECTIVE JUROR NO. 11-1164: No.

10 PROSPECTIVE JUROR NO. 11-1155: No.

11 THE COURT: Have you been involved in a  
12 car accident before?

13 PROSPECTIVE JUROR NO. 11-1164: No.

14 PROSPECTIVE JUROR NO. 11-1155: No.

15 THE COURT: As a juror, you will be  
16 required to listen to witnesses, review evidence,  
17 and make a determination based on the facts. You  
18 the jury are the finder of facts, and my job as  
19 the Court is to make sure that the trial is fair  
20 and to instruct you on the law that you will apply  
21 to the facts.

22 Sometimes you may disagree. Some may  
23 disagree with how some of our laws are written.  
24 It would be a violation of a juror's duty,  
25 however, if he or she tried to render a verdict

1 based upon what he or she believed the law to be  
2 if it was different from my instructions.

3 Do either of you feel that you would not  
4 be able to follow all of the instructions of this  
5 Court on the law even if the instructions differ  
6 from your personal opinions or conceptions of what  
7 the law ought to be?

8 You need to enunciate. You need to  
9 speak.

10 PROSPECTIVE JUROR NO. 11-1164: No.

11 PROSPECTIVE JUROR NO. 11-1155: No.

12 THE COURT: Have either of you heard  
13 anything about this case in the media?

14 PROSPECTIVE JUROR NO. 11-1164: No.

15 PROSPECTIVE JUROR NO. 11-1155: No.

16 THE COURT: Facebook? Television?  
17 Newspapers? Anything?

18 PROSPECTIVE JUROR NO. 11-1164: No.

19 PROSPECTIVE JUROR NO. 11-1155: No.

20 THE COURT: All right. Do either of you  
21 have such a sympathy, prejudice, or bias relating  
22 to age, religion, race, gender, or national origin  
23 that you feel it would affect your ability to be  
24 open-minded, fair, and impartial jurors?

25 PROSPECTIVE JUROR NO. 11-1164: No.

1 PROSPECTIVE JUROR NO. 11-1155: No.

2 THE COURT: Do either of you believe  
3 that for any other reason you would be unable to  
4 be fair and serve as jurors -- to serve as jurors  
5 in this particular case?

6 PROSPECTIVE JUROR NO. 11-1164: No.

7 PROSPECTIVE JUROR NO. 11-1155: No.

8 THE COURT: No? Okay.

9 I'm going to ask you individual  
10 questions. First, I'm going to direct my  
11 questions to Ms. Flores.

12 Okay. Ms. Flores, how long have you  
13 lived in Las Vegas?

14 PROSPECTIVE JUROR NO. 11-1164: About 20  
15 years.

16 THE COURT: 20 years. Okay. And what  
17 do you do for a living, or what work do you do or  
18 education?

19 PROSPECTIVE JUROR NO. 11-1164: I'm a  
20 project manager for a design center, which means I  
21 do designing websites and stuff like that.

22 THE COURT: Okay. Did you study for  
23 that?

24 PROSPECTIVE JUROR NO. 11-1164: No.

25 THE COURT: How long have you worked?

004280

004280

1 PROSPECTIVE JUROR NO. 11-1164: Two  
2 years now.

3 THE COURT: Two years? Okay. With this  
4 company?

5 PROSPECTIVE JUROR NO. 11-1164: Um-hum.

6 THE COURT: What about before that?

7 PROSPECTIVE JUROR NO. 11-1164: I worked  
8 in retail for Goodwill of Southern Nevada and  
9 little retail stores at the mall.

10 THE COURT: Okay. Any other work?

11 PROSPECTIVE JUROR NO. 11-1164: No.

12 THE COURT: Are you married, or do you  
13 have a significant other?

14 PROSPECTIVE JUROR NO. 11-1164: I have a  
15 significant other.

16 THE COURT: What area of work --

17 PROSPECTIVE JUROR NO. 11-1164: He does  
18 the same thing as I do.

19 THE COURT: And you indicated he's your  
20 significant other. Same thing?

21 PROSPECTIVE JUROR NO. 11-1164: Um-hum.

22 THE COURT: He does the same thing you  
23 do, but where is he employed now?

24 PROSPECTIVE JUROR NO. 11-1164: With me.  
25 We do the same thing.



1           THE COURT: Do you know if he's ever  
2 done anything other than the type of work that  
3 you're doing?

4           PROSPECTIVE JUROR NO. 11-1164: He  
5 actually worked here before.

6           THE COURT: Here, meaning the court?

7           PROSPECTIVE JUROR NO. 11-1164: Yeah,  
8 the marriage department, handing out certificates.

9           THE COURT: I'm sorry?

10          PROSPECTIVE JUROR NO. 11-1164: He  
11 handed out marriage certificates.

12          THE COURT: So the marriage licensing?

13          PROSPECTIVE JUROR NO. 11-1164: yes.

14          THE COURT: And when was that?

15          PROSPECTIVE JUROR NO. 11-1164: Seven  
16 years ago.

17          THE COURT: And do you know how long he  
18 worked there?

19          PROSPECTIVE JUROR NO. 11-1164: For  
20 about two years.

21          THE COURT: Okay. All right. Do you  
22 have children?

23          PROSPECTIVE JUROR NO. 11-1164: He does,  
24 my significant other.

25          THE COURT: Okay. What age?

1 PROSPECTIVE JUROR NO. 11-1164: 10 and  
2 6.

3 THE COURT: 10 and 6. Okay. All right.  
4 Have you ever served as a juror before?

5 PROSPECTIVE JUROR NO. 11-1164: No.

6 THE COURT: Okay. Thank you. Will you  
7 please pass the mic to Ms. Mosqueda. I'd like to  
8 know how long you've lived in the Las Vegas area.

9 PROSPECTIVE JUROR NO. 11-1155: For 12  
10 years.

11 THE COURT: 12 years? What about before  
12 that?

13 PROSPECTIVE JUROR NO. 11-1155: I was in  
14 California, LA.

15 THE COURT: Where?

16 PROSPECTIVE JUROR NO. 11-1155:  
17 Los Angeles, California.

18 THE COURT: And what area of work or  
19 education are you in?

20 PROSPECTIVE JUROR NO. 11-1155: I'm not  
21 in school, but I'm hotel security at Wynn casino.

22 THE COURT: So you work in security?

23 PROSPECTIVE JUROR NO. 11-1155: I've  
24 been there for six months, yes.

25 THE COURT: And what are your duties?

1 PROSPECTIVE JUROR NO. 11-1155: Just  
2 assist guests with directions and secure the area,  
3 the whole casino.

4 THE COURT: Did you have training for  
5 that?

6 PROSPECTIVE JUROR NO. 11-1155: Yes, I  
7 had.

8 THE COURT: All right. So you've worked  
9 there for six months. What about before that job?

10 PROSPECTIVE JUROR NO. 11-1155: Before,  
11 I was working at a day care center teaching  
12 two-year-olds.

13 THE COURT: How long were you in that  
14 field?

15 PROSPECTIVE JUROR NO. 11-1155: A year.

16 THE COURT: One year?

17 PROSPECTIVE JUROR NO. 11-1155: Yes.

18 THE COURT: All right. What about  
19 before that?

20 PROSPECTIVE JUROR NO. 11-1155: Before,  
21 I was at a supermarket as a meat clerk.

22 THE COURT: How long?

23 PROSPECTIVE JUROR NO. 11-1155: For a  
24 year also.

25 THE COURT: Anything before that?

1 PROSPECTIVE JUROR NO. 11-1155: That's  
2 it.

3 THE COURT: Are you married, or do you  
4 have a significant other?

5 PROSPECTIVE JUROR NO. 11-1155: No, not  
6 married.

7 THE COURT: Okay. Significant other?

8 PROSPECTIVE JUROR NO. 11-1155: No.

9 THE COURT: Okay. Did you before?

10 PROSPECTIVE JUROR NO. 11-1155: No.

11 THE COURT: All right. Have you ever  
12 been a juror -- do you have children?

13 PROSPECTIVE JUROR NO. 11-1155: No, no  
14 children.

15 THE COURT: Have you ever been a juror  
16 before?

17 PROSPECTIVE JUROR NO. 11-1155: No.

18 THE COURT: Okay. Thank you very much.  
19 All right. Mr. Christiansen?

20 MR. CHRISTIANSEN: Sure.

21 We're going to just end the evening with  
22 you two young ladies. The judge is cognizant it's  
23 Valentine's Day.

24 THE COURT: It was all his idea. I  
25 forgot about it.

1 MR. CHRISTIANSEN: You've got the  
2 microphone, Ms. Mosqueda. Ms. Mosqueda, at the  
3 Wynn?

4 PROSPECTIVE JUROR NO. 11-1155: Yes.

5 MR. CHRISTIANSEN: Doing security?

6 PROSPECTIVE JUROR NO. 11-1155: Hotel  
7 security.

8 MR. CHRISTIANSEN: But you've just been  
9 there a brief period of time?

10 PROSPECTIVE JUROR NO. 11-1155: Six  
11 months.

12 MR. CHRISTIANSEN: You and Ms. Flores  
13 were behind the bar and in the sort of the  
14 audience all morning today.

15 PROSPECTIVE JUROR NO. 11-1155: Right.

16 MR. CHRISTIANSEN: Did you hear the  
17 questions I asked sort of the new people and then  
18 the group as a whole?

19 PROSPECTIVE JUROR NO. 11-1155: Yes.

20 MR. CHRISTIANSEN: You've not been a  
21 juror before?

22 PROSPECTIVE JUROR NO. 11-1155: No.

23 MR. CHRISTIANSEN: Do you understand a  
24 little bit now how the process works?

25 PROSPECTIVE JUROR NO. 11-1155: Yes.

1 MR. CHRISTIANSEN: And remember my  
2 questions about Lady Justice and it not mattering  
3 what color, what gender, any of that stuff?

4 PROSPECTIVE JUROR NO. 11-1155: Right.

5 MR. CHRISTIANSEN: Are you okay with  
6 that idea?

7 PROSPECTIVE JUROR NO. 11-1155: Yes.

8 MR. CHRISTIANSEN: You heard how -- the  
9 process of lawyers objecting and sometimes having  
10 arguments up here and then sometimes having  
11 arguments that spill out to the counsel table and  
12 the jury having to leave. Can you live through  
13 all that?

14 PROSPECTIVE JUROR NO. 11-1155: Yes.

15 MR. CHRISTIANSEN: Could you pay full  
16 attention, for the four weeks after this week when  
17 we get a jury selected, to all the evidence?

18 PROSPECTIVE JUROR NO. 11-1155: Yes.

19 MR. CHRISTIANSEN: Do you think you  
20 would like participating maybe by asking some  
21 questions in writing if you had a question of a  
22 witness?

23 PROSPECTIVE JUROR NO. 11-1155: I don't  
24 have any questions.

25 MR. CHRISTIANSEN: If you did in the

1 course of the trial, could you do that question  
2 process that I told you the judge would allow you  
3 all to do if you were a juror?

4 PROSPECTIVE JUROR NO. 11-1155: Yes.

5 MR. CHRISTIANSEN: You think you could  
6 be a fair juror?

7 PROSPECTIVE JUROR NO. 11-1155: Maybe.

8 MR. CHRISTIANSEN: Okay. Why do you say  
9 maybe?

10 PROSPECTIVE JUROR NO. 11-1155: I  
11 just -- I'm not sure about the two parties that  
12 you guys are talking about.

13 MR. CHRISTIANSEN: Meaning you don't  
14 know anything about either side?

15 PROSPECTIVE JUROR NO. 11-1155: No.

16 MR. CHRISTIANSEN: That's kind of  
17 perfect; right? That's what a trial is for, so  
18 you could learn about what happens. Are you okay  
19 with that?

20 PROSPECTIVE JUROR NO. 11-1155: Right.  
21 Yes.

22 MR. CHRISTIANSEN: You notice -- I ask  
23 all the younger people if they can stay off of  
24 Snapchat and Instagram and Twitter and Facebook.  
25 Would you be able to not look at those things or

1 advertise about the trial on those -- in that type  
2 of media forums? Can you do that?

3 PROSPECTIVE JUROR NO. 11-1155: Yes.

4 MR. CHRISTIANSEN: Can you not read the  
5 newspaper or watch television or the internet  
6 where the trial may be broadcast? Are you okay  
7 with that?

8 PROSPECTIVE JUROR NO. 11-1155: Yes.

9 MR. CHRISTIANSEN: Are you okay not  
10 talking to -- you don't have a significant other.  
11 We'll ask the lady behind you.

12 I told -- well, the judge will tell you,  
13 if anybody asks you what you're doing in the  
14 courthouse, you can tell them you're in a civil  
15 trial in front of Judge Escobar, but you can't  
16 talk anything more about it. Is that okay with  
17 you.

18 PROSPECTIVE JUROR NO. 11-1155: Yes.

19 MR. CHRISTIANSEN: Would you be able to  
20 do that?

21 PROSPECTIVE JUROR NO. 11-1155: Yes.

22 MR. CHRISTIANSEN: And if you were  
23 selected as a juror, would you be able to talk to  
24 your fellow jurors at the time of deliberation and  
25 reach -- you know, try to reach a decision?



1 PROSPECTIVE JUROR NO. 11-1155: Yes.

2 MR. CHRISTIANSEN: No problem with any  
3 of that?

4 PROSPECTIVE JUROR NO. 11-1155: No.

5 MR. CHRISTIANSEN: Why don't you hand  
6 back over your right shoulder, and I bet you  
7 everybody will pass it to Ms. McLain, who will  
8 pass it back to ...

9 Ms. Flores, good afternoon.

10 PROSPECTIVE JUROR NO. 11-1164: Good  
11 afternoon.

12 MR. CHRISTIANSEN: Same question I posed  
13 to this nice lady. Could --

14 THE COURT: Before you start, I'd like  
15 your juror number. And you need to speak a little  
16 bit louder, please.

17 PROSPECTIVE JUROR NO. 11-1164: Juror  
18 No. 11-1164, Kimberly Flores.

19 THE COURT: Thank you.

20 Go ahead.

21 MR. CHRISTIANSEN: Ms. Flores, similar  
22 questions that I posed to the lady before you in  
23 Seat 28.

24 Do you think you can follow the process  
25 as it's been explained over the course of the day?

1 PROSPECTIVE JUROR NO. 11-1164: Yeah.

2 MR. CHRISTIANSEN: Do you have any  
3 problem with the idea of justice being blind and  
4 it not mattering the wealth of a party either way?

5 PROSPECTIVE JUROR NO. 11-1164: No  
6 problem.

7 MR. CHRISTIANSEN: Could you be fair to  
8 the Motor Coach defendant as well as to the  
9 plaintiffs Aria and Keon Khiabani?

10 PROSPECTIVE JUROR NO. 11-1164: Yeah.

11 MR. CHRISTIANSEN: Does anybody have a  
12 head start as we sit here today?

13 PROSPECTIVE JUROR NO. 11-1164: I'm  
14 sorry. What?

15 MR. CHRISTIANSEN: Are we all sort of on  
16 an equal playing field today?

17 PROSPECTIVE JUROR NO. 11-1164: Yeah.

18 MR. CHRISTIANSEN: Nobody is, in your  
19 mind, ahead one way or another?

20 PROSPECTIVE JUROR NO. 11-1164: No.

21 MR. CHRISTIANSEN: You're young too, so  
22 would you be able to stay off of the social media  
23 stuff for the course of our trial?

24 PROSPECTIVE JUROR NO. 11-1164: Yeah.

25 MR. CHRISTIANSEN: It's okay to -- what

004291

004291

1 do you guys call it? -- snap your friends, just  
2 not about the trial.

3 PROSPECTIVE JUROR NO. 11-1164: Yeah, I  
4 can do that.

5 MR. CHRISTIANSEN: You can do that?  
6 Okay.

7 You okay with the admonition Her Honor  
8 reads every time which tells you don't go out and  
9 do your own experiments and google things and  
10 just -- you're here to decide the case based on  
11 what happens from this witness stand from the law  
12 the judge gives you.

13 PROSPECTIVE JUROR NO. 11-1164: Right.

14 MR. CHRISTIANSEN: Is that okay with  
15 you?

16 PROSPECTIVE JUROR NO. 11-1164: Yes.

17 MR. CHRISTIANSEN: You could follow  
18 those directions?

19 PROSPECTIVE JUROR NO. 11-1164: Yeah.

20 MR. CHRISTIANSEN: The process by which  
21 jurors are allowed to answer questions, is that  
22 something you could think about participating in?

23 PROSPECTIVE JUROR NO. 11-1164: Yeah.

24 MR. CHRISTIANSEN: Your significant  
25 other has children.

1 PROSPECTIVE JUROR NO. 11-1164: Right.

2 MR. CHRISTIANSEN: You heard my question  
3 to people that have kids and about using the same  
4 common sense that you use figuring out the truth  
5 between kids. Can you use that same common sense  
6 in a courtroom?

7 PROSPECTIVE JUROR NO. 11-1164: Yes, I  
8 can.

9 MR. CHRISTIANSEN: Do you have any  
10 problem listening to experts testify?

11 PROSPECTIVE JUROR NO. 11-1164: No  
12 problem.

13 MR. CHRISTIANSEN: Do you have any  
14 problem being critical of experts, doctors or  
15 otherwise?

16 PROSPECTIVE JUROR NO. 11-1164: I have  
17 no problem with that.

18 MR. CHRISTIANSEN: For purposes of what  
19 we discussed, Judge, I think that's good for  
20 today. Thanks, Your Honor.

21 THE COURT: All right. I'm going to  
22 read you the admonishment. And tomorrow we are  
23 going to start at 1:00 p.m. And I'll do this  
24 admonishment now.

25 You're instructed -- and this goes to

004293

004293

1 everyone -- okay?

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

10           You are not to conduct any research on  
11 your own relating to this case, such as consulting  
12 dictionaries, using the internet, or using any  
13 reference materials. You are not to conduct any  
14 investigation, test any theory of the case,  
15 re-create any aspect of the case, or in any other  
16 way investigate or learn about the case on your  
17 own.

18           You are not to talk with others, text  
19 others, tweet others, message others -- I'm going  
20 to include Snapchat others, google issues, or  
21 conduct any other kind of book or computer  
22 research with regard to any issue, party, witness,  
23 or attorney involved in this case.

24           You are not to form or express any  
25 opinion on any subject connected with this trial

004294

1 until the case is finally submitted to you.

2 Thank you, everyone, for your  
3 dedication, for your patience. Have a great  
4 Valentine's evening. See you tomorrow at 1:00.

5 THE MARSHAL: All rise.

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

8 THE COURT: Counsel, she would like to  
9 speak to us about something. So we're still on  
10 the record.

11 Please state your name.

12 PROSPECTIVE JUROR NO. 11-0877: My name  
13 is Dorothy Lee, and my number is 11-0877.

14 THE COURT: Ms. Lee, what is it you'd  
15 like to tell us?

16 PROSPECTIVE JUROR NO. 11-0877: Yeah, I  
17 have an appointment on Monday. And it's been in  
18 there for over a month. And it's with a Dr. Diaz  
19 and it's out at Nellis Air Force Base. And, you  
20 know, you don't get those appointments that easy.

21 THE COURT: It's on -- so Monday --

22 PROSPECTIVE JUROR NO. 11-0877: It's on  
23 Tuesday. I'm sorry. It's on Tuesday. And they  
24 told me that Monday you all -- Monday, that you  
25 all would be closed -- we'd be closed. It's a

1 holiday. The appointment is at 1 o'clock on  
2 Tuesday, and that's when I need that time off.

3 MR. KEMP: Can we ask what kind of  
4 appointment?

5 THE COURT: Yes, please, Counsel. Go  
6 ahead.

7 MR. KEMP: Ma'am, what kind of  
8 appointment is it?

9 PROSPECTIVE JUROR NO. 11-0877: I have  
10 diabetes and high blood pressure. And they've  
11 taken me off some medicine, and they've given me  
12 tests to find out if my kidney and everything is  
13 going. It's quite a big thing. Now, I've had one  
14 test, and I lost -- came down a point. And so I'm  
15 going back again to see how this here last month  
16 has been.

17 MR. KEMP: Blood pressure came down a  
18 point?

19 PROSPECTIVE JUROR NO. 11-0877: Well,  
20 it's not really the blood pressure, but it's  
21 really the diabetes.

22 MR. KEMP: Okay. So it's an  
23 endocrinologist at Nellis?

24 PROSPECTIVE JUROR NO. 11-0877: Yeah,  
25 he's just a doctor. It's really under internal

1 medicine.

2 MR. KEMP: Do you think there's any  
3 chance that you can move that up to Monday?

4 PROSPECTIVE JUROR NO. 11-0877: No. You  
5 know, it's in there.

6 MR. KEMP: It's in the system?

7 PROSPECTIVE JUROR NO. 11-0877: It's  
8 been in there. It's been in there. I came from  
9 another doctor that put me on something special to  
10 take me off the medicine. They were taking me off  
11 a different medicine. And so when they took me  
12 off one medicine and dropped the other one in  
13 half, they wanted to make sure it doesn't keep  
14 going on, that Alc. They want to make sure that's  
15 not going up. And that's what I have to go see  
16 about that.

17 MR. KEMP: And without prying too much,  
18 what is the level of the Alc number?

19 PROSPECTIVE JUROR NO. 11-0877: It's  
20 down in 7. It was on the 8 when they took me off  
21 the medicine.

22 MR. KEMP: So you're down to 7 now?

23 PROSPECTIVE JUROR NO. 11-0877: Yeah,  
24 now it's down at the 7-something, but it's because  
25 I went on kind of a vegetarian diet.



1           MR. KEMP:   Okay.   And 7 is pretty good;  
2   right?

3           PROSPECTIVE JUROR NO. 11-0877:   Yeah.   I  
4   mean, you know, anything for your health.   And so  
5   I want to get off of it.   And they're going to  
6   take me off of it anyway, and so I have to go  
7   there and see.   And then I need more -- a  
8   different -- other prescriptions need to be filled  
9   too.

10          MR. KEMP:   If you're down to 7, can I  
11   ask how far up you started?

12          PROSPECTIVE JUROR NO. 11-0877:   Oh, it  
13   had been down low when I was on the medicine.   But  
14   my doctor, he left and went overseas, and so  
15   someone's taken his place.   So it had got to  
16   8-something.

17                 And so they told me, "Well, you're going  
18   to either have to take the shot or take the  
19   medicine."   So they took me off of one, and the  
20   Januvia was cut in half.   So that's when they  
21   finally trying to find out --

22          MR. KEMP:   So what you're taking is  
23   Januvia now?

24          PROSPECTIVE JUROR NO. 11-0877:   Januvia  
25   and metformin.   And so the metformin -- I had been

1 on two metformins, and they took me off the 500.  
2 And so I'm still on one. And they want to make  
3 sure everything is going -- it has to go down, and  
4 my kidneys have to go down.

5 MR. KEMP: Okay. And it's at Nellis Air  
6 Force Base.

7 PROSPECTIVE JUROR NO. 11-0877: Yes, it  
8 is. And the doctor is Dr. Diaz if you wanted, you  
9 know, to talk to him.

10 MR. KEMP: Have you asked him what the  
11 next available is? Like, for example, we start,  
12 you know, relatively late on Tuesdays and  
13 Thursdays.

14 PROSPECTIVE JUROR NO. 11-0877: It's  
15 at -- it is at 1 o'clock. And, you know, it's  
16 been in there before this had even got started.

17 MR. KEMP: I understand, and I know how  
18 the military works.

19 But have you asked if it could be moved  
20 a little bit?

21 PROSPECTIVE JUROR NO. 11-0877: No,  
22 because I've been pretty much in here, you know,  
23 doing everything. I haven't been able to talk to  
24 anybody.

25 MR. KEMP: Could we ask her to at least

1 ask, Your Honor?

2 THE COURT: Yes. Yes. And if I need to  
3 provide anything -- any information, I'm happy to.

4 MR. KEMP: You know, that would be real  
5 helpful, I think, Your Honor, if you did a note  
6 to -- and I know you don't have jurisdiction over  
7 the federal government.

8 THE COURT: No, I don't, but I could  
9 just inform them.

10 MR. ROBERTS: If they could just move it  
11 to the morning, either Tuesday morning or Thursday  
12 morning.

13 PROSPECTIVE JUROR NO. 11-0877: But it  
14 was at 1 o'clock. And, you know, it's hard to get  
15 the appointments.

16 MR. KEMP: I know, but you have the  
17 judge here.

18 PROSPECTIVE JUROR NO. 11-0877: Oh,  
19 okay.

20 THE COURT: Right. I don't have  
21 jurisdiction over -- as Mr. Kemp said, over the  
22 federal government.

23 PROSPECTIVE JUROR NO. 11-0877: I know.

24 THE COURT: But I can tell them that  
25 this is a -- you know, you're here and, so far,

004300

004300

1 you know, you've been participating and ask them  
2 to see if they can help us change your  
3 appointment.

4 PROSPECTIVE JUROR NO. 11-0877: Okay.  
5 I'm going out tomorrow morning early, and I'll go  
6 and see -- I'll talk to them then.

7 THE COURT: Why don't you wait, and I  
8 will give you a note before you go.

9 PROSPECTIVE JUROR NO. 11-0877: Okay.  
10 Great.

11 THE COURT: All right. Let's see.  
12 Where shall we have you wait?

13 PROSPECTIVE JUROR NO. 11-0877: Want me  
14 to wait right outside there?

15 MR. ROBERTS: In the jury room?

16 THE COURT: Yes. Very good idea.  
17 Will you escort her to the jury room,  
18 please.

19 THE MARSHAL: Okay. Right now?

20 THE COURT: Yes.

21 THE MARSHAL: We have two others. I'm  
22 not sure if you want to get them.

23 THE COURT: I'm going to provide her  
24 with a letter so that she can take it to the  
25 doctor tomorrow and see if that can help.

004301

004301

1 MR. KEMP: Thank you, Your Honor.

2 THE COURT: All right.

3 THE MARSHAL: We have two others, Your  
4 Honor. One is concerned about school. That's  
5 Mr. Green-Wilson, the juror that's sitting here.

6 THE COURT: Okay.

7 THE MARSHAL: And also we have --

8 THE COURT: First, I want to get this  
9 letter going. Can you -- excuse me just a moment.

10 (Discussion off the record.)

11 THE MARSHAL: Please come to order.  
12 Department 14 is back in session.

13 THE COURT: All right. I'm having the  
14 letter typed now -- prepared now.

15 MR. ROBERTS: Judge, a copy of that  
16 should probably be made part of the court's  
17 record.

18 THE COURT: Yes, of course.

19 MR. BARGER: Can we inquire as to how  
20 many jurors, if any, we're bringing tomorrow --  
21 new ones? Are we bringing any?

22 THE CLERK: None. Just what we have.

23 MR. BARGER: Just who's here now?

24 THE COURT: Yes.

25 All right, Jerry.

004302

1 THE MARSHAL: Also, we had two concerns.  
2 One was page 1, Mr. Green-Wilson, Badge  
3 No. 11-0825. He had concerns about making it to  
4 school on time, parking, and getting to class in  
5 15 minutes from here.

6 MR. CHRISTIANSEN: Judge, this is the  
7 young man seated right here in the front.

8 THE COURT: I know who he is. And I  
9 have to be honest with you, when you were asking  
10 questions, I was wondering how he's going to leave  
11 this building on the elevator, get to his car  
12 en route to UNLV, and be in class in the lab in  
13 15 minutes.

14 MR. CHRISTIANSEN: Well, we stopped at  
15 4:28 or something today, and he's in the hallway  
16 instead of on his way to class.

17 THE COURT: And so are you willing,  
18 though, to every day that his class --

19 MR. CHRISTIANSEN: Just two days, I  
20 think, Your Honor. I can't remember --

21 THE COURT: It's two days a week you're  
22 willing --

23 MR. CHRISTIANSEN: Tuesdays and  
24 Thursdays.

25 THE COURT: But you're willing to stop a

004303

1 bit earlier to give him more than --

2 MR. KEMP: I think we would be, Your  
3 Honor.

4 THE COURT: You would be? Okay. I  
5 just -- I want to be sure.

6 MR. KEMP: At this point especially.

7 THE COURT: I think that just finding  
8 parking is sometimes difficult at the school. So  
9 I don't think 15 minutes is going to do it. So  
10 you'd have to be willing to --

11 MR. KEMP: I think 4:15 is probably  
12 realistic.

13 THE COURT: Yes.

14 MR. BARGER: Can we talk about that and  
15 deal with it tomorrow? Is that possible?

16 THE COURT: We can.

17 So you don't want to speak to him now?

18 MR. ROBERTS: If that's going to be the  
19 proposed solution, we'd probably rather talk about  
20 it.

21 THE COURT: Okay. Jerry, let's ask him  
22 to come back tomorrow morning --

23 THE MARSHAL: Okay.

24 MR. ROBERTS: Tomorrow morning or --

25 THE COURT: Thank you. Tomorrow

1 afternoon at 1:00.

2 THE MARSHAL: Okay. We have one other.

3 THE COURT: Okay. Go ahead.

4 THE MARSHAL: That would be on page 3.

5 THE COURT: Okay.

6 THE MARSHAL: Badge No. 11-1170, first  
7 name Kazandra.

8 All rise. Just have a seat there in the  
9 metal chair -- the first metal chair.

10 THE COURT: Hi.

11 THE MARSHAL: Please be seated. Come to  
12 order.

13 THE COURT: Please state your name and  
14 your badge number.

15 PROSPECTIVE JUROR NO. 11-1170: Kazandra  
16 Chacon-Higuera, 11-1170.

17 THE COURT: Okay. Chacon?

18 PROSPECTIVE JUROR NO. 11-1170: It's  
19 Kazandra Chacon-Higuera.

20 THE COURT: You asked to speak with me.  
21 I'd like to know what it is -- what the topic is.

22 PROSPECTIVE JUROR NO. 11-1170: I don't  
23 think I'll be --

24 THE COURT: You need to speak louder.

25 PROSPECTIVE JUROR NO. 11-1170: I don't



1 think I'll be able to come. I'm currently taking  
2 care of my mother who recently -- I'm sorry.

3 THE COURT: I'm sorry. There's a box of  
4 tissue right behind you if you need a tissue.

5 Would you like a glass of water? You  
6 sure? Okay.

7 Okay. Let's try again.

8 PROSPECTIVE JUROR NO. 11-1170: My  
9 mother recently got diagnosed with terminal breast  
10 and lung cancer, and she's been sent home. I'm  
11 kind of her caretaker right now. Right now, I  
12 have a nurse taking care of her, but I'm the only  
13 one who can actually take care of her at all. So  
14 I just don't want to leave her alone.

15 THE COURT: When was your mother  
16 diagnosed?

17 MR. KEMP: Judge, we're in agreement.

18 THE COURT: Okay. Very good. I'm going  
19 to excuse you, and I hope your mother is okay.  
20 All right. Take care.

21 Be careful driving. All right?

22 THE MARSHAL: You can follow me, ma'am.  
23 I'll take you out.

24 THE COURT: I don't know. Do you think  
25 300 is going to be enough? Just asking.

004306

004306

1 All right. Anything else we need to  
2 discuss right now?

3 MR. ROBERTS: Not tonight, Your Honor.

4 MR. CHRISTIANSEN: I don't think so,  
5 Your Honor. Have a nice evening.

6 THE COURT: Have a great evening. I'll  
7 see you tomorrow.

8 MR. CHRISTIANSEN: See you at 1:00,  
9 Judge.

10 (Whereupon, the proceedings adjourned at  
11 4:50 p.m.)

12 \* \* \* \* \*

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

004307

-o0o-

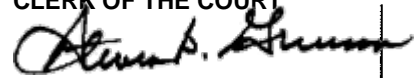
ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
PROCEEDINGS.

  
\_\_\_\_\_  
/S/ Kimberly A. Farkas, RPR

004308

*67*

*67*



1 WILL KEMP, ESQ. (#1205)  
ERIC PEPPERMAN, ESQ. (#11679)  
2 e.pepperman@kempjones.com  
KEMP, JONES & COULTHARD, LLP  
3 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, NV 89169  
4 Telephone: (702) 385-6000  
-and-  
5 PETER S. CHRISTIANSEN, ESQ. (#5254)  
pete@christiansenlaw.com  
6 KENDELEE L. WORKS, ESQ. (#9611)  
kworks@christiansenlaw.com  
7 CHRISTIANSEN LAW OFFICES  
810 Casino Center Blvd.  
8 Las Vegas, Nevada 89101  
Telephone: (702) 240-7979  
9 *Attorneys for Plaintiffs*

10  
11 **DISTRICT COURT**  
12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,  
minors, by and through their Guardian,  
14 MARIE-CLAUDE RIGAUD; SIAMAK  
BARIN, as Executor of the Estate of Kayvan  
15 Khiabani, M.D. (Decedent), the Estate of  
Kayvan Khiabani, M.D. (Decedent); SIAMAK  
16 BARIN, as Executor of the Estate of Katayoun  
Barin, DDS (Decedent); and the Estate of  
17 Katayoun Barin, DDS (Decedent);

18 Plaintiffs,

19 vs.

20 MOTOR COACH INDUSTRIES, INC.,  
a Delaware corporation; MICHELANGELO  
21 LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
22 Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a California  
23 corporation; SEVENPLUS BICYCLES, INC.  
d/b/a Pro Cyclery, a Nevada corporation;  
24 DOES 1 through 20; and ROE  
CORPORATIONS 1 through 20.

25 Defendants.  
26  
27  
28

Case No. A-17-755977-C

Dept. No. XIV


**BENCH BRIEF ON CONTRIBUTORY  
NEGLIGENCE**

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

1 NOW APPEAR Plaintiffs, by and through counsel of record, and hereby file the following  
2 bench brief regarding the issue of contributory negligence.

3 DATED this 15th day of February, 2018.

4 KEMP, JONES & COULTHARD, LLP

5  
6   
7 WILL KEMP, ESQ. (#1205)  
8 ERIC PEPPERMAN, ESQ. (#11679)  
9 3800 Howard Hughes Parkway, 17th Floor  
10 Las Vegas, Nevada 89169

11 -and-

12 PETER S. CHRISTIANSEN, ESQ. (#5254)  
13 KENDELEE L. WORKS, ESQ. (#9611)  
14 CHRISTIANSEN LAW OFFICES  
15 810 South Casino Center Blvd.  
16 Las Vegas, Nevada 89101

17 *Attorneys for Plaintiffs*  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

## I

## INTRODUCTION

Despite the Court's order precluding them from arguing that Decedent was contributorily negligent, during voir dire, Defendant has repeatedly raised the specter of contributory negligence as a defense to Plaintiffs' claims. Plaintiffs filed a motion in limine to prevent this precise conduct, which the Court granted. Nevertheless, Defendant has signaled its intent to ignore the Court's order, and Plaintiffs anticipate that Defendant will continue to circumvent the Court's order throughout the trial. By this bench brief, Plaintiffs request that MCI be admonished—once again—that it may **not** argue, infer, or suggest to the jury during any phase of trial, including voir dire, that Dr. Khiabani was contributorily negligent because contributory negligence is **not** a defense in a strict liability action. *Young's Mach. Co. v. Long*, 100 Nev. 692, 693, 692 P.2d 24, 25 (1984) (holding that "the only defenses available in a strict products liability action [are] assumption of the risk and misuse of the product; **ordinary contributory negligence [is] not to be considered.**") (Bold added). In the event that MCI continues to flout this Court's order and admonishment, Plaintiffs further request an immediate reparative jury instruction whereby the jury is instructed that contributory negligence is **not** a defense in a strict liability action and that, under Nevada law, "contributory negligence [is] not to be considered." *Id.*

## II

## ARGUMENT

**A. Under *Young's Mach. Co.*, contributory negligence is not a defense in a product liability action.**

It is well-settled Nevada law that comparative negligence does not apply to strict-liability-based claims:

[T]he only defenses available in a strict products liability action [are] assumption of the risk and misuse of the product; **ordinary contributory negligence [is] not to be considered.** *Id.*

Thus, contributory negligence is not a defense in a product liability action and must not be argued to the jury.

**B. For this exact reason, the Court granted Plaintiffs' Motion in Limine No. 3 to Preclude Defendant from Arguing Decedent was Contributorily Negligent.**

Plaintiffs knew that MCI would attempt to repeatedly argue that Dr. Khiabani was contributorily negligent and filed a motion in limine to preclude this improper argument. Plaintiffs' motion was based on *Young Mach. Co.* (10/27/17 Mot.). MCI opposed Plaintiffs' MIL No. 3 and asserted that it should be allowed to argue that Dr. Khiabani was contributorily negligent. (*See* 1/8/18 Opp to MIL No. 3). This issue was fully briefed and argued, and the Court **granted** Plaintiffs' motion in its entirety:

As stated above, under *Young's Mach. Co. v. Long*, 100 Nev. 692 (1984), comparative negligence does not apply to a strict liability-based claim, and "the only defenses available in a strict products liability action [are] assumption of the risk and misuse of the product; **ordinary contributory negligence [is] not to be considered.**" Defendant has not established any grounds for asserting an "assumption of risk" defense, as there is no evidence that Dr. Khiabani was, or even should have been, aware of the claimed defects in the coach. *General Electric Co. v. Bush*, 88 Nev. 360 (1972). Further, because Dr. Khiabani was not a "user" of the coach, the only potential "misuse" of the product based on the evidence presented would be by the driver, Mr. Hubbard. This Court has already ruled that any negligence by the driver is foreseeable as a matter of law, and thus cannot insulate Defendant from liability. 2/5/18 Order at 2:17-3:5 (bold added).

Thus, this Court has clearly and concisely precluded MCI from arguing that Dr. Khiabani was contributorily negligent.

**C. MCI has already violated this order on multiple occasions during voir dire, and Plaintiffs anticipate that MCI will continue to violate the order throughout trial.**

On multiple occasions during voir dire, MCI's counsel signaled to the jury that its defense to Plaintiffs' claims would be that Dr. Khiabani was contributorily negligent by entering the bus's lane. This is exactly what the Court ordered MCI not to do because "the only defenses available in a strict products liability action [are] assumption of the risk and misuse of the product; **ordinary contributory negligence [is] not to be considered.**" *Young Mach Co.*, 100 Nev. at 693. MCI cannot even avoid violating the Court's clear and concise order during voir dire, and Plaintiffs expect that MCI's violations will only get worse as the trial moves forward. Accordingly, the Court should admonish MCI that it may **not** argue, infer, or suggest to the jury during any phase of trial that Dr. Khiabani was contributorily negligent and, the next time that MCI flouts the Court's order, issue a reparative jury instruction advising the jury that contributory negligence is **not** a defense in a



1 strict liability action and that, under Nevada law, “contributory negligence [is] not to be considered.”  
 2 *Id.*


### 3 III

### 4 CONCLUSION

5 MCI should be admonished—once again—that it may **not** argue, infer, or suggest to the jury  
 6 during any phase of trial, including voir dire, that Dr. Khiabani was contributorly negligent because  
 7 contributory negligence is **not** a defense in a strict liability action. *Young's Mach. Co.*, 100 Nev. at  
 8 693 (holding that “the only defenses available in a strict products liability action [are] assumption of  
 9 the risk and misuse of the product; **ordinary contributory negligence [is] not to be considered.**”)  
 10 (Bold added). In the event that Defendant continues to flout this Court’s order and admonishment,  
 11 the Court should give an immediate reparative jury instruction whereby the jury is instructed that  
 12 contributory negligence is **not** a defense in a strict liability action and that, under Nevada law,  
 13 “**contributory negligence [is] not to be considered.**” *Id.* (Bold added).

14 DATED this 15th day of February, 2018.

15 KEMP, JONES & COULTHARD, LLP

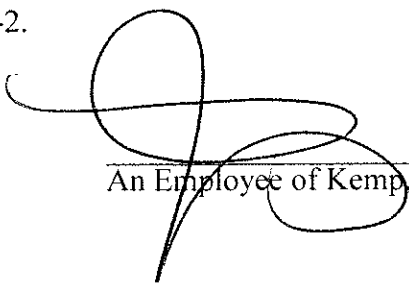
16   
 17 WILL KEMP, ESQ. (#1205)  
 18 ERIC PEPPERMAN, ESQ. (#11679)  
 19 3800 Howard Hughes Parkway, 17th Floor  
 20 Las Vegas, Nevada 89169  
 21 -and-  
 22 PETER S. CHRISTIANSEN, ESQ. (#5254)  
 23 KENDELEE L. WORKS, ESQ. (#9611)  
 24 CHRISTIANSEN LAW OFFICES  
 25 810 South Casino Center Blvd.  
 26 Las Vegas, Nevada 89101  
 27 Attorneys for Plaintiffs  
 28

KEMP, JONES & COULTHARD, LLP  
 3800 Howard Hughes Parkway  
 Seventeenth Floor  
 Las Vegas, Nevada 89169  
 (702) 385-6000 • Fax (702) 385-6001  
 kjc@kempjones.com

004313

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of February, 2018, the foregoing BENCH BRIEF ON CONTRIBUTORY NEGLIGENCE was served on all parties currently on the electronic service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.

  
An Employee of Kemp, Jones & Coulthard.

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

68

68

1 CASE NO. A-17-755977-C

2 DEPT. NO. 14

3 DOCKET U

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 \* \* \* \* \*

7 KEON KHIABANI and ARIA )  
8 KHIABANI, minors by and )  
9 through their natural mother, )  
10 KATAYOUN BARIN; KATAYOUN )  
11 BARIN, individually; KATAYOUN )  
12 BARIN as Executrix of the )  
13 Estate of Kayvan Khiabani, )  
14 M.D. (Decedent) and the Estate )  
15 of Kayvan Khiabani, M.D. )  
16 (Decedent), )  
17 Plaintiffs, )  
18 vs. )  
19 MOTOR COACH INDUSTRIES, INC., ) )  
20 a Delaware corporation; )  
21 MICHELANGELO LEASING, INC. )  
22 d/b/a RYAN'S EXPRESS, an )  
23 Arizona corporation; EDWARD )  
24 HUBBARD, a Nevada resident, )  
25 et al., )  
Defendants. )  
\_\_\_\_\_ )

20 REPORTER'S TRANSCRIPTION OF PROCEEDINGS

21 BEFORE THE HONORABLE ADRIANA ESCOBAR  
22 DEPARTMENT XIV  
23 DATED THURSDAY, FEBRUARY 15, 2018

24 RECORDED BY: SANDY ANDERSON, COURT RECORDER

25 TRANSCRIBED BY: KIMBERLY A. FARKAS, NV CCR No. 741

004315

004315

1 APPEARANCES:

2 For the Plaintiffs Keon Khiabani and the Estate of  
3 Kayvan Khiabani, M.D.:

4 BY: WILLIAM S. KEMP, ESQ.  
5 BY: ERIC M. PEPPERMAN, ESQ.  
6 KEMP, JONES & COULTHARD, LLP  
7 3800 Howard Hughes Parkway, 17th Floor  
8 Las Vegas, Nevada 89169  
9 (702) 385-6000  
10 e.pepperman@kempjones.com

11 For the Plaintiffs Aria Khiabani and Katayoun  
12 Barin:

13 BY: PETER CHRISTIANSEN, ESQ.  
14 BY: KENDELEE WORKS, ESQ.  
15 BY: WHITNEY BARRETT, ESQ.  
16 810 South Casino Center Drive, Suite 104  
17 Las Vegas, Nevada 89101  
18 (702) 570-9262  
19 pjc@christiansenlaw.com  
20 kworks@christiansenlaw.com

21 For the Defendant Motor Coach Industries, Inc.:

22 BY: D. LEE ROBERTS, ESQ.  
23 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL  
24 6385 South Rainbow Boulevard, Suite 400  
25 Las Vegas, Nevada 89118  
(702) 938-3838  
lroberts@wwhgd.com

-AND-

21 BY: DARRELL L. BARGER, ESQ.  
22 HARTLINE DACUS BARGER DREYER  
23 800 North Shoreline Boulevard, Suite 2000  
24 Corpus Christi, Texas 78401  
25 (361) 866-8000  
dbarger@hdbdlaw.com

004316

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 15, 2018;

2 1:00 P.M.

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

4 \* \* \* \* \*

5 THE COURT: Good afternoon. Is there  
6 any housekeeping things we need to go over?

7 MR. CHRISTIANSEN: Not that I know of,  
8 Your Honor.

9 THE COURT: I need to make you aware we  
10 need to indicate by 3:00 p.m. --

11 MR. CHRISTIANSEN: I think Mr. Roberts  
12 told --

13 THE COURT: Okay. I'm just worried  
14 about forgetting that later.

15 MR. CHRISTIANSEN: Mr. Roberts told us  
16 first thing when we walked in that you came out  
17 and told him.

18 THE COURT: Okay. So, otherwise, it  
19 will be too late for tomorrow.

20 MR. CHRISTIANSEN: I think if we just  
21 sort of take your usual -- in about 90 minutes, if  
22 we take a break, we'll all remember at that point  
23 and can assess.

24 THE COURT: Peter, how are you today?

25 MR. HOFFMANN: I'm good, Your Honor.

004317

1 THE COURT: Good. You're not filming  
2 the voir dire; right?

3 MR. HOFFMANN: Absolutely not.

4 THE COURT: Okay. I just want to be  
5 sure. After that, you know, it's fine.

6 MR. HOFFMANN: Thank you.

7 THE COURT: Okay.

8 (Discussion off the record.)

9 MR. BARGER: There were two things, the  
10 lady you wrote the note for.

11 THE COURT: And I have copies for you in  
12 the left-side file.

13 MR. BARGER: And then Mr. Green-Wilson  
14 brought that issue up that you were going to deal  
15 with. Remember the school guy going to school,  
16 the lab?

17 THE COURT: Okay. We may as well go on  
18 the record with respect to that.

19 He's missing five, so let's assess that  
20 now. Shall we?

21 MR. CHRISTIANSEN: Sure.

22 THE COURT: Okay. I've actually been  
23 thinking -- I've actually given this a little bit  
24 of thought -- more thought this last evening.

25 And the juror that has his lab -- is it

1 Mr. Green?

2 MR. CHRISTIANSEN: Mr. Green-Wilson,  
3 Your Honor.

4 THE COURT: Green-Wilson. Okay.

5 The marshal indicated yesterday that he  
6 was concerned that it wasn't sufficient time, as  
7 we had discussed with him, to make it from here  
8 out of this building -- he didn't say this, but  
9 think about it -- out of this building to the  
10 parking lot, driving across to UNLV, finding a  
11 space there, and then making it to his class.

12 And I believe counsel -- I think it was  
13 Mr. Kemp. I can't remember at this point --  
14 indicated that we can work around --

15 MR. KEMP: I had another idea last night  
16 about that.

17 THE COURT: Okay. Let me just tell you  
18 where I'm coming from right now. Okay?

19 MR. KEMP: Okay.

20 THE COURT: So my thought is this: I  
21 think that -- I think he needs a little bit more  
22 time. And when I weigh this -- and I know he has  
23 a right to serve and everything. But those hours,  
24 at the end of the day, add up.

25 MR. KEMP: That's true, Your Honor.



1 THE COURT: And we have court -- you  
2 know, we also have to consider the court time, the  
3 efficiency of that situation. So I wanted to  
4 share my thoughts with you.

5 Go on, Mr. Kemp.

6 MR. KEMP: What I was going to suggest  
7 is, first of all, it's a hypothetical situation.  
8 And I think it's a very hypothetical situation  
9 because, having tried a number of cases with  
10 Mr. Roberts, I know the kind of jurors he tries to  
11 strike. And I think Mr. Green would be right  
12 squarely in that category.

13 So there may be a peremptory exercise on  
14 him. So it may be a hypothetical situation.

15 But assuming, for the sake of argument,  
16 it's not a hypothetical situation, there's a  
17 couple options here: One, if the Court will  
18 consider it, the Court can move its morning  
19 calendar to later in the day if we could start at  
20 9 o'clock on Tuesdays and Thursdays, you know, and  
21 try to work --

22 THE COURT: Well, at this point,  
23 Mr. Kemp, it would be very difficult because  
24 there's too much notice to all --

25 MR. KEMP: I'm not asking the Court to

004320

1 make that decision now --

2 THE COURT: Oh, okay.

3 MR. KEMP: -- you know, going forward.

4 But that's an option.

5 You know, the other option is to let him  
6 out of here a little early. You know, maybe start  
7 just a little earlier. Start at 11:30, 11:00 to,  
8 you know, try to get the hour back.

9 THE COURT: Right.

10 MR. KEMP: That's another option.

11 THE COURT: All right. So with respect  
12 to moving --

13 MR. BARGER: I have a response. I think  
14 his assumption is incorrect. We kind of like this  
15 juror, and we're fine with him staying on for  
16 right now.

17 THE COURT: Okay.

18 MR. BARGER: Depending on how it turns  
19 out, and we're fine with quitting early.

20 THE COURT: So I'm not going to inquire  
21 as to your strategies and everything else. That  
22 is for you to effectuate.

23 I understand your hypothetical.

24 However, I think a superior issue for me is

25 some -- today, we were out a little bit earlier,

1 but some -- and I'm, you know, moving through my  
2 calendars much quicker now. I have been for a  
3 long time.

4 But sometimes there are things that take  
5 a little bit longer, so I can't guarantee that I  
6 can start at 11:45. So I don't want to make that  
7 commitment because I'm not certain. If I can, I'm  
8 happy to.

9 So I will let you know when it's a very  
10 light calendar. We can even get started earlier.  
11 I have no problem with that.

12 But the breaking -- you know, the ending  
13 court that much earlier is not a -- an efficient  
14 thing, if you think about it, for the Court. I  
15 mean --

16 MR. KEMP: Talking probably 4:15? Is  
17 that --

18 THE COURT: Do you really think 4:15 is  
19 enough?

20 MR. KEMP: I can leave at 4:15, Your  
21 Honor. I've made it from this courthouse to the  
22 airport in nine minutes, so...

23 MR. BARGER: By helicopter?

24 MR. KEMP: No.

25 THE COURT: Well, I can't say it on the

1 record. But even if it's 4:15, that's 45 minutes  
2 every day we're taking off the top.

3 MR. KEMP: That's two days a week, so  
4 that's an hour and a half.

5 MR. BARGER: I will say we're  
6 comfortable -- whatever the judge wants to do,  
7 we're fine.

8 THE COURT: Okay. It's two days? It's  
9 two days; right?

10 MR. KEMP: Yeah, it's two days. So it's  
11 not even -- it's a hypothetical situation at this  
12 point. Mr. Roberts, when he examines him, he may  
13 have a deep-seeded hatred of MCI. I don't know.  
14 Something may come up.

15 THE COURT: I don't want my decision to  
16 be -- my decision is not based upon how either  
17 party feels about it. I'm talking about my  
18 managing my calendar. And I'm pretty flexible,  
19 but I am concerned about not having that time at  
20 the end of the day.

21 MR. ROBERTS: And, Your Honor, we  
22 actually did that exercise, and it's similar to  
23 what Mr. Kemp said. We've been breaking about  
24 4:45, really, mostly -- most days. So we said,  
25 "Okay. If that's a half an hour two days a week,

004323

1 that's five hours over the course of the whole  
2 trial. It's seven and a half hours if that's  
3 45 minutes a day."

4 So I needed to discuss that with my  
5 client. That's why we didn't respond yesterday.  
6 But that cost is probably fairly insignificant  
7 over the course of a five-week trial.

8 THE COURT: All right.

9 MR. ROBERTS: So we're okay with it, but  
10 we understand the Court's concerns about  
11 efficiency, and we're okay with whatever the Court  
12 wants to do.

13 MR. KEMP: And there may be other issues  
14 that come up, people that have hard deadlines for  
15 childcare. That may happen too. So until we get  
16 kind of a better idea of who's going to --

17 THE COURT: All right. I can't believe  
18 I'm doing this, but I will agree to break, on the  
19 days that one juror has a lab, at 4:45 -- 4:15.  
20 You're going to have to remind me of the days.

21 Yes, Jerry?

22 THE MARSHAL: The letter for Ms. Dorothy  
23 Lee.

24 THE COURT: For who?

25 THE MARSHAL: The lady that we gave the

1 letter to. It's from her doctor.

2 THE COURT: Oh, I have a letter back  
3 from the Department of the Air Force. I'm just  
4 going to read this into the record. Okay.

5 This is concerning Juror ID  
6 Number 100774513. It is a memorandum for the  
7 Judicial District Court, State of Nevada, Clark  
8 County. Its letterhead, Department of the Air  
9 Force.

10 "1. The physicians at Michael  
11 O'Callahan Federal Hospital Group have cared for  
12 this juror since January of 2004. Her medical  
13 history only allows her to sit for approximately  
14 20 minutes at a time before needing to get up and  
15 walk around. The disorders -- this disorder makes  
16 a poor candidate for jury duty since she is unable  
17 to sustain a sedentary position on a panel of  
18 jurors. Please excuse Ms. Lee" -- can you please  
19 strike the name -- "from jury duty. If you have  
20 any questions, please contact my clinic staff at"  
21 such and such, "signed Rosaly Diaz, M.D."

22 So --

23 MR. KEMP: Judge, that's completely  
24 different than --

25 THE COURT: I know.

1           MR. KEMP: And she's been here three  
2 days. I haven't seen her have a problem sitting.

3           Did they answer the question about --

4           THE COURT: No, and my -- I will share  
5 my letter with you. It was very specific about  
6 timing.

7           MR. BARGER: Oh, we have it. They  
8 actually filed it in the court record.

9           THE COURT: Oh, okay. You know, it was  
10 very specific about the time, the dates, and we  
11 greatly appreciate it and -- so...

12          MR. ROBERTS: We should probably at  
13 least talk to her about it, Your Honor.

14          THE COURT: I know. The problem is I do  
15 have a physician stating that --

16          MR. KEMP: A lot of people stand up and  
17 sit down during trials because they have back and  
18 knee issues and such.

19          THE COURT: I did not expect this, but  
20 I've learned that what you don't expect is what  
21 can happen.

22          Shall we -- so is there --

23          THE MARSHAL: I have another that has a  
24 concern. I've spoken with her twice, and each  
25 time, I guess, she's included more detail. I

004326

1 don't know if she's making it up or not, but I can  
2 give you her badge number if you like.

3 THE COURT: Okay.

4 THE MARSHAL: She's closer to the end,  
5 page 5, Badge No. 11-1325, Claudia Ledda.

6 THE COURT: What is her concern?

7 THE MARSHAL: She said her kid is sick,  
8 has asthma, has all sorts of issues. I guess  
9 she -- first she mentioned -- she said her  
10 boyfriend or husband is watching the kid. Now she  
11 said that her neighbor is watching the kid and  
12 that she has to be there because she's the person  
13 that takes care of him every day.

14 Every time I've spoken with her, it's  
15 gotten more. So I'm not sure if you want to deal  
16 with it now since we're still waiting.

17 MR. KEMP: Judge, I think we ought to do  
18 her. She's not in the box. I wouldn't want to  
19 waste -- she's not even upcoming for a while.

20 MR. BARGER: She's way at the bottom.

21 MR. KEMP: Yeah. So I'd rather hear  
22 what she's got to say and --

23 THE COURT: All right. So we'll bring  
24 her in right now.

25 MR. KEMP: If it sounds pretty good,

004327



1 let's --

2 THE COURT: Why don't we bring her in  
3 right now.

4 THE MARSHAL: Oh, bring in both ladies?

5 THE COURT: One at a time.

6 (Discussion off the record.)

7 THE MARSHAL: All rise. Just have a  
8 seat there. Please be seated.

9 Come to order.

10 THE COURT: Good afternoon, Ms. Lee.

11 So I received a letter from Dr. Rosaly  
12 Diaz.

13 PROSPECTIVE JUROR NO. 11-0877: Yes.  
14 Uh-huh.

15 THE COURT: Okay. It was my  
16 understanding yesterday -- and I think counsel --  
17 both counsel may have some follow-up questions.  
18 You indicated that it was your appointment that --  
19 you were here for two days, and I wasn't aware of  
20 any issues except for when you mentioned it at the  
21 end of the day yesterday that you had an  
22 appointment that you needed to keep --

23 PROSPECTIVE JUROR NO. 11-0877: On  
24 Tuesday at 1 o'clock.

25 THE COURT: -- on Tuesday at 1 o'clock.

004328

004328

1           So I prepared a letter for you asking  
2   them, as a courtesy, if they would please help us  
3   reschedule that to a different time. But I  
4   received a completely different answer to my  
5   letter.

6           PROSPECTIVE JUROR NO. 11-0877: Yeah,  
7   they -- I'm sicker than I -- you know, I would sit  
8   here and went through it, but I am sicker than I'm  
9   telling you. And they don't want my kidneys to go  
10   bad. That's the one thing right now. And I went  
11   and had a blood test today, and they'll be able to  
12   tell.

13          THE COURT: They'll be able to tell  
14   after the blood test?

15          PROSPECTIVE JUROR NO. 11-0877: Yes.  
16   Uh-huh.

17          THE COURT: All right. So -- but you  
18   were fine the first two days?

19          PROSPECTIVE JUROR NO. 11-0877: Yeah, I  
20   was fine. Wednesday was a little hard on me,  
21   yeah. I don't know why. I think it was just  
22   tiring walking. I have to walk, and that's a  
23   little hard on me.

24          THE COURT: Okay.

25          PROSPECTIVE JUROR NO. 11-0877: That is

004329

004329

1 a little distance, you know.

2 THE COURT: Where are you walking from?

3 PROSPECTIVE JUROR NO. 11-0877: You  
4 know, from the garage.

5 THE COURT: Thank you.

6 Counsel, do you have any follow-up  
7 questions?

8 MR. KEMP: When do you think the blood  
9 test is going to be back?

10 PROSPECTIVE JUROR NO. 11-0877: I took  
11 it this morning. I went over this morning and had  
12 the test.

13 MR. KEMP: So when do you think you'll  
14 find out whatever?

15 PROSPECTIVE JUROR NO. 11-0877: They  
16 probably -- they're not going to be open. They  
17 told me I'm lucky I went there today because  
18 they're closed tomorrow and Monday. So I won't  
19 know until Tuesday. So, if anything, you can find  
20 out by Tuesday.

21 MR. KEMP: And this was for the H1AC  
22 again?

23 PROSPECTIVE JUROR NO. 11-0877: Yeah,  
24 for all of it, yeah, cholesterol and the kidneys  
25 and all of it.

004330

004330

1           MR. KEMP: So it may show you're going  
2 down; it may show you're going up; it may show  
3 you're the same?

4           PROSPECTIVE JUROR NO. 11-0877: Let's  
5 hope better.

6           MR. KEMP: And when you walk from --  
7 it's the big parking lot; right?

8           PROSPECTIVE JUROR NO. 11-0877: Yeah.  
9 But I need the exercise. Let that go.

10          MR. KEMP: Okay. Because I was going to  
11 suggest maybe we could find a closer spot.

12          THE COURT: Well, actually, I was just  
13 inquiring if that was something we can --

14          MR. ROBERTS: Once the jurors are  
15 seated, I believe they put them in the garage  
16 right --

17          MR. KEMP: Yeah, they put them across  
18 the street, Your Honor.

19          PROSPECTIVE JUROR NO. 11-0877: Yeah,  
20 then that wouldn't be bad. Yeah.

21          THE COURT: So that wouldn't be that far  
22 away.

23          MR. KEMP: Okay. So you may know more  
24 Tuesday?

25          PROSPECTIVE JUROR NO. 11-0877: Tuesday,

004331

004331

1 yes.

2 MR. KEMP: And Tuesday we don't start  
3 until 12:00 or 1:00.

4 So will you know more Tuesday morning?

5 PROSPECTIVE JUROR NO. 11-0877: No,  
6 after 1 o'clock. See, my appointment is at 1:00.

7 THE COURT: So they didn't change your  
8 appointment?

9 PROSPECTIVE JUROR NO. 11-0877: No.  
10 They can't change it. Everything is kind of set.  
11 You know, they have so many people.

12 MR. KEMP: Your Honor, can we talk about  
13 it off the record?

14 THE COURT: Yes.

15 MR. KEMP: I mean, outside the presence?

16 THE COURT: Yes. All right.

17 PROSPECTIVE JUROR NO. 11-0877: You want  
18 me to go back out?

19 THE COURT: Yes, please. Thank you.

20 All right. Please be seated.

21 MR. KEMP: Judge, the walking concerned  
22 me more than the H1AC because, like I said  
23 yesterday, her H1AC isn't that bad. I mean, I  
24 think if you measured the H1AC of everyone at the  
25 counsel table, someone is going to be worse than a

004332

1 6 or 7, whatever she's got.

2 So, you know, having doctors treat it,  
3 but it's not really that bad an H1AC. And I know  
4 this because I've litigated two Actos cases --

5 THE COURT: Understood. Understood.

6 MR. KEMP: So, you know, I don't want to  
7 play doctor here, but this is not really that  
8 serious of a medical condition.

9 THE COURT: All right. Well --

10 MR. KEMP: You know, the Air Force --

11 THE COURT: What we're facing right now  
12 is the issue of her appointment.

13 MR. KEMP: Right.

14 THE COURT: Okay. I was very specific  
15 about changing the appointment, and they didn't  
16 even discuss that.

17 MR. KEMP: I would suggest sending them  
18 another letter, Your Honor. Now you have  
19 somewhere you can send it to. You have the name  
20 of the doctor.

21 Is there a fax number on that?

22 THE COURT: No. There's a phone number.

23 MR. KEMP: Okay. Well, I mean, we  
24 can -- I would suggest you ask him why he didn't  
25 answer the question. I mean, he didn't answer the

004333

1 question.

2 THE COURT: All right. Okay. I can  
3 have something -- I'll have something drafted  
4 during the break or even -- depending on who's  
5 waiting right now. And I will ask them to address  
6 that. I think that's reasonable. And we'll get a  
7 fax number.

8 MR. KEMP: Okay. Thank you, Your Honor.

9 MR. ROBERTS: That's fine. Thank you,  
10 Your Honor.

11 THE COURT: In fact, let me just jump  
12 off really quickly and have them start this, okay,  
13 so that during the break I can finalize it. Thank  
14 you.

15 (Discussion off the record.)

16 THE MARSHAL: Department 14 is back in  
17 session. Please come to order.

18 THE COURT: You may be seated.

19 All right. That's on its way.

20 Who's next?

21 THE MARSHAL: I'll bring her in.

22 (Discussion off the record.)

23 THE MARSHAL: All rise. Please be  
24 seated. Come to order.

25 PROSPECTIVE JUROR NO. 11-1325: Good

004334

004334

1     afternoon.

2                 THE COURT:   Good afternoon.   Your name  
3     and badge number, please.

4                 PROSPECTIVE JUROR NO. 11-1325:   It's  
5     11-1325.

6                 THE COURT:   Okay.   And your name?

7                 PROSPECTIVE JUROR NO. 11-1325: Claudia  
8     Ledda.

9                 THE COURT:   Okay.   Ms. Ledda, you wanted  
10    to speak to us concerning --

11                PROSPECTIVE JUROR NO. 11-1325:   Yes, my  
12    son is sick at home right now.   He has a cold, a  
13    really bad cough, and he has severe asthma.

14                So that's why I was asking Mr. Sheriff  
15    if I can speak with you, if I can go home and take  
16    care of him, because my neighbor is taking care of  
17    him right now.

18                THE COURT:   How old is your son?

19                PROSPECTIVE JUROR NO. 11-1325:   He's 13.

20                THE COURT:   He's 13?

21                PROSPECTIVE JUROR NO. 11-1325:   Yes.  
22    He's been having asthma since he was one year old.

23                THE COURT:   Okay.   All right.   Does your  
24    neighbor regularly take care of him?

25                PROSPECTIVE JUROR NO. 11-1325:   No.



1           THE COURT: Do you have family members  
2 that can help?

3           PROSPECTIVE JUROR NO. 11-1325: I have  
4 my mom and my sister, but they're at work, and my  
5 husband. So -- I don't work, so I'm the one that  
6 stays home.

7           THE COURT: Okay. All right. Any  
8 question from counsel?

9           MR. KEMP: Ma'am, you said he's got a  
10 cold? Is it a cold or the flu?

11          PROSPECTIVE JUROR NO. 11-1325: Well, he  
12 has a really bad cough, and he has a lot of mucus.  
13 So last night he couldn't sleep.

14          THE COURT: You need to speak into the  
15 microphone, please.

16          PROSPECTIVE JUROR NO. 11-1325: Yeah, he  
17 has -- I don't know whether it's a cold or it's  
18 the flu. Because when he gets sick, then the  
19 asthma starts coming in. So right now, this  
20 morning, I can hear his asthma really bad because  
21 of the cough.

22          MR. KEMP: So he has an underlying  
23 asthma condition.

24          PROSPECTIVE JUROR NO. 11-1325: He does.

25          MR. KEMP: He's got the flu or -- is he

004336

004336

1 running a temperature?

2 PROSPECTIVE JUROR NO. 11-1325: No, not  
3 fever that I know.

4 MR. KEMP: And he's 13?

5 PROSPECTIVE JUROR NO. 11-1325: Yes,  
6 he's 13.

7 MR. KEMP: So I guess he's probably a  
8 freshman or a junior in high school.

9 PROSPECTIVE JUROR NO. 11-1325: He's in  
10 middle school.

11 MR. KEMP: So you kept him out of  
12 school?

13 PROSPECTIVE JUROR NO. 11-1325: Yes.  
14 Not today because they're on break. He's at home.

15 MR. KEMP: Today they're on break? And  
16 have you taken him to the doctor yet?

17 PROSPECTIVE JUROR NO. 11-1325: No.  
18 He's had this cough since two days ago. And  
19 yesterday when I got home from here, he was worse.

20 MR. KEMP: And this morning --

21 PROSPECTIVE JUROR NO. 11-1325: And this  
22 morning he got even -- he's bad.

23 MR. KEMP: Worse than yesterday?

24 PROSPECTIVE JUROR NO. 11-1325: Yes.

25 MR. KEMP: So it's getting worse?

004337

004337

1 PROSPECTIVE JUROR NO. 11-1325: Yes.

2 MR. KEMP: Do you intend to take him to  
3 the doctor?

4 PROSPECTIVE JUROR NO. 11-1325: Yes.

5 MR. KEMP: Do you have an appointment?

6 PROSPECTIVE JUROR NO. 11-1325: No,  
7 because I'm here.

8 THE COURT: Mr. Roberts?

9 MR. ROBERTS: Nothing from me, Your  
10 Honor.

11 THE COURT: Okay. Thank you. If you'll  
12 just wait outside.

13 MR. KEMP: Judge, I don't feel strongly  
14 about it either way. We don't have any time  
15 invested in her, which I think is the significant  
16 issue. She doesn't look like a great juror for  
17 either -- she's kind of what I would say a  
18 middle-of-the-road juror judging from the  
19 questioning.

20 THE COURT: Do I have a stipulation?

21 MR. ROBERTS: Yes. That's fine, Your  
22 Honor. I agree with Mr. Kemp. It didn't sound  
23 urgent enough. If she was in the box, I wouldn't  
24 be stipulating, but she's further down and fairly  
25 neutral. So that's fine.

1 THE COURT: Okay. I'm going to go ahead  
2 and dismiss her, then. I'll excuse her. That  
3 will be pursuant to NRS 16.051 -- let's say (c),  
4 NRS 16.030(c).

5 MR. ROBERTS: Your Honor, I'd just like  
6 to state for the record that an attorney from our  
7 firm, Marisa Rodriguez, is in the courtroom.  
8 She's not participating in the case, but I thought  
9 since she was a lawyer in our firm, I thought I  
10 should note her presence on the record.

11 THE COURT: And, for the record, I'm  
12 very familiar with Ms. Rodriguez. She's a fine  
13 lawyer, but I can still be fair and impartial.

14 MR. ROBERTS: Thank you, Your Honor.

15 (Discussion off the record.)

16 All rise. All the jurors are present,  
17 Your Honor.

18 THE COURT: Thank you.

19 THE MARSHAL: Please be seated. Come to  
20 order.

21 THE COURT: Will you please call roll.

22 THE CLERK: Yes, Your Honor.

23 Badge 11-0798, Byron Lennon.

24 PROSPECTIVE JUROR NO. 11-0798: Here.

25 THE CLERK: Badge 11-0802, John Toston.

004339

1 PROSPECTIVE JUROR NO. 11-0802: Here.

2 THE CLERK: Badge 11-0830, Michelle

3 Peligro.

4 PROSPECTIVE JUROR NO. 11-0830: Here.

5 THE CLERK: 11-0834, Joseph Dail.

6 PROSPECTIVE JUROR NO. 11-0834: Here.

7 THE CLERK: 11-0844, Raphael Javier.

8 PROSPECTIVE JUROR NO. 11-0844: Here.

9 THE CLERK: 11-0853, Dylan Domingo.

10 PROSPECTIVE JUROR NO. 11-0853: Here.

11 THE CLERK: 11-0860, Aberash Getaneh.

12 PROSPECTIVE JUROR NO. 11-0860: Here.

13 THE CLERK: 11-0867, Jenny Gagliano.

14 PROSPECTIVE JUROR NO. 11-0867: Here.

15 THE CLERK: 11-0877, Dorothy Lee.

16 PROSPECTIVE JUROR NO. 11-0877: Here.

17 THE CLERK: 11-0879, Vanessa Rodriguez.

18 PROSPECTIVE JUROR NO. 11-0879: Here.

19 THE CLERK: 11-0880, William Richardson.

20 PROSPECTIVE JUROR NO. 11-0880: Here.

21 THE CLERK: 11-0885, Constance Brown.

22 PROSPECTIVE JUROR NO. 11-0885: Here.

23 THE CLERK: 11-0902, Sherry Hall.

24 PROSPECTIVE JUROR NO. 11-0902: Here.

25 THE CLERK: 11-0915, Ruth McLain.

004340

004340

1 PROSPECTIVE JUROR NO. 11-0915: Here.  
2 THE CLERK: 11-0926, Enrique Tuquero.  
3 PROSPECTIVE JUROR NO. 11-0926: Here.  
4 THE CLERK: 11-0937, Raquel Romero.  
5 PROSPECTIVE JUROR NO. 11-0937: Here.  
6 THE CLERK: 11-0940, Caroline Graf.  
7 PROSPECTIVE JUROR NO. 11-0940: Here.  
8 THE CLERK: 11-0975, Jonathan Fortich.  
9 PROSPECTIVE JUROR NO. 11-0975: Here.  
10 THE CLERK: 11-0999, Janelle Reeves.  
11 PROSPECTIVE JUROR NO. 11-0999: Here.  
12 THE CLERK: 11-1035, Pamela

13 Phillips-Chong.

14 PROSPECTIVE JUROR NO. 11-1035: Here.  
15 THE CLERK: 11-1037, Joel Santa Ana.  
16 PROSPECTIVE JUROR NO. 11-1037: Here.  
17 THE CLERK: 11-1047, Glenn Krieger.  
18 PROSPECTIVE JUROR NO. 11-1047: Here.  
19 THE CLERK: Ms. Reeves, where are you  
20 sitting?

21 And what's your name?

22 PROSPECTIVE JUROR NO. 11-0975: John.  
23 THE COURT: Your ID, your badge number,  
24 and your name.

25 PROSPECTIVE JUROR NO. 11-0975: 11-0975,

004341

1 Jonathan Fortich.

2 THE CLERK: Tell me your badge number  
3 again.

4 PROSPECTIVE JUROR NO. 11-0975: 11-0975.

5 THE CLERK: 0975 is Jonathan Fortich?

6 PROSPECTIVE JUROR NO. 11-0975: Correct.

7 THE CLERK: Did I leave off with  
8 Mr. Krieger, then?

9 PROSPECTIVE JUROR NO. 11-1047: Yes.

10 THE CLERK: And then next is 11-1114,  
11 Thomas Garibay.

12 PROSPECTIVE JUROR NO. 11-1114: Here.

13 THE CLERK: 11-1125, Michael Kaba.

14 PROSPECTIVE JUROR NO. 11-1125: Here.

15 THE CLERK: 11-1127, Gregg Stephens.

16 PROSPECTIVE JUROR NO. 11-1127: Here.

17 THE CLERK: 11-1155, Emilie Mosqueda.

18 PROSPECTIVE JUROR NO. 11-1155: Here.

19 THE CLERK: 11-1164, Kimberly Flores.

20 PROSPECTIVE JUROR NO. 11-1164: Here.

21 THE CLERK: 11-1171, Albert Browning.

22 PROSPECTIVE JUROR NO. 11-1171: Here.

23 THE CLERK: 11-1174, Veronica Gutierrez.

24 PROSPECTIVE JUROR NO. 11-1174: Here.

25 THE CLERK: 11-1186, Ashley Vandevanter.

1 PROSPECTIVE JUROR NO. 11-1186: Here.

2 THE CLERK: 11-1193, Amie Turpin.

3 PROSPECTIVE JUROR NO. 11-1193: Here.

4 THE CLERK: 11-1199, Judy Sanderlin.

5 PROSPECTIVE JUROR NO. 11-1199: Here.

6 THE CLERK: 11-1200, April Hannewald.

7 PROSPECTIVE JUROR NO. 11-1200: Here.

8 THE CLERK: 11-1207, Hani Noshi.

9 PROSPECTIVE JUROR NO. 11-1207: Here.

10 THE CLERK: 11-1218, Iris Adachi.

11 PROSPECTIVE JUROR NO. 11-1218: Here.

12 THE CLERK: 11-1221, Sheri White.

13 PROSPECTIVE JUROR NO. 11-1221: Here.

14 THE CLERK: 11-1222, Carol Padilla.

15 PROSPECTIVE JUROR NO. 11-1222: Here.

16 THE COURT: 11-1223, Jasmine Carrillo.

17 PROSPECTIVE JUROR NO. 11-1222: Here.

18 THE CLERK: 11-1229 -- is it Jaymi? I  
19 can't hear you.

20 PROSPECTIVE JUROR NO. 11-1229: Yes,

21 ma'am.

22 THE CLERK: Jaymi Johnson.

23 PROSPECTIVE JUROR NO. 11-1229: Here.

24 THE CLERK: 11-1246, Brian Stokes.

25 PROSPECTIVE JUROR NO. 11-1246: Here.



1 THE CLERK: 11-1255, Heidi Wooters.  
2 PROSPECTIVE JUROR NO. 11-1255: Here.  
3 THE CLERK: 11-1256, Robert Summerfield.  
4 PROSPECTIVE JUROR NO. 11-1256: Here.  
5 THE CLERK: 11-1268, Katherine Beswick.  
6 PROSPECTIVE JUROR NO. 11-1268: Here.  
7 THE CLERK: 11-1278, Elizabeth Mundo.  
8 PROSPECTIVE JUROR NO. 11-1278: Here.  
9 THE CLERK: 11-1293, Kim Schell.  
10 PROSPECTIVE JUROR NO. 11-1293: Here.  
11 THE CLERK: 11-1296, Alan Castle.  
12 PROSPECTIVE JUROR NO. 11-1296: Here.  
13 THE CLERK: 11-1297, Anna Campbell.  
14 PROSPECTIVE JUROR NO. 11-1297: Here.  
15 THE CLERK: 11-1314, Pragnit Thakor.  
16 PROSPECTIVE JUROR NO. 11-1314: Here.  
17 THE CLERK: 11-1328, Sarah Oelke.  
18 PROSPECTIVE JUROR NO. 11-1328: Here.  
19 THE CLERK: 11-1336, E. Lemons.  
20 PROSPECTIVE JUROR NO. 11-1336: Here.  
21 THE CLERK: 11-1351, Kenneth Prince.  
22 PROSPECTIVE JUROR NO. 11-1351: Here.  
23 THE CLERK: 11-1358, Adam Elliott.  
24 PROSPECTIVE JUROR NO. 11-1358: Here.  
25 THE CLERK: 11-1360, Bridget Slezak.

1 PROSPECTIVE JUROR NO. 11-1360: Here.

2 THE CLERK: 11-1373, Chante Webb.

3 PROSPECTIVE JUROR NO. 11-1373: Here.

4 THE COURT: Okay.

5 MR. CHRISTIANSEN: Can we approach just  
6 real quick, Judge, one quick matter? Can we  
7 approach?

8 THE COURT: Yes.

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

11 MR. CHRISTIANSEN: Thank you.

12 THE COURT: Do the parties stipulate to  
13 the presence of the jury?

14 MR. ROBERTS: Yes, Your Honor.

15 MR. CHRISTIANSEN: Yes, Your Honor.

16 THE COURT: Mr. Christiansen, you may  
17 proceed.

18 MR. CHRISTIANSEN: Good afternoon,  
19 everybody. When we left off yesterday before --

20 THE COURT: Mr. Christiansen, we have --

21 PROSPECTIVE JUROR NO. 11-0825: I never  
22 got my number called.

23 THE COURT: Your number wasn't called?  
24 Your badge number and your name.

25 PROSPECTIVE JUROR NO. 11-0825: Jaylen

1 Green-Wilson, and my badge number is 11-0825.

2 THE CLERK: I'm sorry. I marked him out  
3 from the other day.

4 11-0825, Jaylen Green-Wilson.

5 PROSPECTIVE JUROR NO. 11-0825: Here.

6 THE CLERK: Thank you.

7 THE COURT: And, Mr. Santa Ana, did you  
8 raise your hand?

9 PROSPECTIVE JUROR NO. 11-1037: Yes,  
10 ma'am. I asked the bailiff for permission to  
11 speak to you. Badge No. 11-1037.

12 THE COURT: We will discuss that at the  
13 break. Thank you.

14 Go on, Mr. Christiansen.

15 MR. CHRISTIANSEN: Thank you, Your  
16 Honor.

17 When we left off yesterday, right before  
18 Ms. Mosqueda and Ms. Flores got called up, I had  
19 started discussing with the group as a whole the  
20 issue of caps on damages. And to refresh  
21 everyone's recollection, Mr. Green was sitting  
22 where Ms. Flores is today and was brave enough to  
23 raise his hand and express some reservations or  
24 some of his thoughts on that issue. And others  
25 had raised their hands as well. So that's sort of

004346

004346

1 where I want to go back to and move forward from  
2 there.

3 Mr. Garibay, you had, I think, nodded in  
4 the affirmative maybe yesterday. Mr. Lennon is  
5 handing you down the mic.

6 Mr. Garibay, can I have your badge  
7 number, please?

8 PROSPECTIVE JUROR NO. 11-1114: 11-1114.

9 MR. CHRISTIANSEN: Mr. Garibay, you had  
10 nodded in the affirmative, and I think you might  
11 have even held your hand up when I was asking who  
12 had ideas relative to caps on damages. Is that  
13 accurate?

14 PROSPECTIVE JUROR NO. 11-1114: Yes,  
15 sir.

16 MR. CHRISTIANSEN: And that thought  
17 wasn't a new one, because when you filled out your  
18 questionnaire, you answered similarly. Tell me  
19 what your thoughts are on that issue, if you  
20 would.

21 PROSPECTIVE JUROR NO. 11-1114: Similar  
22 to what these ladies in front of me were saying  
23 yesterday, I have a problem processing the thought  
24 of putting dollar amounts on lives. To me, that  
25 just doesn't make any sense. Where do we come up

1 with such a large amount of money to award for the  
2 loss of a life? While it's tragic, when we start  
3 talking hundreds of millions of dollars, that, to  
4 me, sounds a little absurd.

5 MR. CHRISTIANSEN: So you have a ceiling  
6 at some point in your mind where damages in any  
7 case should not exceed?

8 PROSPECTIVE JUROR NO. 11-1114: I  
9 understand what you were saying about compensation  
10 for the lost wages and taking care of the boys in  
11 this case, but, in terms of punitive damages,  
12 like, for punishment, to me, the idea of hundreds  
13 of millions of dollars against a company really  
14 doesn't make sense to me.

15 MR. CHRISTIANSEN: That's fair. Just  
16 like Mr. Green, it sounds like you've given some  
17 thought to that.

18 PROSPECTIVE JUROR NO. 11-1114: Well,  
19 yeah. And the more I thought about it yesterday,  
20 it still didn't make a lot of sense for the  
21 amounts that you seem to be pursuing.

22 MR. CHRISTIANSEN: And everybody is  
23 entitled to their beliefs. So I'm not being  
24 critical or anything of that nature.

25 PROSPECTIVE JUROR NO. 11-1114: No, I

1 understand.

2 MR. CHRISTIANSEN: But these thoughts of  
3 yours, they existed even back when you were  
4 filling out your questionnaire. You answered that  
5 you would put limits and actually vote for tort  
6 reform. Remember that?

7 PROSPECTIVE JUROR NO. 11-1114: Vaguely.

8 MR. CHRISTIANSEN: It doesn't sound like  
9 you'd be a juror that could consider fairly,  
10 equally for both sides, the issue of punitive  
11 damages; is that accurate?

12 PROSPECTIVE JUROR NO. 11-1114: Fairly?  
13 That's hard to put a number on.

14 MR. CHRISTIANSEN: Okay. Well, you told  
15 me -- remember what we're looking for is just  
16 impartial, people that don't lean one way or  
17 another in the case. Okay? That's our goal.

18 And you volunteered to me -- and I think  
19 you're being super honest -- is that you can't  
20 really consider big numbers, hundreds of millions  
21 of dollars, in a punitive or punishment portion of  
22 a trial. Is that what you told me?

23 PROSPECTIVE JUROR NO. 11-1114: Yes.

24 MR. CHRISTIANSEN: In this case, that  
25 possibility exists. That issue will be decided by

004349

004349

1 a jury. And if a jury believes that conduct on  
2 behalf of the defendant occurred, they check a  
3 box, and that type of a question is posed to the  
4 jury. And they have to determine how much money  
5 would deter a defendant from what we call  
6 despicable or reprehensible conduct.

7 Being as you don't believe in that type  
8 of deterrent as punishment, you probably wouldn't  
9 be a great juror for that part of the case; right?

10 MR. ROBERTS: Objection. Leading.

11 THE COURT: Overruled.

12 MR. CHRISTIANSEN: It means you can  
13 answer.

14 PROSPECTIVE JUROR NO. 11-1114: I'd say  
15 I guess possibly not.

16 MR. CHRISTIANSEN: Okay. There's  
17 nothing wrong with that. Mr. Lennon doesn't want  
18 to be on a death penalty case, doesn't have any  
19 desire to do that. Doesn't make him a bad person.  
20 This doesn't weigh in at all on you either. It's  
21 just a bias that it sounds like you have; fair?

22 PROSPECTIVE JUROR NO. 11-1114: Fair  
23 enough, yeah.

24 MR. CHRISTIANSEN: And the bias is  
25 against an award of punitive damages, and you'd be

1   biased or partial when we got to that portion of  
2   the case, if we did; is that right?

3               PROSPECTIVE JUROR NO. 11-1114:

4   Possibly.

5               MR. CHRISTIANSEN:   You want both sides  
6   in this case to have a fair shot?

7               PROSPECTIVE JUROR NO. 11-1114:   I would  
8   say.

9               MR. CHRISTIANSEN:   And you wouldn't want  
10   a juror with your disposition on the panel in a  
11   punitive damage case if you happened to be sitting  
12   at this table; right?

13              PROSPECTIVE JUROR NO. 11-1114:   Probably  
14   not.

15              MR. CHRISTIANSEN:   No tricky lawyer  
16   questions are going to change that opinion in you,  
17   are they?

18              PROSPECTIVE JUROR NO. 11-1114:   No.

19              MR. CHRISTIANSEN:   It's a long-held  
20   opinion you've had for a while; fair?

21              PROSPECTIVE JUROR NO. 11-1114:   I would  
22   say yes.

23              MR. CHRISTIANSEN:   And nothing me or any  
24   other lawyer is going to question you about is  
25   going to change it?

004351



1 PROSPECTIVE JUROR NO. 11-1114: No.

2 MR. CHRISTIANSEN: Thank you. May we  
3 approach, Your Honor?

4 THE COURT: Yes.

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

7 MR. ROBERTS: Hi, sir. Lee Roberts  
8 representing Motor Coach Industries. And I'd like  
9 to ask you a couple questions.

10 PROSPECTIVE JUROR NO. 11-1114: Okay.  
11 Hello.

12 MR. ROBERTS: And is it Mr. Garibay?

13 PROSPECTIVE JUROR NO. 11-1114: That's  
14 close enough.

15 MR. ROBERTS: Close enough. Okay.

16 I'd like just to talk to you a little  
17 bit more and have you share more of your feelings  
18 with regard to the punitive damage aspect. You  
19 understand that Motor Coach is disputing whether  
20 punitive damages are even appropriate in this  
21 case; right?

22 PROSPECTIVE JUROR NO. 11-1114: Yes,  
23 sir.

24 MR. ROBERTS: And we need a jury that  
25 can fairly and impartially consider whether or not

1 they should be awarded and, if so, what the amount  
2 would be.

3 Do you have a problem in general as a  
4 juror with damages awarded to deter conduct if you  
5 felt that they had met the burden of proof that  
6 the judge is going to instruct you on?

7 PROSPECTIVE JUROR NO. 11-1114: I have a  
8 problem in terms of the amounts that we're  
9 discussing because I -- granted, again, if I think  
10 about this case in particular, while it's tragic  
11 that two boys are left without a father -- when  
12 this lawyer -- if I can speak freely -- when this  
13 lawyer brought up the fact that they lost their  
14 mother, while that's sad to me, that has  
15 absolutely nothing to do with this case.

16 And they, by bringing that up, kind of  
17 seems like, well, they need more money than that.  
18 And, again, we're talking dollar amounts to set up  
19 these boys to where I guess that they can be okay  
20 and live fine. But are we talking about setting  
21 them up so they'll never have to work a day in  
22 their life, plus their families, plus their kids?  
23 I mean, that seems like an excessive amount of  
24 dollars.

25 Even in regards to proper punishment to

1 the company that you represent, I still don't  
2 think that we can go into those triple digits as  
3 far as millions. I think that's an absurd and  
4 outrageous amount of money.

5 So I understood completely what he was  
6 talking about when he said to compensate the  
7 families for the loss, which I'm sure life  
8 insurance also kind of kicked in there a little  
9 bit to help with those costs. But, again, in a  
10 way, I look at it as, where does it stop? You  
11 know?

12 MR. ROBERTS: So if you remember,  
13 Mr. Christiansen talked to you about compensatory  
14 damages to compensate for the loss and then  
15 punitive damages. If the -- certain other  
16 standards are met, it would be appropriate for the  
17 jury to consider whether to award damages to  
18 punish and deter. And the punish and deter, the  
19 Court is going to tell you, doesn't have anything  
20 to do with compensation. She'll instruct you as  
21 to the standards that the jury would apply in that  
22 case.

23 For punitive damages, could you award  
24 punitive damages in some amount?

25 PROSPECTIVE JUROR NO. 11-1114: Not in

1 the amounts that they're looking, but possibly.

2 MR. ROBERTS: Okay. When you say, "I  
3 could never award hundreds of millions," is that  
4 because you had a cap when you walked into the  
5 jury room?

6 PROSPECTIVE JUROR NO. 11-1114: It's  
7 just listening too, I would say.

8 MR. ROBERTS: So, right now, you're  
9 speculating that that amount would be unreasonable  
10 after you've heard the evidence?

11 PROSPECTIVE JUROR NO. 11-1114: Yes,  
12 sir.

13 MR. ROBERTS: Would you be willing to  
14 award punitive damages in the maximum amount that  
15 you thought was reasonable in your heart?

16 PROSPECTIVE JUROR NO. 11-1114: I  
17 suppose.

18 MR. ROBERTS: Okay. And would you leave  
19 open the possibility that you could consider  
20 amounts higher than you might be thinking are  
21 reasonable sitting here in the box?

22 PROSPECTIVE JUROR NO. 11-1114: Probably  
23 not.

24 MR. ROBERTS: Probably not? Okay.

25 But you could award what you felt was

1 reasonable as a juror?

2 PROSPECTIVE JUROR NO. 11-1114: Yes.

3 MR. ROBERTS: Okay. Thank you, sir.

4 Nothing further, Your Honor. Thank you.

5 MR. CHRISTIANSEN: Mr. Garibay, nothing  
6 Mr. Roberts asked you changed your answers to my  
7 questions, did it?

8 PROSPECTIVE JUROR NO. 11-1114: I don't  
9 know if it seemed like that, but I would say no.

10 MR. CHRISTIANSEN: You're still telling  
11 him you can't consider large awards and punitive  
12 damages; you just don't believe in them; right?

13 PROSPECTIVE JUROR NO. 11-1114: No.  
14 Right. Absolutely.

15 MR. CHRISTIANSEN: Thank you.

16 Should we approach, Your Honor?

17 THE COURT: Yes, please.

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

20 THE COURT: All right. Mr. Garibay, I'm  
21 going to go ahead and excuse you, sir. Thank you  
22 very much for your service. Appreciate it. Thank  
23 you for following through and being so candid with  
24 us.

25 PROSPECTIVE JUROR NO. 11-1114: Thank

004356

004356

1     you, Your Honor.

2                 THE COURT:   Please go back to the third  
3     floor to jury services.

4                 PROSPECTIVE JUROR NO. 11-1114:   Okay.  
5     Thank you.

6                 THE CLERK:   Badge 11-1171, Albert  
7     Browning, in Seat 15.

8                 THE COURT:   Good afternoon, Mr.  
9     Browning.

10                PROSPECTIVE JUROR NO. 11-1171:   Hello.

11                THE COURT:   Let's see.   And your badge  
12     number, please.

13                PROSPECTIVE JUROR NO. 11-1171:   11-1171.

14                THE COURT:   Okay.   Very good.   All  
15     right.   I'm going to ask you the questions that  
16     are required.   Okay?   While -- everyone has heard  
17     them before, including yourself.

18                All right.   Do you have any difficulty  
19     understanding the English language?

20                PROSPECTIVE JUROR NO. 11-1171:   No,  
21     ma'am.

22                THE COURT:   Are you acquainted with or  
23     recognize any of the attorneys involved in this  
24     case?

25                PROSPECTIVE JUROR NO. 11-1171:   No.

1 THE COURT: Are you acquainted with or  
2 recognize the names of any of the witnesses who  
3 were identified?

4 PROSPECTIVE JUROR NO. 11-1171: No.

5 THE COURT: Are you acquainted with or  
6 recognize any of the parties in the case?

7 PROSPECTIVE JUROR NO. 11-1171: No.

8 THE COURT: Are you in any way obligated  
9 to any of the parties or the attorneys in this  
10 case, or do they hold any obligations to you?

11 PROSPECTIVE JUROR NO. 11-1171: No.

12 THE COURT: Okay. Do you know any or  
13 recognize any of the members of the panel?

14 PROSPECTIVE JUROR NO. 11-1171: No.

15 THE COURT: Okay. Do you know me or  
16 anyone that has been described or identified in  
17 Department 14?

18 PROSPECTIVE JUROR NO. 11-1171: No,  
19 ma'am.

20 THE COURT: All right. As I've  
21 indicated, this trial should last another four  
22 weeks after this week. Okay. And based on the  
23 schedule that I've previously indicated -- do you  
24 remember what it is?

25 PROSPECTIVE JUROR NO. 11-1171: Yes.

1           THE COURT:   Okay.   Is there -- do you  
2   feel that that would in any way present a physical  
3   or medical hardship?

4           PROSPECTIVE JUROR NO. 11-1171:   No.

5           THE COURT:   All right.   Would that in  
6   any way present a severe or undue hardship?

7           PROSPECTIVE JUROR NO. 11-1171:   No.

8           THE COURT:   No?   All right.

9           Have you ever been involved in a car  
10   accident or any type of accident driving?

11          PROSPECTIVE JUROR NO. 11-1171:   Oh, as a  
12   driver?   Nothing that involved lawyers.

13          THE COURT:   Okay.   It was a vehicle?

14          PROSPECTIVE JUROR NO. 11-1171:   I've  
15   been in a minor --

16          THE COURT:   Or motorcycle or bicycle or  
17   bus or pedestrian.   Anything like that?

18          PROSPECTIVE JUROR NO. 11-1171:   Just  
19   minor fender bender.   Stuff like that.   I'm an EMS  
20   provider, so I am involved in many vehicle --

21          THE COURT:   Oh, I see.   Okay.

22          All right.   The ones you were personally  
23   involved in, have you ever suffered injuries?

24          PROSPECTIVE JUROR NO. 11-1171:   No,  
25   ma'am.



1 THE COURT: No?

2 So you've never been involved in a  
3 lawsuit concerning that?

4 PROSPECTIVE JUROR NO. 11-1171: No.

5 THE COURT: Okay. All right. As a  
6 juror, you will be asked to listen to witnesses,  
7 review evidence, and make a determination based on  
8 the facts. And the jury is the finder of the  
9 facts, and my job is to make sure that the trial  
10 is fair and to instruct you on the law that you  
11 will apply to the facts.

12 Sometimes people disagree with how some  
13 of the laws are written, but it would be a  
14 violation of a juror's duty to not follow the law  
15 as I instruct them and follow their own beliefs.

16 Do you feel that you would not be able  
17 to follow all of the instructions of the Court on  
18 the law even if the instructions differ from your  
19 personal opinions or conceptions of what the law  
20 ought to be?

21 PROSPECTIVE JUROR NO. 11-1171: I would  
22 be able to follow the law as directed by you, yes.

23 THE COURT: Okay. Have you heard  
24 anything about this case in the media, through  
25 your colleagues, any type of internet or social

004360

1 media, print, TV, anything?

2 PROSPECTIVE JUROR NO. 11-1171: No,  
3 ma'am.

4 THE COURT: No? Okay.

5 Do you have any sympathy, prejudice, or  
6 bias relating to age, religion, race, gender, or  
7 national origin that you feel would affect your  
8 ability to be open-minded, fair, and impartial in  
9 this case as a juror?

10 PROSPECTIVE JUROR NO. 11-1171: No.

11 THE COURT: Is there any other reason  
12 you would not be able to be -- to serve as a fair  
13 and impartial juror in this particular case?

14 PROSPECTIVE JUROR NO. 11-1171: No.

15 THE COURT: I'm going to ask you some  
16 specific questions.

17 How long have you lived in the Las Vegas  
18 area?

19 PROSPECTIVE JUROR NO. 11-1171: I've  
20 lived in Mesquite for about 18 years.

21 THE COURT: Oh, you live in Mesquite.  
22 Okay. 18 years.

23 And before that?

24 PROSPECTIVE JUROR NO. 11-1171: Southern  
25 Utah area.

004361

1 THE COURT: All right. So how long in  
2 southern Utah?

3 PROSPECTIVE JUROR NO. 11-1171: Ten  
4 years.

5 THE COURT: Ten years? Okay.

6 And you've mentioned your occupation,  
7 but will you please explain more about it.

8 PROSPECTIVE JUROR NO. 11-1171: Yeah.  
9 I'm currently employed with the City of Mesquite  
10 as a firefighter/paramedic.

11 THE COURT: Okay. And how long have you  
12 been in that area -- have you worked for them?

13 PROSPECTIVE JUROR NO. 11-1171: I've  
14 worked for the City of Mesquite for about ten  
15 years.

16 THE COURT: Okay. And before that?

17 PROSPECTIVE JUROR NO. 11-1171: Before  
18 that and still, I am a small-business owner in  
19 Mesquite.

20 THE COURT: Okay. What type of a  
21 business do you own?

22 PROSPECTIVE JUROR NO. 11-1171: I own a  
23 general automotive repair collision center.

24 THE COURT: Okay. How long have you --

25 PROSPECTIVE JUROR NO. 11-1171: 18 years.

004362

004362

1 THE COURT: I'm sorry. Ten years?

2 PROSPECTIVE JUROR NO. 11-1171: 18 years,  
3 I've had the automatic repair shop, yes. Sorry.

4 THE COURT: All right. Are you married,  
5 or do you have a significant other?

6 PROSPECTIVE JUROR NO. 11-1171: I am  
7 married.

8 THE COURT: Okay. And your spouse, what  
9 area of work is your spouse in?

10 PROSPECTIVE JUROR NO. 11-1171: She is  
11 my executive secretary.

12 THE COURT: Okay? How long has she been  
13 your executive secretary?

14 PROSPECTIVE JUROR NO. 11-1171: She's  
15 worked with me the whole time, 18 years.

16 THE COURT: Okay. And before that?

17 PROSPECTIVE JUROR NO. 11-1171: She is a  
18 hairdresser.

19 THE COURT: Okay. How long was she a  
20 hairstylist or a hairdresser?

21 PROSPECTIVE JUROR NO. 11-1171: She was  
22 a hairdresser in southern Utah for about ten  
23 years.

24 THE COURT: Okay. Do you have adult  
25 children?

1 PROSPECTIVE JUROR NO. 11-1171: I have  
2 two adult children.

3 THE COURT: What are their ages?

4 PROSPECTIVE JUROR NO. 11-1171: 20 and  
5 23.

6 THE COURT: All right. Please tell me  
7 what your 20-year-old does, what education or what  
8 work he or she is in.

9 PROSPECTIVE JUROR NO. 11-1171: Sure.  
10 She's second year at BYU, and she is going for  
11 teaching. And history is her major.

12 THE COURT: Okay. And has she held  
13 any -- has she ever worked?

14 PROSPECTIVE JUROR NO. 11-1171: Yes.  
15 Yeah, she worked for me in the shop, and she's  
16 currently employed helping get herself through  
17 school with scholarships --

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 11-1171: -- and  
20 some help from us.

21 THE COURT: Does she work -- is it like  
22 working at school?

23 PROSPECTIVE JUROR NO. 11-1171: She  
24 works at a department that's for the school, yeah.

25 THE COURT: Okay. Very good. What

004364

004364

1 about your 23-year-old?

2 PROSPECTIVE JUROR NO. 11-1171: He  
3 works -- he runs my collision center, and he's  
4 also going to school for EMS.

5 THE COURT: Has he had any other type of  
6 employment?

7 PROSPECTIVE JUROR NO. 11-1171: Nope.  
8 He's been working for me the whole time.

9 THE COURT: Okay. Very good. All  
10 right. Have you ever served as a juror before?

11 PROSPECTIVE JUROR NO. 11-1171: I have  
12 not.

13 THE COURT: Thank you very much.

14 MR. CHRISTIANSEN: Good afternoon, Mr.  
15 Browning.

16 PROSPECTIVE JUROR NO. 11-1171: Hello.

17 MR. CHRISTIANSEN: Where is -- do you  
18 live -- you work for the City of Mesquite. But on  
19 your questionnaire, you listed that you live in  
20 Bunkerville.

21 PROSPECTIVE JUROR NO. 11-1171: Correct.  
22 Bunkerville is just outside of Mesquite.

23 MR. CHRISTIANSEN: Mr. Kemp and I are  
24 arguing about which side of Mesquite it's on.

25 Where is it?

1 PROSPECTIVE JUROR NO. 11-1171: It's on  
2 the correct side. Bunkerville is south -- south  
3 of Mesquite on the other side of the road, like a  
4 suburb of Mesquite.

5 MR. CHRISTIANSEN: On the Nevada or the  
6 Arizona side?

7 PROSPECTIVE JUROR NO. 11-1171: We're in  
8 Nevada.

9 MR. CHRISTIANSEN: All right. Got it.  
10 Thank you.

11 What's the incorrect side of  
12 Bunkerville? Since there's a correct side.

13 PROSPECTIVE JUROR NO. 11-1171: The  
14 incorrect side of Mesquite?

15 MR. CHRISTIANSEN: Yeah, sorry,  
16 Mesquite.

17 PROSPECTIVE JUROR NO. 11-1171: Oh, that  
18 was a joke. I'm sorry.

19 MR. CHRISTIANSEN: All right. And  
20 you've been in Mesquite since about 2000?

21 PROSPECTIVE JUROR NO. 11-1171: Correct.

22 MR. CHRISTIANSEN: But only an EMT for  
23 the past ten years, as I heard the questions?

24 PROSPECTIVE JUROR NO. 11-1171: That's  
25 correct, yes. For -- yes.

1 MR. CHRISTIANSEN: You drive a 2008  
2 Chevy Silverado?

3 PROSPECTIVE JUROR NO. 11-1171: Yes,  
4 sir.

5 MR. CHRISTIANSEN: That has some type of  
6 proximity sensor on it, a backing sensor or  
7 something?

8 PROSPECTIVE JUROR NO. 11-1171: Correct.

9 MR. CHRISTIANSEN: So you've had some  
10 experience with that just using it in your truck?

11 PROSPECTIVE JUROR NO. 11-1171: Yes.

12 MR. CHRISTIANSEN: Okay. What union are  
13 you currently a member of? I just noticed that in  
14 your questionnaire.

15 PROSPECTIVE JUROR NO. 11-1171: Union --  
16 give me a second. I can't remember. Union 14.

17 MR. CHRISTIANSEN: Okay. Firefighter,  
18 first responder type of a union? I just don't  
19 know --

20 PROSPECTIVE JUROR NO. 11-1171: Yeah,  
21 it's a firefighter union. I can't remember the  
22 exact number.

23 MR. CHRISTIANSEN: Got it. The judge  
24 was asking you questions relative to any of the  
25 car -- fender benders that you were personally



1 involved in. You said none of them involved  
2 lawyers.

3 But if I ask a question that's sort of  
4 more broadly, you have been in the litigation --  
5 some type of litigation before, according to your  
6 questionnaire.

7 At some point, your company got sued by  
8 an employee of a casino maybe; is that right?

9 PROSPECTIVE JUROR NO. 11-1171: That's  
10 correct.

11 MR. CHRISTIANSEN: Would you just tell  
12 me about that.

13 PROSPECTIVE JUROR NO. 11-1171: Sure. I  
14 think this is close to about ten years ago. My  
15 company was sued -- was involved -- was named in a  
16 suit where a gentleman was killed by a forklift  
17 that -- they had put a manlift on the end of the  
18 forklift.

19 At one point, we had serviced the tires  
20 that went on that vehicle. Actually, I had sublet  
21 it to somebody else.

22 So my company actually never touched the  
23 tires. It was all through somebody else. We were  
24 still named in the lawsuit. Our insurance company  
25 paid out the maximum amount, and then we were

1 released from the lawsuit.

2 MR. CHRISTIANSEN: Okay. Back about ten  
3 years ago this happened?

4 PROSPECTIVE JUROR NO. 11-1171: I think  
5 it was probably 2006 area. I don't know for sure.

6 MR. CHRISTIANSEN: Anything about that  
7 process -- sounds like you have some feeling that  
8 you were named maybe and shouldn't have been  
9 because you subbed the work out for the tires on  
10 the forklift. And I might have got that wrong a  
11 little bit.

12 PROSPECTIVE JUROR NO. 11-1171: Yeah.  
13 Yeah, my company never even touched the tires, but  
14 I understand how the process works.

15 MR. CHRISTIANSEN: Anything about your  
16 experience being sued in a case where you didn't  
17 even touch the tires that left a bad taste in your  
18 mouth relative to sort of the system?

19 PROSPECTIVE JUROR NO. 11-1171: Well,  
20 it's not a pleasant situation to be in, for sure,  
21 to be part of a -- named in a lawsuit, for sure.  
22 The whole deposition is certainly unpleasant.

23 And, to me, it just seemed like, you  
24 know, they named all these people just to get the  
25 payout. And then it seems the insurance companies

004369

004369

1 paid up, and they don't need you anymore. Thank  
2 goodness. They have their money anyway, so...

3 MR. CHRISTIANSEN: Okay. And I asked  
4 you that question specifically because I read  
5 about what happened in your questionnaire. And  
6 then you also, when asked about lawsuits in  
7 general, had an answer about -- I'm paraphrasing  
8 you -- about lawyers dragging things out a bit too  
9 long in the system.

10 Do you remember sort of generically  
11 writing that?

12 PROSPECTIVE JUROR NO. 11-1171: I do  
13 remember writing that. And that's -- in my mind,  
14 it's been a little while, that's how I remember it  
15 happening. That's the way it seemed to me. My  
16 opinion.

17 MR. CHRISTIANSEN: Fair enough.  
18 Nobody's quarreling with your opinion.

19 My question to you is, in a case where I  
20 sued -- Mr. Kemp and I filed a lawsuit against  
21 Motor Coach Industries. And, in my head, I think,  
22 all right. Well, Mr. Browning got sued, in his  
23 mind, unfairly. Can Mr. Browning really be fair  
24 to -- who cares about Mr. Kemp and myself -- but  
25 to the Khiabani boys in light of his life

004370

1 experience?

2 PROSPECTIVE JUROR NO. 11-1171: Well, I  
3 feel like I'm a fair person. I feel like I  
4 understand and I don't make rash decisions. I  
5 don't make quick judgments. I feel like I would  
6 be a fair juror.

7 MR. CHRISTIANSEN: Okay. Can you -- so  
8 nothing about that would cause anybody, either  
9 side, to have a head start in here?

10 PROSPECTIVE JUROR NO. 11-1171: No. I  
11 think we'd be -- I think we'd be level. I think  
12 I'd be a good juror.

13 MR. CHRISTIANSEN: Okay. We had --  
14 there were some questions about -- that leads me  
15 to sort of my next area from your questionnaire --  
16 about buses and the bus industry. And your answer  
17 to one of them was you felt like the industry is  
18 regulated and safe.

19 Do you remember writing that down?

20 PROSPECTIVE JUROR NO. 11-1171: I do  
21 remember writing that down. I don't have a lot of  
22 experience with buses.

23 MR. CHRISTIANSEN: That was my first  
24 question to you.

25 PROSPECTIVE JUROR NO. 11-1171: Simply,

1 again, that's my opinion, kind of seeing how the  
2 industry -- the automotive industry is. It's so  
3 heavily regulated. You know, I'm sure that that  
4 bus company or every bus company has certain  
5 regulations that they have to do to manufacture  
6 these buses safely or unsafely.

7 You know, if it's unsafe, then changes  
8 have to be made. I'm sure regulations, in my  
9 mind, are in place to keep buses safe.

10 MR. CHRISTIANSEN: Okay. So you're --  
11 do you know those regulations?

12 PROSPECTIVE JUROR NO. 11-1171: Like I  
13 said, that's my opinion. And I don't know those  
14 regulations. I'm sorry. And maybe I'm speaking  
15 too much.

16 MR. CHRISTIANSEN: No, you're doing  
17 great. I'm the last person to tell anybody  
18 they're speaking too much at this stage of the  
19 game. But I'm just trying to ask and get your  
20 honest answers.

21 So if you believe that the industry is  
22 well regulated and buses are made in conformity  
23 with the regulations, do you see how that could be  
24 perceived as a bias in favor of the bus company  
25 before you've heard a single fact?

1 PROSPECTIVE JUROR NO. 11-1171: Yes,  
2 sir.

3 MR. CHRISTIANSEN: All right. And you  
4 have -- you have some kind of specialized  
5 knowledge.

6 In addition to your EMT firefighter  
7 knowledge, you've been running an automotive  
8 repair small business for 18-plus years with your  
9 family?

10 PROSPECTIVE JUROR NO. 11-1171: Yes,  
11 sir.

12 MR. CHRISTIANSEN: And so I've got to  
13 believe that you've had these notions about bus  
14 regulations and car regulations for quite some  
15 time just because of your family business?

16 PROSPECTIVE JUROR NO. 11-1171: Yes.

17 MR. CHRISTIANSEN: And those beliefs,  
18 you can agree, bias you in favor of the bus  
19 company before you've heard a single fact; right?

20 PROSPECTIVE JUROR NO. 11-1171: I guess  
21 it could.

22 MR. CHRISTIANSEN: All right. And you  
23 understand this is a case against the bus  
24 distributor by two minors who brought suit through  
25 sort of their aunt and uncle.

004373

004373

1           That's sort of the nature of this case;  
2     right?

3           PROSPECTIVE JUROR NO. 11-1171:    I  
4     understand the case.

5           MR. CHRISTIANSEN:   And if you lean in a  
6     bit before you've heard anything, any facts in  
7     favor of the bus company, then you're somewhat  
8     bias.

9           PROSPECTIVE JUROR NO. 11-1171:    With my  
10    knowledge, you're saying I'm biased?

11          MR. CHRISTIANSEN:   I'm asking you if --  
12    I'm asking you.   I'm not telling you.   I asked you  
13    and you said you thought it could appear that way.  
14    So now I'm putting it to you.   I'm trying to ask  
15    you bluntly and directly.

16          With your background and experience, do  
17    you think you're leaning a little bit towards the  
18    bus company?

19          No right or wrong answer.   I'm just  
20    asking.

21          PROSPECTIVE JUROR NO. 11-1171:    I've got  
22    so many questions.   I mean, I don't know the bus  
23    company.   I don't know the manufacturer.   I don't  
24    know the model.   I don't know how many people it's  
25    actually killed.   I don't know -- there's so many

1 questions in my mind. I'm sorry.

2 I don't think I would be biased, no.

3 MR. CHRISTIANSEN: Okay. If you knew or  
4 cared about the plaintiffs in this case, would you  
5 want a juror like yourself sitting in the panel?

6 PROSPECTIVE JUROR NO. 11-1171: Yeah.

7 MR. CHRISTIANSEN: Okay. Because you  
8 can commit to be fair to both sides?

9 PROSPECTIVE JUROR NO. 11-1171:  
10 Absolutely.

11 MR. CHRISTIANSEN: Okay. I also saw  
12 somewhere that you might fly helicopters; is that  
13 right? Or have a helicopter license?

14 PROSPECTIVE JUROR NO. 11-1171: Not me.

15 MR. CHRISTIANSEN: Not you? Sorry.

16 You heard me, ad nauseam now, explain  
17 the whole process.

18 Anything about the process -- what the  
19 lawyers do, what the judge does -- that causes you  
20 pause or concern?

21 PROSPECTIVE JUROR NO. 11-1171: No.

22 MR. CHRISTIANSEN: Could you refrain  
23 from doing your own investigation and research and  
24 listen to and decide the case based on what  
25 happens here in court?



1 PROSPECTIVE JUROR NO. 11-1171: Yes.

2 MR. CHRISTIANSEN: And if all your  
3 questions aren't answered, can you stay off of  
4 Google and try and figure out things on your own?

5 PROSPECTIVE JUROR NO. 11-1171: Yeah.

6 MR. CHRISTIANSEN: You heard me describe  
7 the process where jurors can write out questions.

8 Do you think you'd be okay to do that?

9 PROSPECTIVE JUROR NO. 11-1171: Yes.

10 MR. CHRISTIANSEN: And sort of the last  
11 area I've got into -- I'm trying to go quickly a  
12 bit with you because I know you sat through it and  
13 have been paying close attention.

14 The last area I got to with the two  
15 gentlemen before you and I discussed -- was the  
16 area of tort reform and caps on damages in  
17 lawsuits.

18 Do you have any feelings on that?

19 PROSPECTIVE JUROR NO. 11-1171: I still  
20 haven't formed an opinion on that.

21 MR. CHRISTIANSEN: Tell me what that  
22 means. I just don't know what that means.

23 PROSPECTIVE JUROR NO. 11-1171: I'm  
24 sorry. I don't know the system well enough. I  
25 don't understand. I don't know how much has ever

1    been paid out.  I don't know how much has --  
2    little has ever been paid out.

3               I don't know -- I'd be curious to hear  
4    the economists tell us where those numbers come  
5    from and how they came up with those numbers.

6               MR. CHRISTIANSEN:  Okay.  You heard me  
7    describe and talk to a bunch of jurors about the  
8    standard of proof in a negligence case being more  
9    likely than not.

10              PROSPECTIVE JUROR NO. 11-1171:  I heard  
11    about that.

12              MR. CHRISTIANSEN:  You know,  
13    preponderance of the evidence, 51 percent.  I've  
14    done it a bunch of different ways.

15              Do you have any problem with that being  
16    the standard, what we have to do to win in the  
17    case?

18              PROSPECTIVE JUROR NO. 11-1171:  No.

19              MR. CHRISTIANSEN:  Okay.  The analogy  
20    sometimes I use with guys -- men, I'm sorry -- is  
21    you know, on a football field, the 50-yard line is  
22    sort of the middle of the field?

23              PROSPECTIVE JUROR NO. 11-1171:  Yes.

24              MR. CHRISTIANSEN:  Sorry.  You have to  
25    answer out loud or the court reporter can't take

1 you down.

2 In football, you've got to get to the  
3 touchdown to score; right? You've got to go  
4 50 yards to score?

5 PROSPECTIVE JUROR NO. 11-1171: Yes.

6 MR. CHRISTIANSEN: In a lawsuit, you've  
7 got to get to the 49 or the 51. You've got to  
8 move that ball just one yard.

9 Does that make sense?

10 PROSPECTIVE JUROR NO. 11-1171: I  
11 understand.

12 MR. CHRISTIANSEN: Is that a fair  
13 standard, in your mind?

14 PROSPECTIVE JUROR NO. 11-1171: Yeah.

15 MR. CHRISTIANSEN: How about when  
16 somebody like Mr. Kemp or myself is going to come  
17 to a jury and ask for a big award, tens of  
18 millions of dollars? Is that slight -- that  
19 standard, 51 percent, the right standard in your  
20 mind, or is it a little too easy?

21 PROSPECTIVE JUROR NO. 11-1171: Big  
22 payouts, for me, are tough. As a small-business  
23 owner, other than one time, I've never been sued.  
24 My insurance rates keep going up every year. I'm  
25 sure the bus company's insurance company is who's

004378

1 ultimately mostly paying for a lot of this  
2 lawsuit.

3 THE COURT: I'm sorry. Before you go  
4 on -- and this is no fault of yours -- I just  
5 wanted to instruct everyone that's here that  
6 insurance isn't an issue that we're contemplating  
7 in this case. It's not something that we're going  
8 to discuss. Although you're being candid with us,  
9 that's really not a factor in this case.

10 PROSPECTIVE JUROR NO. 11-1171: I'm  
11 sorry, Your Honor.

12 THE COURT: No, no. I should have  
13 actually discussed that with everyone beforehand.  
14 You just happen to have the microphone now.

15 Please proceed. Go on.

16 MR. CHRISTIANSEN: Thank you, Your  
17 Honor.

18 Mr. Browning, I appreciate your candor.  
19 As a small-business owner who has been through the  
20 process, maybe not as a defendant, large verdicts  
21 are troubling for you, it sounds like. Is that a  
22 fair assessment of what you're telling me?

23 PROSPECTIVE JUROR NO. 11-1171: That's a  
24 fair assessment.

25 MR. CHRISTIANSEN: And in a case where a

1 large verdict is going to be sought, that's going  
2 to be asked for, I'm asking you now -- only you  
3 know the answer in your gut -- does that cause you  
4 some pause as to whether or not you can be  
5 unbiased in light of your life experience?

6 PROSPECTIVE JUROR NO. 11-1171: I think  
7 I would be unbiased. It does cause me some pause,  
8 but that pause lets me think.

9 MR. CHRISTIANSEN: Okay. Help me get  
10 from the -- I'm just trying to follow -- the large  
11 verdicts are troubling as a business owner. I get  
12 that completely. But if placed on the jury,  
13 you'll be able to do it?

14 PROSPECTIVE JUROR NO. 11-1171: I would  
15 be able to do it on a jury.

16 MR. CHRISTIANSEN: If the evidence  
17 supported it. If the evidence doesn't support it,  
18 you don't have to do anything.

19 PROSPECTIVE JUROR NO. 11-1171: Thank  
20 you.

21 MR. CHRISTIANSEN: Are you going to make  
22 me prove more than to the 51-yard line if I want a  
23 large verdict?

24 PROSPECTIVE JUROR NO. 11-1171: I will  
25 go from the directions that the judge gives me.

1           MR. CHRISTIANSEN: Her Honor is going to  
2 tell you that the burden of proof in a case like  
3 this is more likely than not. And that is, by  
4 definition, prove the allegations in the complaint  
5 in my favor however slight, a tissue. You saw me  
6 drop a tissue earlier. I was dropping a tissue on  
7 the scales of justice. Is that something you  
8 could do?

9           PROSPECTIVE JUROR NO. 11-1171: Yes.

10          MR. CHRISTIANSEN: Do you have any  
11 ceiling in your mind in the compensatory phase of  
12 the case -- that is, to compensate the boys -- for  
13 what you see is the highest number you can award?

14          PROSPECTIVE JUROR NO. 11-1171: No, I  
15 don't have an opinion on that.

16          MR. CHRISTIANSEN: If the facts  
17 supported tens of millions of dollars and the  
18 evidence from the stand justified it to you more  
19 likely than not, would you be able to do it?

20          PROSPECTIVE JUROR NO. 11-1171: If facts  
21 supported it, yes.

22          MR. CHRISTIANSEN: Fair enough. Now,  
23 shift gears with me to the -- you're my guinea pig  
24 this afternoon because you just got to the box.  
25 Everybody else had to answer these questions

004381

1 already -- to the punitive damages portion of the  
2 case.

3 The judge will tell all the jurors what  
4 the standard is that the plaintiff needs to meet  
5 to prove an award of punitive damages or to  
6 consider punitive damages. Punitive damages are  
7 to punish, not to compensate. They're to punish a  
8 defendant to deter conduct. Her Honor will give  
9 you the legal description of it. Some of it is  
10 called unconscionable conduct or bad conduct. Her  
11 Honor will define it for you.

12 Are you a person that could consider  
13 imposing punishment or deterrence, punitive  
14 damages, on a company?

15 PROSPECTIVE JUROR NO. 11-1171: Yeah.

16 MR. CHRISTIANSEN: Would that be even  
17 more difficult as a small-business owner?

18 PROSPECTIVE JUROR NO. 11-1171: If the  
19 facts proved that there was fault that was made,  
20 then it's not going to make it harder for me.

21 MR. CHRISTIANSEN: Okay. I'll use you  
22 to shift gears into everybody because I've covered  
23 most of my stuff with you. All the lawyers in the  
24 court will instruct us what jurors are supposed to  
25 consider in making an award. And the only award

1 is an award of money. Everybody understands that;  
2 right? You can't go back in time and fix these  
3 kids' lives. That's all we can do.

4 You understand that, Mr. Browning,  
5 making a monetary award?

6 PROSPECTIVE JUROR NO. 11-1171: Yes.

7 MR. CHRISTIANSEN: And you're to  
8 consider the harms and losses suffered by the  
9 boys. And, actually, in fairness, the harms and  
10 losses, grief, pain, sorrow, and anguish suffered  
11 by Dr. Katy Barin before she passed, in the time  
12 from her husband's death until the time she  
13 passed.

14 Is that something you think you can do?

15 PROSPECTIVE JUROR NO. 11-1171: Yes.

16 MR. CHRISTIANSEN: Can you keep out of  
17 your mind the potential of it harming business  
18 outside of the litigation?

19 PROSPECTIVE JUROR NO. 11-1171: Probably  
20 not.

21 MR. CHRISTIANSEN: You're a  
22 small-business owner; right?

23 PROSPECTIVE JUROR NO. 11-1171: Yes,  
24 sir.

25 MR. CHRISTIANSEN: You are going to, in



1 your mind, be thinking about the ramifications to  
2 business of a large award; correct?

3 PROSPECTIVE JUROR NO. 11-1171: It's  
4 hard to be a small businessman.

5 MR. CHRISTIANSEN: No fighting. But is  
6 the answer yes?

7 PROSPECTIVE JUROR NO. 11-1171: Yes.

8 MR. CHRISTIANSEN: And when you think --  
9 I'm not going to talk you out of or convince you,  
10 and you can't think about it, you've been a  
11 small-business owner with your family. You and  
12 your wife started it, now your son and you run it  
13 for darn near 20 years; right?

14 PROSPECTIVE JUROR NO. 11-1171: Right.  
15 Yes.

16 MR. CHRISTIANSEN: I'm not going to  
17 change your mind on that with some clever  
18 questions, am I?

19 PROSPECTIVE JUROR NO. 11-1171: It's  
20 what I think about every waking hour.

21 MR. CHRISTIANSEN: And so you'll be  
22 thinking about things that aren't just the harms  
23 and losses to the boys when trying to come up with  
24 a proper verdict; fair?

25 PROSPECTIVE JUROR NO. 11-1171: Yes.

1 MR. CHRISTIANSEN: And nobody is going  
2 to prevent you or stop you from doing that; fair?

3 PROSPECTIVE JUROR NO. 11-1171: Fair.

4 MR. CHRISTIANSEN: And because only  
5 harms and losses are the only things you're to  
6 consider, you wouldn't be able to follow the law  
7 just because you've been running a business so  
8 long; correct?

9 PROSPECTIVE JUROR NO. 11-1171: I guess  
10 that's correct.

11 MR. CHRISTIANSEN: Thank you, sir. I  
12 appreciate your candor.

13 Can we approach, Your Honor?

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

16 MR. CHRISTIANSEN: Judge, I have maybe a  
17 couple more questions on another matter you may --  
18 be of interest when we come talk to you.

19 THE COURT: Okay.

20 MR. CHRISTIANSEN: Sir, how far is it to  
21 where you drive?

22 PROSPECTIVE JUROR NO. 11-1171:  
23 80 miles.

24 MR. CHRISTIANSEN: Each way?

25 PROSPECTIVE JUROR NO. 11-1171: Yes,

1 sir.

2 MR. CHRISTIANSEN: And you would have to  
3 go back -- drive here in the morning and drive  
4 home at night?

5 PROSPECTIVE JUROR NO. 11-1171: Yes,  
6 sir.

7 MR. CHRISTIANSEN: Do your EMT job and  
8 run your family business all at the same time?

9 PROSPECTIVE JUROR NO. 11-1171: Yes,  
10 sir.

11 MR. CHRISTIANSEN: Can we approach, Your  
12 Honor?

13 THE COURT: Yes.

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

16 THE COURT: All right. We're going to  
17 have a 20-minute break. And I'd like Mr. Browning  
18 to stay for a few minutes, please.

19 I'm going to admonish you.

20 You're instructed not to talk with each  
21 other or with anyone else about any subject or  
22 issue connected with this trial. You're not to  
23 read, watch, or listen to any report of or  
24 commentary on the trial by any person connected  
25 with this case or by any medium of information,

1 including, without limitation, newspapers,  
2 television, the internet, or radio.

3           You are not to conduct any research on  
4 your own relating to this case, such as consulting  
5 dictionaries, using the internet, or using any  
6 reference materials. You are not to conduct any  
7 investigation, test any theory of the case,  
8 re-create any aspect of the case, or in any other  
9 way investigate or learn about the case on your  
10 own.

11           You are not to talk with others, text  
12 others, tweet others, message others, google  
13 issues, or conduct any other kind of book or  
14 computer research with regard to any issue, party,  
15 witness, or attorney involved in this case.

16           You are not to form or express any  
17 opinion on any subject connected with this trial  
18 until the case is finally submitted to you.

19           THE MARSHAL: All rise.

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

22           THE MARSHAL: Please be seated. Come to  
23 order.

24           THE COURT: For the record, your name  
25 and badge number?

1 PROSPECTIVE JUROR NO. 11-1171: Albert  
2 Browning, 11-1171.

3 THE COURT: Thank you.

4 Counsel, do you have some follow-up  
5 questions?

6 MR. ROBERTS: I do. Thank you.

7 We seem to have an extra juror here,  
8 Your Honor.

9 PROSPECTIVE JUROR NO. 11-1037: You told  
10 me to stay.

11 THE COURT: I'll call you back. I  
12 apologize. Sorry. I didn't see you.

13 Thank you, Mr. Roberts. Okay. I think  
14 we're good now.

15 MR. ROBERTS: Okay. Thank you.

16 Good afternoon, Mr. Browning.

17 PROSPECTIVE JUROR NO. 11-1171: Hello.

18 MR. ROBERTS: When you told  
19 Mr. Christiansen that you might have the effect of  
20 a large amount on the business in your mind during  
21 deliberations, is that what you're saying?  
22 Explain to me further what you were just answering  
23 yes to Mr. Christiansen.

24 PROSPECTIVE JUROR NO. 11-1171: About  
25 the large dollar amount being awarded? That's

1     what we were talking about; right?

2                 MR. ROBERTS:   Yes.

3                 PROSPECTIVE JUROR NO. 11-1171:   Yeah, in  
4     my mind, in a small business, trickle-down effect  
5     from all other businesses affects me.   And it  
6     doesn't help that I just paid my liability  
7     insurance last week either, and it's gone up.

8                 I'm sorry.   What was the question?

9                 MR. ROBERTS:   Let me ask it this way:  
10    When you said that you were concerned about the  
11    effect of an award on the business, were you  
12    talking about the compensatory phase or that  
13    punitive phase where Mr. Christiansen said he was  
14    going to be asking for hundreds of millions of  
15    dollars?

16                PROSPECTIVE JUROR NO. 11-1171:   The  
17    punitive phase is probably what concerns me.

18                MR. ROBERTS:   Okay.   Now, if the Court  
19    were to instruct you that the jury is not even  
20    allowed to award an amount so big that it would  
21    annihilate the company, would that make you feel  
22    better?

23                PROSPECTIVE JUROR NO. 11-1171:   That  
24    would help make me feel better, yes.

25                MR. ROBERTS:   You said -- in response to

004389

004389

1 a number of questions, you probably told  
2 Mr. Christiansen eight, nine, ten times that you  
3 could be fair as a juror; correct?

4 PROSPECTIVE JUROR NO. 11-1171: Yes.

5 MR. ROBERTS: And did you mean that when  
6 you said it?

7 PROSPECTIVE JUROR NO. 11-1171:  
8 Absolutely.

9 MR. ROBERTS: Despite your concerns,  
10 tell me -- just, you know, think through  
11 everything that we've been talking about the last  
12 15, 20 minutes, because we want a fair juror just  
13 like they do.

14 Could you be fair to the boys and  
15 consider awarding damages in accordance with the  
16 instructions of the Court as long as you knew that  
17 the amounts wouldn't annihilate the business?

18 PROSPECTIVE JUROR NO. 11-1171: Yes. In  
19 accordance with instruction of the Court, I feel I  
20 would be a good juror just because of my  
21 background and information and knowledge.

22 MR. ROBERTS: Okay. Thank you, sir. I  
23 appreciate that.

24 Nothing more, Your Honor.

25 MR. CHRISTIANSEN: Mr. Browning, none of

1 the questions posed to you by Mr. Roberts changed  
2 any of your answers that you gave me, did they?

3 PROSPECTIVE JUROR NO. 11-1171: No.

4 MR. CHRISTIANSEN: You're still going to  
5 be thinking about the trickle-down effect when  
6 you're deliberating for a large award in this  
7 case; correct?

8 PROSPECTIVE JUROR NO. 11-1171: Yeah.

9 MR. CHRISTIANSEN: Nothing further,  
10 Judge.

11 MR. ROBERTS: Just a brief follow-up,  
12 Your Honor?

13 THE COURT: Absolutely.

14 MR. ROBERTS: Thank you.

15 And we all have things that we think  
16 about and we're not expected to stop thinking.  
17 The question is would those things that you're  
18 thinking of prevent you from fairly and  
19 impartially considering the evidence. That's what  
20 we need to know.

21 PROSPECTIVE JUROR NO. 11-1171: Right.  
22 Yeah, if I'm thinking about them, doesn't mean I  
23 still can't be fair.

24 MR. ROBERTS: And you could put those to  
25 the side and not use those feelings and thoughts

004391

004391



1 to affect your actual vote on the verdict;  
2 correct?

3 PROSPECTIVE JUROR NO. 11-1171: Yes.

4 MR. ROBERTS: Okay. Thank you, sir.

5 THE COURT: I'm going to ask you a  
6 question. I just saw you make a bit of a facial  
7 gesture. What does that mean?

8 PROSPECTIVE JUROR NO. 11-1171: I'm  
9 sorry.

10 THE COURT: You're not on the hot seat.  
11 There's no wrong answer. I just want to  
12 understand what you're thinking or feeling.

13 PROSPECTIVE JUROR NO. 11-1171: And  
14 it's -- my wife tells me all the time I don't  
15 explain myself very well.

16 THE COURT: That's okay. Take your  
17 time. And, also, this is a -- I don't know if  
18 you've been in this situation before. Most people  
19 are very nervous. It's okay. And you can gather  
20 your thoughts. Just, you know, understand there's  
21 no wrong answer.

22 PROSPECTIVE JUROR NO. 11-1171: Thank  
23 you, Your Honor. I just -- I feel like I would be  
24 a good juror just because of my background. I  
25 feel like, being a business owner and having

1 things thrown at me, I understand probably as good  
2 or better as a lot of the other jurors do.

3 Is it not going to be in the back of my  
4 mind? It will be in the back of my mind. I will  
5 be thinking about judgment, dollars amounts, and  
6 insurance rates. But, for me personally, that's  
7 what I'll be thinking about.

8 But I feel like I could be fair, if that  
9 makes any sense.

10 THE COURT: Okay. From that, which you  
11 live with on a daily basis for many years, what  
12 you've just discussed that's going to be in the  
13 back of your mind, and you've just said you can be  
14 fair.

15 You've been asked if you can follow the  
16 law and you've said yes but also said no. So I  
17 just want -- I'd like to clarify which one is  
18 correct.

19 PROSPECTIVE JUROR NO. 11-1171: I'm  
20 sorry if I said I couldn't follow the law because  
21 I did not mean that. I can absolutely follow the  
22 law. And, yes, I'll follow the law and I'll  
23 follow your direction.

24 THE COURT: And I'm not trying to  
25 intimidate you in any way. I just want to

004393

1 understand, because, depending on what counsel has  
2 asked you -- well, you've said you can follow the  
3 law, but also for a time you said no.

4 And I just -- and there's nothing wrong  
5 with having a preconception as long as we're aware  
6 of it or not. You know? My understanding is that  
7 you're saying that you can follow the law or not?

8 PROSPECTIVE JUROR NO. 11-1171: I feel  
9 like I can follow the law. Just because it's in  
10 the back of my mind isn't going to change how I --  
11 change things -- how I -- I can be fair.

12 THE COURT: I usually don't ask a lot of  
13 questions of the jurors, but I do want to ask you  
14 this: If you were a client of Mr. Kemp's and  
15 Mr. Christiansen, would you like a juror with  
16 what's in the back of your mind and the person  
17 that you are on this jury, understanding what  
18 their case is?

19 PROSPECTIVE JUROR NO. 11-1171: Probably  
20 not. If I was the defendant, I would want me on  
21 my jury, though.

22 THE COURT: If you were the defendant,  
23 you would? And if -- Mr. Roberts, as he sits  
24 there representing his client, would he want you  
25 on his jury?

1 PROSPECTIVE JUROR NO. 11-1171: Yes.

2 THE COURT: Okay. But not plaintiffs?

3 PROSPECTIVE JUROR NO. 11-1171: I feel  
4 like -- Your Honor, I'm really sorry. I don't  
5 explain things very well. I feel like I would be  
6 a fair juror for both sides. Do I feel like I  
7 would be a good juror for Mr. Christiansen?

8 THE COURT: For his client -- for his  
9 clients that he's representing?

10 PROSPECTIVE JUROR NO. 11-1171: For his  
11 clients? Yeah, I think I would.

12 THE COURT: And what about Mr. Roberts'  
13 client?

14 PROSPECTIVE JUROR NO. 11-1171: I  
15 definitely think I would.

16 THE COURT: Thank you. You're excused  
17 for a moment unless counsel have any other  
18 follow-ups.

19 MR. CHRISTIANSEN: No, Your Honor.

20 MR. ROBERTS: No, Your Honor.

21 THE MARSHAL: All rise.

22 Please be seated. Come to order.

23 THE COURT: Just so you know, I don't  
24 intend to joint voir dire anymore, but I could  
25 understand --

1           MR. ROBERTS: I think it's proper for  
2 the Court to inquire under Sears-Page, I think it  
3 is. I think they approved, in fact, said the  
4 judge had the duty to inquire if it was unclear on  
5 the record.

6           THE COURT: Thank you. I just didn't  
7 understand what he was communicating.

8           MR. CHRISTIANSEN: Judge, it's the  
9 plaintiffs' motion to have Mr. Browning removed  
10 for cause. And what the Court just articulated is  
11 exactly the basis for Jitnan, that mandates must  
12 be excused. When he gives conflicting answers.  
13 When he says "I can't" and then "I can follow the  
14 law" -- in Jitnan -- if you'll recall, you had  
15 a -- Juror No. 40, who said "I can give pain and  
16 suffering damages" and then "I can't give pain and  
17 suffering damages," and the supreme court said  
18 that in and of itself is grounds for  
19 disqualification, and the inconsistent answers is  
20 grounds for disqualification.

21           This gentleman is worse. He's worried  
22 about the trickle-down effect which means he's  
23 biased because he has a financial interest in the  
24 outcome of the case as a small-business owner. He  
25 articulated he believed that the industry was well

1 regulated and safe. And he believed that without  
2 knowing a single fact yet.

3 So he's already injected his personal  
4 opinion and bias into what should be an impartial  
5 consideration. And you can bet he'll do it to the  
6 rest of the jury. Under Jitnan, under no set of  
7 circumstances can this man sit on this panel.  
8 He's expressed that he can't follow the law. He's  
9 going to think about things not permitted by the  
10 law. And nothing any of us tell him or any  
11 question posed to him will change that fact.

12 MR. KEMP: Judge, I'd like to add my two  
13 cents.

14 The trickle-down he said, so he's  
15 worried about how it affects him financially. He  
16 actually said it would affect him financially, and  
17 he brought up the insurance premiums that he paid  
18 last week.

19 He said he wouldn't follow the law, then  
20 he would follow the law, then he wouldn't follow  
21 the law. That's very concerning.

22 Then he said that the plaintiffs  
23 shouldn't have him on the jury but the defendants  
24 should. Then he kind of flip-flopped on that.

25 Then he said he's a small business. And

1 he kind of gave a little hardship answer there,  
2 that it would be a hardship on him as well.

3 Then he said, as Pete said, that it's  
4 well regulated and safe, and he compared it to the  
5 auto industry. So he's assuming that there's the  
6 same standards in the bus industry as the auto  
7 industry, which we know it's not.

8 But the worst thing he said -- and it  
9 maybe wasn't the worst thing, but he said it would  
10 always be in the back of his mind, every -- no  
11 matter which way or who poked at him, he said it's  
12 always going to be in the back of his mind.

13 So we have a juror who's conscientious  
14 and trying to be fair, but if it's always in the  
15 back of his mind, it's a bias that can't be  
16 eliminated, Your Honor. And it's a classic Jitnan  
17 case. There's just no way to -- I mean, we have  
18 seven rehabilitation/nonrehabilitation points on  
19 that one. So that's why he should be out.

20 THE COURT: Thank you.

21 Mr. Roberts?

22 MR. ROBERTS: Thank you. We oppose the  
23 motion to excuse, Your Honor.

24 First, to refocus on the standard which  
25 is set forth in NRS 16.050(1) -- and I'm assuming

1 that's the basis of this objection -- is having  
2 formed or expressed an unqualified opinion or  
3 belief as to the merits of the action or the main  
4 question involved therein.

5 This juror never expressed an  
6 unqualified opinion as to the belief of the merits  
7 of this action.

8 In fact, Mr. Christiansen went into a  
9 lot of areas with him and continually tried to get  
10 him to admit a bias, and he continually and  
11 consistently stated that he could be a fair juror  
12 and that he would be able to set aside any of  
13 these beliefs that we've been discussing and be a  
14 fair and a good juror. He continually asserted  
15 that for 15 minutes.

16 Finally, with regard to the small  
17 business, he expressed a concern that, as a  
18 small-business owner, he was concerned about the  
19 effect that a large verdict could have on a small  
20 business. Well, number one, we're not a small  
21 business. We're the largest coach manufacturer in  
22 North America, as plaintiffs will continually tell  
23 the jury over and over, as they have to date,  
24 emphasized that point in their briefs and in  
25 argument before this Court. So that's not even



1 relevant because we're not a small business.

2 But, second, when I was talking to him,  
3 he clarified for the Court that his concern about  
4 the effect on the business was not the  
5 compensatory damages but the hundreds of millions  
6 of dollars that Mr. Christiansen has told the jury  
7 he's going to ask for.

8 Well, Your Honor, he then said that, if  
9 he was instructed that the jury couldn't even  
10 consider damages so high as to annihilate the  
11 company, that would resolve his concern and he  
12 could be fair. As this Court knows, that's the  
13 very instruction this Court has to give on the  
14 punitive phase.

15 So his concern, as clarified, was that  
16 his only concern about bias and being fair was the  
17 hundreds of millions of dollars. And he was okay  
18 once he found out that he wasn't allowed to award  
19 so much that it would annihilate the company. So  
20 I think that resolves all of the bias that he  
21 actually reflected.

22 He said that he misspoke -- to the  
23 extent he said he couldn't follow the law, he said  
24 I didn't mean to say that, if indeed he did say  
25 that.

004400

1           So I believe he adequately clarified his  
2 concerns, that his concerns are consistent with  
3 Nevada law. Juries aren't allowed to annihilate a  
4 company.

5           And then we get to Jitnan. And Jitnan  
6 doesn't say, once you say I can't be fair, that's  
7 it, no rehabilitation. What Jitnan says is the  
8 Court has to base its decision on the totality of  
9 the record.

10           In an isolated case where a juror says  
11 he could be fair, it can't overwhelm a record  
12 where he talks repeatedly about being fair.

13           And it does talk about inconsistency,  
14 but I don't believe we really have the type of  
15 inconsistency we had in Jitnan on this record  
16 because the juror had an explanation for why he  
17 said he didn't think he could be fair versus why  
18 he changed his answer.

19           So, in this case, there is no  
20 unexplained inconsistency which would make him  
21 more unreliable as Jitnan expressed the concern.

22           In addition, I'd like the Court to  
23 consider the ruling in Sanders v. Sears-Page.  
24 This was a court of appeals decision which  
25 clarified the Jitnan standard.

1           And at Headnote 3, the Court says that,  
2 if a juror's statement suggests actual bias, the  
3 trial court must properly question the juror to  
4 determine if the juror will be impartial despite  
5 the bias.

6           And I found the quote that I was  
7 referring to that was proper. So it was proper  
8 for you to do it, but the Court indicated that you  
9 had a duty to do that.

10           Moving on to Headnote 4 and the part  
11 that I wanted to bring attention to the Court that  
12 supports our position in this case, the court of  
13 appeals said, a juror's opinions or views for or  
14 against a party do not without more established  
15 bias.

16           So you can express views for or against  
17 a party without establishing bias. Rather, bias  
18 exists when the juror's views either prevent or  
19 substantially impair the juror's ability to apply  
20 the law and the instructions of the Court in  
21 deciding the verdict. A prior belief becomes bias  
22 only if it were irrational or unshakeable so that  
23 the prospective juror would be unable to  
24 faithfully and impartially apply the law.

25           And this juror did clarify for the Court

1 and made a firm commitment that he could apply the  
2 law. This is not an unshakeable and irrational  
3 belief that's going to prevent him from  
4 considering a verdict on the facts.

5 So I believe it would be improper to  
6 excuse this juror for cause, Your Honor. Thank  
7 you.

8 THE COURT: Okay. Thank you. I'm going  
9 to take a comfort break.

10 Would you like to do that?

11 MR. ROBERTS: Thank you, Your Honor.

12 THE MARSHAL: All rise. Court is in  
13 recess.

14 (Whereupon, a recess was taken.)

15 THE COURT: Let's see. Just before the  
16 break, we had a challenge for cause to  
17 Mr. Browning. And that's Badge No. --

18 THE CLERK: 11-1171.

19 THE COURT: -- 11-1171. I've taken a  
20 few minutes to think about this and I -- okay.  
21 From the beginning -- first of all, I am going to  
22 excuse him for cause, and this is the reason why.

23 Mr. Browning stated that he's a  
24 small-business owner, he thinks about his business  
25 24-7, and it's always in the back of his mind. He

1 mentioned the effects of higher verdicts trickling  
2 down. And I believe that -- and the fact that he  
3 can't -- that he always has his business on his  
4 mind. And he indicated that he would -- while he  
5 was deliberating, this is something that would  
6 personally affect him.

7           So with respect to Sanders v.  
8 Sears-Page, a prospective juror who is anything  
9 less than unequivocal about his or her  
10 impartiality should be excused for cause.  
11 Reliance on the juror's promise of impartiality is  
12 insufficient. When you look at everything as a  
13 whole, it could amount -- it appears to amount to  
14 bias.

15           At some point, he also said that the  
16 plaintiffs would not want him as a juror in the  
17 case. So it appears that here it would possibly  
18 affect his ability to be impartial.

19           And with respect to Jitnan, the record  
20 as a whole needs to be taken into -- you know, be  
21 analyzed. And the fact that he was giving  
22 conflicting answers -- yes, he could be impartial;  
23 no, he couldn't -- I think that that is -- it's  
24 necessary to excuse him for cause.

25           MR. CHRISTIANSEN: Thank you, Your

1 Honor.

2 MR. ROBERTS: Thank you, Your Honor. At  
3 this time, Your Honor, I'd like to renew our  
4 objection and ask for reconsideration of your  
5 ruling allowing the plaintiffs to inquire as to  
6 the specific dollar amount, specifically the  
7 hundreds of millions of dollars.

8 I think we've now lost three perfectly  
9 good jurors because they've been allowed to  
10 believe that they can't serve impartially if they  
11 don't think an award of hundreds of millions of  
12 dollars is something they can conceive of awarding  
13 in the box. What they think is they have to  
14 promise to be able to award hundreds of millions  
15 or they can't serve as a juror.

16 And that's not the standard and it's not  
17 proper, Your Honor. I believe we've now lost  
18 Mr. Green, Mr. Garibay, and now we've lost  
19 Mr. Browning because these huge dollar amounts  
20 have been put in their heads and they can't commit  
21 to awarding hundreds of millions of dollars in  
22 damages.

23 The amount of damages is within the  
24 enlightened conscience of the jury. There's no  
25 litmus test that you can't serve as a juror unless

004405

1 you can award hundreds of millions of dollars.  
2 Why not hundreds of billions of dollars? Let's  
3 qualify them on the national debt. Could they  
4 award that?

5 At some point, this becomes a litmus  
6 test which results in an unfair jury, all of whom  
7 are predisposed to high dollar amounts.

8 In Trautman v. New Rockford-Fessenden,  
9 F-E-S-S-E-N-D-E-N, Cooperative Transportation  
10 Association, it's 181 N.W.2d 754 [sic], North  
11 Dakota 1970. It's an old case, Your Honor.

12 What that court held -- and there are no  
13 decisions that I'm aware of from -- binding  
14 precedent in Nevada. And as this Court knows, the  
15 trial courts are somewhat split on this issue  
16 here. I've had judges exclude it. I've had  
17 judges allow it.

18 In Trautman, the court said that  
19 "Questions to prospective jurors concerning the  
20 possible dollar amount of any verdict are  
21 inappropriate as they may tend to influence the  
22 jury as to the size of a verdict and may lead to  
23 impaneling of a jury which is predisposed to  
24 finding a higher verdict by its tacit promise to  
25 return a verdict for the amount specified during

1 voir dire examination."

2 And I think that's exactly what's  
3 happening here. We're now extracting tacit  
4 promises that you'll all promise me you'll award  
5 hundreds of millions of dollars if you're a juror  
6 or at least consider it, extracting that promise,  
7 indoctrinating the juror.

8 And what we're going to result with is  
9 an unfair juror to us, as jurors who believe in  
10 their heart that hundreds of millions of dollars  
11 in punitive damages sound unreasonable to me --  
12 they sound unreasonable to me. There are a lot of  
13 very good, fair jurors who might believe that  
14 hundreds of millions of dollars in this case where  
15 there is no evidence, as the Court knows, of  
16 willful intent to harm -- we don't believe there's  
17 any evidence of conscious disregard.

18 But under the facts of this case,  
19 hundreds of millions would be unreasonable and  
20 unfair. And to exclude any juror who would  
21 consider that an award that big might be unfair is  
22 going to leave us with an unfair panel.

23 More specifically, under Nevada law, I  
24 believe that these questions also run afoul of  
25 7.70. And this is the case we've been referring

004407



1 to a number of times. This is a different  
2 subsection, however, where the local rule says  
3 that questions are improper if they're based on  
4 what verdict a potential juror would return based  
5 on a hypothetical fact.

6 In Witter v. State, which is Supreme  
7 Court 1996, 921 Pacific 2d 886, that's been  
8 overruled and abrogated on different grounds with  
9 regard to an issue of criminal law.

10 But Headnotes 3 and 4 explain this issue  
11 where at trial the district court denied Witter's  
12 request to ask potential jurors the following:

13 "If there was evidence that defendant  
14 had a prior felony conviction involving the use or  
15 threat of violence, would you still consider all  
16 three sentencing alternatives in your  
17 deliberations?"

18 And the district court found the  
19 question violated the local rule 7.70, and the  
20 Supreme Court affirmed it, finding that, "Since  
21 the record [sic] touches on an anticipated  
22 instruction of law during the penalty phase and  
23 inquires into the verdict a juror would return  
24 based on hypothetical facts, we conclude the  
25 district court properly found the question

1 violated EJDRCR 7.70."

2           So here we're saying, if we prove it,  
3 just like they said, if the evidence shows it --  
4 if we proved it, could you award hundreds of  
5 millions of dollars in punitive damages? That is  
6 asking them could they award a specific verdict  
7 based on the hypothetical evidence supporting it.

8           So it's improper under the local rule.  
9 It preconditions jurors. And we believe --  
10 they've already asked about it, Your Honor.  
11 Everyone's, at least one time, has said they could  
12 be fair and consider dollar amounts that high  
13 who's left on the panel.

14           And we would request that their inquiry  
15 into specific dollar amounts be restricted from  
16 this point forward.

17           Thank you, Your Honor.

18           MR. KEMP: Judge, the reason he went  
19 back to a '96 case is because the law in Nevada is  
20 completely contrary to that as expressed in  
21 Khoury v. Seastrand, 377 Pacific 3d 81, a 2016  
22 case, authored by Justice Saitta. That was the  
23 case where Judge Wiese was the lower court.

24           And they were allowed to ask if  
25 \$2 million was too much in some -- I don't know if

1 it was a slip-and-fall case or what, but it was a  
2 relatively minor personal injury case.

3 This is what Judge Saitta said:

4 "Indeed, it may be appropriate to use a  
5 specific amount in order to discover a juror's  
6 bias towards large verdicts. Simply asking jurors  
7 about their feeling regarding large verdict awards  
8 or some similar vague adjective may be  
9 insufficient to determine if a juror has a  
10 preconceived damages threshold for a certain type  
11 of case.

12 "A juror may consider himself or herself  
13 capable of awarding a verdict of \$100,000, a  
14 verdict in which, in his or her mind, may be  
15 fabulously large and he may be unable to follow  
16 the law and award a verdict with another zero  
17 attached," which would be a million dollars.

18 "Therefore, we hold that allowing a  
19 party to voir dire the jury panel regarding a  
20 specific verdict amount is within the district  
21 court's discretion."

22 That's the law in Nevada, Your Honor.  
23 That case 2016, two years old. Okay. You know,  
24 we don't have to run back to some case that  
25 Mr. Roberts found from 1996 to determine the law

004410

1 in Nevada.

2 And as the Court knows, usually in the  
3 questionnaire, we ask -- in the Actos case, two  
4 different judges approved a questionnaire that  
5 said billion dollars for punitives. In the  
6 hepatitis cases, Judge Williams approved a  
7 questionnaire for -- I can't remember what it was.  
8 I think it was 2 billion. But, anyway, we had  
9 specific amounts in those questions.

10 In this case, the evidence under the  
11 annihilation standard -- and Mr. Roberts has  
12 already agreed it's the applicable standard for  
13 punitive damages, the amount of money that it  
14 would take to annihilate the defendant. The  
15 expert's opinion -- we have an expert on this  
16 point.

17 Our economist, Dr. Smith -- Dr. Stokes.  
18 Yeah, they have an economist but not on this  
19 point. Our expert, Dr. Stokes, rendered an  
20 opinion that \$750 million is the appropriate  
21 figure based on the financials. It might be 738.  
22 It's around there, 750, Your Honor.

23 That is the number we wanted to use.  
24 Okay. That is what we proposed, if you recall,  
25 when this was argued before. And the Court said

004411

1     that you didn't want us to use that.  You said you  
2     wanted us to use a more vague thing like  
3     several -- you know, tens of millions for the  
4     compensatory and hundreds of millions for the  
5     punitives.

6                 That's what we're doing, Your Honor.  
7     So, I mean, we're already cutting ourselves short  
8     because we're saying "hundreds of millions" when  
9     we should be saying "\$750 million" because we know  
10    what the exact amount is.  And that's going to be  
11    the evidence when we get to the punitive phase,  
12    Your Honor.

13                So for that reason, the questions are  
14    perfectly appropriate.  And the reason you got to  
15    have some sort of amount is what I call the  
16    sticker shock thing.  You know, everybody says  
17    that they can afford to buy someone else a car or  
18    a TV or whatever.  But then they walk in the car  
19    lot and they see that, "Oh, this is 80 grand."  
20    Then they get sticker shock.  And then they're,  
21    all of a sudden, not so willing do what they said  
22    was reasonable before.

23                So that is why you need to say the  
24    specific amount, and I don't think we've been  
25    going overboard with it.  We've been saying

1 "700 million." You know, we have not been saying  
2 "billion," "trillion," "10 trillion," "zillion."  
3 We haven't been saying that, which, you know, in  
4 some cases, may be inappropriate because clearly  
5 that would be an excessive amount.

6 In this case, that's not an excessive  
7 amount.

8 THE COURT: Tens of millions?

9 MR. KEMP: Tens of millions is not an  
10 excessive amount for the compensatory damages in  
11 this case, Your Honor.

12 I mean, Dr. Khiabani, his lost income  
13 alone is \$15 million. And that doesn't account  
14 for pain and suffering on either the -- and,  
15 again, that has to be subdivided by what he would  
16 support the kids with, admittedly.

17 But that doesn't count for the pain and  
18 suffering of Dr. Khiabani during the accident. I  
19 mean, he was run over by a bus. His head was  
20 crushed. Okay.

21 And the testimony is going to be that he  
22 tried to get up right after the accident and that  
23 he couldn't get up. Mr. Roberts is going to argue  
24 that he had no conscious pain and suffering, but I  
25 think that's going to be a pretty hotly contested

1 issue that I think we have a strong position on.

2 So, anyway, you have Dr. Khiabani's pain  
3 and suffering. You have the emotional distress of  
4 the widow. You have the emotional distress of  
5 both of the kids. I mean, as I -- I think I told  
6 the Court before, we -- our range of verdict in  
7 this case is 40 to 60 million, maybe even 80.

8 And so instead of saying that to the  
9 jury, instead of saying, "Can you give  
10 80 million," we're saying "tens of millions." So  
11 I think we're being pretty modest in what we're  
12 saying.

13 And on the punitives, we're saying  
14 "hundreds of millions." We're not saying  
15 "750 million" or "a billion." And remember we can  
16 ask the jury to give us a billion dollars in  
17 punitive. It's like a med mal cap case. If it's  
18 a 3-to-1 cap and the compensatory --

19 THE COURT: I understand.

20 MR. KEMP: Yeah, we can shoot for the  
21 moon if we want. Okay. The only issue is whether  
22 you think that would cause us to lose credibility  
23 with the jury.

24 So even if the appropriate figure for  
25 annihilation damages is 750 million, we can ask

1 this jury for a billion. We can do that, Your  
2 Honor. And that decision, of course, is usually  
3 not made until after you see what the compensatory  
4 is so we can apply, you know, some sort of  
5 analysis to how far we think we can push it.

6 But in any event, back to the central  
7 issue here, this Nevada case is two years old. I  
8 mean, it authorizes -- in this case, it was a  
9 specific number, can you award at least 2 million  
10 for compensatory?

11 So, number one, I object that we're  
12 having an impromptu motion for reconsideration  
13 with no written motion right in the middle of jury  
14 selection. I don't know where that's coming from.  
15 But if we are going to consider it, I would ask  
16 the Court to read the Khoury case and go from  
17 there.

18 THE COURT: Which case?

19 MR. KEMP: I can give you my copy.

20 THE COURT: Which one?

21 MR. ROBERTS: Justice Saitta's opinion.

22 THE COURT: I have it.

23 MR. ROBERTS: Thank you, Your Honor.

24 I believe that the Khoury case does  
25 support our position here, Your Honor, and is



1 certainly not inconsistent with it.

2 First of all, if you read carefully the  
3 questions quoted in Khoury, there was no objection  
4 based on Rule 7.70, and the decision doesn't  
5 address 7.70. And that's because, in Khoury, the  
6 quoted passages don't ask the jury if they could  
7 return a verdict in a specific amount.

8 What they say is, "My client is suing in  
9 excess of 20 million. And it is what it is, and  
10 I'm putting it out there. Who's a little  
11 uncomfortable, even a little bit, with what I just  
12 said?"

13 That's not asking a jury if they can  
14 return a verdict of hundreds of millions of  
15 dollars. It's a different format, and it's  
16 different than directly asking them if they can  
17 promise to award a verdict in a certain amount.

18 But beyond that, the Khoury case didn't  
19 say it was proper to ask the jurors about the  
20 specific dollar amount. That's not what the  
21 holding was. The holding was it's within the  
22 sound discretion of the trial court to determine  
23 whether questions like this can be asked.

24 So you would have the discretion to  
25 allow it, you would have the discretion to deny it

004416

1 under the Khoury case to the extent that it's  
2 equivalent to Khoury.

3 And, as I said, we -- the Court has  
4 already allowed questioning on this to some  
5 extent. And Judge Saitta qualified her Khoury  
6 statements that Mr. Kemp read to you carefully  
7 when she noted Seastrand's attorney did not stop  
8 there, however. He repeatedly brought up the  
9 \$2 million verdict amount with each individual  
10 juror in his quest to discover the jurors'  
11 feelings on that specific verdict amount. The  
12 record indicates his actions bordered on  
13 badgering.

14 And Headnote 6, "Although our review of  
15 the voir dire transcript indicates it was aimed  
16 more at acquisition of information than  
17 indoctrination, it was uncomfortably close. If  
18 the conduct by Seastrand's attorney had been  
19 allowed to become any more egregious, it would  
20 have reached the level of reversible error due to  
21 jury indoctrination.

22 "We take this opportunity to remind  
23 district court judges of their role in carefully  
24 considering the treatment of jurors during the  
25 selection process and the ultimate objection of

1 seating a fair and impartial jury."

2 So at this point, they've inquired.  
3 They've said "hundreds of millions of dollars"  
4 over and over. There's no need to continue to  
5 harp on it solely for the purpose of  
6 indoctrinating the -- each juror and getting an  
7 express promise they will consider and award  
8 dollar amounts of hundreds of millions if selected  
9 on this panel.

10 Thank you, Your Honor.

11 THE COURT: I realize we have a jury  
12 waiting. And you know that my thought is I'm  
13 going to go ahead and read and review. I'm sorry  
14 if that slows you down a little bit, but that's  
15 what I'd prefer to do.

16 MR. ROBERTS: Thank you, Your Honor.

17 THE COURT: Thank you. We'll take a  
18 15-minute break.

19 (Whereupon, a recess was taken.)

20 THE COURT: Okay. So just before the  
21 break there was a challenge -- or there was a  
22 motion from defense concerning in part -- it was  
23 part of it -- the ability for plaintiffs to use  
24 amounts in these cases, and there was a thorough  
25 discussion at the bench which was all on the

004418

1 record. I've taken a few -- or many minutes to  
2 review everything, which is -- you're going to  
3 have to get used to that. That's the way that I  
4 am. And let me tell you what my -- what this  
5 Court's ruling is on this and why.

6 All right. So the goal -- the goal here  
7 is to find out -- I may not be as articulate as I  
8 should be right now. I'm a little bit tired -- is  
9 to essentially find out if a prospective juror has  
10 a bias or a mental block with regard to awarding a  
11 verdict in excess of a certain amount without  
12 hearing the facts of the case.

13 So pursuant to Khoury v. Seastrand,  
14 mentioning a specific amount of money or a  
15 ballpark is not per se improper. Here -- and I  
16 believe there it mentions \$2 million. It was  
17 Judge Wiese. This is similar to the situation in  
18 Khoury v. Seastrand.

19 So I do -- pursuant to that case, the  
20 plaintiffs may ask the questions that they've been  
21 asking; however, I do think we're starting to get  
22 a little bit close to what they prohibited. And  
23 that's concerning.

24 So with each juror, Mr. Christiansen --  
25 and sorry it's always you, but you're the only one

1 who's been asking questions and this is very  
2 important -- you should not be seeking any  
3 commitment concerning verdict amounts. And,  
4 obviously, pursuant to Khoury v. Seastrand, you  
5 must be permitted to use a specific amount, in my  
6 view, in order to discover a juror's bias.

7 There's a gentleman -- is he?

8 MR. KEMP: Sorry, Your Honor.

9 THE COURT: No problem. I just want to  
10 make sure. We had one juror earlier that I didn't  
11 see.

12 All right. So must be permitted to use  
13 a specific amount, in my mind, in order to  
14 discover a juror's bias towards a large verdict.  
15 As in Khoury, the Court did find it troubling, but  
16 not yet indoctrinating, when the answers -- I  
17 don't know -- they came close to bullying, I think  
18 the judge used, and so forth.

19 I do believe that, Mr. Christiansen, you  
20 need to abbreviate, not that question, but how  
21 often and how repeatedly you're asking it. If no  
22 juror has a problem with awarding the verdict that  
23 you're talking about -- okay? And I will allow  
24 the amounts that you've been referring to -- then  
25 there's no reason to go any further into it.

1 Okay? Because -- into that topic because there  
2 doesn't appear to be a bias.

3 And if it continues, it could reach, in  
4 my view, the level of indoctrination that they  
5 were discussing in the Khoury case.

6 Also, you have to remember that we have  
7 jurors that have been here since day one. And  
8 they keep hearing this over and over again, which  
9 is necessary, but how much and how often you ask a  
10 particular juror, I think, needs to be a bit more  
11 restrained. Okay? You can ask the question, but  
12 how you ask it and how often, I think, is very  
13 important, that you're aware of that.

14 The juror says no. I think that  
15 anything beyond that is not necessary. If there  
16 appears to be no bias, then no further questioning  
17 should be -- if there is a bias, then we'll take  
18 them outside of the presence of the jury and you  
19 can ask them all you want.

20 But once they say that they have no --  
21 no problem awarding that type of an award should  
22 the evidence be presented, then I think that's as  
23 far as it needs to go. Because you really are  
24 focusing quite a bit on each juror and asking how  
25 much -- I'm not done yet.

004421

1           Let's see. So I'm overruling the  
2 objection -- or denying the oral petition for  
3 reconsideration, but I do believe, having reviewed  
4 the cases again -- because I have reviewed this  
5 before -- that there is a consideration and how  
6 much you go into it is very important. Okay?

7           MR. CHRISTIANSEN: Yes, Your Honor. I  
8 understand the Court's ruling.

9           Just by way of background, Your Honor,  
10 yesterday was the first time we talked about caps  
11 in general. It's in every questionnaire. So the  
12 only jurors -- I talked generally once about it.  
13 And then those jurors that said they believed in  
14 caps or they would vote to change the law to  
15 institute the caps, I spoke to individually.

16           And then today, I didn't get through all  
17 of them. There's still a couple more that have  
18 said that they want changes I have not questioned.  
19 And today it was just the people that got replaced  
20 in the seat. So when they come from the back, I  
21 haven't questioned them at all.

22           THE COURT: All right. And I didn't put  
23 a note here, but I was making some notes in my  
24 chambers that said if they've mentioned caps in  
25 their questionnaire, that they believe in caps, of

004422

1 course you should --

2 MR. CHRISTIANSEN: Thank you, Judge.

3 THE COURT: -- explore that.

4 But it's a fine line, exploring their  
5 cap and if there's a bias with indoctrinating the  
6 jury. I might almost consider, even if it  
7 augments our time, to take them, if we need to,  
8 outside the presence of the jury so that that  
9 doesn't become an issue.

10 I'm sorry if this isn't what the other  
11 judges do, but --

12 MR. KEMP: Everybody is different, Your  
13 Honor.

14 THE COURT: Yeah, I dance to my own tune  
15 here. You know? And I do what I think is equal  
16 and fair.

17 MR. BARGER: Can I make a suggestion?

18 THE COURT: You may. I'm not certain.  
19 No.

20 MR. BARGER: No, no. As the Court  
21 knows, I'm not really from here, but it's been my  
22 experience, instead of getting the commitment,  
23 "can you or will you award," you can say, can you  
24 consider?" Because when you say "can you award,"  
25 that means they're committed. And saying the word



1 "consider," there's some leeway in there that they  
2 can consider. They don't have to do it.

3 And so I would -- again, Mr. Roberts has  
4 argued the law, and I understand that. But I  
5 would request that the Court consider stating that  
6 you can ask them can you consider but not use the  
7 word "award." That would be a recommendation.

8 MR. KEMP: The issue is whether there's  
9 a cap, Your Honor. You have to ask them if  
10 there's a hard cap.

11 THE COURT: I understand. Mr. Barger, I  
12 understand what you're saying. And yesterday or  
13 the day before -- I can't remember what day it  
14 was -- we did discuss -- I did discuss with  
15 Mr. Christiansen that I didn't want him to get a  
16 commitment or a promise, because even though  
17 they're promising to a specific issue that he's  
18 discussing, they're promising it to him when he's  
19 in front of the jury, and I don't think that's  
20 appropriate.

21 So that cannot happen. But I do think  
22 the question of would they be capable of awarding  
23 is prudent as long as it's not asked over and over  
24 again and, you know -- because I honestly -- you  
25 know, I know all these judges. I've known them

1 for years. But, you know, I may think that you're  
2 getting closer than perhaps they did.

3 And I just -- you know, we know it's in  
4 my discretion. So I want to be very clear about  
5 this. If you want to -- if the cap thing is going  
6 further, let's take them out of the presence of  
7 the other jurors. And, also, if there's really a  
8 suspected bias, that's one thing. But if the  
9 gymnastics or the questions are going into so much  
10 after they've said they can, I think that that's a  
11 bit too much and it's getting close to the  
12 Khoury v. Seastrand comments that Judge Saitta  
13 made.

14 MR. KEMP: Your Honor, I just was going  
15 to bring up that Mr. Santa Ana has been in and out  
16 of here since you were gone.

17 THE COURT: I just wanted to make sure I  
18 was really clear on this.

19 MR. KEMP: I think you have, Your Honor.

20 MR. ROBERTS: Thank you, Your Honor.

21 THE COURT: If we don't take  
22 Mr. Santa Ana, I think he's going to explode. I'm  
23 not afraid of him; I just don't want him to have a  
24 breakdown or something. Yes, Judge Escobar sent  
25 him to the ER.

1 Will you please bring him in?

2 THE MARSHAL: We also have another  
3 issue, Your Honor, one of many.

4 MR. CHRISTIANSEN: Your Honor, while  
5 he's on his way in, Keely Perdue is a lawyer with  
6 my office. She's here observing. So I just  
7 wanted to make sure the Court knew she was with  
8 me.

9 THE COURT: Hi. Welcome.

10 THE MARSHAL: Page 5, 11-1360, Bridget  
11 Slezak --

12 THE COURT: I think we should take  
13 Mr. Santa Ana first.

14 THE MARSHAL: Okay.

15 All rise.

16 You can sit in the front row, sir. Any  
17 of those seats is fine.

18 PROSPECTIVE JUROR NO. 11-1037: I'll sit  
19 in my seat.

20 THE COURT: Mr. Santa Ana, can you state  
21 your name and your badge number for the record,  
22 please.

23 PROSPECTIVE JUROR NO. 11-1037: Joe  
24 Santa Ana, 11-1037.

25 THE COURT: I know you've been very

004426

004426

1 eager to speak to us. Sorry it's taken so long.  
2 What would you like to inform the Court and the  
3 counsel?

4 PROSPECTIVE JUROR NO. 11-1037: Okay. I  
5 just found out from our HR that they're only going  
6 to pay us maximum of seven days for jury duty.  
7 And -- and when -- I didn't raise my hand if I'm  
8 going to get a hardship, it's because I thought I  
9 was going to be able to work on the weekend. But,  
10 unfortunately, my boss said I cannot guarantee  
11 that, because we're a 24/7 business, you know, and  
12 all that. So I calculated how much I'm going to  
13 loss, and it's close to \$3,500 to \$4,000 a month.  
14 That's going to be my loss.

15 And, anyway, just to mention too that  
16 last August, my wife had surgery. You know, she  
17 had fibrotic. They have to take her uterus. And  
18 I had to withdraw money from my 401(k) to pay for  
19 that. And I'm paying my loan, low interest, but I  
20 still have to pay for it.

21 THE COURT: Thank you.

22 Do you have any questions for  
23 Mr. Santa Ana?

24 MR. KEMP: No, Your Honor.

25 MR. ROBERTS: So, sir, just to be clear,

1 you've calculated the amount you're going to lose.  
2 Would it be an undue financial hardship for you to  
3 lose that much money in your current financial  
4 position?

5 PROSPECTIVE JUROR NO. 11-1037: Yes,  
6 sir. It means mortgage, car payment. We've got  
7 two car payments we're doing. Mortgage is about  
8 \$1,600 a month. And not to mention, nine years  
9 ago, we filed bankruptcy. So we're trying to  
10 start all over.

11 MR. ROBERTS: Okay. Thank you, sir.  
12 Would you like us to approach, Your  
13 Honor?

14 THE COURT: Yes.

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

17 THE COURT: Mr. Santa Ana, I'm going to  
18 ask you some more questions. Okay?

19 PROSPECTIVE JUROR NO. 11-1037: Go  
20 ahead, ma'am.

21 THE COURT: How much do you make?

22 PROSPECTIVE JUROR NO. 11-1037: 22 an  
23 hour. And, also, we get paid for mileage. And I  
24 average, like, 500 every two weeks.

25 THE COURT: 500 in mileage?

1           PROSPECTIVE JUROR NO. 11-1037: Yes.  
2 But, of course, I have to pay gas. So you're  
3 looking at half that, you know.

4           THE COURT: So what is your salary?

5           PROSPECTIVE JUROR NO. 11-1037: We're  
6 salary exempt, so we can't do overtime.

7           THE COURT: On the questionnaire, you  
8 checked 50 to \$100,000 a year.

9           PROSPECTIVE JUROR NO. 11-1037: That's  
10 me and my wife.

11          THE COURT: Okay. So I'm asking you  
12 first about you. How much do you make a year of  
13 the 50 to 100?

14          PROSPECTIVE JUROR NO. 11-1037: Without  
15 any overtime and all that, about 45.

16          THE COURT: 45? And your wife, sir?

17          PROSPECTIVE JUROR NO. 11-1037: She  
18 make, like, 15 bucks an hour. So I don't know  
19 exactly. I don't have any calculator. I'll say  
20 about 30.

21          THE COURT: 30? Is she working now?

22          PROSPECTIVE JUROR NO. 11-1037: Yes. So  
23 she work in dental office. And --  
24 whatchamacallit -- sometimes they can get 40  
25 hours, sometimes not, a week.

004429

004429

1           And, also, that's another question --  
2   is -- because we cannot discuss the case with her,  
3   I cannot -- I don't know who the dentist she knows  
4   because she work with two dental offices before.  
5   And one of them is, like, Indian heritage from UK  
6   and one of them is Vietnamese.

7           So I don't know how the dental  
8   association is, you know, within, but I cannot  
9   discuss anything to her, so I'm not asking her. I  
10   don't know who she knows or who she met before.

11           THE COURT: Okay. So your wife is  
12   presently working?

13           PROSPECTIVE JUROR NO. 11-1037: Yes,  
14   ma'am.

15           THE COURT: And you're under oath.  
16   Realistically, how many hours does she work a  
17   week?

18           PROSPECTIVE JUROR NO. 11-1037: Me?

19           THE COURT: Your wife.

20           PROSPECTIVE JUROR NO. 11-1037: A week  
21   is 40 hours. But sometimes she gets sent home  
22   because, for example, somebody canceled a root  
23   canal, so they have to drop everything, you know.

24           THE COURT: But generally it's 40 hours?

25           PROSPECTIVE JUROR NO. 11-1037: Yes,

004430

1 ma'am.

2 THE COURT: All right. Do the parties  
3 have anything else?

4 MR. KEMP: No, Your Honor.

5 MR. CHRISTIANSEN: No, Your Honor.

6 PROSPECTIVE JUROR NO. 11-1037: Can I  
7 also mention something too? When I was going  
8 college, you didn't ask me about, you know, if  
9 I've ever witness anything when I was riding the  
10 bus going to college. Man, that bus, I can tell  
11 you that some of the bus driver are kind of like  
12 neglect, almost running over people. I see  
13 that -- when I was going to college in Bryant, I  
14 was, like, I was taking a medical assistant class.  
15 And, you know, it was just like -- especially in  
16 San Francisco all the way from Millbrae, I'll say  
17 about seven miles. Seeing all these people  
18 crossing the street and bus was like (indicating.)

19 Also, when I was going to college, I  
20 have some Iranian friends that exchange students.  
21 So I don't know how the scales going to tip on  
22 either side. And, you know, because they were  
23 good to me, and, you know, as a Christian and as a  
24 Muslim and we get along together, and it's like a  
25 unity right there. So if that scale tip on one or

004431



1 the other and, let's say, the family got  
2 destroyed, I will have like a guilty conscious,  
3 like, oh, damn, he's from Iran. Because you  
4 mentioned that they were actually from Tehran.  
5 You know, they have to come over to the states. I  
6 remember everything you said. I'm just -- and, of  
7 course, I'm 52 now and I don't have the memory  
8 that I used to have, but, yeah, I do have some  
9 Iran friends, Syrian friends, Iran, Iraq. My  
10 neighbor is from Egypt. My other neighbor that I  
11 just say hi every day is from Pakistan.

12 So, I mean, being a soldier, I was,  
13 like, hey, I can defend this country, but you have  
14 to start with something to unify.

15 THE COURT: I'm sorry. The last thing  
16 you said was what?

17 PROSPECTIVE JUROR NO. 11-1037: You have  
18 the unity. You know, it's kind of like, hey, you  
19 know, all the things that I trained, how to kill  
20 and all that -- I don't know.

21 THE COURT: You're mentioning that you  
22 had Iranian or Persian friends in college.

23 PROSPECTIVE JUROR NO. 11-1037: In San  
24 Francisco, yeah. One of them was my accounting  
25 partner.

004432

1           If the scale tipped to MCI and, of  
2   course, we have to follow the law -- you know, by  
3   law because I'm under oath. And deep down after  
4   this, I was going to say, God, I wish it could  
5   have been something else. You know?

6           And then if it tipped to the other side,  
7   I'd say, okay. Great. You know? But how about  
8   the other company when everything rights up, you  
9   know, and then it's going to cost someone his job  
10  on the other side. You know? So I don't know.

11          So I was thinking about that when the  
12  gentleman said, "well, it's kind of hard for the  
13  family losing." I just lost my best friend from  
14  the Philippines, like -- he's actually son of a  
15  doctor too, and we grew up together. So I can  
16  only imagine. It's like my brother. The guy who  
17  was suing it's like that's a brother to him. So  
18  it's hard. So I don't know.

19          And your question about, yeah, I was  
20  stationed in North and South Korea. And we're  
21  responsible for stopping his dad from crossing.  
22  Some of the things I can't tell you because they  
23  were classified, but, yes, that was my duty.

24           THE COURT: Questions?

25           MR. ROBERTS: Yes, Your Honor.

1 THE COURT: Okay. Please.

2 MR. ROBERTS: Lee Roberts. I represent  
3 MCI.

4 PROSPECTIVE JUROR NO. 11-1037: I know,  
5 Mr. Roberts.

6 MR. ROBERTS: Thank you, sir.

7 And I just want to follow up and  
8 understand the feelings that you were just  
9 describing to the Court. And as I understand it,  
10 you feel some sympathy for the boys who've lost  
11 both their parents?

12 PROSPECTIVE JUROR NO. 11-1037: Somehow,  
13 yes.

14 MR. ROBERTS: And a connection to them  
15 because you've had Iranian friends?

16 PROSPECTIVE JUROR NO. 11-1037: Yes, in  
17 college.

18 MR. ROBERTS: And, as I heard you, that  
19 if weighing the evidence, the evidence weighed in  
20 MCI's favor, you might wish it hadn't gone that  
21 way; right?

22 PROSPECTIVE JUROR NO. 11-1037: Yes.

23 MR. ROBERTS: So as you sit here today,  
24 you're sort of hoping that the plaintiffs prevail?

25 PROSPECTIVE JUROR NO. 11-1037: I'm not

1 saying that. It was just -- because, you know,  
2 like I said, Libra, it tips even one ounce, less  
3 than one ounce.

4 MR. ROBERTS: I'm a Libra too, so I  
5 know. We've got the scales.

6 So here's the question -- and you've  
7 just described some sympathy for the boys and a  
8 connection to them because of their heritage.

9 Despite that, can you set that aside and  
10 consider the evidence as it comes in and make your  
11 decision only based on the evidence in accordance  
12 with the instructions given to you by the Court?

13 PROSPECTIVE JUROR NO. 11-1037: Well,  
14 the question is this: How I'm going to live with  
15 it, you know, after the fact. I mean, I can be  
16 equal and fair and all that, but the question is,  
17 after the fact of the -- let's say the trial is  
18 over, that there's a decision, it probably be kind  
19 of like -- I'll probably be sad about it. You  
20 know?

21 MR. ROBERTS: Do you understand what the  
22 word "unequivocally" means?

23 PROSPECTIVE JUROR NO. 11-1037: Yeah,  
24 you're not siding any side.

25 MR. ROBERTS: Well, no, unequivocally

1 means absolutely, positively I can do it. No  
2 chance I can't do it.

3 So can you unequivocally -- that's  
4 positively -- state that you can put aside your  
5 sympathy for the boys and decide the case based on  
6 the evidence?

7 PROSPECTIVE JUROR NO. 11-1037: Well, I  
8 got two things now: financial or the boys.

9 So, either way, you know, I mean, this  
10 is, like, a big case in a sense. And I don't want  
11 to tip the Libra either way, because I'm more  
12 thinking about paying my house than this --  
13 whatever the doctors or economists and whatever  
14 are going to tell me. Okay. They're going to  
15 have you and the plaintiff with either -- let's  
16 say 20 or 50 million, and how about me losing  
17 close to \$4,000 a month and not be able to pay my  
18 payment, you know, and to pay my loan for my wife.

19 Because I discuss it her last night.  
20 It's like what? Four weeks? I say yep. And --  
21 because I took accounting too, and we're trying to  
22 catch up on our bills. And, you know, how  
23 could -- it could be justice for either one of  
24 you, but how about justice for my financial side?

25 MR. ROBERTS: Is this feeling that

1 you're not getting justice if you would be  
2 required to serve on the jury, would that  
3 interfere with your ability --

4 PROSPECTIVE JUROR NO. 11-1037: No,  
5 because what it is is also when we calculated the  
6 month and we get a loss, three years ago, I was  
7 terminated by my company in a --  
8 whatchamacallit -- wrongful termination.

9 And I went to EDD. I got my lawyer, you  
10 know, Padda. And then when we went there, they  
11 asked how many employees we got. They said, well,  
12 we had this. So they say, unfortunately, 1964  
13 law, you cannot sue the company because they got  
14 less people. It protects the small businesses.  
15 So, right there, I got a sour taste of the law.

16 So make the long story short, so they  
17 said, okay, send your paper. You can at least get  
18 your money back. This is -- technically it's  
19 about \$4,000 too -- that the ADD owes me for my  
20 loss during that time. So --

21 MR. ROBERTS: Excuse me, Mr. Santa Ana.  
22 I think Mr. Kemp would like to talk to the Court.

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

25 THE COURT: Mr. Santa Ana, I'm going to

1 excuse you.

2 PROSPECTIVE JUROR NO. 11-1037: Thank  
3 you.

4 THE COURT: Good luck with your  
5 financial issues. Please go to the jury  
6 commissioner on the third floor.

7 PROSPECTIVE JUROR NO. 11-1037: Okay.  
8 Thank you.

9 THE COURT: Thank you.

10 MR. KEMP: Judge, can we fill those two  
11 seats before we get to the other one? We didn't  
12 fill the other one.

13 THE COURT: Is there someone else  
14 waiting?

15 MR. BARGER: The other one is  
16 Ms. Gutierrez.

17 MR. CHRISTIANSEN: Well, that's who's  
18 supposed to. I don't think Her Honor is done yet.

19 THE COURT: All right. Where are you?  
20 Ronny was the gentleman that we let go earlier.

21 MR. CHRISTIANSEN: He was 15.

22 THE COURT: Seat 15.

23 MR. CHRISTIANSEN: Famous 15.

24 THE CLERK: So now we need -- 15 will be  
25 Ms. Gutierrez.

004438

004438

1 MR. CHRISTIANSEN: Ms. Gutierrez?

2 THE CLERK: Veronica is the first one.

3 THE COURT: Wait. Didn't we already  
4 have -- hold on.

5 MR. CHRISTIANSEN: I think it's Veronica  
6 Gutierrez, Badge No. 11-1174.

7 THE CLERK: Oh, okay. That's it. We're  
8 on the same page.

9 MR. CHRISTIANSEN: That's who goes in  
10 Seat 15.

11 THE CLERK: Right. And then for Seat 25  
12 will be Ashley Vandevanter.

13 (Discussion off the record.)

14 THE MARSHAL: All rise.

15 Any of those seats is fine.

16 Please be seated and come to order.

17 THE COURT: I'd like your name and badge  
18 number for the record, please.

19 PROSPECTIVE JUROR NO. 11-1360: My name  
20 is Bridget Slezak, and my badge number is 11-1360.

21 THE COURT: You indicated you want to  
22 speak to the Court or to counsel. Please tell us  
23 what your concern is or your --

24 PROSPECTIVE JUROR NO. 11-1360: One of  
25 the issues I was telling the bailiff was that my



1 daughter does gymnastics with her best friend who  
2 does gymnastics. And her best friend went to  
3 school with one of the boys.

4 And I was just worried not disclosing  
5 that was something -- because, at the time, I  
6 didn't know when we filled out the paperwork  
7 because, when I went to pick them up from gym, my  
8 daughter asked me what you do when you're a juror  
9 and I was telling her.

10 And then her friend was telling -- all  
11 of a sudden just was, like, "Well, my friend's dad  
12 was killed, and they're going to be getting a  
13 juror. Do you think that that would be -- do you  
14 think they would get jurors like normal people or  
15 would they get" -- and I just was -- I didn't know  
16 what to say. So I just kind of was like, "Oh,  
17 probably."

18 But then she went on to say quite a few  
19 different things about, you know, the boys are now  
20 living in Canada. And she really -- she had gone  
21 to school with them, and she really wished they  
22 could come back. And it was just kind of  
23 heartbreaking.

24 And I felt like, if I didn't say that I  
25 felt that way when they were talking, that it was

004440

1 wrong.

2 THE COURT: Was this yesterday?

3 PROSPECTIVE JUROR NO. 11-1360: No.

4 This happened the day after I did that 26-page,  
5 and I didn't know how to turn the information in.  
6 So I thought I'll just come in and I'll wait. But  
7 I'm, like, the second-to-last person.

8 So I started thinking, you know, a lot  
9 of people are wasting time by just not saying  
10 things. So I thought I should bring that up.

11 THE COURT: And what were your feelings  
12 about that? I interrupted you. I'm sorry.

13 PROSPECTIVE JUROR NO. 11-1360: I guess  
14 it's hard for me because hearing Sarah's thoughts  
15 about what happened and that they did a memorial.  
16 And I guess, being a parent, it's just really been  
17 eating at me. And I'm just worried about how my  
18 mind thinks. I know it sounds crazy, but --

19 THE COURT: Nothing sounds crazy to us.

20 PROSPECTIVE JUROR NO. 11-1360: I mean,  
21 I feel like I should have said something earlier,  
22 but I didn't know who to talk to. And then I  
23 noticed that there were actually people asking to  
24 come say something. So I thought maybe I should  
25 do the same rather than wait.

004441

1           THE COURT: So do you think that you  
2 would be more sympathetic to the boys than to the  
3 company?

4           PROSPECTIVE JUROR NO. 11-1360: Yes. I  
5 mean, because it was just -- I guess, like,  
6 listening to her talk about how, you know, they  
7 did the memorial at the school and just a lot of  
8 things. It kind of got me thinking because my  
9 daughter and her are together a lot. And I don't  
10 know. It just has been really eating at me.

11          THE COURT: Okay. Thank you.

12          Do you have questions?

13          MR. KEMP: No questions, Your Honor.

14          MR. ROBERTS: Do you need me to inquire,  
15 Your Honor?

16          THE COURT: Do you have any questions?

17          MR. ROBERTS: Yes. Thank you, Your  
18 Honor.

19          So, ma'am, if you were selected as a  
20 juror and you didn't feel that the evidence  
21 supported the plaintiffs' claims in this case,  
22 would you have trouble voting against a verdict  
23 for those boys based on the friendship that you've  
24 just discussed, the relationship you've got to  
25 them?

1           PROSPECTIVE JUROR NO. 11-1360: I mean,  
2 I would like to say a definite yes or no. I'm  
3 just worried about what if I was picked and then  
4 you were in the middle of this and I started  
5 feeling like that.

6           I don't know how to explain that  
7 feeling, but I don't want to jeopardize the case  
8 for either side by being chosen and then, all of a  
9 sudden, being, like, "Oh, I actually knew this and  
10 felt this."

11          MR. ROBERTS: So jurors are supposed to  
12 decide the case based on the evidence they hear in  
13 court. You've just told us that you've heard  
14 things about the family and the memorial service  
15 and the boys' losses outside the courtroom.

16          PROSPECTIVE JUROR NO. 11-1360: Right.

17          MR. ROBERTS: Would you be able to put  
18 that all out of your mind and decide the case only  
19 based on the evidence, or are those things just  
20 going to be in the back of your mind?

21          PROSPECTIVE JUROR NO. 11-1360: I kind  
22 of feel like those are going to be in the back of  
23 my mind, just to be honest.

24          MR. ROBERTS: And can you unequivocally  
25 state that you won't let any of those things

1 influence your verdict?

2 PROSPECTIVE JUROR NO. 11-1360: No, I  
3 don't think I could definitely state that. I  
4 would like to think not. But I just see people  
5 that are coming and going and all the work you're  
6 putting into finding the right jury, that I feel  
7 like, if I was picked and then what if my mind --  
8 I don't know. I just don't want to be one of  
9 those people that messes up it for anybody because  
10 I feel like you both should have the best.

11 MR. ROBERTS: Thank you. And based on  
12 this personal connection you have to the boys, you  
13 think you'd be the wrong juror for this case?

14 PROSPECTIVE JUROR NO. 11-1360: Yes.

15 MR. ROBERTS: Thank you, ma'am. Nothing  
16 further, Your Honor.

17 THE COURT: Thank you.

18 MR. KEMP: You want to make a motion?

19 MR. ROBERTS: Yes. We'd move to excuse  
20 the juror for cause, Your Honor.

21 MR. KEMP: No opposition, Your Honor.

22 THE COURT: Okay. Very good. There's a  
23 stipulation.

24 And I agree with you. It seems like she  
25 can't put those things aside and she's worried

004444

1 about jeopardizing the outcome.

2 So I'm going to excuse Badge  
3 No. 11-1360, Bridget Slezak.

4 MR. ROBERTS: Thank you, Your Honor.

5 THE COURT: Jerry, will you please let  
6 her know?

7 THE MARSHAL: I will, Your Honor.

8 THE COURT: Ask her to go to jury  
9 services.

10 THE MARSHAL: I will.

11 THE COURT: We're starting to take a  
12 little shortcut now.

13 MR. KEMP: Shortcuts, Your Honor. I  
14 offered Mr. Roberts right at the very beginning  
15 that we'd take the panel as is, and he said,  
16 "Let's go."

17 MR. ROBERTS: He did. He said, "Let's  
18 just exercise our preempts and get to trial."

19 MR. KEMP: I said, "Let's do it."

20 MR. ROBERTS: "Let's not even talk to  
21 them." I don't know if he was serious or not,  
22 Your Honor.

23 THE COURT: I kind of like that idea.

24 All right. Jerry, unless it's something  
25 where you think they can't make a decision and

1 that's what they've told you, I don't want to talk  
2 to them right now.

3 THE MARSHAL: Okay.

4 THE COURT: Wait. Unless there's -- I  
5 mean, it's already 4:30. So...

6 THE MARSHAL: We have Mr. Green-Wilson.  
7 I'm not sure if we decided on that one.

8 THE COURT: Oh, okay. We have.

9 MR. KEMP: Why don't we let them all go  
10 except for the ones who have problems and work  
11 through the problems?

12 THE COURT: Good idea. And they should  
13 be here tomorrow at 9:30.

14 THE MARSHAL: Okay.

15 THE COURT: Okay. Let's bring them in.  
16 I'll admonish them.

17 Let's see. Who's the other one -- who  
18 else has the problems?

19 THE MARSHAL: A few of them, but  
20 Ms. Reeves -- she said she has a new hardship at  
21 work. She said she could come. She could do it.  
22 She's willing to do it, but she --

23 MR. CHRISTIANSEN: She's the lady seated  
24 right here, Your Honor.

25 MR. KEMP: Judge, why don't we just --

1 you know, it's like one day a year, the king has  
2 to hear all the complaints. So...

3 THE COURT: What's that?

4 MR. KEMP: One day a year, the king has  
5 to hear all the complaints.

6 THE COURT: All right. Let's just do  
7 it. Okay. I just can't remember who it is.

8 MR. CHRISTIANSEN: She's right here,  
9 Your Honor. She's the dark-haired lady, wears the  
10 black hoodie sweatshirt.

11 THE CLERK: Seat 22.

12 THE COURT: If you tell me the seat  
13 number, that makes it easier. Seat 22.

14 And the gentleman we've talked to  
15 several times, the student?

16 MR. CHRISTIANSEN: Seat 14, Your Honor.

17 THE COURT: Seat 14.

18 And who else, Jerry?

19 MR. CHRISTIANSEN: I think that was it  
20 for the two that he was just mentioning to you,  
21 Your Honor.

22 MR. ROBERTS: Her father is a paralegal  
23 who does plaintiffs work.

24 THE COURT: Oh, Ms. Reeves right here.  
25 Okay.



1 All right. Let's bring them in. I'd  
2 like to talk to Marshal Ragsdale to see if there's  
3 anyone else, since we have a few minutes, that we  
4 need to get through so we don't waste time  
5 tomorrow.

6 MR. KEMP: Sure. You want me to get  
7 him, Your Honor?

8 THE COURT: Yes, please.

9 Jerry, what we're going to do is hear  
10 individual cases because there's not much more to  
11 do. I'm going to bring the jury in. We're going  
12 to admonish them, but I need to know who to keep  
13 back.

14 THE MARSHAL: I can get a roll call now  
15 if you just -- you want to get all the issues  
16 settled because they --

17 THE COURT: As many as we can.

18 THE MARSHAL: Okay. I'll do that.

19 THE COURT: All right.

20 MR. CHRISTIANSEN: You mean there's more  
21 than one?

22 THE MARSHAL: Oh, my gosh.

23 THE COURT: And I have to tell you that  
24 our marshal -- you know, of course, I'm biased,  
25 but he is one of the most easygoing, tranquil

1 persons. You know, so if he's even making an  
2 inflection -- when he says this, it really means  
3 this.

4 MR. KEMP: He's the gatekeeper. We're  
5 at the gate.

6 THE CLERK: We are off the record.

7 (Discussion off the record.)

8 THE MARSHAL: All rise. All the jurors  
9 are present, Your Honor.

10 Have a seat and come to order.

11 THE COURT: Parties stipulate to the  
12 presence of the jury?

13 MR. KEMP: Yes, Your Honor.

14 MR. ROBERTS: Yes, Your Honor.

15 THE COURT: Ladies and gentlemen, what  
16 we're going to do is I'm going to read you your  
17 evening admonishment, and there are some jurors  
18 that I want to remain. Tomorrow we will begin at  
19 9:30 in the morning sharp. Okay?

20 All right. You are instructed -- and  
21 before everyone leaves, we'll read the jurors that  
22 need to stay. Okay.

23 You are instructed not to talk with each  
24 other or anyone else about any subject or issue  
25 connected with this trial.

1           You are not to read, watch, or listen to  
2 any report of or commentary of the trial with any  
3 person connected with this case or by any  
4 memorandum, including, without limitation,  
5 newspaper, television, internet, or the radio.

6           You're not to conduct any research on  
7 your own related to this case, such as consulting  
8 dictionaries, using the internet, or using any  
9 reference materials.

10           You are not to conduct any  
11 investigation, test any theory of the case,  
12 re-create any aspect of the case, or in any other  
13 way investigate or learn about the case on your  
14 own.

15           You are not to talk with others, text  
16 others, tweet others, message others, Instagram  
17 others, or anything like that, google any issues,  
18 or conduct any other kind of book or computer  
19 research with regard to any issue, party, witness,  
20 or attorney involved in this case.

21           You are not to form or express any  
22 opinion on any subject connected with this trial  
23 until the case is finally submitted to you.

24           We're going to ask the following jurors  
25 to stay behind.

1                   And one is Seat No. 14,  
2                   Mr. Green-Wilson; is that correct?

3                   All right. And then the other is Seat  
4                   No. 22, Ms. Reeves.

5                   I will ask you to wait outside, but  
6                   you're to stay, okay, until we call you in.

7                   Marshal Ragsdale, did you have --

8                   THE MARSHAL: I do have others. They  
9                   know who they are. I'll have them wait outside.

10                  THE COURT: All right. Very good.  
11                  Thank you.

12                  THE MARSHAL: All rise.

13                  THE COURT: Mr. Green-Wilson, go ahead  
14                  and take a seat, sir.

15                  Okay. Excuse me just one moment. I  
16                  want to make sure my letter went out.

17                  (Discussion off the record.)

18                  THE COURT: All right. You can be  
19                  seated.

20                  Mr. Green-Wilson?

21                  PROSPECTIVE JUROR NO. 11-0825: Yes.

22                  THE COURT: All right. So -- and your  
23                  badge number, please.

24                  PROSPECTIVE JUROR NO. 11-0825: 11-0825.

25                  THE COURT: Okay. Earlier in the week,

1 we discussed your school schedule.

2 PROSPECTIVE JUROR NO. 11-0825: Yes.

3 THE COURT: And you indicated that your  
4 labs -- you must attend your labs; correct?

5 PROSPECTIVE JUROR NO. 11-0825: Yes.

6 THE COURT: And those are Tuesday and  
7 Wednesday?

8 PROSPECTIVE JUROR NO. 11-0825: Yeah, at  
9 5 o'clock.

10 THE COURT: Okay. If we were to wrap up  
11 at 4:15 sharp, would that give you enough time, do  
12 you think?

13 PROSPECTIVE JUROR NO. 11-0825: Yeah,  
14 but my -- my whole thing was, like, I already have  
15 one absence left because I was sick earlier in the  
16 year, and I used one absence for this earlier this  
17 week. And I can't miss it.

18 Last night, the only reason I stayed  
19 longer when I was in the hallway was because I  
20 managed to get the TA to have him let me come in  
21 20 minutes later just so I could stay, because I  
22 emailed him during lunch.

23 And it's not even me trying to get out  
24 of the actual jury duty. I just want to see if I  
25 could be put on another case, like, later in time.

1 Because at the same time, once I'm done with that,  
2 I still have to stay up and study because I'm  
3 missing class too so I can come to this during the  
4 day.

5 Like, that's why I was dozing off  
6 earlier today because I was up last night trying  
7 to -- you know, I don't want to be disrespectful  
8 to anybody in the court.

9 THE COURT: No, no. No disrespect.

10 PROSPECTIVE JUROR NO. 11-0825: It's  
11 just something I feel bad -- you know, I don't  
12 want to -- it just looks bad for me to sit in here  
13 and fall asleep.

14 That's why I was wondering if there was  
15 any way I could just get put on something at a  
16 later date this year, because I still have  
17 midterms and stuff coming up too. And, like, I  
18 wouldn't feel right, you know, rushing through  
19 this to get to there and then making everybody  
20 else cut their time short just so I can go do that  
21 then still stay up and study and come back in the  
22 next morning and I can't even give them my full  
23 attention. That was my whole concern.

24 THE COURT: Understood.

25 MR. ROBERTS: No questions, Your Honor.

1 THE COURT: Mr. Christiansen?

2 MR. CHRISTIANSEN: No additional  
3 questions, Judge.

4 THE COURT: Okay. If Mr. Kemp has any  
5 questions?

6 MR. CHRISTIANSEN: Can I just tell  
7 Mr. Kemp?

8 THE COURT: Yes.

9 MR. KEMP: No questions, Your Honor.

10 THE COURT: All right. Well, I'm going  
11 to excuse you, okay, because I think that your  
12 concerns are legitimate. And if you were dozing  
13 off today, that's not good.

14 PROSPECTIVE JUROR NO. 11-0825: I feel  
15 bad.

16 THE COURT: And I don't feel like you're  
17 not trying to follow through with your civic duty.  
18 I do think that -- it's too bad because this is a  
19 very important case, and both parties want you on  
20 this case. And we were willing to even modify the  
21 schedule of the court for two days.

22 But I understand that it's cutting it  
23 too close for you. You only have one absence  
24 left. And you're missing your day classes.

25 Okay. So I will excuse you. I wish you

1 luck with your studies. And please report to jury  
2 services. Okay.

3 PROSPECTIVE JUROR NO. 11-0825: Thank  
4 you, Your Honor.

5 THE COURT: Good luck to you.

6 PROSPECTIVE JUROR NO. 11-0825: Thank  
7 you.

8 THE MARSHAL: Just leave the mic on the  
9 seat. Just wait outside.

10 Next, Your Honor, we have Juror No. 1,  
11 Byron Lennon.

12 MR. CHRISTIANSEN: Can we replace him  
13 first, Your Honor, just so we all can keep track?

14 THE COURT: Yes, absolutely.

15 THE CLERK: The next in line is 11-1193,  
16 Amie Turpin.

17 THE COURT: 11-1193, Ms. Turpin?

18 THE CLERK: Yes, in Seat 14.

19 THE COURT: We also have Ms. Reeves. We  
20 haven't spoken to her yet.

21 Jerry, will you please ask Ms. Reeves to  
22 come in?

23 THE MARSHAL: Reeves?

24 THE COURT: Yes.

25 THE MARSHAL: Okay.



1 All rise. Please be seated. Come to  
2 order.

3 THE COURT: State your name and your  
4 badge number.

5 PROSPECTIVE JUROR NO. 11-0999: Janelle  
6 Reeves, 11-0999.

7 THE COURT: Ms. Reeves, what did you  
8 want to discuss with us?

9 PROSPECTIVE JUROR NO. 11-0999: During  
10 break today, I was informed by one of the people  
11 that work for me that tomorrow will be her last  
12 day. So now, instead of just working my hours and  
13 what I need to get done, I also have to take over  
14 her position for the next six weeks while we train  
15 somebody else.

16 I have a four-hour turnaround time, what  
17 we call, to stay in compliance with our  
18 medicare-escalated cases. And that's a 24-hour,  
19 7 days a week. So any escalation comes in at any  
20 time, it has to be answered within four hours.

21 I can work around it. I have other  
22 people that help me. There's also stuff only I  
23 can do. But I don't know if I'll be able to stay  
24 awake during court, to be honest.

25 THE COURT: You work graveyard?

1           PROSPECTIVE JUROR NO. 11-0999: I'm on  
2 call 24-7. I've been able to work at night or  
3 like -- I was at work this morning before we came  
4 in. Just based on the court schedule, I can do  
5 that. But now that she's leaving, I have to cover  
6 that too to make sure everything gets answered.

7           THE COURT: Who is she?

8           PROSPECTIVE JUROR NO. 11-0999: Jasmine  
9 Reyes. She was working on my team. We take care  
10 of Medicaid- and Medicare-escalated cases for 15  
11 different states for United Healthcare.

12          THE COURT: When Ms. Reyes is on  
13 vacation, who substitutes for her?

14          PROSPECTIVE JUROR NO. 11-0999: Oh,  
15 well, we usually work that out between us. We  
16 have laptops we take home and stuff. But she  
17 doesn't get a lot of vacation. She's a student.

18          THE COURT: What do you mean, you work  
19 that out between yourselves?

20          PROSPECTIVE JUROR NO. 11-0999: I have  
21 myself; my -- I call him my right-hand man, James;  
22 and Jasmine. And we have a part-time person that  
23 works the evenings. And then we have laptops at  
24 home that we check every three hours to ensure the  
25 fact that all escalated cases are taken care of.

1 THE COURT: Okay. Thank you.

2 Counsel, do you have any questions?

3 MR. KEMP: No, Your Honor.

4 MR. ROBERTS: I have down here your  
5 employer is Alorica; is that --

6 PROSPECTIVE JUROR NO. 11-0999: Alorica,  
7 Inc.

8 MR. ROBERTS: Alorica? And what exactly  
9 is Alorica's role in a Medicare-escalated case?

10 PROSPECTIVE JUROR NO. 11-0999: Well,  
11 we're one of -- Alorica is a contracted company.  
12 The particular account I work for is United  
13 Healthcare. United Healthcare handles a great  
14 deal of Medicaid and Medicare cases for -- we  
15 handle 15 different states. Escalated cases, so  
16 we -- we create and process prior authorizations  
17 for medical requests for patients.

18 MR. ROBERTS: So if someone has an  
19 urgent healthcare need but cannot see a doctor  
20 until they get prior authorization from the  
21 managed care organization, they would have to --  
22 they'd have to wait for their service until that  
23 request can be processed.

24 PROSPECTIVE JUROR NO. 11-0999: Well,  
25 there is that. That's part of our other side.

1 They do that. They process that part.

2 What I take care of is, if it's not  
3 built or taken care of correctly, I have to  
4 correct it and fix it to send it through the  
5 system so they can get their services within time.

6 MR. ROBERTS: What I'm trying to  
7 understand -- and maybe you could help me with  
8 this.

9 PROSPECTIVE JUROR NO. 11-0999: I have a  
10 hard time explaining my job. I apologize.

11 MR. ROBERTS: If it takes you longer to  
12 do your job and you get behind because you're  
13 selected for jury service, is that going to  
14 endanger anyone's healthcare in the community?

15 PROSPECTIVE JUROR NO. 11-0999: It can.  
16 They can be denied services because the processing  
17 is not quick enough or information is not received  
18 quick enough. Also, United Healthcare and Alorica  
19 can receive \$10,000 fines for going out of  
20 compliance. That's where my turnaround time comes  
21 in. I have to take care of it within a certain  
22 amount of time.

23 MR. ROBERTS: So from a standpoint, if  
24 you can, of separating the hardship on your  
25 company from the hardship for you personally, what

1 would be the hardship for you personally if you  
2 served?

3 PROSPECTIVE JUROR NO. 11-0999: In  
4 addition to my jury duty, I would be also working  
5 12 to 16 hours a day six days a week.

6 MR. ROBERTS: And you're concerned that  
7 you may fall asleep here?

8 PROSPECTIVE JUROR NO. 11-0999: Yes.

9 MR. ROBERTS: Have you had any trouble  
10 staying awake so far?

11 PROSPECTIVE JUROR NO. 11-0999: Only  
12 that first day, because I had to work Sunday night  
13 and then come here and spend all day here.

14 MR. ROBERTS: And you had trouble that  
15 first day paying attention?

16 PROSPECTIVE JUROR NO. 11-0999: No, not  
17 paying attention. I was just -- everybody was  
18 answering the same questions.

19 MR. ROBERTS: Thank you so much, ma'am.  
20 No further questions.

21 THE COURT: Thank you. I'll let you  
22 know.

23 Do you have any --

24 THE MARSHAL: Wait outside.

25 MR. KEMP: Judge, I would note for the

004460

004460

1 record that United Health Services is Mr. Roberts'  
2 biggest client. So you would think if there was a  
3 problem there, he could solve it if anyone could.

4 THE COURT: I was not aware of that.

5 MR. KEMP: That's his biggest client by  
6 far.

7 THE COURT: I don't follow things as  
8 much as some of my colleagues do.

9 MR. KEMP: You would think that would  
10 give me some concern, but I don't -- you know --

11 MR. ROBERTS: I never represented them  
12 until Will sued them, and we've been good friends  
13 ever since. She doesn't work for United  
14 Healthcare; she works for Alorica, which is a  
15 vendor for United Healthcare. So I don't know  
16 what, if anything, it would be appropriate for me  
17 to do on her behalf.

18 But I know it's pretty clear among most  
19 of the judges in this jurisdiction that hardship  
20 on your employer is not an excuse. It's your  
21 personal hardship. But if -- due to her personal  
22 obligations of the requirements of her work, if  
23 she's going to be working 12 to 16 hours a day  
24 after spending eight to nine hours on our full  
25 days in jury service, that's no time for sleep at

1 all.

2 And I don't feel strongly about it, Your  
3 Honor, but I am concerned that she said she might  
4 fall asleep while serving. I'm willing to go with  
5 what the Court thinks. I'm leaning toward  
6 excusing her even though I don't think she's  
7 clearly stated a statutory basis.

8 MR. KEMP: I don't think she's stated a  
9 statutory basis.

10 THE COURT: I'm not going to excuse her.  
11 Thank you.

12 MR. ROBERTS: Thank you, Your Honor.

13 THE COURT: So she needs to come back  
14 tomorrow at 9:30, Jerry, please.

15 Please bring in the next person. Let us  
16 know who they are.

17 I don't feel she meets the statutory  
18 requirements. And also --

19 THE MARSHAL: All rise. Come to order.

20 THE COURT: Good afternoon. Please  
21 state your name and badge number.

22 PROSPECTIVE JUROR NO. 11-0798: Byron  
23 Lennon, 11-0798.

24 THE COURT: And what would you like to  
25 speak with us about?

004462

1           PROSPECTIVE JUROR NO. 11-0798: I'd just  
2 like you to know that, right now, the hardship is  
3 financial -- I know everybody has financial  
4 problems and everything. But, right now, my wife,  
5 she's temping. So, obviously, I'm basically the  
6 main person in the household that's making money,  
7 paying the bills, basically. And I even went so  
8 far as to try to work, like, overnight at my job.  
9 They told me I can't do that. So, basically, this  
10 is it.

11           And I've tried everything to try to get  
12 around that, even work at my job, and they told me  
13 I can't do that. Because of the hours, they  
14 conflict with the hours of being here. And if I  
15 work overnight, I just can't do it.

16           So, I mean, me trying to pay my bills  
17 and the rent. And I'm the main person. So my  
18 wife is stressing. I'm sitting here, honestly,  
19 half paying attention. And I don't want to do  
20 that because I'm not that type of person. If I'm  
21 going to be in something, I'm 110 percent. Right  
22 now, I'm nowhere near that because my heart is  
23 stressed out because my wife is stressing. I'm  
24 stressing.

25           So when I come here, all I'm thinking in

004463



1 my mind right now is how am I going to pay my  
2 bills if I'm here for, like, five weeks. A week,  
3 two weeks, that's doable. But five weeks is very  
4 much not doable especially if -- you know -- I  
5 know that's my problem. I understand that.  
6 Everybody has problems. But, right now, my mind,  
7 my heart is -- I don't like to see my wife in  
8 stress, and it's stressing me out.

9 And I can't concentrate like I want to  
10 here and give my full attention if I'm just  
11 stressing out every day about this situation.  
12 It's not something that I'm trying to get out --  
13 out of jury duty, because that's not me. I have  
14 no problem of doing jury duty. It's just the  
15 length of the time that I have to do it is the  
16 issue.

17 I mean, I could come back in a couple  
18 months and do a week, whatever. I have no issue  
19 with that. It's just the five weeks is the issue  
20 for me.

21 THE COURT: I understand. You say your  
22 wife works temp?

23 PROSPECTIVE JUROR NO. 11-0798: Yeah,  
24 she's working through a temp agency right now. So  
25 I'm full-time. She's on my insurance. I'm

1 basically paying the majority of the bills for the  
2 household right now. And the five weeks will  
3 definitely put a strain on that for sure.

4 THE COURT: So you've indicated that  
5 you're stressed concerning that, the five weeks.

6 PROSPECTIVE JUROR NO. 11-0798: Yes,  
7 it's the five weeks. Like I said, I have, you  
8 know, bills, my rent on the 1st. Obviously, this  
9 is going way past that. So me not getting paid  
10 what I normally get paid -- what I should get paid  
11 to be able to pay those bills, it's not going to  
12 happen. And, of course, complex apartment is not  
13 going to want to hear I'm short or whatever.

14 Now I'm really going to be stressed even  
15 more so once I get down that line of the timing.  
16 And it would definitely be a burden on me to be --  
17 come in here and concentrating on that. I'm in  
18 jeopardy of, you know, whatever will happen  
19 because I'm here.

20 I have no problem doing this at all.  
21 It's just the length of the time is the problem  
22 for me right now.

23 THE COURT: Okay. Thank you.

24 Counsel, do you have any questions?

25 MR. KEMP: Judge, can we approach?

1 THE COURT: Yes.

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

4 THE COURT: Sir, you work at the  
5 Venetian in security; right?

6 PROSPECTIVE JUROR NO. 11-0798: Yes.

7 THE COURT: Have you talked to the HR  
8 yet, the people in human resources?

9 PROSPECTIVE JUROR NO. 11-0798: Yes.

10 Well, I've talked to my managers that --  
11 you know, they say, well, we'll talk to who we  
12 need to talk to then. We'll let you know what we  
13 could do, what we need to do.

14 THE COURT: Okay. Because it's my  
15 understanding that in the past the Venetian paid  
16 for several weeks of work.

17 PROSPECTIVE JUROR NO. 11-0798: Yeah,  
18 they pay for 10 days. That's why I said one or  
19 two weeks.

20 THE COURT: They pay for 10 days now?

21 PROSPECTIVE JUROR NO. 11-0798: Yes, 10  
22 days.

23 THE COURT: You've already inquired?

24 PROSPECTIVE JUROR NO. 11-0798: Yes,  
25 that part. That's why I say I can do one, two

004466

1 weeks. That's fine. But once those 10 days is  
2 up, that's when the issue starts. I can do one or  
3 two weeks because they pay for 10 days. Once we  
4 get past those 10 days, they don't pay no more.

5 THE COURT: If the trial is of the  
6 nature that it goes further than 10 days, like  
7 five weeks, are you aware -- have you discussed  
8 that with them?

9 PROSPECTIVE JUROR NO. 11-0798: Yes, I  
10 have.

11 THE COURT: You've discussed it with  
12 your manager?

13 PROSPECTIVE JUROR NO. 11-0798: Yes.  
14 And the only thing they could give me, they say,  
15 is Saturday and Sunday, which is two days. That's  
16 it. I can't work during the week at all, nothing.  
17 So that's only two days out of, you know -- that's  
18 what I --

19 THE COURT: So you'd be missing three  
20 days a week?

21 PROSPECTIVE JUROR NO. 11-0798: Three  
22 days a week, yes, ma'am. I'd be missing three  
23 days a week. And that's a lot. That would  
24 definitely coincide with, like I said, my bills  
25 coming up, my rent coming up, that's that time

1 right there where it's very crucial. That would  
2 be the crucial time for me.

3 Like I said, I have no problems doing it  
4 the 10 days. After the 10 days, they say, okay.  
5 I could work Saturday and Sunday, possibly work  
6 Saturday and Sunday, but that's it. I can't work  
7 during the week at all. Because I've tried. I  
8 can't do it. I wanted to work overnights, and  
9 they told me I can't do it. So I've tried to be  
10 able to work extra, but, the weekends, that's the  
11 only thing they could give me past those 10 days.  
12 That's it.

13 THE COURT: Any other questions?

14 MR. KEMP: No, Your Honor.

15 MR. ROBERTS: No, Your Honor.

16 THE COURT: Okay. Thank you.

17 MR. KEMP: Judge, I don't want to sound  
18 unsympathetic, but he's still working two out of  
19 five days. He's being paid for the first two  
20 weeks. He's not factoring into the fact that that  
21 first week, he's making the extra \$200. He's  
22 getting paid that too. I know it's not a grand  
23 sum. Trust me, my advice was that they increase  
24 that to \$100 a day long ago.

25 But, in any event, I don't think it

1 meets the ...

2 THE COURT: Undue hardship?

3 MR. KEMP: Yeah.

4 THE COURT: Mr. Roberts?

5 MR. ROBERTS: If I was a judge, I'd  
6 probably let everyone go, Your Honor. You feel  
7 bad for people, but it probably doesn't meet the  
8 statute. He did put in his questionnaire that it  
9 would be a financial hardship for him to serve  
10 over 10 days. So we're fine with what the Court  
11 wants to do.

12 THE COURT: My main concern is what do  
13 you think about the fact that he said he's  
14 stressed and he can't concentrate?

15 MR. KEMP: Everybody is stressed and  
16 can't concentrate.

17 MR. ROBERTS: Well, no, I think that's  
18 unfair. I certainly don't want a jury full of  
19 people who are stressed and can't concentrate.  
20 They have to be willing to commit to concentrating  
21 and focusing on the evidence in the case.

22 If he really can't do that, maybe we can  
23 inquire of that further -- you know, later. He is  
24 being paid now. You could just tell him that  
25 you'll consider his hardship, but you're not going

1 to do it now. Maybe we can inquire further about  
2 whether he's been able to concentrate between now  
3 and when I reach him.

4 MR. KEMP: At a minimum, Your Honor, we  
5 should get a letter from Venetian human resources  
6 department saying what their policy is, because it  
7 could well be they still pay four to six weeks.

8 MR. ROBERTS: And I know some judges may  
9 be more comfortable with this than others, but I  
10 have had judges who will call and say, "This is an  
11 important case. Will you pay for the juror for  
12 the full length of the trial?"

13 THE COURT: That's why I was asking if  
14 they have exceptions. I've never done it, but --

15 MR. ROBERTS: And I'd have no problem if  
16 you wanted to call the Venetian general counsel's  
17 office and say, "Look, we need to get a jury in  
18 for a long case and would you consider paying  
19 him?"

20 THE COURT: Mr. Kemp, would you have an  
21 objection to that?

22 MR. KEMP: We actually represent the  
23 Venetian, Your Honor.

24 THE COURT: Okay. Honestly, I just --

25 MR. ROBERTS: Well, maybe Mr. Kemp can

004470

004470

1 just arrange it.

2 MR. KEMP: If you'll stipulate to it,  
3 I'll arrange it. Okay? If you'll stipulate on  
4 the record, I'll arrange it.

5 MR. ROBERTS: I'd be more comfortable  
6 with the Court calling, Your Honor.

7 THE COURT: Is there any objection to --  
8 do you stipulate to my calling? I just want to  
9 make sure.

10 MR. KEMP: Yes, Your Honor.

11 MR. ROBERTS: Yes, Your Honor.

12 MR. KEMP: If you want, I can get you an  
13 appropriate name to call tomorrow. I'll bring one  
14 in tomorrow.

15 THE COURT: That would be great. Thank  
16 you. Let's do that, then. Very good.

17 Jerry?

18 THE MARSHAL: Tell him to come back  
19 tomorrow at 9:30? Bring the next one in.

20 All rise.

21 Please be seated. Come to order.

22 THE COURT: Your name and your badge  
23 number, please.

24 PROSPECTIVE JUROR NO. 11-0860: My name  
25 is Aberash, Badge No. 11-0860.

004471

004471



1 THE COURT: And your last name?

2 PROSPECTIVE JUROR NO. 11-0860: Getaneh.

3 THE COURT: Will you please tell us what  
4 you want to discuss. What is it that you want to  
5 discuss?

6 PROSPECTIVE JUROR NO. 11-0860: Yeah, I  
7 have question for -- I'm here, like, three days,  
8 but I don't understand -- some language, I don't  
9 understanding. So when I hear some people, I  
10 don't understanding.

11 THE COURT: You're having trouble  
12 understanding?

13 PROSPECTIVE JUROR NO. 11-0860: Yes.

14 THE COURT: Okay. What types of things?  
15 If you don't understand what they're saying, but  
16 at what point? The questioning or the answers?

17 PROSPECTIVE JUROR NO. 11-0860: Even I  
18 don't know for this case, I don't know how to,  
19 like --

20 THE COURT: You don't know how to what?

21 PROSPECTIVE JUROR NO. 11-0860: I don't  
22 know how to like --

23 THE COURT: I'm sorry. I don't  
24 understand what you're saying.

25 PROSPECTIVE JUROR NO. 11-0860: I don't

004472

004472

1 understanding --

2 THE COURT: You don't understand?

3 PROSPECTIVE JUROR NO. 11-0860: Yes.

4 THE COURT: What the attorneys are  
5 saying or what I'm saying?

6 PROSPECTIVE JUROR NO. 11-0860: No.

7 When is ask for the people to ask for the  
8 question, when they talking. So I don't  
9 understanding.

10 THE COURT: Okay. When you were asked  
11 questions, you appeared to understand.

12 PROSPECTIVE JUROR NO. 11-0860: Yes.

13 THE COURT: Right?

14 PROSPECTIVE JUROR NO. 11-0860: Yes.

15 THE COURT: So what is the difference in  
16 the questions to the others that you do not  
17 understand?

18 PROSPECTIVE JUROR NO. 11-0860: I don't  
19 know. I'm scared.

20 THE COURT: You're scared?

21 PROSPECTIVE JUROR NO. 11-0860: Yeah.

22 THE COURT: What are you scared of?

23 It's okay to be nervous. There's no right or  
24 wrong answer. What are you scared about?

25 PROSPECTIVE JUROR NO. 11-0860: I

004473

1 don't -- I don't know.

2 THE COURT: You don't know what you're  
3 scared about?

4 PROSPECTIVE JUROR NO. 11-0860: Yeah.

5 THE COURT: I'd like you to think about  
6 it for a moment. What fears do you have?

7 PROSPECTIVE JUROR NO. 11-0860: I don't  
8 know. I'm sorry.

9 THE COURT: You must know what you're  
10 scared of.

11 PROSPECTIVE JUROR NO. 11-0860: For  
12 language.

13 THE COURT: The English?

14 PROSPECTIVE JUROR NO. 11-0860: Yeah.

15 THE COURT: I see.

16 Counsel, do you have any questions?

17 MR. KEMP: No, Your Honor.

18 MR. ROBERTS: No, Your Honor.

19 THE COURT: Okay. Thank you.

20 THE MARSHAL: Thank you, ma'am. Follow  
21 me. Wait outside for me.

22 THE COURT: Any thoughts, Counsel?

23 MR. KEMP: Judge, I thought she clearly  
24 understood the questioning when Mr. Christiansen  
25 asked her the questions. She answered it. We can

1 go back and pull the transcript out. Her English  
2 ability seems to have regressed greatly in four  
3 days. I'm just not buying it.

4 MR. ROBERTS: I think after --  
5 initially, she did get off the jury, her English  
6 seemed to improve dramatically for a day or two.  
7 And I'm afraid I may be with Mr. Kemp on this one.  
8 This is always a difficult thing to gauge, just  
9 your gut reaction, because you want people who  
10 understand on your jury. But, on the other hand,  
11 you don't want someone who's come into this  
12 country and applied for citizenship and enjoying  
13 the benefits of citizenship just -- and I see so  
14 many people trying to get out when I don't think  
15 it's legitimate, Your Honor.

16 I'm happy to live with the Court's gut.  
17 My gut is that she understands enough to serve as  
18 a juror.

19 THE COURT: I agree. I don't think  
20 there's a reason to excuse her.

21 But I will tell you -- and I'm taking  
22 some liberty here -- that I don't know -- just  
23 because I observe their faces, when you use --  
24 which it is, in the case of the statute --  
25 "unequivocal," I don't know that they all know

004475

1     what it means.

2                 MR. KEMP:   I could not unequivocally  
3     state that I know either.

4                 THE COURT:   I have noticed that their  
5     faces look a little bit blank when that specific  
6     word comes up.

7                 MR. ROBERTS:   I wish the supreme court  
8     had chosen a different word, Your Honor.

9                 THE COURT:   I know.   I just thought I'd  
10    mention that.

11                All right.   So, Jerry, please ask her to  
12    be back at 9:30 tomorrow.

13                MR. KEMP:   It's good to be firm with  
14    some of them, Your Honor, because it turns into a  
15    stampede.   Because, you know, they talk in the  
16    hallway.

17                MR. CHRISTIANSEN:   For sure.

18                THE COURT:   I presided over five  
19    specialty courts for a year and a half.   I know  
20    what that's like.

21                THE MARSHAL:   All rise.

22                Just grab that mic.

23                Please be seated.   Come to order.

24                THE COURT:   Please state your name and  
25    your badge number.

004476

004476

1 PROSPECTIVE JUROR NO. 11-0880: My name  
2 is William Richardson. My badge number is  
3 11-0880.

4 THE COURT: Mr. Richardson, what would  
5 you like to discuss?

6 PROSPECTIVE JUROR NO. 11-0880: This is  
7 something that has come to my attention since the  
8 trial has started. I believe I may have a bias  
9 that I have not been asked about. Although I  
10 checked on the questionnaire that I ride a bike  
11 and I ride the bus, since then, I realized that I  
12 just don't have a bias; I've acted on the bias.

13 THE COURT: I'm sorry?

14 PROSPECTIVE JUROR NO. 11-0880: I just  
15 don't have a bias; I've acted on the bias before.  
16 So I believe --

17 THE COURT: How so?

18 PROSPECTIVE JUROR NO. 11-0880:  
19 Actually, anyone who rides a bike in Las Vegas or  
20 any metropolitan area is assuming a great risk  
21 inherently. And that that risk, I believe people  
22 somehow think that the fiction of the law will  
23 protect them. And, as a result, their behavior as  
24 cyclists often goes outside, where they will zoom  
25 through intersections without stopping. They will

004477

1 cut off cars.

2 And, as a result, I've kind of, over the  
3 years, in driving for 40-some, 50 years, that  
4 cyclists are arrogant people who assume too much.  
5 And, as I said, I have acted on this. I quit  
6 driving in November of '16 for financial reasons.  
7 I'm on social security, limited income. And I  
8 bought a Schwinn Meridian, which is an adult cargo  
9 tricycle. And I ride that on the sidewalk because  
10 I refuse to ride it on the streets. I go to the  
11 supermarket and back.

12 And when I do ride it, I wear a  
13 ridiculously outlandish outfit with a vest, a  
14 giant helmet, to make myself visible to the cars.  
15 Because my job as a cyclist, even when I'm walking  
16 across the intersection -- I don't ride across --  
17 is to make sure that I am seen because I believe  
18 that it's my responsibility to take care of myself  
19 and not rely upon the law to protect me. That's  
20 one issue.

21 THE COURT: Okay. And when you say  
22 you've acted on this bias, how --

23 PROSPECTIVE JUROR NO. 11-0880: By  
24 buying the tricycle and refusing to ride on the  
25 street, wearing this ridiculous helmet and the

1 safety vest goes to the notion that it is unsafe  
2 to ride a bicycle in Las Vegas pretty much across  
3 the board, any metropolitan area.

4 When I was growing up, we were taught to  
5 ride facing traffic on the oncoming. And so we'd  
6 see the cars coming at us, practicing see and  
7 avoid. It was the responsibility of the cyclist  
8 to avoid the cars and not get in their way, not  
9 put yourself in the position of getting hit in  
10 that way.

11 Now I understand this is not a liability  
12 issue in those regards, or negligent or whatever.  
13 But I believe that you -- it's almost like -- and,  
14 again, my understanding of the law is imperfect,  
15 but it's analogous in a way of, like, coming to  
16 the nuisance. You're actually inviting the  
17 danger.

18 THE COURT: Okay. And you weren't aware  
19 of that?

20 PROSPECTIVE JUROR NO. 11-0880: I wasn't  
21 aware until we started talking about the various  
22 biases. I did check on the questionnaire, but I  
23 was never asked about it. And I thought, hearing  
24 all these other biases -- again, it's not my  
25 intention to be dismissed. I just thought that it

004479

004479



1 was important that I brought this to ensure that I  
2 was still an appropriate or suitable candidate for  
3 a juror.

4 THE COURT: When you say that you think  
5 cyclists are arrogant, that's quite a  
6 generalization.

7 PROSPECTIVE JUROR NO. 11-0880: Some,  
8 not all, yes. I agree, yes.

9 THE COURT: So please explain that.

10 PROSPECTIVE JUROR NO. 11-0880: Well, it  
11 has been my experience, both from driving and from  
12 knowing cyclists and observing their behavior,  
13 that they tend, in many cases, to cut off cars, to  
14 go through intersections when there's a red light  
15 or a stop sign, breezing through, relying upon the  
16 drivers of the vehicles to see them.

17 Because, in my mind, I believe they have  
18 this notion in their head that the law protects  
19 them. And while it may on an abstract level, it  
20 doesn't on a physical level.

21 I think it's analogous to skydiving  
22 where you may have a right to jump out of an  
23 airplane, but that doesn't mitigate the danger  
24 involved in that activity.

25 THE COURT: Okay. How long have you

004480

1 felt this way, sir, about cyclists?

2 PROSPECTIVE JUROR NO. 11-0880: When I  
3 bought my bike a year ago November is when I  
4 started buying additional equipment to make myself  
5 visible. I have photographs on my phone to show  
6 you the ridiculous outfit I wear.

7 And that would be -- it was just kind of  
8 an aha moment hearing, "Oh, wait. That's a bias I  
9 have." I didn't even think about it until I  
10 started hearing about some of these other biases.  
11 And I thought maybe that's what I have. And since  
12 I haven't been asked about it, it never really  
13 came to the top of my mind.

14 THE COURT: And is that something that  
15 you feel consistently or not?

16 PROSPECTIVE JUROR NO. 11-0880: Well,  
17 again, it's -- yeah, it's consistent. I still  
18 believe today, and I'll believe when I leave this  
19 room, that it's inherently dangerous to ride a  
20 bike in the city streets in Las Vegas. I believe  
21 it's the responsibility of the cyclist to make  
22 sure their presence is known and to not put  
23 themselves into situations where they're likely or  
24 potentially likely to be injured.

25 THE COURT: Thank you.

004481

1 Counsel? Do you have any questions?

2 MR. KEMP: No, Your Honor.

3 MR. ROBERTS: Are these feelings going  
4 to make it difficult for you to be fair to the  
5 family of the cyclist, in this case?

6 PROSPECTIVE JUROR NO. 11-0880: I  
7 honestly don't know. I hadn't thought about it  
8 until a couple days ago when I started hearing  
9 this stuff. I think I can be fair. I don't think  
10 that it -- you know, I'm just spinning here. I  
11 really don't know.

12 MR. ROBERTS: You really don't know if  
13 you can be fair?

14 PROSPECTIVE JUROR NO. 11-0880: Yes,  
15 honestly. Because I don't really understand how  
16 I'm going to feel when the evidence is presented.  
17 I understand that you have to shield your feelings  
18 and you have to go on the evidence alone, but I  
19 would -- might use my feelings to weigh evidence  
20 to see which is more important or who I might  
21 believe.

22 MR. ROBERTS: The feelings that you've  
23 expressed that it's inherently dangerous to be on  
24 a bicycle in Las Vegas and bicyclists have a duty  
25 to make sure they're seen, do you have any

004482

1 understanding of whether those feelings are  
2 contrary to the law that the judge may instruct  
3 you on? What's your understanding?

4 PROSPECTIVE JUROR NO. 11-0880: I'm not  
5 familiar with Nevada law to understand that to  
6 that point. My knowledge is on the common law.

7 MR. ROBERTS: If the judge instructed  
8 you that the law was something other than what you  
9 feel it should be --

10 PROSPECTIVE JUROR NO. 11-0880: Right, I  
11 have no problem with that. I will follow the  
12 judge. The law in this room is whatever Her Honor  
13 says it is. That's one issue.

14 THE COURT: Do you have another issue?

15 PROSPECTIVE JUROR NO. 11-0880: Yes.

16 THE COURT: I'd like to hear it.

17 PROSPECTIVE JUROR NO. 11-0880: Since  
18 I've been coming to court, I'm -- I don't have a  
19 lot of money. So I went and bought a 30-day bus  
20 pass. And the last week, I have been riding the  
21 bus on a daily basis.

22 To your admonition that you should not  
23 put yourself in a position where you're making  
24 judgments or investigations, when I'm sitting at a  
25 bus stop and a bus is zooming by and I'm feeling

1 the difference in air pressures, that's kind of  
2 hard for me to ignore. And I believe that, in  
3 that situation, if I did ignore it, I might even  
4 put myself in personal jeopardy.

5 So I'm very in tune to my environment  
6 and what's going on around it, and that's not the  
7 kind of stuff that I can just ignore.

8 That's the other issue.

9 MR. ROBERTS: Sir, if I can ask you one  
10 follow-up question.

11 Do you understand what the word  
12 "unequivocally" means?

13 PROSPECTIVE JUROR NO. 11-0880: I  
14 believe so.

15 MR. ROBERTS: Can you unequivocally tell  
16 the Court that you will be able to put these  
17 preconceived biases aside when you render your  
18 verdict and decide the case only on what you hear  
19 in the courtroom and the law as instructed by the  
20 judge?

21 And if you may not be able to do that --

22 PROSPECTIVE JUROR NO. 11-0880:  
23 Unequivocally -- I can't say unequivocally because  
24 this is a visceral, very held gut feeling that I  
25 know I have. And to dismiss it -- if it's

1 contrary to the law, of course, you know. But,  
2 again, it will affect how I view the evidence and  
3 what weight I apply to the evidence.

4 MR. ROBERTS: Thank you, sir.

5 Nothing more, Your Honor.

6 THE COURT: Okay. Thank you very much.

7 PROSPECTIVE JUROR NO. 11-0880: All  
8 right. Thank you. Thank you, Your Honor. I  
9 apologize if I wasted the Court's time.

10 THE MARSHAL: Thank you, sir. Leave the  
11 mic in the seat for me.

12 MR. ROBERTS: Thank you, sir.

13 MR. KEMP: Judge, you know, someone that  
14 says they're a bicyclist hater, ordinarily, I'd  
15 say let's throw them off the jury, but I wasn't  
16 buying that one either.

17 THE COURT: Really?

18 MR. KEMP: No. And he did say he would  
19 follow the judge's instruction on -- Mr. Roberts  
20 was alluding, I think, to contributory negligence  
21 not being a defense, which eliminates all this.  
22 And he said he would follow the law. So I don't  
23 think the person has shown cause.

24 MR. BARGER: Judge, let me say  
25 something. With all due respect to Mr. Kemp, who

1 I like a bunch, what he thinks is not really the  
2 test. I think the test is what the witness said.  
3 I'll let Mr. Roberts argue that. But he said  
4 unequivocally he could not. I think that's the  
5 test.

6 MR. ROBERTS: And, unfortunately, I  
7 think this is a little different than the language  
8 thing. I think that, even though he's expressing  
9 a bias against the other party and in my favor  
10 effectively, I think the fact that he's willing to  
11 say, "I can't unequivocally promise I can put this  
12 aside and decide on the facts and the evidence"  
13 objectively meets the standard.

14 And if he just lied under oath about  
15 that, then he's not any more reliable than if he  
16 can't decide it on the facts and the evidence.  
17 And I don't want to endanger the panel by having  
18 someone who's admitted a bias. And I don't want  
19 an unreliable juror who is going to lie about  
20 having a bias.

21 So either way, I want him gone, Your  
22 Honor. So we'd move to dismiss him.

23 MR. KEMP: I just thought it was pretty  
24 weak, Your Honor. He said he'd follow the Court's  
25 instruction on -- what I think he was alluding to

1 was the contributory negligence instruction, and  
2 that's where the bias is, on contributory  
3 negligence.

4 THE COURT: Let's see. Your concern is  
5 that he thinks that cyclists are arrogant people  
6 who assume almost an assumption-of-risk issue. I  
7 mean, he didn't say those words. But he was, in  
8 my mind, going there. I mean, I was sensing --

9 MR. KEMP: He pretty much said that,  
10 Your Honor.

11 MR. ROBERTS: I think he said "assumes  
12 the risk."

13 THE COURT: Right. Oh, did he say it?  
14 Okay. It was very close, if not. Okay.

15 MR. KEMP: He didn't use the word "death  
16 wish," but it was close.

17 THE COURT: I should have asked to see  
18 his photographs. But, you know, he's actually  
19 physically changed, according to him, his riding  
20 so that he is more careful and is riding on a  
21 sidewalk with a tricycle in some colorful outfit,  
22 I think.

23 He thinks it's akin to skydiving, which  
24 also, I think, he was inviting the -- I don't know  
25 if I read the right word -- the danger.



1           MR. KEMP: Judge, I'll concede it. He's  
2 been to law school, and he wants off the jury. If  
3 you don't let him off now, he's going to come back  
4 with something tomorrow or the next day.

5           THE COURT: Right.

6           MR. KEMP: So I will concede.

7           THE COURT: But, I mean, I do think that  
8 there is -- at least he selected the proper words  
9 to bring this into an analysis of causation.  
10 So -- and he doesn't unequivocally believe that he  
11 can be fair and impartial. So, okay, I'm going to  
12 excuse him for cause.

13          THE CLERK: The next one would be  
14 Seat 12, Judy Sanderlin.

15          MR. CHRISTIANSEN: Badge No. 11-1199?

16          THE CLERK: Yes.

17          THE COURT: Judy Sanderlin? That's 12?

18          THE CLERK: Yes.

19          THE MARSHAL: Two more, Your Honor.

20          THE COURT: Let's go.

21          THE MARSHAL: Ready?

22          THE COURT: Yes.

23          THE MARSHAL: All rise. Please be  
24 seated. Come to order.

25          THE COURT: Please state your name and

004488

004488

1 your badge number for the record.

2 PROSPECTIVE JUROR NO. 11-0926: Enrique  
3 Tuquero, 11-0926.

4 THE COURT: Okay. All right. What is  
5 it that you'd like to inform me?

6 PROSPECTIVE JUROR NO. 11-0926: My  
7 financial status.

8 THE COURT: Okay. Can you expand on  
9 that, please.

10 PROSPECTIVE JUROR NO. 11-0926: Yes. My  
11 wife and I were making all of the bills the other  
12 night, totaling it out. And me staying over here  
13 four or five weeks, it's not going to pay for our  
14 bills.

15 THE COURT: Okay. How much money do you  
16 make? What is your salary?

17 PROSPECTIVE JUROR NO. 11-0926: I have  
18 the breakdown if you guys want to look at it.

19 MR. KEMP: Your Honor, can we approach?

20 THE COURT: Yes.

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

23 THE COURT: All right. We have another  
24 juror who works where you work, and I want you to  
25 come back tomorrow. I'm going to see if there's

004489

004489

1 something that can be done. I can't promise  
2 anything.

3 PROSPECTIVE JUROR NO. 11-0926: Okay.

4 THE COURT: Okay? Thank you.

5 THE MARSHAL: Leave that mic in the  
6 chair for me, sir.

7 MR. PEPPERMAN: Judge, I have a contact  
8 at the Venetian for you.

9 THE MARSHAL: All rise. Please be  
10 seated. Come to order. Please be seated.

11 THE COURT: Please state your name and  
12 your badge number.

13 PROSPECTIVE JUROR NO. 11-1164: Kimberly  
14 Flores, 11-1164.

15 THE COURT: Ms. Flores, please inform us  
16 of what your issue is.

17 PROSPECTIVE JUROR NO. 11-1164: Well, I  
18 work Monday through Friday, 6:00 a.m. to 3:00 p.m.  
19 I have about 30 to 40 customers underneath me that  
20 need to be in contact with me every two to three  
21 days.

22 Besides financially, \$40 a day isn't  
23 going to cut into -- it's going to be less than  
24 half of my paycheck. And that's going to be hard  
25 on me.

004490

1           And not just that, I do have anxiety,  
2           and sometimes I get really restless and physically  
3           sick where I have to run to the bathroom and throw  
4           up.

5           THE COURT: Do you see anyone for your  
6           anxiety?

7           PROSPECTIVE JUROR NO. 11-1164: I have a  
8           doctor on Charleston by the UMC Hospital. I  
9           actually haven't been able to see her since late  
10          November because financially I haven't been able  
11          to pay.

12          THE COURT: What is your doctor's name?

13          PROSPECTIVE JUROR NO. 11-1164:  
14          Dr. Marilyn.

15          THE COURT: Marilyn? What is her first  
16          name?

17          PROSPECTIVE JUROR NO. 11-1164: Marilyn.  
18          I don't remember her last name. It starts with a  
19          "Q."

20          THE COURT: Okay. Where do you work?

21          THE WITNESS: It's at a company called  
22          iVenue. It's design -- website designing and  
23          editing.

24          THE COURT: Are you prescribed  
25          medication for your anxiety?

004491

1 PROSPECTIVE JUROR NO. 11-1164: At the  
2 moment, no, I have taken against that.

3 THE COURT: Do they pay for jury duty at  
4 your work? Have you looked into it at human  
5 resources?

6 PROSPECTIVE JUROR NO. 11-1164: I  
7 actually haven't. I think it's \$40. I'm not  
8 sure.

9 THE COURT: You need to inquire. And  
10 I'd like to see a letter concerning what their  
11 policy is.

12 PROSPECTIVE JUROR NO. 11-1164: Of work.  
13 Okay.

14 THE COURT: And what they pay when  
15 you're on this jury. Okay?

16 Counsel, do you have any questions?

17 MR. ROBERTS: Could we approach, Your  
18 Honor?

19 THE COURT: Yes.

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

22 THE COURT: Ms. Flores, are you aware  
23 that we have Wi-Fi here?

24 PROSPECTIVE JUROR NO. 11-1164: Yes.

25 THE COURT: Okay. Because if you work

004492

004492

1 in this company that designs websites, that's  
2 something that you might be able to do during the  
3 breaks and so forth.

4 PROSPECTIVE JUROR NO. 11-1164: I've  
5 been checking my email every other day, but  
6 there's not much that I can do besides sending  
7 emails back. I can send emails to my other fellow  
8 coworkers, but that's about it.

9 THE COURT: What happens when you go on  
10 vacation?

11 PROSPECTIVE JUROR NO. 11-1164: I  
12 usually only do it on the weekends because those  
13 are my days off. But if I go -- if I leave for  
14 vacation, it's either on a Friday and a Monday.  
15 My other PMs either take -- cover for those two  
16 days.

17 THE COURT: Okay. So you can get  
18 coverage if you need to?

19 PROSPECTIVE JUROR NO. 11-1164: If I  
20 really need to, then, yes, I can.

21 THE COURT: Okay. Who's in charge of  
22 your company? Do you know? Do you have bosses'  
23 names?

24 PROSPECTIVE JUROR NO. 11-1164: I know  
25 my bosses' names. We're basically a little

1 third-party company for maWebCenters of America.

2 I don't know if you've heard of our --

3 THE COURT: What is the name?

4 PROSPECTIVE JUROR NO. 11-1164: We're  
5 basically a third-party tech support for Market  
6 America, maWebCenters.

7 THE COURT: Market America? And do you  
8 know who the --

9 PROSPECTIVE JUROR NO. 11-1164: My  
10 general manager from my department, his name is  
11 Phil Theragreen (phonetic).

12 THE COURT: Do you know any of the  
13 senior -- who the senior people are at Marketing  
14 America?

15 PROSPECTIVE JUROR NO. 11-1164: Hum-um.

16 THE COURT: Okay. Let's see. I'd like  
17 you to check with HR and see what their policies  
18 are. And what about the ability to see a doctor  
19 for your anxiety?

20 PROSPECTIVE JUROR NO. 11-1164: What was  
21 the question?

22 THE COURT: Are you able to see a  
23 physician for your anxiety?

24 PROSPECTIVE JUROR NO. 11-1164: I have  
25 my therapist that I see.

004494

004494

1 THE COURT: How often?

2 PROSPECTIVE JUROR NO. 11-1164: Again, I  
3 haven't seen her since late November because I  
4 haven't been able to pay for a late fee and -- the  
5 fee that you pay before you go in to see the  
6 doctor.

7 THE COURT: All right. Thank you.

8 THE MARSHAL: All rise.

9 THE COURT: I'd like you to check with  
10 your HR and see what their policy is.

11 PROSPECTIVE JUROR NO. 11-1164: Okay.  
12 Thank you.

13 THE MARSHAL: Just wait outside for me,  
14 please. Thank you.

15 THE COURT: I don't know. I think our  
16 sending her to a particular doctor might be a bit  
17 too much, don't you think, even though Mr. Kemp  
18 apparently has --

19 MR. KEMP: Well, she wants some anxiety  
20 medication and just happens to be someone on the  
21 jury panel one day.

22 MR. BARGER: Can you repeat that?

23 MR. KEMP: That -- Mr. Roberts put us  
24 there, of course.

25 THE COURT: No, Mr. Kemp, we can't do



1 that.

2 MR. KEMP: Just trying to solve the  
3 problem.

4 THE COURT: Just for the record, we  
5 can't do that.

6 Jerry, anyone else?

7 THE MARSHAL: That would be all, Your  
8 Honor.

9 MR. BARGER: The next person would be?

10 THE COURT: Ms. Flores is still with us.

11 THE CLERK: So I have four seats that  
12 need to be replaced.

13 Seat 15 will be Veronica Gutierrez.

14 Seat 25, Ashley Vandevanter.

15 Seat 14, Amie Turpin.

16 And Seat 12, Judy Sanderlin.

17 I know the others weren't excused, so we  
18 don't need to replace them yet.

19 MR. CHRISTIANSEN: Thank you, Ms. Clerk.

20 THE CLERK: You're welcome.

21 THE COURT: Are 300 jurors going to be  
22 sufficient? It's not even a rhetorical question  
23 at this point.

24 MR. CHRISTIANSEN: I think we'll start,  
25 hopefully, moving a little quicker, Judge, we

1 hope.

2 MR. TERRY: Your Honor, before you leave  
3 today, would you be so kind as to get a picture of  
4 the lawyer in his tricycle outfit. I would like  
5 to make it a counterpoint to the, hey --

6 THE COURT: You know what? I already  
7 let him go. It's too late. I'll try.

8 MR. TERRY: Thank you, Your Honor. I  
9 would appreciate it.

10 THE COURT: Sir, so you know, I'm going  
11 to have my chambers reach out for the person.  
12 Mr. Pepperman, are you going to give me  
13 information?

14 MR. PEPPERMAN: Yes, I am. It's the  
15 associate general counsel. Her name is Nicole  
16 Lesani, L-E-S-A-N-I. Her phone number is  
17 702-607-4220. And she'll be in the office all day  
18 tomorrow and will be expecting your call.

19 THE COURT: All right. And just remind  
20 me, this is juror number.

21 MR. TERRY: There were two of them, Your  
22 Honor.

23 THE CLERK: Seat 1 and Seat 19 both work  
24 at the Venetian.

25 THE COURT: Okay. I'm just going to

004497

004497

1 offer a suggestion. Mr. Roberts and Mr. Kemp, if  
2 you wouldn't prefer to call Ms. Lesani or her boss  
3 together instead of me.

4 MR. KEMP: Judge, given that we  
5 represent the Venetian, it's probably a better  
6 idea that you call.

7 THE COURT: Understood.

8 MR. ROBERTS: And I think they might be  
9 less likely to say no to you than they would to me  
10 or Mr. Kemp.

11 MR. KEMP: I don't know about that.

12 MR. ROBERTS: They say no to me all the  
13 time.

14 THE COURT: Maybe I'll just call  
15 Sheldon, Mr. Adelson.

16 MR. KEMP: Your Honor, there is a  
17 solution to this problem if Mr. Roberts will  
18 stipulate to it.

19 THE COURT: All right. Seriously. Have  
20 a great evening, everyone.

21 MR. ROBERTS: Thank you, Your Honor.

22 MR. KEMP: Thank you, Your Honor.

23 THE MARSHAL: Court is now adjourned.

24 5:43 p.m.

25 THE COURT: Can we go back on the

1 record? The only time I can request money is if  
2 I -- I'm not allowed -- like, I want to -- I'm not  
3 supposed to --

4 MR. KEMP: I think you just need to ask  
5 them their policy, Your Honor. If you want me to  
6 ask them for a favor, Mr. Roberts has to stipulate  
7 to that, which I'm happy to do.

8 THE COURT: I just want to be really  
9 clear with you that I cannot ask them --

10 MR. ROBERTS: You're happy to ask --

11 MR. KEMP: Let's see what the policy is,  
12 if we need to take it above that.

13 THE COURT: Just judicial candidates,  
14 they're very strict --

15 MR. ROBERTS: I'm fine with you asking  
16 them as long as I'm on the phone.

17 THE COURT: I wanted to be able to raise  
18 money for justice court, and I couldn't do it.

19 MR. PEPPERMAN: And, Your Honor, that's  
20 what I confirmed with them, is you'll be calling  
21 just to get what the policy is.

22 THE COURT: Thank you. All right.

23 (Thereupon, the proceedings adjourned at  
24 5:46 p.m.)  
25

-o0o-

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

  
\_\_\_\_\_  
/S/ Kimberly A. Farkas, RPR

004500