

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.

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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
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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

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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 FRIDAY, FEBRUARY 16, 2018

24 RECORDED BY: SANDY ANDERSON, COURT RECORDER

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

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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.
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12 Barin:

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21 For the Defendant Motor Coach Industries, Inc.:

22 BY: D. LEE ROBERTS, ESQ.
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25 (361) 866-8000
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1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 16, 2018;

2 9:34 A.M.

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

4 * * * * *

5 THE MARSHAL: All rise. Department 14
6 is in session.

7 THE COURT: Good morning. Let's see if
8 we can select a jury today.

9 Jerry, you want to give us an update of
10 what's happening out there?

11 THE MARSHAL: Yes. We have three that
12 have issues. You want their names and their
13 hardship?

14 THE COURT: Sure. Why not?

15 THE MARSHAL: The first will be page 3,
16 badge number is 11-1155. First of Emilie. She
17 works graveyard. She said she had a hardship of
18 focusing and possibly not paying attention because
19 she works at night and has to come in in the
20 morning. She works at the Wynn, security at the
21 Wynn.

22 The next whenever you're ready.

23 THE COURT: Who is the next one?

24 THE MARSHAL: Page 4, Badge No. 11-1223,
25 first a Jasmine Carrillo. She said she has fever

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1 now. I'm not sure if that was from overnight, but
2 she hasn't stated she had fever any other time.

3 And the last as of now, page 5, Badge
4 No. 11-1328, first of Sarah. And she stated,
5 like, one of the witnesses is her doctor. So she
6 wasn't sure if it's the same name -- I mean, the
7 same person, but they bear the same name.

8 THE COURT: Do you know which name?

9 THE MARSHAL: She said it was one of the
10 lady doctors. I didn't get the name.

11 THE COURT: Okay. Thank you, Jerry. Is
12 everyone present?

13 THE MARSHAL: As of five minutes ago,
14 no. I'll double-check now.

15 THE COURT: Anything we want to talk
16 about in the meantime?

17 MR. KEMP: Judge, I think Wynn pays four
18 or six weeks.

19 MR. ROBERTS: Right. I did notice she
20 looked tired yesterday. Maybe she doesn't know
21 that she can be excused for jury service and be
22 paid for a while.

23 THE COURT: I haven't phoned the Wynn,
24 and I don't know what their policy is.

25 MR. KEMP: I think it's four to six

1 weeks, but we can check.

2 MR. ROBERTS: I've had Wynn jurors
3 before for six-week trials.

4 MR. KEMP: Plus, she's 21, Your Honor.
5 I mean, she should be able to survive anything.

6 THE COURT: I agree. I think you would
7 agree, a person can stay up all night and read and
8 do whatever I need to.

9 MR. KEMP: This is what I call escape
10 from Alcatraz day.

11 THE COURT: I know. This is like a
12 flight. I say we keep them here unless it's
13 something that's, you know, absolutely within the
14 statute that's an exemption, pretty much.

15 MR. KEMP: Judge, I had an idea.
16 Usually at the end of the day, we do the
17 hardships, the people that want to talk to us.
18 Maybe we can do those at the beginning of the day
19 on Tuesday. And that buys time for the juror
20 who's got the relatively low H1AC level to go to
21 Nellis.

22 THE COURT: Right.

23 MR. ROBERTS: That's a good idea.

24 MR. KEMP: As optimistic -- even being
25 optimistic, I don't see us getting done today

1 because Mr. Roberts hasn't started yet and we've
2 got four new jurors coming in. Unless you guys
3 want to stipulate to the panel.

4 MR. ROBERTS: I told you we'd stipulate
5 and let you sit down and I'll get it done today.

6 MR. KEMP: My first offer looks better
7 every day; right?

8 MR. ROBERTS: Yes, it does. It does.
9 Next time.

10 (Discussion off the record.)

11 THE MARSHAL: All rise. All the jurors
12 are present, Your Honor.

13 THE COURT: Thank you.

14 THE MARSHAL: Please be seated. Come to
15 order.

16 THE COURT: Please take roll call.

17 THE CLERK: Badge 11-0798, Byron Lennon.

18 PROSPECTIVE JUROR NO. 11-0798: Here.

19 THE COURT: 11-0802, John Toston.

20 PROSPECTIVE JUROR NO. 11-0802: Here.

21 THE COURT: 11-0830, Michelle Peligro.

22 PROSPECTIVE JUROR NO. 11-0830: Here.

23 THE CLERK: 11-0384, Joseph Dail.

24 PROSPECTIVE JUROR NO. 11-0830: Here.

25 MR. CHRISTIANSEN: 11-0844, Raphael

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1 Javier.

2 PROSPECTIVE JUROR NO. 11-0844: Here.

3 THE CLERK: 11-0853, Dylan Domingo.

4 PROSPECTIVE JUROR NO. 11-0853: Here.

5 THE CLERK: 11-0860, Aberash Getaneh.

6 PROSPECTIVE JUROR NO. 11-0860: Here.

7 THE CLERK: 11-0867, Jenny Gagliano.

8 PROSPECTIVE JUROR NO. 11-0867: Here.

9 THE CLERK: 11-0877, Dorothy Lee.

10 PROSPECTIVE JUROR NO. 11-0877: Here.

11 THE CLERK: 11-0879, Vanessa Rodriguez.

12 PROSPECTIVE JUROR NO. 11-0879: Here.

13 THE CLERK: 11-0880, William

14 Richardson -- oh, I'm sorry.

15 11-0885, Constance Brown.

16 PROSPECTIVE JUROR NO. 11-0885: Here.

17 THE CLERK: 11-0902, Sherry Hall.

18 PROSPECTIVE JUROR NO. 11-0902: Here.

19 THE CLERK: 11-0915, Ruth McLain.

20 PROSPECTIVE JUROR NO. 11-0915: Here.

21 THE CLERK: 11-0926, Enrique Tuquero.

22 PROSPECTIVE JUROR NO. 11-0926: Here.

23 THE CLERK: 11-0937, Raquel Romero.

24 PROSPECTIVE JUROR NO. 11-0937: Here.

25 THE CLERK: 11-0940, Caroline Graf.

1 PROSPECTIVE JUROR NO. 11-0940: Here.
2 THE CLERK: 11-0975, Jonathan Fortich.
3 PROSPECTIVE JUROR NO. 11-0975: Here.
4 THE CLERK: 11-0999, Janelle Reeves.
5 PROSPECTIVE JUROR NO. 11-0999: Here.
6 THE CLERK: 11-1035, Pamela
7 Phillips-Chong.
8 PROSPECTIVE JUROR NO. 11-1035: Here.
9 THE CLERK: 11-1047, Glenn Krieger.
10 PROSPECTIVE JUROR NO. 11-1047: Here.
11 THE CLERK: 11-1125, Michael Kaba.
12 PROSPECTIVE JUROR NO. 11-1125: Here.
13 THE CLERK: 11-1127, Gregg Stephens.
14 PROSPECTIVE JUROR NO. 11-1127: Here.
15 THE CLERK: 11-1155, Emilie Mosqueda.
16 PROSPECTIVE JUROR NO. 11-1155: Here.
17 THE CLERK: 11-1164, Kimberly Flores.
18 PROSPECTIVE JUROR NO. 11-1164: Here.
19 THE CLERK: 11-1174, Veronica Gutierrez.
20 PROSPECTIVE JUROR NO. 11-1174: Here.
21 THE CLERK: 11-1186, Ashley Vandevanter.
22 PROSPECTIVE JUROR NO. 11-1186: Here.
23 THE CLERK: 11-1193, Amie Turpin.
24 PROSPECTIVE JUROR NO. 11-1193: Here.
25 THE CLERK: 11-1199, Judy Sanderlin.

1 PROSPECTIVE JUROR NO. 11-1199: Here.
2 THE CLERK: 11-1255, April Hannewald.
3 PROSPECTIVE JUROR NO. 11-1255: Here.
4 THE CLERK: 11-1207, Hani Noshi.
5 PROSPECTIVE JUROR NO. 11-1207: Here.
6 THE CLERK: 11-1218, Iris Adachi.
7 PROSPECTIVE JUROR NO. 11-1218: Here.
8 THE CLERK: 11-1221, Sheri White.
9 PROSPECTIVE JUROR NO. 11-1221: Here.
10 THE CLERK: 11-1222, Carol Padilla.
11 PROSPECTIVE JUROR NO. 11-1222: Here.
12 THE CLERK: 11-1223, Jasmine Carrillo.
13 PROSPECTIVE JUROR NO. 11-1223: Here.
14 THE CLERK: 11-1229, Jaymi Johnson.
15 PROSPECTIVE JUROR NO. 11-1229: Here.
16 THE CLERK: 11-1246, Brian Stokes.
17 PROSPECTIVE JUROR NO. 11-1246: Here.
18 THE CLERK: 11-1255, Heidi Wooters.
19 PROSPECTIVE JUROR NO. 11-1255: Here.
20 THE CLERK: 11-1256, Robert Summerfield.
21 PROSPECTIVE JUROR NO. 11-1256: Here.
22 THE CLERK: 11-1268, Katherine Beswick.
23 PROSPECTIVE JUROR NO. 11-1268: Here.
24 THE CLERK: 11-1278, Elizabeth Mundo.
25 PROSPECTIVE JUROR NO. 11-1278: Here.

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1 THE CLERK: 11-1293, Kim Schell.

2 PROSPECTIVE JUROR NO. 11-1293: Here.

3 THE CLERK: 11-1296, Alan Castle.

4 PROSPECTIVE JUROR NO. 11-1296: Here.

5 THE CLERK: 11-1297, Anna Campbell.

6 PROSPECTIVE JUROR NO. 11-1297: Here.

7 THE CLERK: 11-1314, Pragnit Thakor.

8 PROSPECTIVE JUROR NO. 11-1314: Here.

9 THE CLERK: 11-1328, Sarah Oelke.

10 PROSPECTIVE JUROR NO. 11-1328: Here.

11 THE CLERK: 11-1336, E. Lemons.

12 PROSPECTIVE JUROR NO. 11-1336: Here.

13 THE CLERK: 11-1351, Kenneth Prince.

14 PROSPECTIVE JUROR NO. 11-1351: Here.

15 THE CLERK: 11-1358, Adam Elliott.

16 PROSPECTIVE JUROR NO. 11-1358: Here.

17 THE CLERK: And 11-1373, Chante Webb.

18 PROSPECTIVE JUROR NO. 11-1373: Here.

19 THE COURT: Is there anyone present

20 whose name has not been called?

21 Okay. Do the parties stipulate to the

22 presence of the jury?

23 MR. KEMP: Yes, Your Honor.

24 MR. ROBERTS: Yes, Your Honor.

25 THE COURT: Madam Clerk, will you please

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1 seat the jurors.

2 THE CLERK: Badge 11-1174, Veronica
3 Gutierrez, in Seat 15.

4 11-1186, Ashley Vandevanter, in Seat 25.

5 11-1193, Amie Turpin, in Seat 14.

6 And 11-1199, Judy Sanderlin, in Seat 12.

7 THE COURT: Good morning, ladies and
8 gentlemen.

9 IN UNISON: Good morning.

10 THE COURT: Welcome back this morning.
11 Thank you very much for your service and for being
12 here. I'm going to start with the questions to
13 the jurors that have just been seated. Okay?

14 First, does any one of you have any
15 difficulty understanding the English language?

16 No positive answer to that.

17 Are any of you acquainted with or
18 recognize any of the attorneys involved in this
19 case?

20 Yes. Your name and your badge number,
21 please.

22 PROSPECTIVE JUROR NO. 11-1199: Judy
23 Sanderlin, Badge No. 11-1199.

24 Dan Polsenberg, co-counsel for defense,
25 my younger sister is his legal secretary.

1 I also used to work for Lewis & Roca,
2 which is the firm he works for, about seven years
3 ago. And the managing shareholder I work for now,
4 Tony Martin, at my new law firm, he came from
5 Lewis & Roca as well.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR NO. 11-1199: You're
8 welcome.

9 THE COURT: Are any of you acquainted
10 with or recognize the name of any of the witnesses
11 who were identified in the questionnaire?

12 I show no show of hands.

13 Are any of you acquainted with or
14 recognize any of the parties in the case?

15 No show of hands.

16 Are any of the people, the attorneys or
17 parties, obligated to you in any way or are you
18 obligated to them?

19 Okay. No show of hands.

20 Do any of you know any other member of
21 the jury panel?

22 Okay.

23 Understanding that this is going to be a
24 case that lasts approximately four weeks after
25 this week, based on the previous schedule that

1 I've indicated, would anyone have a physical or
2 medical hardship serving on this jury?

3 No hands.

4 All right. Is there anyone who feels
5 that, for some other reason, serving on this jury
6 would present them with a severe or undue
7 hardship?

8 No hands have been raised. Okay.

9 Let's see. Have any of you ever been
10 involved in automobile accident or any type of
11 traffic accident?

12 Okay. We'll start with you, please.

13 Your name and badge number.

14 PROSPECTIVE JUROR NO. 11-1199: Judy
15 Sanderlin, 1199.

16 THE COURT: Please describe -- did you
17 suffer any injuries?

18 PROSPECTIVE JUROR NO. 11-1199: I didn't
19 suffer any injuries. It was when I was 19 years
20 old, my car rolled and wrapped around a tree. So
21 I was in an accident.

22 THE COURT: Okay. What caused that
23 accident?

24 PROSPECTIVE JUROR NO. 11-1199: I was --
25 I had been drinking, yeah. So I had to go to

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1 court and everything for that.

2 THE COURT: All right. Do you think
3 that the outcome was fair, or what did you
4 think --

5 PROSPECTIVE JUROR NO. 11-1199: I do.

6 THE COURT: Thank you. Will you please
7 pass that to Ms. Turpin.

8 Good morning. Your name and badge
9 number.

10 PROSPECTIVE JUROR NO. 11-1193: Good
11 morning. Amie Turpin, 11-1193.

12 THE COURT: Okay. Very good.

13 PROSPECTIVE JUROR NO. 11-1193: I was
14 crossing the street when I was in grade school and
15 got hit by a passing car after I got off the
16 school bus. So no --

17 THE COURT: Injuries?

18 PROSPECTIVE JUROR NO. 11-1193: The car
19 broke my hand because it hit my hand when I was
20 crossing, but that was it.

21 THE COURT: Was there a lawsuit
22 involved?

23 PROSPECTIVE JUROR NO. 11-1193: No.

24 THE COURT: All right. Thank you.

25 Next.

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1 PROSPECTIVE JUROR NO. 11-1174: Veronica
2 Gutierrez, Badge 11-1174.

3 When I was in high school, I used to
4 take public transportation, so I was on a bus, and
5 it did hit another car.

6 THE COURT: Okay. And did you
7 personally suffer any injuries?

8 PROSPECTIVE JUROR NO. 11-1174: No.

9 THE COURT: Did the person who was hit
10 by the car suffer injuries -- or the bus? Excuse
11 me.

12 PROSPECTIVE JUROR NO. 11-1174: I'm not
13 sure. It didn't look like a really bad accident,
14 but both drivers were trying to cut each other off
15 and the bus kind of, like, swerved to try to,
16 like, not have them cut off, and he hit them.

17 THE COURT: Okay. Thank you.

18 Was there anyone else? You raised your
19 hand as well. Your name and your badge number,
20 please.

21 PROSPECTIVE JUROR NO. 11-1186: Ashley
22 Vandevanter, 11-1186.

23 I was in a fender bender at the age of
24 17. I was at fault. It was not injury-related.
25 And I had an inclement weather, icy condition,

1 where my vehicle went off the road and flipped,
2 but there was only whiplash.

3 THE COURT: I'm sorry. The last one?

4 PROSPECTIVE JUROR NO. 11-1186: Only
5 whiplash.

6 THE COURT: Okay. Thank you. Was there
7 a lawsuit involved?

8 PROSPECTIVE JUROR NO. 11-1186: No.

9 THE COURT: Okay. Thank you. Let's
10 see. All right.

11 We'll start with you. How long have you
12 lived in Las Vegas?

13 PROSPECTIVE JUROR NO. 11-1186:
14 Currently, for three and a half years. I lived in
15 Las Vegas previously.

16 THE COURT: All right. How long?

17 PROSPECTIVE JUROR NO. 11-1186:
18 Previously, for three years.

19 THE COURT: Okay. What area of work are
20 you in?

21 PROSPECTIVE JUROR NO. 11-1186: I'm a
22 teacher.

23 THE COURT: Okay. And what grades or
24 what subjects do you teach?

25 PROSPECTIVE JUROR NO. 11-1186: I teach

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1 kindergarten, first and second grade. It's a
2 self-contained program called life skills. I
3 teach students with mild to moderate disabilities.

4 THE COURT: You've been an educator for
5 how many years?

6 PROSPECTIVE JUROR NO. 11-1186: Since
7 2005.

8 THE COURT: Are you married, or do you
9 have a significant other?

10 PROSPECTIVE JUROR NO. 11-1186: I am
11 legally married but separated, in the process of
12 divorce.

13 THE COURT: Okay. And your spouse, what
14 area of work is your spouse in?

15 PROSPECTIVE JUROR NO. 11-1186: He is a
16 service foreman for a crane company.

17 THE COURT: Okay. And has he been
18 employed in any other types of work?

19 PROSPECTIVE JUROR NO. 11-1186: Yes.
20 His father owns a construction company, so he has
21 worked for his father. And he was a sheriff's
22 deputy for Eureka County, I believe, and also a
23 corrections officer for Ely Prison.

24 THE COURT: Do you have children?

25 PROSPECTIVE JUROR NO. 11-1186: I do.

1 THE COURT: How old?

2 PROSPECTIVE JUROR NO. 11-1186: One,
3 six, and seven.

4 THE COURT: Have you ever served as a
5 juror before?

6 PROSPECTIVE JUROR NO. 11-1186: No.

7 THE COURT: Thank you. If you'll pass
8 the mic back to Ms. Gutierrez.

9 Your name and badge number.

10 PROSPECTIVE JUROR NO. 11-1174: Veronica
11 Gutierrez, Badge 11-1174.

12 THE COURT: How long have you lived in
13 Las Vegas?

14 PROSPECTIVE JUROR NO. 11-1174: Four
15 years.

16 THE COURT: And before that?

17 PROSPECTIVE JUROR NO. 11-1174: A place
18 called Willowbrook. It's L.A. County.

19 THE COURT: And what area of work are
20 you in?

21 PROSPECTIVE JUROR NO. 11-1174:
22 Administrative and financial.

23 THE COURT: In what type of a company?

24 PROSPECTIVE JUROR NO. 11-1174: It's a
25 production company. We build scenery and stage

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1 for the shows on the Strip.

2 THE COURT: How long have you been in
3 that position?

4 PROSPECTIVE JUROR NO. 11-1174: Four
5 years.

6 THE COURT: And before that?

7 PROSPECTIVE JUROR NO. 11-1174: I was in
8 California, and I was a billing administrator. I
9 did invoicing.

10 THE COURT: Okay. I'd like you to speak
11 a little bit louder. Okay? Thank you.

12 All right. Are you married, or do you
13 have a significant other?

14 PROSPECTIVE JUROR NO. 11-1174: Yes, I'm
15 married.

16 THE COURT: All right. And what does
17 your spouse do?

18 PROSPECTIVE JUROR NO. 11-1174: He works
19 for a company named Airgas. They do specialty
20 gases, medical, oxygen, the CO2 that goes in the
21 vending machine for the soda, stuff like that.

22 THE COURT: Okay. How long has he been
23 employed there?

24 PROSPECTIVE JUROR NO. 11-1174: Like, 14
25 years.

1 THE COURT: Okay. And before that?

2 PROSPECTIVE JUROR NO. 11-1174: Before
3 that he was a security guard supervisor in
4 California.

5 THE COURT: What type of industry?

6 PROSPECTIVE JUROR NO. 11-1174:
7 Security. Like, the security guards that you see,
8 like the ones that you have downstairs.

9 THE COURT: Was he in the court? Was it
10 in retail? Was it in a company?

11 PROSPECTIVE JUROR NO. 11-1174: It was a
12 company. It was a company, and they did, like,
13 different places, like Vons or warehouses.

14 THE COURT: Okay. Thank you. Do you
15 have children?

16 PROSPECTIVE JUROR NO. 11-1174: Yes.

17 THE COURT: How old?

18 PROSPECTIVE JUROR NO. 11-1174: I have a
19 19-year-old daughter.

20 THE COURT: What area of work or
21 education is your daughter in?

22 PROSPECTIVE JUROR NO. 11-1174: Retail,
23 I would say. She works for a company called Go
24 Wireless. She's a sales consultant.

25 THE COURT: Has she worked in any other

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1 area?

2 PROSPECTIVE JUROR NO. 11-1174: Yes.

3 She worked at In-N-Out.

4 THE COURT: Is she in school?

5 PROSPECTIVE JUROR NO. 11-1174: No,
6 she's not.

7 THE COURT: Have you ever served as
8 juror before?

9 PROSPECTIVE JUROR NO. 11-1174: Yes, I
10 have.

11 THE COURT: And was that case civil or
12 criminal?

13 PROSPECTIVE JUROR NO. 11-1174: I
14 honestly don't remember. I was selected for the
15 jury, but on day one, they reached an agreement.
16 So I never actually --

17 THE COURT: They settled. All right.
18 Very good. Thank you. You can pass the mic on.

19 Your name and badge number, please.

20 PROSPECTIVE JUROR NO. 11-1193: Amie
21 Turpin, 11-1193.

22 THE COURT: How long have you lived in
23 the Las Vegas area?

24 PROSPECTIVE JUROR NO. 11-1193: 18
25 years.

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1 THE COURT: All right. Before that?

2 PROSPECTIVE JUROR NO. 11-1193:

3 Colorado.

4 THE COURT: And what area of work are
5 you in?

6 PROSPECTIVE JUROR NO. 11-1193: I work
7 for an overseas manufacturing company. I'm the
8 director of administrative operations.

9 THE COURT: How long have you worked in
10 this area?

11 PROSPECTIVE JUROR NO. 11-1193: 18
12 years.

13 THE COURT: Okay. Very good.
14 Before that?

15 PROSPECTIVE JUROR NO. 11-1193: I worked
16 for a real estate agency in Colorado before I
17 moved here.

18 THE COURT: All right. Are you married
19 or do you have a significant other?

20 PROSPECTIVE JUROR NO. 11-1193: I do.

21 THE COURT: Okay. And what area of work
22 is your spouse or significant --

23 PROSPECTIVE JUROR NO. 11-1193: Sales.

24 THE COURT: What type of sales?

25 PROSPECTIVE JUROR NO. 11-1193:

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1 Automotive sales.

2 THE COURT: Okay. How long?

3 PROSPECTIVE JUROR NO. 11-1193: Forever.

4 18 years.

5 THE COURT: Pardon me?

6 PROSPECTIVE JUROR NO. 11-1193: 18

7 years.

8 THE COURT: Okay. What about before
9 that?

10 PROSPECTIVE JUROR NO. 11-1193: He was
11 still in the same industry.

12 THE COURT: Okay. Very good. Do you
13 have children?

14 PROSPECTIVE JUROR NO. 11-1193: No.

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

17 PROSPECTIVE JUROR NO. 11-1193: Yes.

18 THE COURT: Okay. And was this case --
19 once or more?

20 PROSPECTIVE JUROR NO. 11-1193: I've
21 only served once.

22 THE COURT: Okay. Was the case civil or
23 criminal?

24 PROSPECTIVE JUROR NO. 11-1193: Civil.

25 THE COURT: All right. Without telling

1 us what the verdict was, did the case reach a
2 verdict?

3 PROSPECTIVE JUROR NO. 11-1193: Yes.

4 THE COURT: Okay. And were you the
5 foreperson?

6 PROSPECTIVE JUROR NO. 11-1193: No.

7 THE COURT: All right. Thank you very
8 much.

9 PROSPECTIVE JUROR NO. 11-1199: 11-1199,
10 Judy Sanderlin.

11 THE COURT: All right. How long have
12 you lived in the Las Vegas area?

13 PROSPECTIVE JUROR NO. 11-1199: 13
14 years.

15 THE COURT: Okay. And you've told us
16 what you do for a living, so you -- okay. Go
17 ahead and for the record just --

18 PROSPECTIVE JUROR NO. 11-1199: I'm a
19 paralegal assistant.

20 THE COURT: Okay. And --

21 PROSPECTIVE JUROR NO. 11-1199: And I go
22 to school at night to get my paralegal degree.

23 THE COURT: Okay. You need to speak
24 louder, please.

25 PROSPECTIVE JUROR NO. 11-1193: Okay. I

1 go to school at night.

2 THE COURT: What are you studying?

3 PROSPECTIVE JUROR NO. 11-1193:

4 Paralegal studies.

5 THE COURT: Okay. What area of work or
6 what area of the law?

7 PROSPECTIVE JUROR NO. 11-1193: Labor
8 and employment work.

9 THE COURT: Okay. All right. Are you
10 married or do you have a significant other?

11 PROSPECTIVE JUROR NO. 11-1199: I do
12 have a significant other. She's a student advisor
13 for UNLV.

14 THE COURT: Okay. Any specific type of
15 major or no?

16 PROSPECTIVE JUROR NO. 11-1199: She --
17 no. She advises all sorts of students. She got
18 her master's in art from UNLV.

19 THE COURT: And how long has she been in
20 that area?

21 PROSPECTIVE JUROR NO. 11-1199: She for
22 the past four years has worked for the university;
23 but for the advising, it's been less than a year
24 now.

25 THE COURT: Okay. And before that, what

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1 area of work was she in?

2 PROSPECTIVE JUROR NO. 11-1199: She
3 didn't. She attended school.

4 THE COURT: Okay. Is she -- was she
5 employed in any --

6 PROSPECTIVE JUROR NO. 11-1199: No.
7 Well, she was an assistant. I guess they got paid
8 monthly to work with the professors.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 11-1199: So she
11 made money that way.

12 THE COURT: I see.

13 PROSPECTIVE JUROR NO. 11-1199: Yeah.

14 THE COURT: All right. Thank you. All
15 right. Thank you.

16 All right. Do you have any children?

17 PROSPECTIVE JUROR NO. 11-1199: I don't.

18 THE COURT: Okay. Have you ever served
19 as a juror before?

20 PROSPECTIVE JUROR NO. 11-1199: I have
21 not.

22 THE COURT: Okay. Thank you very much.

23 PROSPECTIVE JUROR NO. 11-1199: You're
24 welcome.

25 THE COURT: All right.

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1 Mr. Christiansen, would you like to proceed?

2 MR. CHRISTIANSEN: Yes, Your Honor.

3 THE COURT: Thank you.

4 MR. CHRISTIANSEN: Good morning, again.

5 So to start this morning, I'm going to
6 confine my question to the four ladies that came
7 up just this morning. Then I'll try to catch you
8 four up to where I left with everybody else and
9 hopefully finish up today.

10 Ms. Sanderlin?

11 PROSPECTIVE JUROR NO. 11-1199: Yes.

12 Yes.

13 MR. CHRISTIANSEN: Ms. Sanderlin, you
14 don't have to guess what my first question is;
15 right? You work for -- your sister works for
16 Mr. Polsenberg.

17 PROSPECTIVE JUROR NO. 11-1199: Yes, she
18 does.

19 MR. CHRISTIANSEN: All right. He is
20 employed by a law firm called Lewis & Roca?

21 PROSPECTIVE JUROR NO. 11-1199: Yes.

22 MR. CHRISTIANSEN: And you used to be
23 employed by Lewis & Roca?

24 PROSPECTIVE JUROR NO. 11-1199: I did.
25 Well, I worked for a company called Icon and we

1 were contracted at Lewis & Roca. So I was
2 physically there for a few years.

3 MR. CHRISTIANSEN: Gotcha. So you had
4 some ties where you got paid by Lewis & Roca
5 indirectly, maybe?

6 PROSPECTIVE JUROR NO. 11-1199: Our
7 shareholder that I work with now, he left to work
8 with Ogletree Deakins, and I left with him.

9 MR. CHRISTIANSEN: He used to be a
10 partner, I think, at Lewis & Roca or --

11 PROSPECTIVE JUROR NO. 11-1199: I'm not
12 sure if he was a partner; but his wife, Suzanne
13 Martin, him, and Joe Garcia are all shareholders
14 at my new firm, and they all came from Lewis &
15 Roca.

16 MR. CHRISTIANSEN: So you have pretty
17 strong ties to one of the law firms for defendant
18 Motor Coach Industries.

19 PROSPECTIVE JUROR NO. 11-1199: Yes, I
20 do.

21 THE CLERK: How long have you known
22 Mr. Polsenberg?

23 PROSPECTIVE JUROR NO. 11-1199:
24 Personally, I haven't. I only knew of him through
25 my sister when they worked together, but I know of

1 him.

2 MR. CHRISTIANSEN: And let me ask it to
3 you bluntly. You know the -- you know you have
4 ties to a lawyer in the case.

5 PROSPECTIVE JUROR NO. 11-1199: Right.

6 MR. CHRISTIANSEN: I probably -- well,
7 so do you have leanings towards that lawyer?

8 PROSPECTIVE JUROR NO. 11-1199: No.

9 MR. CHRISTIANSEN: It's sort of ringing
10 a little bit.

11 PROSPECTIVE JUROR NO. 11-1199: No.

12 MR. CHRISTIANSEN: If that lawyer came
13 in and argued or said something, would you tend to
14 believe what he says more or less than any other
15 lawyer?

16 PROSPECTIVE JUROR NO. 11-1199: No.

17 MR. CHRISTIANSEN: All right. You
18 didn't know Dan personally?

19 PROSPECTIVE JUROR NO. 11-1199:

20 Personally, no, I didn't know him.

21 MR. CHRISTIANSEN: And how about your
22 employers who used to be partners or worked with
23 him?

24 PROSPECTIVE JUROR NO. 11-1199: I'm sure
25 they know him personally.

1 MR. CHRISTIANSEN: And do they still
2 associate with him?

3 PROSPECTIVE JUROR NO. 11-1199: I'm not
4 sure. We do a lot of things with Lewis & Roca.

5 THE COURT: Excuse me. You need to
6 speak louder.

7 PROSPECTIVE JUROR NO. 11-1199: Sorry.
8 I'm not sure personally.

9 MR. CHRISTIANSEN: I think what you said
10 that kind of got drowned out is you guys still do
11 lots of things with Lewis & Roca?

12 PROSPECTIVE JUROR NO. 11-1199: Correct.
13 We're friendly with them.

14 MR. CHRISTIANSEN: Have cases in common?

15 PROSPECTIVE JUROR NO. 11-1199: I'm not
16 sure.

17 MR. CHRISTIANSEN: What kind of things
18 does your current firm, this Ogletree something --
19 I --

20 PROSPECTIVE JUROR NO. 11-1199: Ogletree
21 Deakins. Well, we'll have lunch with the people
22 we know from over there, stuff like that. But I
23 mean --

24 MR. CHRISTIANSEN: Socialize with people
25 at Lewis & Roca?

1 PROSPECTIVE JUROR NO. 11-1199: Yeah.
2 Sometimes the office manager comes over and hangs
3 out.

4 MR. CHRISTIANSEN: Anything more than
5 socialize?

6 PROSPECTIVE JUROR NO. 11-1199: No, not
7 that I'm aware of.

8 MR. CHRISTIANSEN: Do you still have
9 friends besides your sister that work at Lewis &
10 Roca.

11 PROSPECTIVE JUROR NO. 11-1199: Yes.

12 MR. CHRISTIANSEN: And your sister works
13 directly for Dan?

14 PROSPECTIVE JUROR NO. 11-1199: Correct.
15 She's his secretary.

16 MR. CHRISTIANSEN: And he's one of the
17 lawyers in this case.

18 PROSPECTIVE JUROR NO. 11-1199: Yes.

19 MR. CHRISTIANSEN: Do you understand --

20 PROSPECTIVE JUROR NO. 11-1199: I did
21 write that on my questionnaire.

22 MR. CHRISTIANSEN: You did? I missed
23 that.

24 PROSPECTIVE JUROR NO. 11-1199: I did.

25 MR. CHRISTIANSEN: I'm sorry. Maybe you

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1 did.

2 PROSPECTIVE JUROR NO. 11-1199: I wrote
3 it at the top of one of the pages where it said
4 "Do you know any of these lawyers?"

5 MR. CHRISTIANSEN: You sure did, and I
6 missed it. And not only do you know
7 Mr. Polsenberg, but you know other partners at
8 Lewis & Roca?

9 PROSPECTIVE JUROR NO. 11-1199: Correct.

10 MR. CHRISTIANSEN: Like Craig?

11 PROSPECTIVE JUROR NO. 11-1199: Vaughan.

12 MR. CHRISTIANSEN: You know Joel?

13 PROSPECTIVE JUROR NO. 11-1199: Joel,
14 yes.

15 MR. CHRISTIANSEN: Okay. He's another
16 one of the lawyers for MCI in this case?

17 PROSPECTIVE JUROR NO. 11-1199: I did
18 not -- I wasn't aware of that.

19 MR. CHRISTIANSEN: And that's
20 Mr. Henriod; right?

21 PROSPECTIVE JUROR NO. 11-1199: Yes.

22 MR. CHRISTIANSEN: How well do you know
23 Joel?

24 PROSPECTIVE JUROR NO. 11-1199: Not very
25 well. Just made copies for him.

1 MR. CHRISTIANSEN: Socially?

2 PROSPECTIVE JUROR NO. 11-1199: No.

3 MR. CHRISTIANSEN: Just at work?

4 PROSPECTIVE JUROR NO. 11-1199: Yeah,
5 when I used to work there.

6 MR. CHRISTIANSEN: I guess the question
7 to you is, can you unequivocally tell us that that
8 relationship, both business and personal, because
9 it's your sister and employee -- ex-employer, will
10 not infect your deliberations if selected as a
11 juror in this case?

12 PROSPECTIVE JUROR NO. 11-1199: No, it
13 won't sway me either way.

14 MR. CHRISTIANSEN: Okay. While I've got
15 you, let me stick to my notes from your
16 questionnaire.

17 Well, just -- before I do that, the four
18 of you -- and you can pass the mic around -- you
19 heard ad nauseam the explanation for what goes on
20 here in court in terms of lawyers and how we have
21 disputes amongst each other via objections. Do
22 you guys remember that? You sort of got to see
23 some of it.

24 When Mr. Roberts may or may not like a
25 question I say, he objects. Sometimes we go to

1 the bench. Everybody okay with that process?
2 Anybody not okay with the process? How about
3 that? I'll make it easier. Raise your hand if
4 you're not okay with it.

5 Anybody have a problem with the judge
6 turning on the white noise and us doing stuff that
7 you don't get to hear at the bench? If you do,
8 raise your hand. No hands are raised.

9 Anybody have a problem with the process
10 via jurors getting to ask questions in writing
11 that then get passed from the marshal to the judge
12 and the judge, just like she decides whether our
13 questions are appropriate, she decides whether
14 your questions are appropriate? Anybody not able
15 to do that of the four of you? You all could do
16 it? Okay.

17 Everybody remember my description of
18 Lady Justice, the statue and blindfold? Anybody
19 disagree with the notion that justice should be
20 blind? Anybody disagree with that?
21 Ms. Gutierrez? You want to hand that mic down,
22 Ms. Sanderlin.

23 PROSPECTIVE JUROR NO. 11-1174: Veronica
24 Gutierrez, Badge 11-1174.

25 MR. CHRISTIANSEN: Are you okay with the

1 notion of justice being blind?

2 PROSPECTIVE JUROR NO. 11-1174: I
3 believe it should be. I don't think it really is.

4 MR. CHRISTIANSEN: Okay. You might -- I
5 read your questionnaire and you had some comments
6 on there that pointed the questions toward you,
7 Ms. Gutierrez. Tell me what you mean by that.
8 And remember, there's no wrong answers. There's
9 just honest answers.

10 PROSPECTIVE JUROR NO. 11-1174: It is
11 supposed to be blind. We have certain laws in
12 place to make sure that everybody gets treated
13 fairly. It does not always happen because,
14 unfortunately, the people that are supposed to
15 apply and uphold the law are human, and we do
16 bring our biases into the courtroom.

17 MR. CHRISTIANSEN: Okay. In your
18 questionnaire you wrote something along the
19 lines -- I'm trying to find it here -- of you're
20 fair but strict and believe that two wrongs don't
21 make a right. Just because you got hurt doesn't
22 mean you're automatically entitled to
23 compensation.

24 PROSPECTIVE JUROR NO. 11-1174: That's
25 correct.

1 MR. CHRISTIANSEN: Help me understand
2 what you meant.

3 PROSPECTIVE JUROR NO. 11-1174: Well, I
4 think Mr. Garibay used the example that I had
5 yesterday. But that's if, you know, you're
6 jaywalking and you get run over, I mean, you were
7 at fault. Regardless if the car had a defect or
8 not, had brakes or not, it does not matter. You
9 were wrong to begin with. So you should not be
10 rewarded if you broke the rules first.

11 MR. CHRISTIANSEN: Okay. Her Honor's
12 going to tell you what the law is in this case,
13 but this is a case about whether or not, one way
14 or another the bus was defective and whether that
15 defect or defects -- there's more than one
16 alleged -- caused the death of Dr. Khiabani. This
17 isn't about whether Dr. Khiabani did something or
18 the bus driver did -- it's not a car wreck case.
19 Make sense?

20 PROSPECTIVE JUROR NO. 11-1174: Yes.

21 MR. CHRISTIANSEN: Okay. So
22 Mr. Garibay, the gentleman in the -- that's the
23 hot seat. You got the lucky or unlucky 15. A lot
24 of people going in and out of that seat, seems
25 like.

1 Mr. Garibay expressed some concerns
2 about the way the process works and, ultimately,
3 you know, said he didn't think -- he was biased is
4 what he ultimately said to me. Is that sort of
5 what you're trying to point out to me?

6 PROSPECTIVE JUROR NO. 11-1174: Kind of,
7 yes. I think I would not have a problem with
8 listening to everything and, I guess, figuring out
9 if they were at fault or not; but when it comes
10 to, like, the money, I would have a problem there.

11 MR. CHRISTIANSEN: Right. And I got
12 that from reading your questionnaire. You lean
13 towards a defendant or defense -- a company that's
14 been sued, you lean that way as opposed to --
15 you're biased in their favor as opposed to the
16 person who's been hurt.

17 PROSPECTIVE JUROR NO. 11-1174: Not
18 necessarily. I wouldn't say it that way, although
19 it does appear that way in this case. It's just
20 that I don't believe that you can punish somebody
21 by rewarding somebody else. If you're going to
22 punish the person, you do a punishment for that
23 person or company, but it shouldn't be by
24 rewarding somebody else.

25 MR. CHRISTIANSEN: So you're not going

1 to ever be able to award a big monetary award
2 because of these beliefs.

3 PROSPECTIVE JUROR NO. 11-1174: No.
4 Sorry.

5 MR. CHRISTIANSEN: You just don't sort
6 of believe that making a monetary reward is a
7 right way to fix a wrong. That's kind of what --

8 PROSPECTIVE JUROR NO. 11-1174: That's
9 correct.

10 MR. CHRISTIANSEN: That's kind of what
11 you wrote.

12 PROSPECTIVE JUROR NO. 11-1174: That's
13 correct.

14 MR. CHRISTIANSEN: And that's a belief
15 you've had for a long time. Fair?

16 PROSPECTIVE JUROR NO. 11-1174: It is
17 fair.

18 MR. CHRISTIANSEN: I'm not going to
19 change your belief with any funny lawyer
20 questions?

21 PROSPECTIVE JUROR NO. 11-1174: Probably
22 not.

23 MR. CHRISTIANSEN: And you'll probably
24 be a great juror in a criminal case?

25 PROSPECTIVE JUROR NO. 11-1174: I

1 believe so. I just don't think in a civil case,
2 where money is involved, that I would be good.

3 MR. CHRISTIANSEN: You can't be fair on
4 that particular issue?

5 PROSPECTIVE JUROR NO. 11-1174: I can be
6 fair but not when it comes to actually awarding a
7 money settlement. I would not be able to,
8 especially if it's punitive damages and not -- I
9 mean, I believe that if you suffer a loss, you
10 should be compensated and compensated fairly.
11 When you made the statement of millions of
12 dollars, to me already it's a red flag to me,
13 like, how is that fair already.

14 MR. CHRISTIANSEN: Right. So you're
15 already leaning -- it's okay. You're already
16 leaning or biased for the defendant.

17 PROSPECTIVE JUROR NO. 11-1174: I think
18 it's more that I'm biased toward you in a negative
19 way.

20 MR. CHRISTIANSEN: So is everybody else
21 at this stage.

22 PROSPECTIVE JUROR NO. 11-1174: Well,
23 honestly, it's just that I have no feelings
24 towards the defendant or the company, MCI, or, you
25 know, anybody sitting on that side of the

1 courtroom, basically. But there's certain things
2 that you said that to me already, like, they just
3 kind of triggered certain things.

4 MR. CHRISTIANSEN: And what is
5 triggering is a bias against what would be my
6 clients, ultimately.

7 PROSPECTIVE JUROR NO. 11-1174: That's
8 correct.

9 MR. CHRISTIANSEN: You just couldn't be
10 fair to them in this case?

11 PROSPECTIVE JUROR NO. 11-1174: I don't
12 think I could be fair to you.

13 MR. CHRISTIANSEN: I appreciate your
14 candor, ma'am.

15 May we approach, Your Honor?

16 THE COURT: Yes.

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

19 THE COURT: Ms. Sanderlin and
20 Ms. Gutierrez, I want to thank you for your
21 service, and I'm going to excuse both of you. I'd
22 like you to go to the third floor to jury
23 services, please. Have a great day, great
24 weekend.

25 THE CLERK: Badge 11-1200, April

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1 Hannewald, in Seat 15.

2 Badge 11-1207, Hani Noshi, in Seat 12.

3 THE COURT: Good morning. You could
4 probably recite these by now. Do any of the two
5 of you have difficulty understanding the English
6 language? No show of hands. Thank you. All
7 right.

8 Are you acquainted with or recognize
9 either or any of the attorneys involved in this
10 case?

11 PROSPECTIVE JUROR NO. 11-1200: No.

12 PROSPECTIVE JUROR NO. 11-1207: No.

13 THE COURT: The answer's no.

14 Are you acquainted with or recognize any
15 of the witnesses who were identified in the
16 questionnaire? Okay. No.

17 Are any of you acquainted with or
18 recognize any of the parties in the case? The
19 answer is no.

20 Next question: Are any of you in any
21 way obligated to any of the parties or any of the
22 attorneys in this case or are they obligated to
23 you in any way? That's no.

24 Do any of you know any of the other
25 members of the jury panel? No? Okay.

1 Oh, I forgot to ask the others. The
2 others that were seated a little while ago, do any
3 of you know me or any of the staff in
4 Department 14 that I identified earlier in this
5 case? Okay.

6 Understanding that this trial is going
7 to last approximately four more weeks, does
8 anyone -- and understanding the schedule that I
9 have informed you of before, does anyone have a
10 physical or medical hardship? Do any of you?
11 Okay.

12 What about would serving on this jury
13 cause anyone or any of the two of you a severe or
14 undue hardship? Okay. I'd like your badge
15 number, please, and your name.

16 PROSPECTIVE JUROR NO. 11-1207: Hani
17 Noshi, 11-1207.

18 THE COURT: Okay, Mr. Noshi. What is
19 that?

20 PROSPECTIVE JUROR NO. 11-1207: Just the
21 nature of my work, unfortunately. For my company,
22 I'm an engineering consultant. My specialty is
23 flood control. And in my company I'm the only one
24 at the engineering firm who can do this specific
25 task. And, Your Honor, you mentioned it's

1 foreseen to be four or five weeks.

2 And I know this will be very detrimental
3 to my company. And the way we're working, we have
4 a couple of projects a week that only me can work
5 on. And I know the company and I will be
6 suffering if we continued -- if I'm away for four
7 weeks. And I don't believe -- it will always be
8 in the back of my head while I'm here.

9 THE COURT: Okay. And, Mr. Noshi, what
10 happens when you go on vacation?

11 PROSPECTIVE JUROR NO. 11-1207:
12 Actually, we're planning, like, months ahead, and
13 I rarely go on vacation, especially in the last
14 couple of years because we've been very busy.

15 THE COURT: Okay. Thank you.

16 Have either of you ever been involved in
17 a car accident or any type of vehicular traffic
18 accident?

19 PROSPECTIVE JUROR NO. 11-1207: Yes,
20 just a fender bender, and there was no legal
21 action.

22 THE COURT: Were you injured?

23 PROSPECTIVE JUROR NO. 11-1207: No.

24 THE COURT: Thank you. Pass the mic,
25 please.

1 PROSPECTIVE JUROR NO. 11-1200: April
2 Hannewald, 11-1200.

3 I've been involved in a couple of fender
4 benders. One, I already had back problems. I was
5 on my way to the chiropractor and I was
6 rear-ended. So I got an unexpected settlement
7 from the guy's insurance company, but it was
8 nothing really major or long-lasting.

9 THE COURT: Okay. So do you think that
10 that was -- do you feel comfortable with the
11 resolution?

12 PROSPECTIVE JUROR NO. 11-1200: I was
13 pleasantly surprised, yes.

14 THE COURT: All right. As a juror,
15 you'll be asked to listen to witnesses, review
16 evidence, and make a determination based on the
17 facts. As I've indicated before, the jury is the
18 fact finders in a case, and the Court instructs
19 you on the law.

20 Some of you may disagree with how some
21 of our laws are written, and it would be a
22 violation of a juror's duty if he or she decided
23 to follow their personal feelings or thoughts on
24 the law instead of the instructions given by the
25 Court. And this goes to everyone that was just

1 seated today.

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

7 No hands are up. Okay.

8 Has everyone who's been seated today
9 heard about this case in the media or in any way?

10 Yes?

11 PROSPECTIVE JUROR NO. 11-1200: April
12 Hannewald, 11-1200.

13 I just remember hearing about it. I
14 read about it in the newspaper when it happened.

15 THE COURT: All right. Thank you. All
16 right.

17 Mr. Noshi? Your name and your badge
18 number, please.

19 PROSPECTIVE JUROR NO. 11-1200: Hani
20 Noshi, 11-1207.

21 Yes, Your Honor, I remember when it
22 happened. I heard it on the news, and it got my
23 interest because I live close by. Usually, I go
24 take walks where it happened, like, in the same
25 neighborhood.

1 THE COURT: Okay. Thank you.

2 Anyone else that's been seated today?

3 No. All right.

4 Is there anyone who's been seated today
5 who has such a sympathy, prejudice, or bias
6 relating to age, religion, race, gender, or
7 national origin that they feel it would affect
8 their ability to be open-minded, fair, and
9 impartial juror?

10 Okay. No.

11 Are there any of you who believe that,
12 for any other reason, you would be unable to be
13 fair and serve as a juror in this particular case?

14 Okay. That's a no.

15 Going to go to individual questions,
16 then, to the last two.

17 Mr. Noshi, your badge number, please.

18 PROSPECTIVE JUROR NO. 11-1207: 11-1207.

19 THE COURT: How long have you lived in
20 Las Vegas or the area?

21 PROSPECTIVE JUROR NO. 11-1207: 17
22 years.

23 THE COURT: Okay. And before that?

24 PROSPECTIVE JUROR NO. 11-1207: In
25 Louisiana, and a couple years in Asia. This is

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1 where I'm originally from. And a few years in
2 Colorado before that.

3 THE COURT: All right. And you've
4 mentioned that you are in engineering?

5 PROSPECTIVE JUROR NO. 11-1207: Yeah.

6 THE COURT: Please describe what area
7 and what your duties are and what you've focused
8 on.

9 PROSPECTIVE JUROR NO. 11-1207: I'm a
10 civil engineer. I work for a consulting firm --
11 engineering consulting firm. And I work
12 specifically with flood control and drainage,
13 like, do design for buildings or any property so
14 that, when they're constructed, they're flood
15 protected and safe against flooding.

16 THE COURT: Okay. And, in your work as
17 an engineer and during your profession, have you
18 ever focused in other areas of engineering?

19 PROSPECTIVE JUROR NO. 11-1207: Yeah, I
20 went through graduate school for my master's and
21 Ph.D. And the basis of it is hydraulic
22 engineering, working with fluids. And this is
23 where the engineering comes in place, just worked
24 with some wind tunnels and experiments and
25 research and stuff as a graduate student in

1 Colorado, Colorado State University.

2 THE COURT: Okay. All right. Let's
3 see. Are you married, or do you have a
4 significant other?

5 PROSPECTIVE JUROR NO. 11-1207: I don't
6 have a significant other, and I've been divorced
7 for, like, 15 years or so.

8 THE COURT: Now, your ex-spouse, what
9 area of work?

10 PROSPECTIVE JUROR NO. 11-1207: She's,
11 like, a paralegal in a law office, but I don't
12 remember actually the -- I think it's like ...

13 THE COURT: I'm sorry?

14 PROSPECTIVE JUROR NO. 11-1207: I don't
15 remember the law firm.

16 THE COURT: Is it a local law firm?

17 PROSPECTIVE JUROR NO. 11-1207: Yeah.

18 THE COURT: Do you know what area of the
19 law they practice or they focus on?

20 PROSPECTIVE JUROR NO. 11-1207: Not
21 really.

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

24 PROSPECTIVE JUROR NO. 11-1207: Yeah,
25 two. I have 21 and 24.

1 THE COURT: All right. What area of
2 work or education is your 24-year-old?

3 PROSPECTIVE JUROR NO. 11-1207: My
4 daughter is 24. She graduated from Colorado State
5 University two years ago, and she's working there
6 in Fort Collins, Colorado. And she works with,
7 like, special needs -- profitable organization for
8 special needs.

9 And my son is -- goes to school in
10 Northern Arizona University in Arizona.

11 THE COURT: What is his major?

12 PROSPECTIVE JUROR NO. 11-1207:
13 Business.

14 THE COURT: Okay. Thank you. Have you
15 ever served as a juror before?

16 PROSPECTIVE JUROR NO. 11-1207: No.

17 THE COURT: Okay. Thank you. Let's
18 pass the mic.

19 For the record, your name and badge
20 number, please.

21 PROSPECTIVE JUROR NO. 11-1200: April
22 Hannewald, 11-1200.

23 THE COURT: How long have you lived in
24 the Las Vegas area?

25 PROSPECTIVE JUROR NO. 11-1200: Just

1 short of 62 years, nothing prior.

2 THE COURT: Okay. All right. And what
3 do you do for a living or what work or area are
4 you in?

5 PROSPECTIVE JUROR NO. 11-1200: I'm
6 retired. I retired six years ago from the
7 mortgage industry.

8 THE COURT: Okay. So tell us about your
9 career in the mortgage industry. What was your
10 role and how long were you in that area?

11 PROSPECTIVE JUROR NO. 11-1200: I was in
12 that area my whole adult life -- or most of my
13 adult life, I guess, in all positions --
14 processing, originations, supervisor. I ended as
15 a corporate officer and a division manager of a
16 mortgage company.

17 THE COURT: What about before your adult
18 life? Did you have employment with this --

19 PROSPECTIVE JUROR NO. 11-1200: Yes. I
20 delivered newspapers for the Las Vegas
21 Review-Journal when I was 15. And I worked a
22 little bit in retail.

23 For one year during my career, I went
24 back to college to get teaching credentials and
25 taught fourth grade for the Clark County School

1 District, but I quickly went back to the business
2 world.

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

5 PROSPECTIVE JUROR NO. 11-1200: I am
6 married.

7 THE COURT: What area of work is your
8 spouse in?

9 PROSPECTIVE JUROR NO. 11-1200: My
10 husband is retired as well, and he was a realtor.

11 THE COURT: A realtor also? Did he do
12 the same type of work?

13 PROSPECTIVE JUROR NO. 11-1200: No. So
14 I was in mortgage; he worked for -- the latter
15 years, he worked for a homebuilder, Juliet
16 Properties, selling condominiums.

17 THE COURT: All right. And before that?

18 PROSPECTIVE JUROR NO. 11-1200: I think
19 he worked for another homebuilder. So he sold new
20 homes in Las Vegas. He moved to Las Vegas in
21 about 1990, and he sold new homes here. Prior to
22 that, he lived in Arizona, where he was in resale
23 real estate. Prior to that, like, a server while
24 he was in college.

25 THE COURT: Thank you. Do you have

1 children?

2 PROSPECTIVE JUROR NO. 11-1200: I have
3 two. I have a 38-year-old son and a 26-year-old
4 daughter.

5 THE COURT: All right. Your son, what
6 area of work is he in or what education or
7 background?

8 PROSPECTIVE JUROR NO. 11-1200: He is a
9 licensed home inspector here in Las Vegas.

10 THE COURT: A licensed home inspector?

11 PROSPECTIVE JUROR NO. 11-1200: Um-hum.

12 THE COURT: Okay. And how long has he
13 been employed in that area?

14 PROSPECTIVE JUROR NO. 11-1200: One
15 year.

16 THE COURT: Okay. Before that?

17 PROSPECTIVE JUROR NO. 11-1200: Before
18 that, he was a termite inspector and pest control
19 agent for about seven years, I think.

20 THE COURT: All right. What about your
21 daughter?

22 PROSPECTIVE JUROR NO. 11-1200: My
23 daughter graduated from NAU in hospitality in
24 2014, I think. And she now works for the Hyatt at
25 the front desk.

1 Prior to that, she was a manager for
2 Outback Steakhouse and a manager for a sushi
3 restaurant. She's been in hospitality since she
4 was in high school and throughout college.

5 THE COURT: Okay. Very good. Thank
6 you. All right. Have you ever served as a juror
7 before?

8 PROSPECTIVE JUROR NO. 11-1200: I have
9 not.

10 THE COURT: Thank you.

11 Mr. Christiansen, before you start, I'm
12 going to take a five-minute recess. If you need
13 to stand up or move around, but I'm not going to
14 let you go right now.

15 THE MARSHAL: All rise. Court is in
16 recess five minutes. Please be seated.

17 (Whereupon, a recess was taken.)

18 THE MARSHAL: Please be seated. Come to
19 order. Department 14 is back in session.

20 THE COURT: It's come to my attention
21 that some of the jurors need to use the restroom,
22 so I'm going to give you a 10-minute break. And I
23 must read this admonishment.

24 You're instructed not to talk with each
25 other or with anyone else about any subject or

1 issue connected with this trial. You are not to
2 read, watch, or listen to any report of or
3 commentary on the trial by any person connected
4 with this case or by any medium of information,
5 including, without limitation, newspapers,
6 television, the internet, or radio.

7 You are not to conduct any research on
8 your own relating to this case, such as consulting
9 dictionaries, using the internet or using any
10 reference materials. 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're not to talk with others, text
16 others, tweet others, message others, google
17 issues, or conduct any other kind of book or
18 computer research with regard to any issue, party,
19 witness, or attorney involved in this case.

20 You are not to form or express any
21 opinion on any subject connected with this trial
22 until the case is finally submitted to you.

23 See you back in 10 minutes. Thank you.

24 THE MARSHAL: All rise.

25 (Whereupon, a recess was taken.)

1 THE MARSHAL: All rise. All the jurors
2 are present, Your Honor. Please be seated. Come
3 to order.

4 THE COURT: Thank you, Marshal Ragsdale.
5 Do the parties stipulate to the presence
6 of the jury?

7 MR. CHRISTIANSEN: Yes, Your Honor.

8 THE COURT: Okay. Thank you.

9 Mr. Christiansen, please proceed.

10 MR. CHRISTIANSEN: We've got Mr. Noshi
11 and Ms. Hannewald are new but not that much newer
12 than the two women to your left.

13 So, Mr. Noshi, you told Her Honor that
14 you're an engineer and you've had some background
15 in, like, aerodynamics or I think you said wind
16 tunnels and the like?

17 PROSPECTIVE JUROR NO. 11-1207: Yes.

18 MR. CHRISTIANSEN: You also, my
19 recollection, told Her Honor that you live sort of
20 near the Red Rock Casino, the area where this
21 incident took place?

22 PROSPECTIVE JUROR NO. 11-1207: Yes.

23 MR. CHRISTIANSEN: And I recall from
24 looking at my summary of your questionnaire that
25 you also bicycle.

1 PROSPECTIVE JUROR NO. 11-1207: Yeah,
2 but not regularly.

3 MR. CHRISTIANSEN: Okay. And when you
4 bicycle, do you bicycle on the street or in the
5 mountains?

6 PROSPECTIVE JUROR NO. 11-1207: On the
7 street.

8 MR. CHRISTIANSEN: Have you had the
9 experience of a big vehicle passing you while
10 bicycling?

11 PROSPECTIVE JUROR NO. 11-1207: Every
12 now and then.

13 MR. CHRISTIANSEN: And from your
14 engineering background, have you experienced the
15 air blast or the air flow?

16 PROSPECTIVE JUROR NO. 11-1207: Yeah.

17 MR. CHRISTIANSEN: Help me understand
18 how it affected you.

19 PROSPECTIVE JUROR NO. 11-1207: Not
20 much, really. Like, I usually go when it's quiet.
21 And I'm usually pretty careful. And a lot of
22 times, I'm on the sidewalk actually because the
23 bike lanes are not that clear.

24 MR. CHRISTIANSEN: Have you just maybe
25 stood on a curb and felt a bus go by you?

1 PROSPECTIVE JUROR NO. 11-1207: Yeah.

2 MR. CHRISTIANSEN: And what did you feel
3 when it went by?

4 PROSPECTIVE JUROR NO. 11-1207: Just
5 feel the air blowing.

6 MR. CHRISTIANSEN: What is that, if you
7 know?

8 MR. ROBERTS: Objection.

9 THE COURT: Sustained.

10 PROSPECTIVE JUROR NO. 11-1207: Like
11 drag.

12 MR. CHRISTIANSEN: Okay. The two of
13 you, either of you have a problem, Ms. Hannewald
14 or Mr. Noshi, with the process as it's been
15 explained a whole bunch?

16 PROSPECTIVE JUROR NO. 11-1200: No.

17 PROSPECTIVE JUROR NO. 11-1207: No.

18 MR. CHRISTIANSEN: Everybody okay with
19 the judge making the rules and us trying to follow
20 them and sometimes agreeing to disagree, us
21 lawyers?

22 PROSPECTIVE JUROR NO. 11-1200: Yes.

23 MR. CHRISTIANSEN: Anything about that
24 process and sidebars and sometimes clearing the
25 courtroom for us to talk bother either one of you?

1 PROSPECTIVE JUROR NO. 11-1200: No.

2 PROSPECTIVE JUROR NO. 11-1207: No.

3 MR. CHRISTIANSEN: I can't recall, have
4 either of you been jurors? I know somebody had.

5 You have; right? That's right. It's
6 Ms. Turpin; is that right?

7 Would you hand the microphone to
8 Ms. Turpin, Mr. Noshi.

9 PROSPECTIVE JUROR NO. 11-1193: Amie
10 Turpin, 11-1193.

11 MR. CHRISTIANSEN: And both of you two
12 come at least from some point from Fort Collins;
13 right?

14 PROSPECTIVE JUROR NO. 11-1193: Yes.

15 PROSPECTIVE JUROR NO. 11-1207: Yes.

16 MR. CHRISTIANSEN: Colorado State, the
17 Rams?

18 PROSPECTIVE JUROR NO. 11-1193: Yes.

19 MR. CHRISTIANSEN: Was your jury
20 service -- I know you've off and on lived in Las
21 Vegas. Was your jury service in Las Vegas?

22 PROSPECTIVE JUROR NO. 11-1193: Yes.

23 MR. CHRISTIANSEN: And it was a civil
24 case?

25 PROSPECTIVE JUROR NO. 11-1193: Yes.

1 MR. CHRISTIANSEN: I don't recall the
2 judge asking, but did you find it to be a positive
3 experience when it was finished or not so much?

4 PROSPECTIVE JUROR NO. 11-1193: I don't
5 know. Yeah. Sure.

6 MR. CHRISTIANSEN: The lady -- and her
7 name was Ms. Gutierrez, that was sitting to your
8 left, we were making light with each other
9 about --

10 PROSPECTIVE JUROR NO. 11-1193: Her not
11 liking you.

12 MR. CHRISTIANSEN: And while, you know,
13 I joke about it, I need to ask you, is there
14 anybody else that I've bothered to such an extent
15 that they can't be fair?

16 I mean, obviously, I represent two boys
17 that don't have parents, and I take it very
18 serious. And so if I bothered somebody so they
19 don't think they can be fair to these two boys, I
20 want to know.

21 And I know this is a tedious process,
22 but I assume all of you can understand to
23 everybody involved why it's important and why we
24 go through it in such fine detail so we can figure
25 out who can and who cannot be fair.

1 Does everybody understand that?

2 PROSPECTIVE JUROR NO. 11-1193: Yes.

3 MR. CHRISTIANSEN: There was somebody
4 else. I think it was Ms. Vandevanter. Will you
5 hand the microphone down to her.

6 Ms. Vandevanter?

7 PROSPECTIVE JUROR NO. 11-1186: Ashley
8 Vandevanter, 11-1186.

9 MR. CHRISTIANSEN: Okay. Thanks. Your
10 badge number one more time.

11 PROSPECTIVE JUROR NO. 11-1186: 11-1186.

12 MR. CHRISTIANSEN: And you teach special
13 needs children, young ages?

14 PROSPECTIVE JUROR NO. 11-1186: Correct.

15 MR. CHRISTIANSEN: And have been doing
16 that for how long?

17 PROSPECTIVE JUROR NO. 11-1186: This
18 population, this year; but I have been teaching
19 special education for 12 years.

20 MR. CHRISTIANSEN: Oh, there's my note.

21 I know Mr. Noshi explained that he's
22 from the Middle East, but I circled that you
23 somehow were in Kuwait.

24 PROSPECTIVE JUROR NO. 11-1186: Correct.

25 During the layoffs, in 2009-2010, my

1 husband at the time was laid off from the crane
2 company, so construction industry. We had friends
3 that were in Kuwait City doing government contract
4 work, so we went over there. He was going to do
5 government contract work as well. I was pregnant
6 at the time and decided that it was not a fit for
7 me.

8 MR. CHRISTIANSEN: Okay. I was just
9 trying to figure out how a teacher got herself
10 over to Kuwait and then back.

11 And your husband, my recollection, is
12 from one of the northern counties.

13 PROSPECTIVE JUROR NO. 11-1186: He's
14 actually from Utah. But he took a position in Ely
15 at the prison and then was a sheriff's deputy as
16 well.

17 MR. CHRISTIANSEN: All right. So you
18 lived in White Pine County for a while?

19 PROSPECTIVE JUROR NO. 11-1186: Before
20 my time, but, yes, he did.

21 MR. CHRISTIANSEN: And Ms. McLain behind
22 you worked for the Nevada Department of Prisons at
23 some point. She was a corrections officer. Do
24 you know one way or another if your husband --
25 sounds like your almost-to-be-ex-husband knew her

1 or she knew him?

2 PROSPECTIVE JUROR NO. 11-1186: Not that
3 I'm aware of.

4 MR. CHRISTIANSEN: Ms. McLain is shaking
5 her head in the negative, so she doesn't --

6 PROSPECTIVE JUROR NO. 11-1186: It's a
7 pretty recognizable last name, so usually people
8 know or not.

9 MR. CHRISTIANSEN: Got it.

10 All right. To the four -- let me ask
11 you, Ms. Vandevanter. Anything about living in
12 the Middle East in Kuwait that would cause you to
13 lean one way or another relative to Iranian
14 persons? My clients are American citizens, but
15 their parents were born in Iran.

16 PROSPECTIVE JUROR NO. 11-1186: My time
17 in the Middle East was extremely positive. I
18 pretty much only associated with government
19 contract workers or foreign nationals not really
20 from Asia. So, no, no feelings either way.

21 MR. CHRISTIANSEN: Can you hand that
22 back to Mr. Noshi. I'll ask him the same question
23 just because not very often you get people that
24 are in the Middle East.

25 PROSPECTIVE JUROR NO. 11-1207: No,

1 shouldn't affect me.

2 MR. CHRISTIANSEN: Not one way or
3 another?

4 PROSPECTIVE JUROR NO. 11-1207: No.

5 MR. CHRISTIANSEN: Okay. Great.

6 Well, the four of you have all heard,
7 just before I stopped with Ms. Gutierrez, the
8 notion of Lady Justice being blind, those things.
9 Any of the four of you have a problem with that?
10 Four new persons.

11 PROSPECTIVE JUROR NO. 11-1193: No
12 problem.

13 MR. CHRISTIANSEN: Okay. Although I'm
14 certain none of you woke up Monday morning excited
15 to come here for four weeks, if chosen as a juror,
16 can all four of you promise to give everybody your
17 full time and attention for the next, you know,
18 basically, four weeks after starting next week?
19 Mr. Noshi?

20 PROSPECTIVE JUROR NO. 11-1207: I'm
21 going to have a hard time, but I'm going to have
22 to try.

23 MR. CHRISTIANSEN: Okay. Ms. Turpin?
24 Yes?

25 PROSPECTIVE JUROR NO. 11-1193: Yes. No

1 problem.

2 MR. CHRISTIANSEN: No problem.

3 And, Ms. Vandevanter, can you do it as
4 well?

5 PROSPECTIVE JUROR NO. 11-1186: I can.

6 MR. CHRISTIANSEN: All right. We've had
7 other teachers say, you know, hard to be away from
8 my class -- or their class, not my class -- their
9 class for some period of time. Will you be able
10 to make arrangements for your students?

11 PROSPECTIVE JUROR NO. 11-1186: Yes, I
12 can actually spend the first half of the day there
13 and half the day on Tuesdays and Thursdays. So
14 it's going to be ideal for me.

15 MR. CHRISTIANSEN: Great.

16 Any of the four of you find anything
17 problematic about aggressive questioning by the
18 lawyers? I promise I'm going to cross-examine
19 some witnesses of the defense and they're not
20 going to think I'm very entertaining. Is that
21 okay with all of you?

22 IN UNISON: Yes.

23 MR. CHRISTIANSEN: You'll hear from the
24 judge as we get going in this thing that lawyers
25 don't get to make up evidence. We ask questions,

1 but the answers are evidence, not the questions.

2 Is everybody okay with that? Yeah?

3 Similarly, lawyers don't get to make up
4 facts. So if you hear a fact that a lawyer tells
5 you that turns out to just be made up, you're
6 going to have to disregard it because the
7 witnesses make the facts, not the lawyers. We
8 just try to elicit the facts from the witnesses.
9 Does that sound fair to all of you?

10 IN UNISON: Yes.

11 MR. CHRISTIANSEN: Her Honor will tell
12 you at some point that what the lawyers say in
13 argument -- we're going to give opening statements
14 and closing arguments, is -- just our version of
15 what we think the facts are going to show, and
16 it's not the facts. You independently have, each
17 of you, an obligation to assess the credibility of
18 jurors and determine what you believe the facts
19 are and then, at the end of the case, go back and
20 talk with each other and see if you can reach
21 conclusions based on the law as Her Honor gives it
22 to you. All of you think that's okay? You
23 understand how goofy it would be if lawyers got to
24 make up facts? We'd never -- nothing would ever
25 get done on the merits; right?

1 Okay. So everybody okay with making
2 sure that doesn't happen here?

3 IN UNISON: Yes.

4 MR. CHRISTIANSEN: You all heard me
5 probably yesterday when you came in talk about the
6 law relative to corporations and that they're
7 treated -- MCI is treated just like Aria and Keon,
8 no better, no worse. Anybody think that's unfair
9 or should be different?

10 IN UNISON: No.

11 MR. CHRISTIANSEN: Everybody think
12 that's okay?

13 IN UNISON: Yes.

14 MR. CHRISTIANSEN: You have had a
15 chance, I'm sure, to observe all of us, you four,
16 and you see sometimes we disagree about some
17 things and we argue and then other times we're
18 nice to each other and we hold open the door and
19 crack a joke or something like that. Can all of
20 you promise you're not going to try to read into
21 us lawyers dealing with each other and focus on
22 the evidence that comes from the witness stand?

23 IN UNISON: Yes.

24 MR. CHRISTIANSEN: The four of you, like
25 all others before, can you commit to not go do any

1 research? Not Google, not go out to -- Mr. Noshi,
2 I know you live close -- not go measure streets
3 and bike lanes and things of that nature, and
4 everybody promise to not do that?

5 IN UNISON: Yes, sir.

6 MR. CHRISTIANSEN: I usually focus this
7 on, like, the real young folks, but can everyone
8 stay off social media? I get surprised by the
9 people that have Twitters and -- is that what you
10 got, like Twitter?

11 PROSPECTIVE JUROR NO. 11-1200: So older
12 people are on Facebook more than young people
13 today.

14 MR. CHRISTIANSEN: Older are? Is that
15 right?

16 PROSPECTIVE JUROR NO. No : Yes.
17 That's what the records show, so...

18 MR. CHRISTIANSEN: My kids don't -- they
19 use that instasnap.

20 IN UNISON: Instagram.

21 MR. CHRISTIANSEN: Yeah. Can we just
22 avoid it all --

23 IN UNISON: Yes.

24 MR. CHRISTIANSEN: -- for purposes of
25 the case?

1 IN UNISON: Yes.

2 MR. CHRISTIANSEN: Nobody cares if you,
3 I guess, snap your friends -- I think that's how
4 my daughter referred to it, or Facebook some
5 pictures of families that, you know, on the
6 east -- that live in different parts of the
7 country. That's all fine. Just about this case,
8 a jury needs to decide things that happen in here,
9 not on a Facebook post.

10 IN UNISON: Sure.

11 MR. CHRISTIANSEN: Does that seem fair
12 and logical to everybody? Any of the four of you
13 think that whatever you read in the media is a
14 hundred percent true or hear in the media? Has
15 anybody for fun ever turned on Fox News and then
16 flipped to CNN and just watch and try to figure
17 out are they really talking about the same event?

18 PROSPECTIVE JUROR NO. 11-1186: Yeah.

19 PROSPECTIVE JUROR NO. 11-1193: No.

20 MR. CHRISTIANSEN: So just based on that
21 simple analogy, can everybody see it -- the four
22 of you see it's super important to not watch
23 anything in the media?

24 PROSPECTIVE JUROR NO. 11-1200:

25 Pertaining to the case.

1 MR. CHRISTIANSEN: Pertaining to the
2 case, yes, ma'am. You watch President Trump, like
3 him or dislike him, watch him all you want. But
4 not anything about the Khiabani v. MCI case. Can
5 all of you agree to do that?

6 We're going to have media attention in
7 this case. So usually we're talking about it in a
8 vacuum because most trials don't have media. But
9 this one, I'm being practical and saying it
10 exists. You could -- you know, it's going to be
11 on news channels.

12 And can everybody, the four of you,
13 commit to, hey, if we see something come on --
14 I'll make it up -- Channel 3, as we're watching
15 the evening news, we'll just switch and not watch
16 what Channel 3 says happened in court today?
17 Because they didn't know. They don't know. They
18 didn't sit in here. They're just guessing and
19 making crap up to get good ratings.

20 Is that okay with all of you? All
21 right.

22 All of you heard me talk about the
23 standard of more likely than not, a preponderance
24 of the evidence, which is what the judge is going
25 to tell you. Everything in this case with the

1 exception of punitive damages, and she'll -- Her
2 Honor will give you the law on that. But
3 everything else, it's -- that's the standard you
4 have to make decisions on. You believe one side
5 more likely than not.

6 And I use all kinds of different
7 analogy, but the easy one is that football analogy
8 with the football's on the 50-yard line. To
9 prevail on a civil case, the plaintiff need not go
10 to the end zone. Plaintiff just needs to move to
11 the 49 or 51. Just need to push up one way or tip
12 those scales in Lady Justice's hands, however
13 slight, and -- you remember me grabbing a tissue
14 and going like that. Anybody have a problem with
15 that standard?

16 Ms. Hannewald, do you have a problem
17 with it if I'm asking for a large award?

18 PROSPECTIVE JUROR NO. 11-1200: April
19 Hannewald, 11-1200. No, I don't have a problem
20 with that.

21 MR. CHRISTIANSEN: Of the four of you,
22 anybody think, if you're going to ask for a larger
23 award, sort of a gut feeling, you should really
24 have more proof? Everybody say no? Everybody
25 okay to apply that burden of proof, more likely

1 than not?

2 Does anybody have -- there is an aspect
3 to this case that is a bit unique in that there's
4 an allegation of punitive damages where the
5 plaintiff is seeking damages to deter conduct that
6 Her Honor will define for you that's sometimes
7 referred to as despicable or oppressive. They're
8 legal words the judge will give you instructions
9 on. But do any of you at a gut level have a
10 problem hearing evidence about what may amount to
11 punitive damages?

12 IN UNISON: No.

13 MR. CHRISTIANSEN: Anybody? Mr. Noshi,
14 are you okay with that?

15 PROSPECTIVE JUROR NO. 11-1207: Yeah.

16 MR. CHRISTIANSEN: Okay. Of the four of
17 you, do any of you have thoughts about lawsuit
18 reform or damage caps? This is sort of where I
19 yesterday left off with the entire group, and I
20 didn't get through everybody, but I'll try to
21 catch up. Any of the four of you? You've got the
22 microphone, Ms. Hannewald.

23 PROSPECTIVE JUROR NO. 11-1200: Yeah,
24 April Hannewald.

25 MR. CHRISTIANSEN: Ms. Hannewald, your

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1 badge number?

2 PROSPECTIVE JUROR NO. 11-1200: 11-1200.

3 MR. CHRISTIANSEN: Thank you.

4 PROSPECTIVE JUROR NO. 11-1200: And I
5 have no problems with caps, with no caps with
6 damages.

7 MR. CHRISTIANSEN: You don't have an
8 artificial ceiling in your mind?

9 PROSPECTIVE JUROR NO. 11-1200: I don't.

10 MR. CHRISTIANSEN: Ms. Turpin?

11 PROSPECTIVE JUROR NO. 11-1193: No.

12 MR. CHRISTIANSEN: Mr. Noshi? I keep
13 trying to say Oshi. It's not Oshi. It's Noshi.
14 All right. You want to pass it down to Mr. Noshi.
15 I read something.

16 PROSPECTIVE JUROR NO. 11-1207: Like, I
17 don't have a cap on -- for punitive, but, you
18 know, like, just, I'm more into, like,
19 compensation. I have to understand the
20 compensation, like one of the other jurors
21 mentioned before. Like, to me, the punitive, I
22 don't get part of it. Like, I don't get it, but
23 I'm willing to, you know, try to open my mind.

24 MR. CHRISTIANSEN: Okay. And just so
25 I'm clear, I'm trying to understand what you're

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1 saying to me. Is it that you've not thought about
2 punitives and don't really understand how that
3 process works but you'll listen to the judge, or
4 you sort of know about them; you don't like them?

5 PROSPECTIVE JUROR NO. 11-1207: I'm
6 learning more about it the last couple days.

7 MR. CHRISTIANSEN: Sure.

8 PROSPECTIVE JUROR NO. 11-1207: And
9 it's -- I still feel, like, different. Like, I
10 can totally understand compensation for the loss
11 and it should be -- in my mind, it should be as
12 generous and sustained, you know, on the victims'
13 lives. But I don't get the part that -- you know,
14 maybe as an engineer that it's, you know, a design
15 of a facility or something or a bus in that case
16 or anything is punishable by paying additional
17 amount of money to the victims. That part I don't
18 get.

19 MR. CHRISTIANSEN: Okay. That's part of
20 this case. And the way the process works -- you
21 all, I think, heard me sort of explain it a couple
22 days ago -- is that you have the compensatory part
23 of the trial, that is, whether the bus was
24 defective and that defect caused the death of
25 Dr. Khiabani. And then, as you sort of mentioned,

1 what's the appropriate compensation for the
2 plaintiffs. That part you're okay with?

3 PROSPECTIVE JUROR NO. 11-1207: Yeah.

4 MR. CHRISTIANSEN: All right. Then if
5 the plaintiff can show by clear and convincing
6 evidence -- and Her Honor will tell you what that
7 is -- the defendant acted with conscious disregard
8 for the rights and safety of the public -- that's
9 what the plaintiff will allege and try to prove to
10 you all -- you check the box, and we start a
11 different phase of the trial where you assess what
12 amount of money would stop the defendant from
13 acting with conscious disregard in the future and
14 try to deter that type of conduct. Does that make
15 sense?

16 PROSPECTIVE JUROR NO. 11-1207: Yeah.

17 MR. CHRISTIANSEN: If the judge
18 explained it to you, could you go through that
19 process, Mr. Noshi?

20 PROSPECTIVE JUROR NO. 11-1207: Yeah, I
21 think I can go through.

22 MR. CHRISTIANSEN: Okay. Mr. Noshi, I
23 asked you one way, and I want to -- relative to
24 you being from Egypt. You won't -- you said it's
25 just fine that the plaintiffs' parents,

1 Dr. Khiabani and Dr. Katy Barin, were born in
2 Tehran. That's okay with you.

3 PROSPECTIVE JUROR NO. 11-1207: Yes.

4 MR. CHRISTIANSEN: You're not going to
5 favor them just because they were born in Tehran
6 and you hail from Egypt, are you?

7 PROSPECTIVE JUROR NO. 11-1207: No.

8 MR. CHRISTIANSEN: Everybody's going to
9 be fair, even playing field? Okay.

10 Any -- Ms. Turpin, Ms. Hannewald, and
11 Ms. Vandevanter, do any of you have any concerns
12 relative to the punitive damage portion of the
13 case?

14 IN UNISON: No.

15 MR. CHRISTIANSEN: Any of -- would all
16 of you be able to follow Her Honor's instructions
17 and follow the law?

18 IN UNISON: Yes.

19 MR. CHRISTIANSEN: Great.

20 Of the four of you, who rides bikes?
21 Anybody? Just -- besides Mr. Noshi, I talked to
22 him.

23 PROSPECTIVE JUROR NO. 11-1200: I have a
24 bike. I think your question on the questionnaire
25 was, "Do you frequently ride a bike?" I think

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1 about riding it frequently, but I ride it about
2 once a year.

3 April Hannewald, 11-1200.

4 MR. CHRISTIANSEN: Good intentions;
5 right? You have good intentions; you just don't
6 quite always get there. Is that what I'm hearing?

7 PROSPECTIVE JUROR NO. 11-1200: Yes.

8 MR. CHRISTIANSEN: Okay. Ms. Hannewald,
9 when you do right a bike, you ever been on your
10 bike when a car's gone by you?

11 PROSPECTIVE JUROR NO. 11-1200: I --
12 like, if I'm going to ride my bike, I ride on the
13 sidewalk or in the neighborhood. I don't like to
14 ride it on the street.

15 MR. CHRISTIANSEN: True.

16 Any of the three of you ladies ever been
17 a -- maybe just a pedestrian on the sidewalk and
18 had a bus pass?

19 PROSPECTIVE JUROR NO. 11-1186: Yes.

20 MR. CHRISTIANSEN: Ms. Vandevanter? You
21 want to hand the mic up to her.

22 What did you experience when that
23 occurred, Ms. Vandevanter?

24 PROSPECTIVE JUROR NO. 11-1186: I am in
25 charge of bus duty, so --

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1 MR. CHRISTIANSEN: Oh, with the kids?

2 PROSPECTIVE JUROR NO. 11-1186: Right.

3 MR. CHRISTIANSEN: Okay.

4 PROSPECTIVE JUROR NO. 11-1186: So we
5 have a bus lane and what I feel is a fairly narrow
6 sidewalk and then a fence. So on a -- every
7 morning and every afternoon of school days, I am
8 very closely connected to school buses.

9 MR. CHRISTIANSEN: And do you feel that
10 on -- do you feel the air sort of push against you
11 when they pass by?

12 PROSPECTIVE JUROR NO. 11-1186: Yes.

13 MR. CHRISTIANSEN: That's kind of a
14 daily thing for you?

15 PROSPECTIVE JUROR NO. 11-1186: Yes.

16 MR. CHRISTIANSEN: I imagine there's
17 more than one bus; right? So they sort of --

18 PROSPECTIVE JUROR NO. 11-1186: Five.

19 MR. CHRISTIANSEN: Five buses a couple
20 of times a day?

21 PROSPECTIVE JUROR NO. 11-1186: Correct.

22 MR. CHRISTIANSEN: Pretty familiar with
23 that feeling?

24 PROSPECTIVE JUROR NO. 11-1186: Yes.

25 MR. CHRISTIANSEN: Of the four of you,

1 who has a vehicle with proximity sensor on it?

2 You've got the mic, so you're --

3 PROSPECTIVE JUROR NO. 11-1186: For the
4 past four years, I --

5 MR. CHRISTIANSEN: This is
6 Ms. Vandevanter, Badge No. --

7 PROSPECTIVE JUROR NO. 11-1186:
8 Ms. Vandevanter, 11-1186. Sorry.

9 MR. CHRISTIANSEN: That's okay.

10 PROSPECTIVE JUROR NO. 11-1186: For the
11 past previous four years, I drove a Ram 3500 which
12 had backup sensors and a backup camera. I
13 currently drive a -- I don't even know what
14 year -- a Sienna, Toyota Sienna, which has backup
15 cameras. And occasionally since the
16 questionnaire, I drive a 2018 Ram 2500 which has
17 front sensors, back sensors, and backup cameras.

18 MR. CHRISTIANSEN: And tell me the new
19 vehicle. What was it?

20 PROSPECTIVE JUROR NO. 11-1186: It's a
21 2018 RAM 2500.

22 MR. CHRISTIANSEN: All right. So the
23 Ram that has the front sensors and side sensors,
24 are those --

25 PROSPECTIVE JUROR NO. 11-1186: It's not

1 side. It's back.

2 MR. CHRISTIANSEN: Oh, sorry. The front
3 sensors, they alert you when things are in front
4 of you or to the side of you?

5 PROSPECTIVE JUROR NO. 11-1186: It
6 alerts you when you are too close to things that
7 are in front of you or behind you, yes.

8 MR. CHRISTIANSEN: And is the alert an
9 audible or a visual or both?

10 PROSPECTIVE JUROR NO. 11-1186: Both.

11 MR. CHRISTIANSEN: Like, some lights
12 come on and maybe beeps?

13 PROSPECTIVE JUROR NO. 11-1186: Yeah.
14 There's a light on the dash panel and then it
15 beeps. Different frequency of beeping depending
16 on how close.

17 MR. CHRISTIANSEN: Okay. Who else said
18 they had proximity sensors? Ms. Hannewald? Both?

19 PROSPECTIVE JUROR NO. 11-1200: April
20 Hannewald, 11-1200.

21 I drive a 2013 Honda Accord. It has a
22 front sensor that beeps and flashes if you get too
23 close to the car in front of you, a backup camera,
24 and side cameras.

25 MR. CHRISTIANSEN: Are the side

1 cameras -- so, like, if you're going to change
2 lanes and there's something there, it will alert
3 you?

4 PROSPECTIVE JUROR NO. 11-1200: You just
5 see that there's something there. There's no
6 audible alert.

7 MR. CHRISTIANSEN: Oh, like a light or
8 something will come on your side mirror?

9 PROSPECTIVE JUROR NO. 11-1200: You see
10 it on the screen. You see the car.

11 MR. CHRISTIANSEN: Got it.

12 Ms. Turpin? No proximity sensors in --

13 PROSPECTIVE JUROR NO. 11-1193: No.

14 MR. CHRISTIANSEN: Okay.

15 And, Mr. Noshi, how about your --

16 PROSPECTIVE JUROR NO. 11-1207: No.

17 Just the backup camera.

18 MR. CHRISTIANSEN: Great.

19 I want to follow up with everybody. I
20 think I've almost got you guys caught up. But
21 with every -- the group as a whole yesterday -- it
22 might have been the gentleman before you.

23 Someone -- somebody said something about, well, it
24 didn't matter that Dr. Barin -- it was irrelevant
25 that Dr. Barin had cancer and passed away after

1 Dr. Khiabani was killed. You generically remember
2 that statement?

3 Part of this case -- I want everybody to
4 understand so I can see if anybody thinks it's
5 unfair. Part of this case is the pain, anguish,
6 and grief that Katy Barin felt after her husband
7 died for the six months that she did live. It was
8 about six. You know, she succumbed to cancer in
9 October of last year. Does anybody think that
10 shouldn't be part of the case? A spouse's grief?
11 Okay.

12 Okay. Is there anybody that can't
13 consider it, I guess is a better way to ask the
14 question? Everybody can?

15 IN UNISON: Yes.

16 MR. CHRISTIANSEN: Okay. All right.
17 Now I do have you guys all caught up.

18 When we left off yesterday, I was
19 talking to the group as a whole and then
20 individuals about who believed in lawsuit reform
21 or caps on damages. And I got through some
22 persons but not everybody. I sort of talked to
23 the four of you already, so you're out of the hot
24 seat on that. I'll just try to sort of wrap back
25 with the persons I didn't get to yesterday.

1 Mr. Fortich?

2 PROSPECTIVE JUROR NO. 11-0975: Yes.

3 MR. CHRISTIANSEN: Can you, Mr. Noshi,
4 hand that mic up to Mr. Fortich for me.

5 PROSPECTIVE JUROR NO. 11-0975: Jonathan
6 Fortich, 11 --

7 MR. CHRISTIANSEN: Fortich, I'm sorry.

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

9 MR. CHRISTIANSEN: Mr. Fortich, I noted
10 on your questionnaire that you had some feelings
11 relative to -- I'll just ask you. You wrote that
12 you thought about 67 percent of lawsuits were
13 frivolous.

14 PROSPECTIVE JUROR NO. 11-0975: Correct.

15 MR. CHRISTIANSEN: And when asked if you
16 would vote for legal limits on damages or a change
17 in the law to impose that, you said yes.

18 PROSPECTIVE JUROR NO. 11-0975: Yes.

19 MR. CHRISTIANSEN: Help me understand
20 what you meant when you wrote it so I can figure
21 out where you're coming from.

22 PROSPECTIVE JUROR NO. 11-0975: Repeat
23 the question. I'm sorry.

24 MR. CHRISTIANSEN: Sure. Just help me
25 understand what you meant when you said you

1 thought, you know, the majority of lawsuits were
2 frivolous and that there should be caps on
3 damages.

4 PROSPECTIVE JUROR NO. 11-0975: I don't
5 know.

6 MR. CHRISTIANSEN: Look, it's fine. I
7 mean, you heard -- you guys remember Mr. Wilson
8 Green, this gentleman who wrote that he knew me,
9 he knew Mr. Kemp, he knew about the case. And
10 then he showed up -- he wrote that in his
11 questionnaire, and we all had questions for him,
12 you know, about did we know him. He showed up and
13 said, "Guys, not really. That was a different
14 case, some different lawyers. I didn't know
15 anything about it." So there was a mistake on the
16 questionnaire, no big deal.

17 Was it -- did you understand the
18 questions? Sometimes they're not worded exactly
19 super -- lawyers write them, so they're not, you
20 know, often as clear as they could be.

21 PROSPECTIVE JUROR NO. 11-0975: Probably
22 not.

23 MR. CHRISTIANSEN: You've heard me
24 talking about -- and it's been the person directly
25 behind you, unfortunately -- limits on awards, and

1 you heard some people give opinions if they
2 thought there should be limits and that they
3 couldn't consider large awards. How do you feel
4 about that?

5 PROSPECTIVE JUROR NO. 11-0975: I feel
6 they deserve the most compensation out of that
7 reward, in my opinion.

8 MR. CHRISTIANSEN: Would you be able to
9 consider large awards -- and we've been
10 generically saying awards in the tens of millions
11 of dollars -- if the evidence supported it?

12 PROSPECTIVE JUROR NO. 11-0975: Yes and
13 no.

14 MR. CHRISTIANSEN: All right. You know
15 that's going to get a follow-up question; right?
16 Help me understand what "yes and no" means.
17 Sounds like my kid talking to me, "Yes and no."

18 PROSPECTIVE JUROR NO. 11-0975: Like the
19 other gentleman -- I forgot his last name, Garibay
20 or something --

21 MR. CHRISTIANSEN: Yeah, Mr. Garibay,
22 who was sitting right behind you?

23 PROSPECTIVE JUROR NO. 11-0975: He was
24 saying if they were awarded tens of millions of
25 dollars, which means they wouldn't have to work

1 ever and be set for life, I disagree on that.

2 MR. CHRISTIANSEN: Okay. Her Honor is
3 going to tell you, and she'll give you the exact
4 law, that an award of damages can be based only on
5 the harms and losses suffered by the plaintiffs.

6 Does that make sense?

7 PROSPECTIVE JUROR NO. 11-0975: Yes.

8 MR. CHRISTIANSEN: It sounds -- well,
9 let me ask you, are you okay with that?

10 PROSPECTIVE JUROR NO. 11-0975: Yes.

11 MR. CHRISTIANSEN: When you tell me that
12 you wouldn't -- or you'd be uncomfortable with
13 making an award such that the two minor boys
14 didn't have to work forever, it sounds like, in
15 your mind, you've got some ceiling that you think
16 you can't go higher than that.

17 PROSPECTIVE JUROR NO. 11-0975: Correct.

18 MR. CHRISTIANSEN: I knew you felt that
19 way a little bit because it's in your answers --

20 PROSPECTIVE JUROR NO. 11-0975: Yes.

21 MR. CHRISTIANSEN: -- to your
22 questionnaire, just so I'm clear. You wrote that
23 down, that you thought there should be limits on
24 damages.

25 PROSPECTIVE JUROR NO. 11-0975: Correct.

1 MR. CHRISTIANSEN: You still feel like
2 that after five days of listening to me? And,
3 believe me, nobody is more tired of me talking
4 than me.

5 PROSPECTIVE JUROR NO. 11-0975: Yes.

6 MR. CHRISTIANSEN: None of my clever
7 questions or anybody else's clever questions is
8 going to change your opinion?

9 PROSPECTIVE JUROR NO. 11-0975: Correct.

10 MR. CHRISTIANSEN: You're always going
11 to have a cap in your mind for a damage award that
12 you can't go above?

13 PROSPECTIVE JUROR NO. 11-0975: I am.

14 MR. CHRISTIANSEN: And you felt that way
15 before you came in when you filled out the
16 questionnaire, and, after five days of
17 questioning, you still feel the same way?

18 PROSPECTIVE JUROR NO. 11-0975: Correct.

19 MR. CHRISTIANSEN: Mr. Fortich, I
20 appreciate your candor. Thank you very much.

21 May we approach, Your Honor?

22 THE COURT: Yes.

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

25 THE COURT: All right. Ladies and

1 gentlemen, we're going to take an early lunch
2 today. I'm going to -- we're going to take a
3 break as soon as I finish reading you the
4 admonishment. And then you are to be back here at
5 1:00 p.m. I think you'll see you won't be
6 fighting the long lines for lunch.

7 All right. You're instructed not to
8 talk with each other or with anyone else about any
9 subject or issue connected with this trial. You
10 are not to read, watch, or listen to any report of
11 or commentary on the trial by any person connected
12 with this case or by any medium of information,
13 including, without limitation, newspapers,
14 television, the internet, or radio.

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

23 You are not to talk with others, text
24 others, tweet others, message others, google
25 issues, or conduct any other kind of book or

1 computer research with regard to any issue, party,
2 witness, or attorney involved in this case.

3 You are not to form or express any
4 opinion on any subject connected with this trial
5 until the case is finally submitted to you.

6 Before you go, I would like Mr. Noshi
7 and -- who told me about the media? I'm sorry.

8 MR. CHRISTIANSEN: Ms. Hannewald.

9 THE COURT: -- to wait just outside.
10 Okay?

11 Thank you very much.

12 MR. CHRISTIANSEN: And Mr. Fortich as
13 well, Your Honor.

14 THE COURT: Okay. Mr. Fortich.

15 THE MARSHAL: All rise.

16 All rise. Have a seat up front, sir.
17 Keep going. Please be seated. Come to order.

18 THE COURT: Mr. Noshi?

19 PROSPECTIVE JUROR NO. 11-1207: Yes,
20 Your Honor.

21 THE COURT: Thank you for waiting. I'd
22 like counsel to follow up with any questions you
23 may have.

24 MR. CHRISTIANSEN: Mr. Noshi, you said
25 you'd seen something in the media. Without saying

1 it in front of everybody else, we wanted to know
2 what it was you saw or heard in the media.

3 PROSPECTIVE JUROR NO. 11-1207: I just
4 saw the typical news, like the 3 or the 5 -- you
5 know, the news. Like, usually, I watch -- I
6 forget -- from work, the 11:00 o'clock news.

7 And I just remember -- usually, I don't
8 pay much attention, but because they showed the
9 intersection or something, and this is, like --
10 almost my daily walk around is in this
11 neighborhood, so it got my attention. And I don't
12 know a lot of details, but I remember a couple of,
13 you know, like, pictures and stuff of the
14 accident.

15 MR. CHRISTIANSEN: Okay. Do you
16 remember hearing about any conclusions that people
17 had drawn, whether it was a reporter or law
18 enforcement, anything like that?

19 PROSPECTIVE JUROR NO. 11-1207: I just
20 remember them saying that it was deemed as an
21 accident and that the driver wasn't impaired or
22 anything.

23 MR. CHRISTIANSEN: That intersection is
24 Pavilion Center and Griffith Peak?

25 PROSPECTIVE JUROR NO. 11-1207: Yeah.

1 MR. CHRISTIANSEN: I understand you live
2 somewhere near there?

3 PROSPECTIVE JUROR NO. 11-1207: Yeah, I
4 live kind of by the Town Center, which is kind of
5 a little bit to the west. And I usually take
6 walks to Summerlin downtown.

7 MR. CHRISTIANSEN: Over by, like, Faith
8 Lutheran, by the high school?

9 PROSPECTIVE JUROR NO. 11-1207: Exactly.
10 Right next to Faith Lutheran.

11 MR. CHRISTIANSEN: Got it.

12 Anything about what you saw in the media
13 that would taint your ability to be fair and
14 impartial and hear the case based on what happens
15 in here?

16 PROSPECTIVE JUROR NO. 11-1207: I don't
17 believe so.

18 MR. CHRISTIANSEN: Okay. Thank you,
19 sir.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR NO. 11-1207: Thank
22 you.

23 MR. ROBERTS: No follow-up, Your Honor.
24 Thank you.

25 THE MARSHAL: Just leave it in the

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1 chair, please. Thank you, sir.

2 All rise.

3 Please be seated. Come to order.

4 THE COURT: Please state your name and
5 your badge number for the record.

6 PROSPECTIVE JUROR NO. 11-1200: My name
7 is April Hannewald, 11-1200.

8 THE COURT: Thank you.

9 Counsel, follow-up questions.

10 MR. CHRISTIANSEN: Ms. Hannewald, you
11 said with everybody in the room that you had seen
12 something in the media. We brought you in by
13 yourself so we could hear what it was exactly you
14 saw in the media about the incident in question.

15 PROSPECTIVE JUROR NO. 11-1200: I
16 honestly don't -- I remember -- I mean, when it
17 happened, I saw that somebody on a bike was killed
18 by a bus. I mean, I always read the newspaper,
19 and I just happened to remember it because it was
20 sad.

21 MR. CHRISTIANSEN: Sure.

22 PROSPECTIVE JUROR NO. 11-1200: I don't
23 really -- I knew that he went under the bus, but I
24 didn't really -- I think at that time there was no
25 talk of whose fault it was or why it happened or

1 what happened.

2 And then I learned from my father, when
3 you get to be a certain age, to read the
4 obituaries to find out when your friends and
5 parents' friends die. So I read the obituaries
6 every day. And I read the obituary of the wife.
7 And I think the obituary probably mentioned that
8 her husband had been killed.

9 So I remember saying to my husband, "Oh,
10 my gosh. Remember that guy that was killed by the
11 bus?" And my husband said, "No. What guy?"

12 And I was like, "Well, his wife just
13 died. That's so sad."

14 That's all.

15 MR. CHRISTIANSEN: Anything about what
16 you read relative to the accident that would taint
17 your ability to be a fair juror?

18 PROSPECTIVE JUROR NO. 11-1200: No. I
19 would say when I hear something like that -- like,
20 I know this isn't about the bus driver; it's about
21 the bus company. But my first thought is for
22 everybody involved, for the bus driver, for the
23 family of the bus driver, for the family of the
24 victims. I mean, I just feel empathy for anybody
25 involved in a situation like that.

1 MR. CHRISTIANSEN: Similarly, you
2 probably felt some empathy when you read
3 Dr. Barin's obituary.

4 PROSPECTIVE JUROR NO. 11-1200: Sure. I
5 mean, what a sad story.

6 MR. CHRISTIANSEN: Sure. Can you
7 promise all of us that, if selected as a juror in
8 this case, that you won't base any decision on
9 sympathy or empathy?

10 PROSPECTIVE JUROR NO. 11-1200:
11 100 percent. Because I would have the same
12 empathy and sympathy for the bus company if I
13 didn't think that -- you know, if evidence didn't
14 convince me that they were at fault or whatever,
15 then I would have the same empathy for them.

16 THE COURT: Thank you.

17 Oh, wait. I'm sorry.

18 Mr. Roberts?

19 MR. ROBERTS: I don't have any follow-up
20 questions.

21 Thank you, ma'am. Appreciate it.

22 THE COURT: Thank you.

23 THE MARSHAL: All rise.

24 THE COURT: Mr. Roberts, I apologize. I
25 keep forgetting to ask you, sir.

1 MR. ROBERTS: Well, your gut was right
2 both times, Your Honor.

3 THE MARSHAL: All rise. Please be
4 seated. Come to order.

5 THE COURT: State your name and badge
6 number.

7 PROSPECTIVE JUROR NO. 11-0975: Jonathan
8 Fortich, 11-0975.

9 THE COURT: Thank you. We have some
10 follow-up questions for you from counsel.

11 MR. ROBERTS: Hi. I'll be asking you a
12 few questions, Mr. Fortich. I wanted to follow up
13 on your thoughts regarding caps. And you
14 indicated on your questionnaire you were in favor
15 of caps, and you confirmed that today; right?

16 PROSPECTIVE JUROR NO. 11-0975: Yep.

17 MR. ROBERTS: What I would like to know
18 is, if you were chosen for the jury, is there
19 right now a number above which you could say, "I
20 would never go above this number regardless of
21 what the evidence is"?

22 Or would you be willing to listen to the
23 evidence and then form your opinion as to what
24 amount in this case would be the proper amount?

25 PROSPECTIVE JUROR NO. 11-0975: I'd

1 listen to the evidence and then state my opinion.

2 MR. ROBERTS: Okay. And when
3 Mr. Christiansen was talking to you, it sounded
4 like you were saying, "I have a cap and I'd never
5 go over it."

6 PROSPECTIVE JUROR NO. 11-0975: Right.

7 MR. ROBERTS: Is that what you meant?

8 PROSPECTIVE JUROR NO. 11-0975: Correct.

9 MR. ROBERTS: And what amount is that?

10 PROSPECTIVE JUROR NO. 11-0975: Well,
11 when you mention tens of millions, I think that's
12 already too much, in my opinion, so --

13 MR. ROBERTS: And when you say "I think
14 that's too much," is that based on you guessing
15 what the evidence might show?

16 PROSPECTIVE JUROR NO. 11-0975: Correct.

17 MR. ROBERTS: But you understand there's
18 been no evidence in this case?

19 PROSPECTIVE JUROR NO. 11-0975: Right.

20 MR. ROBERTS: Could there be another
21 case where tens of millions might be appropriate?

22 PROSPECTIVE JUROR NO. 11-0975: Yes.

23 MR. ROBERTS: So when you said you think
24 tens of millions is too much for this case, it was
25 based on you just assuming what the evidence is

1 probably going to show?

2 PROSPECTIVE JUROR NO. 11-0975: Correct.

3 MR. ROBERTS: Okay. As Mr. Christiansen
4 said, what he has told the jury during voir dire
5 is not evidence. What I'm going to tell people
6 when I get up is not evidence.

7 PROSPECTIVE JUROR NO. 11-0975: Right.

8 MR. ROBERTS: So you haven't heard any
9 evidence?

10 PROSPECTIVE JUROR NO. 11-0975: No.

11 MR. ROBERTS: Okay. Understanding that
12 you haven't heard any evidence in this case, do
13 you understand why that wouldn't be fair to
14 prejudge an amount before you've heard the
15 evidence?

16 PROSPECTIVE JUROR NO. 11-0975: Right.

17 MR. ROBERTS: Okay. Knowing now that
18 you haven't heard any evidence, does that change
19 your opinion about whether or not tens of millions
20 is automatically too much?

21 PROSPECTIVE JUROR NO. 11-0975: No.

22 MR. ROBERTS: It doesn't?

23 What if you heard evidence that their
24 father was making a million dollars a year? Would
25 that change your mind?

1 PROSPECTIVE JUROR NO. 11-0975: No.

2 MR. ROBERTS: No.

3 Why wouldn't that change your mind?

4 PROSPECTIVE JUROR NO. 11-0975: If he
5 was making millions?

6 MR. ROBERTS: Yes. The father who died,
7 he was making millions. Would that change whether
8 tens of millions -- he was going to make a million
9 dollars a year for 20 years. Let's assume the
10 evidence showed that.

11 Would that then change your mind about
12 whether tens of millions was too much?

13 MR. CHRISTIANSEN: Objection.
14 Hypotheticals are inappropriate.

15 THE COURT: Sustained.

16 MR. ROBERTS: So, right now, as you sit
17 here, you could not award tens of millions no
18 matter what the evidence shows?

19 PROSPECTIVE JUROR NO. 11-0975: Correct.

20 MR. ROBERTS: That's all I have, Your
21 Honor. Thank you.

22 Nothing further, Your Honor.

23 THE COURT: Okay. Thank you,
24 Mr. Fortich.

25 THE MARSHAL: All rise. Come to order.

1 MR. KEMP: Judge, we'll stipulate.

2 MR. ROBERTS: We'll stipulate, Your
3 Honor.

4 THE COURT: Parties have stipulated.
5 I'm going to excuse Mr. Fortich. He's consistent
6 in his ideas on caps.

7 MR. ROBERTS: And I agree with the
8 Court's ruling on my question.

9 THE COURT: Will you let Mr. Fortich
10 know, if he's still there, that he's excused and
11 he should go to the third floor, please.

12 THE MARSHAL: The other two need to come
13 back; right?

14 THE COURT: He does not need to come
15 back.

16 THE MARSHAL: The other two?

17 THE COURT: The other two, yeah. Seat
18 20?

19 THE CLERK: 23.

20 THE COURT: He's in 23. All right. Who
21 are you going to be calling next, please?

22 THE CLERK: Iris Adachi.

23 MR. CHRISTIANSEN: Adachi, Badge 1218?

24 THE CLERK: Yes.

25 MR. CHRISTIANSEN: Thank you, Ms. Clerk.

1 THE COURT: As I was beginning -- I
2 briefly spoke to the parties about it at sidebar
3 at the bench. I have not heard back from
4 Ms. Lee's doctor. We've faxed her a letter
5 yesterday, and also Ms. Powell has tried calling,
6 and no one answers her phone. She's been on 20
7 minutes at a time and can't get a person.

8 MR. KEMP: Sounds like the military.

9 THE COURT: Anyway, I will tell you,
10 though, that I have observed her, and she appears
11 to be napping through part of the -- this morning.

12 MR. KEMP: The point?

13 THE COURT: Pardon?

14 And I have another concern. Because the
15 last communication has been her doctor
16 directing -- excuse me just a second -- informing
17 that she cannot serve because of her condition,
18 I'm concerned, number one, for her. She may not
19 feel that way, but she's not a physician.

20 And, number two, frankly, if anything
21 happens to her while she's sitting here for the
22 next four weeks, with that doctor's letter, I
23 think that I'm exposing this court to liability.

24 MR. KEMP: Judge, I was just going to
25 suggest, at the end of the day, you ask her if she

1 has an update, and if she doesn't --

2 THE COURT: I want to let you know that
3 there are more concerns than --

4 MR. KEMP: Right. She may have an
5 update. I don't know.

6 THE COURT: No, I hope she does. I'm
7 open to that, but I do have to consider that issue
8 as well. Okay?

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

11 MR. ROBERTS: Thank you, Your Honor.

12 THE COURT: See you at 1:00.

13 THE MARSHAL: All rise. Court is
14 recessed until 1:00.

15 (Whereupon, the luncheon recess was
16 taken.)

17 THE COURT: Let's go back on the record.
18 So, for the record, the parties have stipulated to
19 Mr. Kemp or one of the attorneys associated with
20 Mr. Kemp --

21 MR. KEMP: And one of the attorneys.

22 THE COURT: Oh, okay. You're going to
23 call together the Venetian to explore the
24 possibility of some of the jurors that work there
25 be able to have further pay while they're here.

1 Okay.

2 All right. Are we ready for the jury?

3 I am.

4 MR. ROBERTS: One more thing, Your
5 Honor.

6 THE COURT: Yes.

7 MR. ROBERTS: Mr. Kemp noticed that it
8 looked like our juror Ms. Mosqueda, I believe, was
9 having trouble staying awake today.

10 THE COURT: Yeah, she has her eyes
11 closed.

12 MR. ROBERTS: And we were thinking maybe
13 the Court could ask her to inquire with HR to see
14 if she should get paid. We believe the Wynn will
15 pay her for some jury duty, maybe up to four
16 weeks, and then she wouldn't be trying to work at
17 night and stay awake during the day.

18 THE COURT: All right.

19 MR. ROBERTS: And when I say "we," I
20 mean MCI. Mr. Kemp didn't agree with that.

21 THE COURT: You're talking about seat --
22 the spot -- she's seated in No. 28; correct?

23 MR. ROBERTS: Correct.

24 THE COURT: And that's Badge 11-1155?

25 MR. ROBERTS: I will confirm that, Your

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1 Honor.

2 THE COURT: I think it is.

3 MR. ROBERTS: That is correct, Your
4 Honor. Emilie Mosqueda. And this is one where
5 your marshal indicated that she had told him that
6 working at nights and coming here --

7 THE COURT: Yes.

8 MR. ROBERTS: -- during the days would
9 make it difficult for her.

10 THE COURT: My inquiry was with respect
11 to Mr. Byron Lennon and Mr. Enrique Tuquero. I
12 did not discuss this person.

13 MR. ROBERTS: Emilie Mosqueda.

14 THE COURT: And then Ms. Flores --

15 MR. KEMP: We may suggest that she
16 contact HR because she just started at the Wynn.

17 THE COURT: Right.

18 MR. ROBERTS: And given what's going on
19 at the Wynn, she may be reluctant to --

20 THE COURT: Correct. Why don't I have
21 her brought in first and let her know.

22 But before that, would you like to see
23 Ms. Flores' handbook? I actually wrote her name
24 on there.

25 MR. CHRISTIANSEN: The handbook.

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1 Remember she told us to contact HR.

2 MR. ROBERTS: Right. Right.

3 (Discussion off the record.)

4 MR. KEMP: That's good. If she's been
5 there over 90 days, and I think she has.

6 THE COURT: All right. I'm going to
7 have Marshal Ragsdale bring Ms. Mosqueda in first.

8 (Discussion off the record.)

9 THE MARSHAL: All rise.

10 Please be seated. Come to order.

11 THE COURT: Please state your name and
12 your badge number.

13 PROSPECTIVE JUROR NO. 11-1155: Yes.
14 Emilie Mosqueda, 11-1155.

15 THE COURT: Okay. Ms. Mosqueda, are
16 you -- you look a little bit tired today.

17 PROSPECTIVE JUROR NO. 11-1155: Yes. I
18 just haven't had sleep. I came straight here from
19 work around 8:00 a.m.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 11-1155: So I'm
22 not sure if I can be able to stay for this trial.
23 I mean, I can't focus and --

24 THE COURT: You work at the Venetian;
25 right?

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1 PROSPECTIVE JUROR NO. 11-1155: No, at
2 the Wynn casino.

3 THE COURT: At the Wynn. Okay.

4 All right. So what I'd like you to do,
5 please, is -- and counsel may have some questions
6 or suggestions for you as well -- is to follow
7 through and talk to HR, the human resources
8 department. Have you spoken to anyone yet?

9 PROSPECTIVE JUROR NO. 11-11-55: No.

10 THE COURT: Okay. I'd like you to do
11 that as soon as possible and let them know that
12 you -- this is a trial that is going to last
13 probably another four weeks.

14 PROSPECTIVE JUROR NO. 11-1155: Right.

15 THE COURT: And I believe their policy
16 would cover you, if I'm not mistaken, and I'd like
17 you to follow through and confirm. Okay?

18 PROSPECTIVE JUROR NO. 11-1155: right.

19 THE COURT: So that you wouldn't be so
20 tired.

21 PROSPECTIVE JUROR NO. 11-1155:

22 THE COURT: And then, Counsel, do you
23 have any questions or comments?

24 MR. KEMP: I think Wynn pays four to six
25 weeks. I'm not sure. But if she contacts human

1 resources, they should be able -- they fill out a
2 form or something and she gets paid when she's
3 down here.

4 THE COURT: Right.

5 MR. ROBERTS: So what you're saying is
6 she would get paid even though she didn't report
7 to work during the trial?

8 THE COURT: Yes.

9 PROSPECTIVE JUROR NO. 11-1155: Because
10 I work graveyard.

11 THE COURT: It doesn't matter what time
12 you work. I think their policy has to be the same
13 for all employees, but you need to contact them
14 and fill something out as soon as possible.

15 PROSPECTIVE JUROR NO. 11-1155: Okay.

16 THE COURT: Okay. Thank you.

17 THE MARSHAL: All rise.

18 THE COURT: Are we ready? Everybody
19 ready? Yes? Okay. Great.

20 MR. ROBERTS: Were you going to talk to
21 Ms. Lee?

22 THE COURT: Not yet. I haven't heard
23 from her doctor yet.

24 MR. ROBERTS: Very well.

25 (Discussion off the record.)

1 THE MARSHAL: All rise. All the jurors
2 are present, Your Honor.

3 Please be seated. Come to order.

4 THE COURT: Counsel, do you stipulate to
5 the presence of the jury?

6 MR. ROBERTS: Yes, Your Honor.

7 MR. CHRISTIANSEN: Yes, Your Honor.

8 THE COURT: Thank you.

9 THE CLERK: Badge No. 11-1218, Iris
10 Adachi, in Seat 23.

11 THE COURT: Good afternoon, everyone.
12 Welcome back. And please state your name and your
13 badge number.

14 PROSPECTIVE JUROR NO. 11-1218: Iris
15 Adachi, 11-1128.

16 THE COURT: And you're going to need to
17 speak louder than that, please.

18 I'm going to ask you the very similar
19 questions that I'm required to ask. All right?

20 Do you have any problems understanding
21 the English language?

22 PROSPECTIVE JUROR NO. 11-1218: No.

23 THE COURT: All right. Are you
24 acquainted or do you recognize any of the
25 attorneys in this case?

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1 PROSPECTIVE JUROR NO. 11-1218: No.

2 THE COURT: Are you acquainted or do you
3 recognize any of the witnesses that were included
4 in the questionnaire?

5 PROSPECTIVE JUROR NO. 11-1218: No.

6 THE COURT: Are you acquainted or do you
7 recognize any of the parties in this case?

8 PROSPECTIVE JUROR NO. 11-1218: No.

9 THE COURT: Are any of the parties or
10 the attorneys obligated to you in any way, or are
11 you obligated to them?

12 PROSPECTIVE JUROR NO. 11-1218: No.

13 THE COURT: Do you know any other
14 members of the jury panel, or do you recognize
15 anyone else?

16 PROSPECTIVE JUROR NO. 11-1218: No.

17 THE COURT: Do you know me or any of the
18 staff of Department 14?

19 PROSPECTIVE JUROR NO. 11-1218: No.

20 THE COURT: Understanding that this is
21 going to be likely another four weeks of trial and
22 given the schedule I've shared with everyone,
23 would you have any physical or medical hardship
24 that would prohibit you from serving as a juror in
25 this case?

1 PROSPECTIVE JUROR NO. 11-1218: No.

2 THE COURT: What about -- the same
3 thing, but would you have any severe -- or would
4 it cause you any severe or undue hardship, this
5 time?

6 PROSPECTIVE JUROR NO. 11-1218: Only
7 financial.

8 THE COURT: I'm sorry. Speak louder.

9 PROSPECTIVE JUROR NO. 11-1218: Only
10 financially.

11 THE COURT: Financially. All right.

12 Have you ever been in a car accident or
13 any type of vehicular accident?

14 PROSPECTIVE JUROR NO. 11-1218: I was
15 hit by a car, but there were no injuries and there
16 was no lawsuit.

17 THE COURT: You were hit by a car, no
18 injuries and no lawsuit?

19 PROSPECTIVE JUROR NO. 11-1218: Huh-uh.

20 THE COURT: As a juror, you will be
21 asked to listen to witnesses, review evidence, and
22 make a determination based on the facts. And the
23 Court -- or I will instruct you on the law that
24 you will apply to the facts.

25 Sometimes persons may disagree with how

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1 some of the laws are written. It would be a
2 violation of a juror's duty if he or she tried to
3 render a verdict based upon what he or she
4 believed the law to be if it was different from
5 any instructions I give the jury -- or the Court
6 gives the jury.

7 Do you feel that you would be able to
8 follow all of the instructions of the Court on the
9 law even if the instructions differ from your
10 personal opinions or conceptions of what the law
11 ought to be?

12 PROSPECTIVE JUROR NO. 11-1218: Yes.

13 THE COURT: You do? Okay.

14 Have you heard about this case in the
15 media?

16 PROSPECTIVE JUROR NO. 11-1218: I think
17 I saw it on television when it first happened, on
18 the news.

19 THE COURT: You did? You saw it on
20 television?

21 PROSPECTIVE JUROR NO. 11-1218: Um-hum.

22 THE COURT: Okay. Thank you.

23 Do you hold anything such as a sympathy,
24 prejudice, or bias relating to age, religion,
25 race, gender, or national origin that you feel

1 would affect your ability to be open-minded, fair,
2 and an impartial juror in this trial?

3 PROSPECTIVE JUROR NO. 11-1218: No.

4 THE COURT: All right. Is there any
5 other reason that you would be unable to fairly --
6 to serve as a fair juror in this particular case?

7 PROSPECTIVE JUROR NO. 11-1218: No.

8 THE COURT: Okay. How long have you
9 lived in the Las Vegas area?

10 PROSPECTIVE JUROR NO. 11-1218: Since
11 1983.

12 THE COURT: 1983? Okay.

13 And where did you live before that?

14 PROSPECTIVE JUROR NO. 11-1218: South
15 Dakota.

16 THE COURT: I'm sorry. I can't hear
17 you.

18 PROSPECTIVE JUROR NO. 11-1218: South
19 Dakota.

20 THE COURT: All right. What do you do
21 for work?

22 PROSPECTIVE JUROR NO. 11-1218: I work
23 for a casino.

24 THE COURT: A casino? And what do you
25 do in the casino?

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1 PROSPECTIVE JUROR NO. 11-1218: Cage
2 cashier.

3 THE COURT: You're a cashier?

4 PROSPECTIVE JUROR NO. 11-1218: Yes.

5 THE COURT: And how long have you been
6 in that line of work?

7 PROSPECTIVE JUROR NO. 11-1218: About 35
8 years.

9 THE COURT: 35 years? All right.

10 Are you married, or do you have a
11 significant other?

12 PROSPECTIVE JUROR NO. 11-1218:
13 Separated.

14 THE COURT: And is your former -- or is
15 your -- your spouse, what area of work?

16 PROSPECTIVE JUROR NO. 11-1218: He's
17 retired.

18 THE COURT: And before he retired?

19 PROSPECTIVE JUROR NO. 11-1218: Air
20 Force.

21 THE COURT: And what area of the Air
22 Force? What were his duties there?

23 PROSPECTIVE JUROR NO. 11-1218: He was,
24 like, in computers.

25 THE COURT: How long was he in the Air

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1 Force?

2 PROSPECTIVE JUROR NO. 11-1218: 20
3 years.

4 THE COURT: Do you have children?

5 PROSPECTIVE JUROR NO. 11-1218: One.

6 THE COURT: How old is your child?

7 PROSPECTIVE JUROR NO. 11-1218: 41.

8 THE COURT: 41? Okay. And what area of
9 work is your --

10 PROSPECTIVE JUROR NO. 11-1218: He's
11 actually on disability.

12 THE COURT: Your son is on disability?
13 Okay.

14 And how long has he been on disability?

15 PROSPECTIVE JUROR NO. 11-1218: Probably
16 about 20 years maybe.

17 THE COURT: 20 years? Okay. All right.
18 Have you ever served on a jury before?

19 PROSPECTIVE JUROR NO. 11-1218: No.

20 THE COURT: No?

21 PROSPECTIVE JUROR NO. 11-1218: No.

22 THE COURT: Okay. Thank you.

23 Mr. Christiansen?

24 MR. CHRISTIANSEN: Good afternoon,
25 Ms. Adachi.

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1 Ms. Adachi, were you able to hear
2 yesterday and today sort of the explanation of how
3 things work in a trial and how they'll go if
4 you're selected?

5 PROSPECTIVE JUROR NO. 11-1218: Yes.

6 MR. CHRISTIANSEN: That explanation
7 about us lawyers sometimes disagreeing, sometimes
8 getting along with each other, sometimes having
9 sidebars, anything about the process that would
10 cause you an inability to be fair to both sides?

11 PROSPECTIVE JUROR NO. 11-1218: No.

12 MR. CHRISTIANSEN: You have heard a
13 bunch of times Judge Escobar read that admonition
14 when we all leave. Part of that admonition is
15 don't go on the internet; don't do your own
16 research; don't talk to people you're not supposed
17 to talk to.

18 Could you abide by those directions?

19 PROSPECTIVE JUROR NO. 11-1218: Yes.

20 MR. CHRISTIANSEN: I didn't see -- you
21 have not been a juror ever before?

22 PROSPECTIVE JUROR NO. 11-1218: No.

23 MR. CHRISTIANSEN: Have you got called
24 for jury duty before?

25 PROSPECTIVE JUROR NO. 11-1218: Yes.

1 MR. CHRISTIANSEN: Just never made it --
2 you're one of the lucky ones that got to stay
3 behind the bar?

4 PROSPECTIVE JUROR NO. 11-1218: Yes.

5 MR. CHRISTIANSEN: The question you've
6 heard me ask others before you about the media,
7 can you avoid, if you're selected, watching the
8 internet or news channels or reading in the
9 newspaper what may be reported by the media?

10 PROSPECTIVE JUROR NO. 11-1218: Yes.

11 MR. CHRISTIANSEN: Do you understand
12 it's important the jury decides the case based on
13 evidence, not what the media says happened?

14 PROSPECTIVE JUROR NO. 11-1218: Yes.

15 MR. CHRISTIANSEN: Take one break.

16 Judge, may we approach on that one
17 issue? I want to make sure to stay with the
18 Court's directives.

19 THE COURT: When we are at sidebar, if
20 you speak to one another, she can't make a record.
21 So you really can't chat while we're at sidebar,
22 unfortunately. Okay?

23 Thank you.

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

1 MR. CHRISTIANSEN: All right,
2 Ms. Adachi. You remember coming in some weeks
3 back and filling out that questionnaire?

4 PROSPECTIVE JUROR NO. 11-1218: Yes.

5 MR. CHRISTIANSEN: Has the live version
6 that you've had to sit through for, I guess, the
7 last -- you came in Wednesday; is that right?

8 PROSPECTIVE JUROR NO. 11-1218: Yes.

9 MR. CHRISTIANSEN: Has the live version
10 been more informative than the questionnaire or
11 vice versa?

12 PROSPECTIVE JUROR NO. 11-1218: The
13 live.

14 MR. CHRISTIANSEN: The live has been
15 better?

16 PROSPECTIVE JUROR NO. 11-1218: Yes.

17 THE COURT: Ms. Adachi, I'd like you to
18 speak louder, please. The mic is not picking you
19 up. Thank you.

20 MR. CHRISTIANSEN: You have to talk up a
21 bit, if you can. Okay?

22 Anything about the explanation of how
23 things are supposed to go that you have a question
24 about or you're unsure of?

25 PROSPECTIVE JUROR NO. 11-1218: No.

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1 MR. CHRISTIANSEN: If selected as a
2 juror, would you be able to participate in that
3 question process that Her Honor will explain to
4 you where, at the conclusion of witnesses, jurors
5 can write out a question, give it to the marshal,
6 who gives it to the judge. And then, like she
7 decides our questions, she'll decide what
8 questions of the jurors she'll want to pose.

9 Would you want to do that?

10 PROSPECTIVE JUROR NO. 11-1218: Yes.

11 MR. CHRISTIANSEN: Would you find that
12 interesting or not so much?

13 PROSPECTIVE JUROR NO. 11-1218: Yes.

14 MR. CHRISTIANSEN: Sort of like it makes
15 the jury a part of the process. You think you
16 would feel that way a bit?

17 PROSPECTIVE JUROR NO. 11-1218: Right.

18 MR. CHRISTIANSEN: Great.

19 You also work at the Venetian; is that
20 right?

21 PROSPECTIVE JUROR NO. 11-1218: Yes.

22 MR. CHRISTIANSEN: So we've got Lennon,
23 Mr. Tuquero, and yourself are all Venetian
24 employees. But you don't know either of the
25 gentlemen that also are employed there?

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1 PROSPECTIVE JUROR NO. 11-1218: No.

2 MR. CHRISTIANSEN: Okay.

3 The financial hardship that you told Her
4 Honor, is it similar to the other Venetian persons
5 that you've heard say you only get X number of
6 days and if the case lasts a long time, that would
7 become difficult?

8 PROSPECTIVE JUROR NO. 11-1218: Well, I
9 have custody of my granddaughter and I'm the sole
10 support.

11 MR. CHRISTIANSEN: I remember that from
12 your questionnaire. So I wanted to ask you, is
13 that granddaughter the daughter of your disabled
14 son?

15 PROSPECTIVE JUROR NO. 11-1218: Yes.

16 MR. CHRISTIANSEN: Do you care for both
17 of them?

18 PROSPECTIVE JUROR NO. 11-1218: No, just
19 her.

20 MR. CHRISTIANSEN: Just her. Okay.
21 He's an adult?

22 PROSPECTIVE JUROR NO. 11-1218: Yes.

23 MR. CHRISTIANSEN: How old is your
24 granddaughter, ma'am?

25 PROSPECTIVE JUROR NO. 11-1218: 16.

1 MR. CHRISTIANSEN: And you said you're
2 separated, so is it -- am I understanding it's
3 just you and your granddaughter?

4 PROSPECTIVE JUROR NO. 11-1218: Yes.

5 MR. CHRISTIANSEN: And you're her only
6 support?

7 PROSPECTIVE JUROR NO. 11-1218: Yes.

8 MR. CHRISTIANSEN: Tell us what shift
9 you work typically as a cage cashier at the
10 Venetian.

11 PROSPECTIVE JUROR NO. 11-1218: Days.

12 MR. CHRISTIANSEN: So the hours here in
13 court aren't much different than what you would
14 have if you were at work?

15 PROSPECTIVE JUROR NO. 11-1218: Right.

16 MR. CHRISTIANSEN: The question for you
17 becomes can you pay the bills --

18 PROSPECTIVE JUROR NO. 11-1218: And then
19 pay the rent and the late fees and come up with
20 another month's rent, is what I'm thinking.

21 MR. CHRISTIANSEN: If I'm understanding,
22 the Venetian pays for X number of days. I don't
23 remember what X was. Maybe somebody said 10.

24 THE COURT: 10.

25 MR. CHRISTIANSEN: Thank you, Judge.

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1 But it would be after that point in time
2 that the hardship would start to sort of weigh on
3 you?

4 PROSPECTIVE JUROR NO. 11-1218: Yes.

5 MR. CHRISTIANSEN: So you're okay right
6 now, at least while we're figuring out who gets
7 the lucky straws and gets to sit?

8 PROSPECTIVE JUROR NO. 11-1218: Right.

9 MR. CHRISTIANSEN: Okay. I noticed in
10 your questionnaire, Ms. Adachi, that you regularly
11 ride buses.

12 PROSPECTIVE JUROR NO. 11-1218: No.

13 MR. CHRISTIANSEN: No?

14 PROSPECTIVE JUROR NO. 11-1218: No.

15 MR. CHRISTIANSEN: I may have got that
16 wrong. Do you ride bikes, and I got it backwards?

17 PROSPECTIVE JUROR NO. 11-1218: No.

18 MR. CHRISTIANSEN: Okay. Neither. I'm
19 sorry.

20 Have you experienced a large vehicle,
21 like a bus or a truck, pass you when you're on the
22 sidewalk, like it goes by on the street?

23 PROSPECTIVE JUROR NO. 11-1218: Probably
24 at some point. I don't -- not recently.

25 MR. CHRISTIANSEN: Have you ever felt

1 the wind that goes along with that vehicle
2 passing?

3 PROSPECTIVE JUROR NO. 11-1218: I'm sure
4 I have at some point but not lately, not in the
5 past few years.

6 MR. CHRISTIANSEN: Do you drive?

7 PROSPECTIVE JUROR NO. 11-1218: Yes.

8 MR. CHRISTIANSEN: How about in your car
9 when, like, a big truck or a bus goes by you in
10 your car, do you feel that?

11 PROSPECTIVE JUROR NO. 11-1218:
12 Sometimes, yes.

13 MR. CHRISTIANSEN: Would you be open to
14 listening to evidence about that phenomenon in
15 this case?

16 PROSPECTIVE JUROR NO. 11-1218: Yes.

17 MR. CHRISTIANSEN: Okay. My questions
18 about corporations being no better nor worse than
19 individuals in the eyes of the law, do you agree
20 with that?

21 PROSPECTIVE JUROR NO. 11-1218: Yes.

22 MR. CHRISTIANSEN: These lawyers
23 represent a defendant who's a corporation;
24 Mr. Kemp and these nice young ladies and I
25 represent two boys.

1 Can we agree everybody is on sort of the
2 same starting line or an even playing field?

3 PROSPECTIVE JUROR NO. 11-1218: Yes.

4 MR. CHRISTIANSEN: The preponderance of
5 the evidence, or the more likely than not
6 standard, did you understand my attempt to explain
7 that to others?

8 PROSPECTIVE JUROR NO. 11-1218: Yes.

9 MR. CHRISTIANSEN: How do you feel about
10 that standard?

11 PROSPECTIVE JUROR NO. 11-1218: I'm fine
12 with it.

13 MR. CHRISTIANSEN: How about in a case
14 where somebody -- I -- am going to ask for a large
15 amount of money, tens of millions of dollars?
16 Should I have to do more than 51 percent?

17 PROSPECTIVE JUROR NO. 11-1218: I don't
18 know. When you said "tens of millions of
19 dollars," it just -- I don't know. I don't know.
20 And then you added the -- what was it? -- punitive
21 damages on top of that?

22 MR. CHRISTIANSEN: You got it right so
23 far.

24 PROSPECTIVE JUROR NO. 11-1218: I just
25 don't see that.

1 MR. CHRISTIANSEN: Okay. There's no
2 wrong answer, just like, you know, I hate
3 tomatoes. That's just the way it is. If you've
4 got feelings, I want to hear about them.

5 So, in your mind, it sounds like to me,
6 that large awards are something you struggle with?

7 PROSPECTIVE JUROR NO. 11-1218: Right.

8 MR. CHRISTIANSEN: Were your thoughts
9 similar to others? I think, in fact, it was the
10 young man that was sitting in the case -- she's
11 nodding yes -- sitting right in your chair before
12 you, that awarding large numbers is just not
13 something you can do?

14 PROSPECTIVE JUROR NO. 11-1218: Right,
15 especially the punitive. I can see being
16 compensated for something, but I just don't see
17 that adding on to it with the punishment section
18 of it.

19 MR. CHRISTIANSEN: Is that a feeling
20 you've held for some period of time?

21 PROSPECTIVE JUROR NO. 11-1218: Yes.

22 MR. CHRISTIANSEN: Yes? I'm sorry.

23 I --

24 PROSPECTIVE JUROR NO. 11-1218: I'm
25 sorry.

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1 MR. CHRISTIANSEN: That's okay. We're
2 all used to being loud, because we have to be, and
3 it's not sort of normal. So ...

4 It doesn't sound like you think you
5 could fairly consider any claim for punitive
6 damages.

7 PROSPECTIVE JUROR NO. 11-1218: I don't
8 think so.

9 MR. CHRISTIANSEN: And that's a belief
10 you've had for -- before today?

11 PROSPECTIVE JUROR NO. 11-1218: Yes.

12 MR. CHRISTIANSEN: I think you even had
13 it when you answered your questionnaire.

14 PROSPECTIVE JUROR NO. 11-1218: I think
15 so.

16 MR. CHRISTIANSEN: And no clever
17 questions by me are going to change that; right?

18 PROSPECTIVE JUROR NO. 11-1218: I don't
19 see a reason for it.

20 MR. CHRISTIANSEN: Understood. And I'm
21 not trying to talk you out of it one way or the --
22 that's just a feeling you have; fair?

23 PROSPECTIVE JUROR NO. 11-1218: Yes.

24 MR. CHRISTIANSEN: And you're not going
25 to change it?

1 PROSPECTIVE JUROR NO. 11-1218: No.

2 MR. CHRISTIANSEN: And you are not a
3 juror well suited to consider even punitive
4 damages; fair?

5 PROSPECTIVE JUROR NO. 11-1218: Fair.

6 MR. CHRISTIANSEN: And you don't want to
7 ever impose them?

8 PROSPECTIVE JUROR NO. 11-1218: No.

9 MR. CHRISTIANSEN: And no matter what
10 any lawyer says to you, that opinion of yours --
11 which you are entitled to -- is never changing?

12 PROSPECTIVE JUROR NO. 11-1218: No.

13 MR. CHRISTIANSEN: Thank you, ma'am, for
14 being honest. Appreciate it.

15 Can we approach, Your Honor?

16 THE COURT: Yes.

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

19 MR. CHRISTIANSEN: Everybody up here
20 agree that manufacturers should design safe
21 products? Does everybody agree with that?

22 IN UNISON: Yes.

23 MR. CHRISTIANSEN: Does anybody disagree
24 that that should be the goal?

25 Is there anybody that believes that it's

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1 okay to design unreasonably dangerous products
2 that the community has to use?

3 MR. ROBERTS: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. CHRISTIANSEN: Just, again, to
6 everybody, the jury -- jurors are the judges of
7 credibility. In other words, you have to decide
8 what version -- or whose version you want to
9 believe from the witness stand.

10 Does anybody think they'd have a tough
11 time doing that?

12 Who's -- take that, pass it right behind
13 you, if you would, to Ms. Hannewald.

14 I just looked up and remembered you had
15 kids and so -- and you're recent to the bench.

16 Ms. Hannewald, can you tell the judge
17 your badge number please.

18 PROSPECTIVE JUROR NO. 11-1200: Yeah.
19 April Hannewald, 11-1200.

20 MR. CHRISTIANSEN: You probably,
21 Wednesday or, again, yesterday, remember my
22 question about children and two kids coming to a
23 parent with two different versions of the same
24 event. Do you remember those types of questions?

25 PROSPECTIVE JUROR NO. 11-1200: No,

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1 because I have two only children. They're 12
2 years apart. They didn't speak to each other.

3 MR. CHRISTIANSEN: Got it. You were in
4 the mortgage business?

5 PROSPECTIVE JUROR NO. 11-1200: Yes.

6 MR. CHRISTIANSEN: And I think you told
7 Her Honor that you sort of progressed to various
8 levels and one point or another were a supervisor.

9 PROSPECTIVE JUROR NO. 11-1200: Yes.

10 MR. CHRISTIANSEN: As a supervisor, did
11 some of the people you supervised at times come to
12 you with two different versions about a single
13 event?

14 PROSPECTIVE JUROR NO. 11-1200: Yes.

15 MR. CHRISTIANSEN: And as a supervisor
16 or a manager of persons, what did you do in those
17 situations?

18 PROSPECTIVE JUROR NO. 11-1200: Just ask
19 questions and evaluate the answers and make a
20 decision based on what you saw and heard.

21 MR. CHRISTIANSEN: Did you use your
22 common sense?

23 PROSPECTIVE JUROR NO. 11-1200: Yes.

24 MR. CHRISTIANSEN: The judge is going to
25 read all of you folks an instruction that says

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1 you're supposed to use your common sense. Common
2 sense is -- you're not supposed to leave that
3 outside. You've got to bring that in here.

4 Ms. Hannewald, would that be something
5 you could do as a juror?

6 PROSPECTIVE JUROR NO. 11-1200: For
7 sure.

8 MR. CHRISTIANSEN: Is there anybody that
9 doesn't think they'll be able to judge credibility
10 of witnesses? In other words, you may have two
11 witnesses in one particular area say two different
12 things, and you've got to figure out which one is
13 right or which one you believe. Anybody think
14 they can't do that? All right. Nobody's got
15 their hands up.

16 What's the standard by which you have to
17 believe them? See if anybody's been paying --

18 PROSPECTIVE JUROR NO. 11-0940:
19 51 percent.

20 MR. CHRISTIANSEN: All right.
21 Ms. Graf's got it. Ms. Hannewald, I bet she's got
22 it as well. More likely than not.

23 PROSPECTIVE JUROR NO. 11-1200: More
24 likely than not, yes.

25 MR. CHRISTIANSEN: Anybody think that's

1 an improper standard when judging credibility,
2 that if you're going to decide, you know, who's
3 more credible than another, that you should really
4 have to decide, like, a hundred percent? Anybody?
5 Because everybody in the courtroom, the judge, all
6 the lawyers on both sides of the aisle, agree
7 that's the standard you're supposed to use in a
8 civil case.

9 Anybody not okay with that particular
10 standard? All right.

11 I've talked to individual jurors about
12 it, so I want to ask sort of generic -- generally.
13 Is there anybody seated up here that thinks in
14 their head they're going to be thinking of things
15 other than the harms and losses to the Khiabani
16 boys when deciding this verdict? We had a person
17 say he's thinking about his business. Had other
18 people say they thought about different things.
19 Is there anybody who can't commit or unequivocally
20 say that the only thing they'll consider are the
21 harms and losses to the Khiabani boys, Aria and
22 Keon?

23 Ms. -- I'm going to butcher your name
24 again -- Vandevanter. Ms. Vandevanter, you want
25 to hand -- grab that microphone?

1 PROSPECTIVE JUROR NO. 11-1186: I have
2 one very small child, so you've got children. And
3 then I'm also responsible for 13 children at
4 school, 10 of which are not verbal. So that's
5 always something that's on my mind as well.

6 MR. CHRISTIANSEN: Perfect.

7 PROSPECTIVE JUROR NO. 11-1186: Not that
8 I couldn't concentrate, but...

9 MR. CHRISTIANSEN: Great example,
10 because what you said afterwards is you could
11 concentrate, but you're being super candid and
12 honest and throwing it out there that you've got a
13 life; right? Everybody else does, and we've never
14 had a juror in a courtroom in this courthouse that
15 didn't have a life.

16 So the question really is can you give
17 us what attention the case deserves in here while
18 your life is going on out there? And I think you
19 probably can.

20 PROSPECTIVE JUROR NO. 11-1186: Yes. My
21 only concern is being that they're children, as a
22 parent, and I had a difficult medical experience a
23 year ago, that would be the only thing that may be
24 emotionally distracting to me.

25 MR. CHRISTIANSEN: The judge is going to

1 tell all of us that sympathy, much like prejudice,
2 that nobody's looking to judge a case based on
3 sympathy. The Khiabani boys don't want it. They
4 just want you to judge it based on the facts in
5 here. If the judge tells you that's the law --
6 everybody's got empathy. Can you promise to
7 follow the law and judge the case based on the
8 facts?

9 PROSPECTIVE JUROR NO. 11-1186:

10 Absolutely.

11 MR. CHRISTIANSEN: And nothing about you
12 having that unique job of dealing with special
13 children and having children of your own would
14 prevent you from using the logic side of your
15 brain and judging this case based on logic and
16 reason; right?

17 PROSPECTIVE JUROR NO. 11-1186: No.

18 MR. CHRISTIANSEN: Somebody else?

19 Mr. Noshi. Hand it back, please. Go ahead,
20 Mr. Noshi.

21 PROSPECTIVE JUROR NO. 11-1207: 11-1207.

22 Just if I understand the question
23 correctly, like, if there would be something in
24 the back of my mind, still, like, to your -- other
25 than the well-being of the victims, the

1 children -- and I just -- I don't know if that's
2 relevant or not. But, like, to me, an engineer,
3 working with engineering, always trying to do my
4 best to do the best design, the best whatever,
5 through the process we still get sometimes
6 complaints and some have lawsuits at my company in
7 regard to, you know, like, they -- this shouldn't
8 have happened or whatever.

9 And so, to me, in the back of my head,
10 I'm always thinking, like, in my mind, as an
11 engineer, thinking that this is the best they can
12 do. We can't foresee everything, and we can't be
13 flawless or -- and that's just the kind of -- that
14 this is always in the back of my head, is -- you
15 know, is there any way, like, yeah, you know,
16 engineering progresses in the years to come,
17 things improve.

18 And then when we know we're not doing
19 something entirely correct, it's just kind of like
20 this. Like, whenever you're talking about
21 manufacturing, it's always in the back of my head,
22 like, I could have been in a similar situation.
23 And that would be my -- you know, like, did I do
24 my best or not? Should I be punished for missing
25 this or trying my best, but additional information

1 showed up later.

2 MR. CHRISTIANSEN: Thank you. I
3 appreciate you sharing that with me. When you're
4 designing things and you're presented with two
5 alternative designs, one being safer and one being
6 less safe, which one do you choose?

7 PROSPECTIVE JUROR NO. 11-1207: The more
8 safe.

9 MR. CHRISTIANSEN: You choose the safer
10 one? You think that's a good practice?

11 PROSPECTIVE JUROR NO. 11-1207:
12 Absolutely.

13 MR. CHRISTIANSEN: Okay. How about
14 anybody else? When presented with -- anybody else
15 think that Mr. Noshi's notion for given two
16 designs, you should always choose the safer?
17 Anybody disagree with that?

18 MR. ROBERTS: May we approach, Your
19 Honor?

20 THE COURT: Yes. It's a good time to
21 approach.

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

24 THE COURT: Thank you, counsel. All
25 right. I'm going to give you a 10-minute break.

1 There's something we need to follow through with.

2 So you're instructed not to talk with
3 each other or with anyone else about any subject
4 or 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 recreate 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, google
20 issues, or conduct any other kind of book or
21 computer research with regard to any issue or any
22 witness or attorney involved in this case.

23 You are not to form or express any
24 opinion or any subject connected with this trial
25 until the case is finally submitted to you.

1 See you in 10 minutes.

2 THE MARSHAL: All rise.

3 THE COURT: Jerry, call Ms. Adachi back.

4 (Discussion off the record.)

5 THE MARSHAL: All rise.

6 THE COURT: Please state your name and
7 your badge number.

8 PROSPECTIVE JUROR NO. 11-1218: Iris
9 Adachi, 11-1218.

10 THE COURT: Thank you. We have some
11 follow-up questions for you --

12 PROSPECTIVE JUROR NO. 11-1218: Okay.

13 THE COURT: -- related to counsel
14 stuff.

15 PROSPECTIVE JUROR NO. 11-1218: Okay.

16 THE COURT: Counsel.

17 MR. CHRISTIANSEN: Judge, I think we had
18 an agreement relative to her. I believe
19 Mr. Roberts stipulated.

20 MR. ROBERTS: I did, Your Honor.

21 THE COURT: Right. It's stipulated?

22 MR. ROBERTS: I've stipulated, yes, Your
23 Honor.

24 THE COURT: Thank you. Thank you for
25 the agreement.

1 So, Ms. Adachi, I'm going to excuse you.

2 PROSPECTIVE JUROR NO. 11-1218: Okay.

3 THE COURT: And please go to jury

4 services on the third floor.

5 PROSPECTIVE JUROR NO. 11-1218: Okay.

6 Thank you.

7 THE COURT: Thank you for your service.

8 THE MARSHAL: All rise.

9 (Whereupon, a recess was taken.)

10 THE MARSHAL: All rise.

11 THE COURT: Good afternoon. Please be

12 seated.

13 PROSPECTIVE JUROR NO. 11-1221: Hello.

14 THE COURT: Hi. Your name and badge

15 number, please.

16 PROSPECTIVE JUROR NO. 11-1221: Sheri

17 White, 11-1221.

18 THE COURT: Thank you. Okay. Before we

19 begin the general questions, it's my understanding

20 that you've heard something about this case

21 before?

22 PROSPECTIVE JUROR NO. 11-1221: I have.

23 I saw it on the news.

24 THE COURT: Will you please speak a

25 little bit louder --

1 PROSPECTIVE JUROR NO. 11-1221: Oh,
2 sorry. Yes. Saw it on the news.

3 THE COURT: -- so that they can pick it
4 up over there.

5 PROSPECTIVE JUROR NO. 11-1221: Okay.

6 THE COURT: Let --

7 PROSPECTIVE JUROR NO. 11-1221: Just a
8 TV --

9 THE COURT: I'd like to hear --

10 PROSPECTIVE JUROR NO. 11-1221: TV blip.

11 MR. KEMP: And can we get a badge number
12 for the record.

13 PROSPECTIVE JUROR NO. 11-1221: 11-1221.

14 MR. KEMP: Thank you.

15 THE COURT: All right. So when did
16 you --

17 PROSPECTIVE JUROR NO. 11-1221: I think
18 it was January last year.

19 THE COURT: January of last year?

20 PROSPECTIVE JUROR NO. 11-1221: Yeah.

21 THE COURT: Okay. And what did you
22 hear?

23 PROSPECTIVE JUROR NO. 11-1221: Just
24 that there was a bus accident and someone died
25 from a bike --

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 11-1221 -- on a
3 bike.

4 THE COURT: All right. Did they -- I'll
5 let counsel ask any other questions.

6 MR. CHRISTIANSEN: Sure.

7 THE COURT: Mr. Roberts, proceed.

8 MR. ROBERTS: Thank you.

9 MR. CHRISTIANSEN: Ms. White, Pete
10 Christiansen on behalf of the plaintiff.

11 I just knew, because I read it in your
12 questionnaire, that you had seen something about
13 it. Did you see it on TV or in the paper?

14 PROSPECTIVE JUROR NO. 11-1221: Yeah. I
15 watch Channel 13, so I saw it on the news.

16 MR. CHRISTIANSEN: Okay. Do you recall
17 from it -- do you recall the substance of anything
18 you saw except for it being bike, bus, deceased
19 person?

20 PROSPECTIVE JUROR NO. 11-1221: Nope.
21 That's it.

22 MR. CHRISTIANSEN: When you said you
23 knew of it, you probably recognized the
24 description in the -- when you filled out your
25 questionnaire?

1 PROSPECTIVE JUROR NO. 11-1221: Correct.

2 MR. CHRISTIANSEN: You didn't know

3 Dr. Khiabani?

4 PROSPECTIVE JUROR NO. 11-1221: Nope.

5 MR. CHRISTIANSEN: Or Dr. -- or his

6 wife, Katy Barin?

7 PROSPECTIVE JUROR NO. 11-1221: Nope.

8 MR. CHRISTIANSEN: Or the children or

9 anything like that?

10 PROSPECTIVE JUROR NO. 11-1221: Nope.

11 MR. CHRISTIANSEN: You just -- once you

12 read the description in the questionnaire --

13 PROSPECTIVE JUROR NO. 11-1221: Yeah,

14 something.

15 MR. CHRISTIANSEN: -- the lightbulb went

16 on?

17 PROSPECTIVE JUROR NO. 11-1221: Yep.

18 MR. CHRISTIANSEN: Anything about what

19 you heard -- well, I'll ask it differently.

20 Were there any conclusions from what you

21 watched as to, you know, what happened, or do you

22 remember?

23 PROSPECTIVE JUROR NO. 11-1221: No. I

24 don't remember the details. I just -- you know, I

25 work in the medical field, so when I hear

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1 something happens, I kind of, like, tune in.

2 MR. CHRISTIANSEN: Got it.

3 PROSPECTIVE JUROR NO. 11-1221: But I
4 didn't look at the details other than someone
5 passed away.

6 MR. CHRISTIANSEN: Anything about what
7 you saw that would taint your impartiality to be a
8 juror in this case?

9 PROSPECTIVE JUROR NO. 11-1221: I have a
10 prejudice, unfortunately, against doctors. I work
11 with doctors. I hate to say it. I'm sorry.

12 MR. CHRISTIANSEN: That's all right.
13 I've got a sister that's a doctor, so I can see
14 your point.

15 PROSPECTIVE JUROR NO. 11-1221: Yeah. I
16 don't believe the turmoil he's in right now.

17 MR. CHRISTIANSEN: So when -- while
18 we've got you in here -- Judge, is that okay if we
19 explore that right now?

20 THE COURT: Yes, I think we should right
21 now.

22 MR. CHRISTIANSEN: So we brought you in
23 originally just because we saw that you --

24 PROSPECTIVE JUROR NO. 11-1221: Okay.

25 MR. CHRISTIANSEN: -- knew something.

1 PROSPECTIVE JUROR NO. 11-1221: Right.

2 MR. CHRISTIANSEN: And we wanted to hear
3 about what it was that you knew from the media.

4 PROSPECTIVE JUROR NO. 11-1221: Okay.

5 MR. CHRISTIANSEN: Since you're here and
6 you're being super honest, tell me what your --

7 PROSPECTIVE JUROR NO. 11-1221: Okay.

8 MR. CHRISTIANSEN: -- what your bias --
9 which isn't a bad thing -- is.

10 PROSPECTIVE JUROR NO. 11-1221: I worked
11 in the medical field for 27 years.

12 MR. CHRISTIANSEN: Okay. Tell me, doing
13 what?

14 PROSPECTIVE JUROR NO. 11-1221: I am an
15 X-ray tech.

16 MR. CHRISTIANSEN: Okay.

17 PROSPECTIVE JUROR NO. 11-1221: I've
18 been certified as MRI. I'm the only MRI tech at
19 my doctor's office, Dr. Crovetti, who's an
20 orthopaedic surgeon in town.

21 MR. KEMP: Yeah, we know Dr. Crovetti.

22 PROSPECTIVE JUROR NO. 11-1221: Yeah.
23 So I have gotten X-ray covered, but no one is
24 certified to do MRI in his office. So they have
25 rescheduled everybody this week. And I get techs

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1 last night saying, "Can we move everybody to
2 Monday?" It's, like, well, I think it's a
3 holiday. I can probably work. But it's been
4 tough with the pressure from the office to get me
5 back. It's like -- I told them four weeks,
6 though. So --

7 MR. CHRISTIANSEN: Okay. What your --

8 PROSPECTIVE JUROR NO. 11-1221: Well, as
9 far as prejudices towards the doctors?

10 MR. CHRISTIANSEN: That's what I'm
11 trying to ask you about --

12 PROSPECTIVE JUROR NO. 11-1221: Okay.

13 MR. CHRISTIANSEN: -- yeah. Sorry. I
14 was in the middle of a question.

15 PROSPECTIVE JUROR NO. 11-1221: No,
16 that's okay. I went off on a limb, so...

17 I need -- I know that there's -- that he
18 has life insurance. That's my issues. I know his
19 family probably has it. I'm sure the boys are set
20 up. I'm very sorry for what happened, but I have
21 issues as far as -- obviously, they have money, so
22 they can go for more, is what my bias is. I don't
23 think that -- I think it was an accident. I don't
24 know anything about the bus company, but --

25 THE COURT: I need you to speak louder,

1 please.

2 PROSPECTIVE JUROR NO. 11-1221: I think
3 that there's issues with -- I think they have
4 money, so why not get a little more for the kids.
5 So that's --

6 MR. CHRISTIANSEN: So you're biased
7 against my side?

8 PROSPECTIVE JUROR NO. 11-1221: Yes.

9 MR. CHRISTIANSEN: And nothing -- no
10 question I ask you is going to change that?

11 PROSPECTIVE JUROR NO. 11-1221: No, sir.

12 MR. CHRISTIANSEN: You're going to
13 keep --

14 PROSPECTIVE JUROR NO. 11-1221: Oh,
15 yeah.

16 MR. CHRISTIANSEN: -- hold firm to your
17 beliefs? And nothing that Mr. Roberts asks you
18 and says that you've got to follow the law, you're
19 still going to be biased against my side.

20 PROSPECTIVE JUROR NO. 11-1221: I am.

21 MR. CHRISTIANSEN: Thank you for your
22 honesty. I appreciate it.

23 THE COURT: Mr. Roberts.

24 MR. ROBERTS: Yes.

25 But your bias is against doctors; right?

1 PROSPECTIVE JUROR NO. 11-1221: It is.
2 It's a -- against, yes.

3 MR. ROBERTS: But neither of the
4 plaintiffs in this case, the boys, are doctors;
5 right?

6 PROSPECTIVE JUROR NO. 11-1221: No. But
7 I know that they have a life set up. And I'm
8 sorry that they lost their parents.

9 MR. ROBERTS: Let me get right to the
10 important question.

11 PROSPECTIVE JUROR NO. 11-1221: Okay.

12 MR. ROBERTS: You've got a bias against
13 doctors and maybe people with that much money.

14 PROSPECTIVE JUROR NO. 11-1221: Yes.

15 MR. ROBERTS: Okay. Are you going to be
16 able to set that aside and decide the case just on
17 the facts and the evidence and the instructions
18 from the judge, or is that going to influence you
19 in your verdict?

20 PROSPECTIVE JUROR NO. 11-1221: It would
21 influence me, I --

22 MR. ROBERTS: Okay.

23 PROSPECTIVE JUROR NO. 11-1221: Yeah.

24 MR. ROBERTS: Thank you for being honest
25 with us, ma'am.

1 PROSPECTIVE JUROR NO. 11-1221: Okay.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR NO. 11-1221: Thank
4 you.

5 MR. CHRISTIANSEN: You're all done, I
6 think.

7 THE MARSHAL: All rise.

8 THE COURT: Thank you very much.

9 PROSPECTIVE JUROR NO. 11-1221: Thanks,
10 Miss -- nice to meet you.

11 THE COURT: Counsel, shall we discuss
12 this?

13 MR. KEMP: Your Honor, Juror No. 1,
14 Monroe, E., I thought she said yesterday that she
15 would know something one way or the other by two
16 o'clock. It's two o'clock.

17 MR. BARGER: She's No. 10.

18 MR. KEMP: No. 10?

19 THE COURT: Right.

20 MR. KEMP: Yeah, No. 10. Excuse me.

21 THE COURT: I've just asked my office if
22 we've heard anything from the doctor and -- during
23 that last break and we have no information.

24 MR. KEMP: Well, if she doesn't have any
25 information, I think we're at judgment day.

1 THE COURT: Yes.

2 MR. KEMP: Maybe we can bring her in and
3 see if she has any information --

4 THE COURT: Okay.

5 MR. KEMP: -- before we bring everybody
6 else in.

7 THE COURT: Will you bring Ms. Lee in?

8 MR. ROBERTS: Do you have a motion?
9 Have you made a motion on it?

10 MR. KEMP: No, I haven't made any
11 motion.

12 MR. CHRISTIANSEN: I thought you agreed.
13 Didn't you agree?

14 MR. ROBERTS: I did, but there's no
15 motion --

16 MR. KEMP: Judge, we just wanted more
17 information before we decide what has to be done.

18 MR. CHRISTIANSEN: No, that part of
19 my -- Judge, we would challenge that last juror
20 for cause.

21 MR. KEMP: If the judge may agree.

22 MR. CHRISTIANSEN: Ms. White for cause.

23 THE COURT: Yes?

24 MR. ROBERTS: Yes, we stipulate, Your
25 Honor.

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1 THE COURT: All right. Very good.

2 MR. CHRISTIANSEN: And I apologize.

3 Lee's right. I should have made the motion.

4 THE COURT: Ms. White, Juror 11 -- Badge
5 No. 11-1221, it's stipulated she's excused for
6 cause.

7 THE MARSHAL: All rise.

8 Please be seated. Come to order.

9 THE COURT: Good afternoon, Ms. Lee.
10 How are you today?

11 PROSPECTIVE JUROR NO. 11-0877: Fine.

12 THE COURT: Your badge number, please.

13 PROSPECTIVE JUROR NO. 11-0877: I'm
14 sorry?

15 THE COURT: Your badge number.

16 PROSPECTIVE JUROR NO. 11-0877: It is
17 11-0877.

18 THE COURT: Okay. And yesterday we
19 discussed the possibility that you would know by
20 today if you were going to be able to schedule
21 your appointment.

22 PROSPECTIVE JUROR NO. 11-0877: Yeah,
23 they said they wouldn't. I think they gave you a
24 letter, didn't they, saying they couldn't change
25 it.

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1 THE COURT: Right. It actually didn't
2 discuss schedule.

3 PROSPECTIVE JUROR NO. 11-0877: Oh. But
4 they -- when I went over, they couldn't. And the
5 next appointment would be in April, and I just --
6 that can't wait that late.

7 THE COURT: Okay. Any questions?

8 MR. KEMP: No, Your Honor.

9 THE COURT: Thank you very much.

10 THE MARSHAL: All rise.

11 THE COURT: All right. I'm excusing
12 Ms. Lee pursuant to NRS 6.030(1)(c). I think it
13 would be an undue hardship for her to serve as we
14 have a doctor's letter stating that her condition
15 makes her unable to serve as a juror, and they
16 were not able to reschedule her appointment.

17 MR. BARGER: Can I bring up a procedural
18 point?

19 THE COURT: Yes.

20 MR. BARGER: Not procedural; it's
21 administrative. It's obvious we're going to need
22 50 more people Tuesday.

23 THE COURT: Yes. And by the way, I can
24 start at --

25 MR. BARGER: Do they have to contact

1 somebody or call somebody?

2 THE COURT: By three o'clock.

3 MR. ROBERTS: By three o'clock they
4 already got them, so --

5 THE COURT: Let me just go tell her
6 really quickly, and we can start at noon on
7 Tuesday.

8 (Discussion off the record.)

9 THE MARSHAL: Come to order.

10 THE COURT: We have a new panel coming
11 Tuesday at noon. So I'd like to know, Madam
12 clerk, who is next.

13 THE CLERK: The next seat is Badge
14 11-1222 for seat 23, Carol Padilla; and 11-1223,
15 Jasmine Carrillo, for Seat 10.

16 MR. CHRISTIANSEN: Judge, Ms. Carrillo,
17 I think, is the lady that said that she was
18 feeling ill this morning. Am I correct? Maybe we
19 should bring her in.

20 THE COURT: Should we bring her in?
21 Yes. Yes.

22 MR. CHRISTIANSEN: Just keeping
23 everybody from getting it.

24 THE COURT: Tell Jerry to bring
25 Ms. Carrillo in.

1 MR. ROBERTS: Ms. Carrillo's
2 questionnaire says she's a full-time student at
3 College of Southern Nevada, just for the Court's
4 information.

5 (Discussion off the record.)

6 THE MARSHAL: All rise. Please be
7 seated. Come to order.

8 THE COURT: Good afternoon.

9 PROSPECTIVE JUROR NO. 11-1223: Good
10 afternoon.

11 THE COURT: Please state your name and
12 badge number.

13 PROSPECTIVE JUROR NO. 11-1223: Jasmine
14 Carrillo, 11-1223.

15 THE COURT: Ms. Carrillo, I understand
16 you're not feeling well today?

17 PROSPECTIVE JUROR NO. 11-1223: No, I'm
18 not.

19 MR. CHRISTIANSEN: What's wrong?

20 PROSPECTIVE JUROR NO. 11-1223: I'm
21 having, like, real bad body aches and I had fever
22 last night.

23 THE COURT: You did? Have you seen a
24 physician?

25 PROSPECTIVE JUROR NO. 11-1223: No, I

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1 haven't. I wanted to go to the urgent care after.

2 THE COURT: Okay. And it's my
3 understanding that you're a student.

4 PROSPECTIVE JUROR NO. 11-1223: Yeah,
5 I'm a full-time student.

6 THE COURT: What is your schedule?

7 PROSPECTIVE JUROR NO. 11-1223: It's
8 Monday through Thursday 8:00 to 2:00.

9 THE COURT: 8:00 a.m. to 2:00 p.m.?

10 PROSPECTIVE JUROR NO. 11-1223: Yes.

11 THE COURT: And how many units are you
12 taking?

13 PROSPECTIVE JUROR NO. 11-1123: 12.

14 THE COURT: What classes are you taking?

15 PROSPECTIVE JUROR NO. 11-1123: English,
16 history ...

17 MR. KEMP: Judge, we have an agreement.

18 THE COURT: All right. What I'm going
19 to do is excuse you. Okay? I hope you feel
20 better. And don't miss any classes. Okay?

21 Have a great weekend. Thank you for
22 your service.

23 THE MARSHAL: All rise.

24 MR. KEMP: Just for the record,
25 Mr. Roberts and I agreed to excuse the last juror.

1 THE COURT: She can't pick you up.

2 MR. KEMP: Just for the record, we
3 agreed to excuse the last juror.

4 THE COURT: Ms. Carrillo, yes.

5 MR. CHRISTIANSEN: Somebody should
6 probably disinfect that mic again.

7 THE COURT: Actually, Jerry, maybe you
8 should. Let's take a moment to do that, please.

9 (Discussion off the record.)

10 THE MARSHAL: All rise. All the jurors
11 are present, Your Honor.

12 Please be seated. Come to order.

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

15 MR. ROBERTS: Yes, Your Honor.

16 MR. CHRISTIANSEN: Yes, Your Honor.

17 THE CLERK: Badge 11-1222, Carol
18 Padilla, in Seat 23.

19 And Badge 11-1229, Jaymi Johnson, in
20 Seat 10.

21 THE COURT: All right. Ms. Padilla and
22 Ms. Johnson, I'm going to ask you the questions
23 that are required.

24 Do either of you have difficulty
25 understanding the English language?

1 PROSPECTIVE JUROR NO. 11-1222: No.

2 PROSPECTIVE JUROR NO. 11-1229: No.

3 THE COURT: No.

4 Are you acquainted with or recognize any
5 of the attorneys involved in this case?

6 PROSPECTIVE JUROR NO. 11-1222: No.

7 PROSPECTIVE JUROR NO. 11-1229: No.

8 THE COURT: Was that a no?

9 PROSPECTIVE JUROR NO. 11-1222: No.

10 THE COURT: Thank you.

11 All right. Are you acquainted with or
12 recognize the names of any of the witnesses who
13 are identified in the questionnaire?

14 PROSPECTIVE JUROR NO. 11-1222: No.

15 PROSPECTIVE JUROR NO. 11-1229: No.

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

18 PROSPECTIVE JUROR NO. 11-1222: No.

19 PROSPECTIVE JUROR NO. 11-1229: No.

20 THE COURT: Are you in any way obligated
21 to any of the parties or any of the attorneys in
22 the case, or are they in any way obligated to you?

23 PROSPECTIVE JUROR NO. 11-1222: No.

24 PROSPECTIVE JUROR NO. 11-1229: No.

25 THE COURT: Okay. Do you know any other

1 member of the jury panel or recognize anyone else?

2 PROSPECTIVE JUROR NO. 11-1222: No.

3 PROSPECTIVE JUROR NO. 11-1229: No.

4 THE COURT: Do you know me or any

5 members of the Department 14 staff?

6 PROSPECTIVE JUROR NO. 11-1222: No.

7 PROSPECTIVE JUROR NO. 11-1229: No.

8 THE COURT: Understanding that this case
9 is going to last four weeks after this week and
10 based upon the schedule that I've already
11 discussed with you, do either of you feel that
12 serving for that period of time would present a
13 physical or medical hardship?

14 PROSPECTIVE JUROR NO. 11-1222: No.

15 PROSPECTIVE JUROR NO. 11-1229: No.

16 THE COURT: Same question, but in any
17 way would it present any severe or undue hardship?

18 PROSPECTIVE JUROR NO. 11-1222: No.

19 PROSPECTIVE JUROR NO. 11-1229: No.

20 THE COURT: Have any of you been
21 involved in a car accident or traffic accident in
22 the past?

23 PROSPECTIVE JUROR NO. 11-1222: Yes.

24 PROSPECTIVE JUROR NO. 11-1229: Yes.

25 THE COURT: Okay. Ms. Padilla -- we'll

1 start with Ms. Johnson.

2 PROSPECTIVE JUROR NO. 11-1229: Yes,
3 ma'am.

4 THE COURT: Your badge number, please.

5 PROSPECTIVE JUROR NO. 11-1229: 11-1229.

6 THE COURT: What type of an accident
7 were you involved in?

8 PROSPECTIVE JUROR NO. 11-1229:
9 Gentleman ran a red light and struck my vehicle.

10 THE COURT: Were you injured?

11 PROSPECTIVE JUROR NO. 11-1229: No,
12 ma'am.

13 THE COURT: All right. Was there any
14 type of a lawsuit?

15 PROSPECTIVE JUROR NO. 11-1229: No,
16 ma'am.

17 THE COURT: Okay. All right.

18 Ms. Padilla?

19 You need to pass the mic, please.

20 PROSPECTIVE JUROR NO. 11-1222: Thank
21 you.

22 Carol Padilla, 11-1222.

23 Rear-ended, no lawsuit or injuries.

24 THE COURT: Were you injured?

25 PROSPECTIVE JUROR NO. 11-1222: No.

1 THE COURT: Okay. Thank you.

2 Again, you can probably recite this by
3 now, but, as a juror, you'll be asked to listen to
4 witnesses, review evidence, and make a
5 determination based on the facts. The jury is the
6 trier of the facts, and my job is to make sure
7 that the trial is fair and instruct you on the law
8 that you will apply to the facts of this case.

9 Some of you may disagree with how some
10 of our laws are written. It would be a violation
11 of a juror's duty, however, if he or she tried to
12 render a verdict based upon what he or she
13 believed the law to be if it was different from
14 any instruction I give.

15 Do either of you feel that you would not
16 be able to follow all of the instructions of the
17 Court on the law even if the instructions differ
18 from your personal opinions or conceptions of what
19 the law ought to be?

20 PROSPECTIVE JUROR NO. 11-1222: I can
21 follow the law.

22 PROSPECTIVE JUROR NO. 11-1229: Yes,
23 ma'am.

24 THE COURT: Okay. Thank you.

25 Have either of you heard about this case

1 in the media?

2 PROSPECTIVE JUROR NO. 11-1229: No.

3 PROSPECTIVE JUROR NO. 11-1222: I did
4 when it happened, so, yes.

5 THE COURT: Okay. Thank you.

6 All right. Do you have such a sympathy,
7 prejudice, or bias relating to age, religion,
8 race, gender, or national origin that you feel
9 would affect your ability to be open-minded, fair,
10 and impartial as a juror in this case?

11 PROSPECTIVE JUROR NO. 11-1229: No.

12 PROSPECTIVE JUROR NO. 11-1222: No.

13 THE COURT: Ms. Padilla?

14 PROSPECTIVE JUROR NO. 11-1222: No.

15 THE COURT: All right. Do you believe
16 that there is any other reason that you would not
17 be able to be -- that would render you unable to
18 be fair and impartial if you were to serve as a
19 juror in this particular case?

20 PROSPECTIVE JUROR NO. 11-1229: No.

21 PROSPECTIVE JUROR NO. 11-1222: No.

22 THE COURT: Okay. Very good. All
23 right. We'll start with Ms. Johnson -- or who has
24 the mic?

25 We'll start with Ms. Padilla.

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1 Ms. Padilla, how long have you lived in Las Vegas?

2 PROSPECTIVE JUROR NO. 11-1222: 40
3 years.

4 THE COURT: 40?

5 PROSPECTIVE JUROR NO. 11-1222: Yes.

6 THE COURT: What area of work are you
7 in?

8 PROSPECTIVE JUROR NO. 11-1222: I work
9 for the Air Force. I'm the school liaison
10 officer.

11 THE COURT: So you are in the Air Force?

12 PROSPECTIVE JUROR NO. 11-1222: No,
13 ma'am. I'm a civilian employee.

14 THE COURT: How long have you worked in
15 that position?

16 PROSPECTIVE JUROR NO. 11-1222: Four
17 years.

18 THE COURT: What are your duties?

19 PROSPECTIVE JUROR NO. 11-1222:
20 Assisting military families when they transfer
21 into Las Vegas or transferring out of Las Vegas
22 with their school needs for their kids.

23 THE COURT: That's great. Before that,
24 what did you do?

25 PROSPECTIVE JUROR NO. 11-1222: I was a

1 youth director.

2 THE COURT: Where?

3 PROSPECTIVE JUROR NO. 11-1222: At
4 Nellis, at the Air Force base.

5 THE COURT: So how long --

6 PROSPECTIVE JUROR NO. 11-1222: 40 years
7 I've worked with the Air Force.

8 THE COURT: Oh, really?

9 PROSPECTIVE JUROR NO. 11-1222: Yes.

10 THE COURT: Okay. Great.

11 Do you have a spouse or significant
12 other?

13 PROSPECTIVE JUROR NO. 11-1222: We're
14 separated, yes.

15 THE COURT: Okay. Is -- your spouse,
16 what area of work is your spouse in?

17 PROSPECTIVE JUROR NO. 11-1222: He's
18 retired but previous Air Force.

19 THE COURT: Okay. And what were his
20 duties in the Air Force? What was his --

21 PROSPECTIVE JUROR NO. 11-1222: He was a
22 recreation, took care of the physical fitness and
23 that type of thing with the Air Force.

24 THE COURT: Okay. Thank you. Do you
25 have children?

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1 PROSPECTIVE JUROR NO. 11-1222: No. I
2 have guardianship of a nephew. He's 17.

3 THE COURT: 17? Is he in high school?

4 PROSPECTIVE JUROR NO. 11-1222: He just
5 graduated.

6 THE COURT: Okay. Very good. Thank
7 you.

8 Have you ever served as a juror before?

9 PROSPECTIVE JUROR NO. 11-1222: No.

10 THE COURT: Thank you very much. Will
11 you please pass the microphone to Ms. Johnson.

12 Please state your name and your badge
13 number.

14 PROSPECTIVE JUROR NO. 11-1229: Jaymi
15 Johnson, 11-1229.

16 THE COURT: How long have you lived in
17 the Las Vegas area?

18 PROSPECTIVE JUROR NO. 11-1229: 41
19 years.

20 THE COURT: Okay. And what do you do
21 for a living, or what type of work are you in?

22 PROSPECTIVE JUROR NO. 11-1229: I'm a
23 special education teacher.

24 THE COURT: How long have you worked in
25 that area?

1 PROSPECTIVE JUROR NO. 11-1229: 12
2 years.

3 THE COURT: Okay. And what type of
4 education, when you say special education?

5 PROSPECTIVE JUROR NO. 11-1229: I have a
6 self-contained classroom for emotionally disturbed
7 children.

8 THE COURT: What ages?

9 PROSPECTIVE JUROR NO. 11-1229: Five to
10 eight.

11 THE COURT: How long have you worked in
12 this field?

13 PROSPECTIVE JUROR NO. 11-1229: 12
14 years.

15 THE COURT: All right. And before that?

16 PROSPECTIVE JUROR NO. 11-1229: Before
17 that, I was an office manager.

18 THE COURT: And what type of business
19 did you manage?

20 PROSPECTIVE JUROR NO. 11-1229: A
21 packaging company.

22 THE COURT: Okay. How long were you
23 employed there?

24 PROSPECTIVE JUROR NO. 11-1229: Maybe
25 about 15 to 18 years.

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1 THE COURT: Okay. All right. Are you
2 married, or do you have a significant other?

3 PROSPECTIVE JUROR NO. 11-1229: I am
4 married.

5 THE COURT: Okay. And what area of work
6 is your spouse in?

7 PROSPECTIVE JUROR NO. 11-1229: He's a
8 martial arts instructor.

9 THE COURT: How long has he been in that
10 field?

11 PROSPECTIVE JUROR NO. 11-1229: We've
12 owned our martial arts school for two years, and
13 he's been an instructor for six.

14 THE COURT: What area of employment was
15 he in before that?

16 PROSPECTIVE JUROR NO. 11-1229: He was a
17 geotechnical and nuclear inspector for roads.

18 THE COURT: How many years?

19 PROSPECTIVE JUROR NO. 11-1229: 18.

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

22 PROSPECTIVE JUROR NO. 11-1229: Yes,
23 ma'am.

24 THE COURT: What ages?

25 PROSPECTIVE JUROR NO. 11-1229: I have a

1 14-year-old son and two stepsons, 19 and 23.

2 THE COURT: All right. Your stepsons,
3 the 23-year-old, what area of work is he in?

4 PROSPECTIVE JUROR NO. 11-1229: He's in
5 computers. He's in the Marines in Texas.

6 THE COURT: Is that the area he's always
7 worked in?

8 PROSPECTIVE JUROR NO. 11-1229: Yes,
9 ma'am.

10 THE COURT: What about your 19-year-old?

11 PROSPECTIVE JUROR NO. 11-1229: He is in
12 Atlanta with his mom, still going to school.

13 THE COURT: Very good. Have you ever
14 served as a juror before?

15 PROSPECTIVE JUROR NO. 11-1229: No,
16 ma'am.

17 THE COURT: Thank you very much.

18 PROSPECTIVE JUROR NO. 11-1229: Thank
19 you.

20 THE COURT: Mr. Christiansen?

21 MR. CHRISTIANSEN: Good afternoon. You
22 two ladies are in the hot seat now.

23 Is it Padilla or Padilla?

24 PROSPECTIVE JUROR NO. 11-1222: Padilla.

25 THE COURT: That's a version I can

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1 pronounce.

2 And it's Ms. Johnson?

3 PROSPECTIVE JUROR NO. 11-1229: Yes,
4 sir.

5 MR. CHRISTIANSEN: Ms. Johnson, do you
6 do tae kwon do as well, or is it just your husband
7 that does it?

8 PROSPECTIVE JUROR NO. 11-1229: I train
9 as well.

10 MR. CHRISTIANSEN: Your husband and you
11 have owned a school for how long?

12 PROSPECTIVE JUROR NO. 11-1229: Two
13 years.

14 MR. CHRISTIANSEN: And you are a special
15 ed teacher. And I wrote it down, because I had
16 not heard it until Ms. Vandevanter talked about
17 it, a self-contained classroom?

18 PROSPECTIVE JUROR NO. 11-1229: Yes,
19 sir. It means all the students in the classroom
20 have specialized programs. There's no general
21 education students in that particular classroom.

22 MR. CHRISTIANSEN: And I've heard a --
23 do they get, like, a -- what's that evaluation
24 that you give them? It's called something.

25 PROSPECTIVE JUROR NO. 11-1229: They

1 have an individualized education plan.

2 MR. CHRISTIANSEN: IEP. That's the term
3 I've heard before.

4 And that's different than children
5 without special needs that are just enrolled in a
6 general education school; is that right?

7 PROSPECTIVE JUROR NO. 11-1229: Correct.

8 MR. CHRISTIANSEN: You two don't know
9 each other?

10 PROSPECTIVE JUROR NO. 11-1229: No, sir.

11 MR. CHRISTIANSEN: You do sort of
12 similar things, it sounds like.

13 PROSPECTIVE JUROR NO. 11-1229: We both
14 teach special education, but they're very
15 different programs.

16 MR. CHRISTIANSEN: Help me understand
17 the difference just so I don't try to lump two
18 things that aren't alike together.

19 PROSPECTIVE JUROR NO. 11-1229: The
20 children that are in my program generally have
21 behavior issues that have them not be able to be
22 in a classroom. For example, they may hit, kick,
23 bite, spit, throw desks and chairs, things like
24 that.

25 MR. CHRISTIANSEN: Wow. Good to know

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1 tae kwon do.

2 Is that different than the children in
3 Ms. Vandevanter's class?

4 PROSPECTIVE JUROR NO. 11-1229: Yes,
5 sir.

6 MR. CHRISTIANSEN: Can you tell me the
7 difference, or do I have to make --

8 PROSPECTIVE JUROR NO. 11-1229: I know a
9 few things about it. Typically, students that are
10 in that program have other physical disabilities.
11 I believe she said earlier that she has some
12 nonverbal students in her class as well.

13 The difference is, a lot of times, these
14 are physical disabilities or disabilities that
15 will never be corrected versus the kids in my
16 program are sometimes -- are mostly behavior,
17 where their behavior is impeding their learning.

18 MR. CHRISTIANSEN: Do the children that
19 you teach, is the end goal to get them back in
20 general education, or are they going to do the
21 individualized education stuff that you described
22 for me?

23 PROSPECTIVE JUROR NO. 11-1229: The goal
24 is to help them understand that those behaviors
25 are not acceptable in a classroom setting, help

1 them learn to manage and cope with their anger,
2 and get them back in a general education setting.

3 MR. CHRISTIANSEN: Great. Thanks for
4 helping me understand.

5 I'm going to speak just to you two
6 ladies, as you've heard me do when new people come
7 up. The process you've heard us describe, do
8 either of you have a problem with lawyers asking
9 questions, objecting, being aggressive, those
10 types of things?

11 PROSPECTIVE JUROR NO. 11-1229: No, sir.

12 PROSPECTIVE JUROR NO. 11-1222: No.

13 MR. CHRISTIANSEN: No from both of you?
14 Okay.

15 If chosen to be jurors -- jurors,
16 plural, because I'm talking to two of you on the
17 case -- could you participate in the
18 question-asking process that the judge would
19 outline?

20 PROSPECTIVE JUROR NO. 11-1222: Yes.

21 PROSPECTIVE JUROR NO. 11-1229: Yes,
22 sir.

23 MR. CHRISTIANSEN: And you're okay with,
24 much like sometimes she doesn't like my questions
25 getting answered, if Her Honor didn't ask a

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1 juror's questions, you would understand it's no
2 different than when she doesn't let Mr. Roberts
3 ask a question or me or Mr. Kemp; right? The
4 judge makes the rules. Is everybody okay with
5 that?

6 PROSPECTIVE JUROR NO. 11-1229: Yes,
7 sir.

8 PROSPECTIVE JUROR NO. 11-1222: Yes.

9 MR. CHRISTIANSEN: Neither one of you
10 have had jury service; is that true?

11 PROSPECTIVE JUROR NO. 11-1229: Yes.

12 PROSPECTIVE JUROR NO. 11-1222: Correct.

13 MR. CHRISTIANSEN: Same question I posed
14 to the lady that was there before you, the written
15 questionnaire you did some weeks ago and the sort
16 of last three days. Have you learned more in the
17 last couple of days than you did from the
18 questionnaire? Which one did you find more --
19 that's a loaded question.

20 Which was more educational? How about
21 that? That's a teacher word.

22 PROSPECTIVE JUROR NO. 11-1222: Being
23 here.

24 MR. CHRISTIANSEN: Since you've both sat
25 here, is there some question that I've posed that

1 you've heard answers to that you sort of agreed
2 with and wanted to speak up about? Either one?
3 Ms. Padilla?

4 PROSPECTIVE JUROR NO. 11-1222: That I
5 wanted to speak up about?

6 MR. CHRISTIANSEN: Yes, ma'am.

7 PROSPECTIVE JUROR NO. 11-1222: Not
8 necessarily, but you leaned on some things.

9 MR. CHRISTIANSEN: Gets redundant;
10 right?

11 PROSPECTIVE JUROR NO. 11-1222: Yes.

12 MR. CHRISTIANSEN: Everybody okay with
13 not judging someone based on color, creed,
14 nationality, religion, sex, any of that stuff? Is
15 that fine with both of you?

16 PROSPECTIVE JUROR NO. 11-1229: Yes.

17 PROSPECTIVE JUROR NO. 11-1222: Yes.

18 MR. CHRISTIANSEN: Are you okay for Lady
19 Justice and being blind?

20 PROSPECTIVE JUROR NO. 11-1229: Yes.

21 PROSPECTIVE JUROR NO. 11-1222: Yes.

22 MR. CHRISTIANSEN: The school hardship
23 that I went through with Ms. Vandevanter -- I
24 swear I'm going to get that -- Ms. Vandevanter,
25 with you, Ms. Johnson, would you be able to, like

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1 she sort of talked about, knowing you've got kids
2 that you're responsible for back at school, still
3 give us your full time and attention here if
4 chosen?

5 PROSPECTIVE JUROR NO. 11-1229: Yes,
6 sir. I have two amazing assistants.

7 MR. CHRISTIANSEN: Great. How many kids
8 are in your class? I didn't write it down.

9 PROSPECTIVE JUROR NO. 11-1229:
10 Currently, five.

11 MR. CHRISTIANSEN: Both of you remember
12 the -- Ms. Padilla, could you also -- whatever --
13 the relocation of children for persons serving our
14 country at Nellis, could you leave that work
15 outside and concentrate and give us your full time
16 and attention in here?

17 PROSPECTIVE JUROR NO. 11-1222: Yes.

18 MR. CHRISTIANSEN: Remember my questions
19 about corporations being the same as individuals
20 under the law? Either of you have a problem with
21 that or think that's unfair?

22 PROSPECTIVE JUROR NO. 11-1229: No, sir.

23 PROSPECTIVE JUROR NO. 11-1222: No.

24 MR. CHRISTIANSEN: Can you -- if chosen
25 as jurors, would you treat a corporation like

1 you'd treat the Khiabani boys?

2 PROSPECTIVE JUROR NO. 11-1222: Yes,
3 sir.

4 PROSPECTIVE JUROR NO. 11-1229: Yes.

5 MR. CHRISTIANSEN: You heard the
6 standard that has to be met in a court of law in a
7 civil case, which is more likely than not, and us
8 lawyers use the words by preponderance of the
9 evidence. I've described it several ways and used
10 visuals and sporting events and the like. In
11 general, do both of you understand what the
12 standard is?

13 PROSPECTIVE JUROR NO. 11-1222: Yes,
14 sir.

15 PROSPECTIVE JUROR NO. 11-1229: Yes.

16 MR. CHRISTIANSEN: Do either of you
17 think it's too easy of a standard?

18 IN UNISON: No.

19 MR. CHRISTIANSEN: And to use my
20 football analogy, I don't got to score a touchdown
21 to win. I've just got to move the football one
22 yard. Everybody think that's fair?

23 PROSPECTIVE JUROR NO. 11-1222: That's
24 fair.

25 MR. CHRISTIANSEN: The question

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1 pertaining to a large -- a request for a large
2 verdict -- and I've used the term tens of millions
3 -- excuse me -- do either of you think if Mr. Kemp
4 and I are going to stand up and ask for a
5 substantial verdict from the jury, that that
6 standard might be a little too easy, more likely
7 than not, we should really have to -- as you've
8 heard others -- I think one nice man in the back
9 said I should really have to bring my game or
10 something like that if I was going to ask for a
11 big award. Are you both okay with the standard as
12 the judge will explain it to you?

13 IN UNISON: Yes.

14 MR. CHRISTIANSEN: Won't require more if
15 the request is for more.

16 PROSPECTIVE JUROR NO. 11-1229: No, sir.

17 MR. CHRISTIANSEN: That same standard,
18 can both of you agree to use it when judging the
19 credibility of witnesses?

20 IN UNISON: Yes.

21 MR. CHRISTIANSEN: Do you deal with kids
22 as much, Ms. Padilla, or mostly with adult parents
23 getting their kids into places?

24 PROSPECTIVE JUROR NO. 11-1222: Yes.

25 The last four years I've dealt mainly with the

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1 parents. Previously was day to day with the kids.

2 MR. CHRISTIANSEN: Ms. Johnson, you deal
3 with children every day and sounds like children
4 that need special kinds of attention.

5 PROSPECTIVE JUROR NO. 11-1229: Yes,
6 sir.

7 MR. CHRISTIANSEN: All right. Could you
8 use the same skill set that you use with those
9 kids to judge people from the witness stand?

10 PROSPECTIVE JUROR NO. 11-1229: Yes,
11 sir.

12 MR. CHRISTIANSEN: Any problem with
13 figuring out which doctors are telling the truth?

14 PROSPECTIVE JUROR NO. 11-1229: No, sir.

15 MR. CHRISTIANSEN: By telling the truth,
16 that's a bad way of saying it. Which doctors'
17 story you feel to be most credible. We all may
18 hear that experts within a given field disagree on
19 a topic, and it's the juror's job to decide what
20 version makes the most sense to that standard more
21 likely than not. Both of you think you can do
22 that?

23 PROSPECTIVE JUROR NO. 11-1222: Yes.

24 PROSPECTIVE JUROR NO. 11-1229: Yes,
25 sir.

1 MR. CHRISTIANSEN: I got the marshal
2 coming up after me.

3 You've heard this case is a bit
4 different because there's a claim for punitive
5 damages or deterrence damages in this case. And
6 you've heard me -- the judge will tell you --
7 instruct you as to the law, but those have to be
8 proven by a different standard, clear and
9 convincing evidence, and Her Honor will tell you
10 what that is. Can both of you consider those
11 types of claims in this case?

12 PROSPECTIVE JUROR NO. 11-1229: Yes,
13 sir.

14 PROSPECTIVE JUROR NO. 11-1222: Yes.

15 MR. CHRISTIANSEN: Do either of you have
16 a bias -- which is just a leaning, not a bad word
17 in a courtroom -- against punitive awards, awards
18 that don't compensate the Khiabani boys but in
19 this case would punish Motor Coach Industries?

20 PROSPECTIVE JUROR NO. 11-1229: No, sir.

21 PROSPECTIVE JUROR NO. 11-1222: No.

22 MR. CHRISTIANSEN: You both could think
23 about those?

24 PROSPECTIVE JUROR NO. 11-1229: Yes,
25 sir.

1 PROSPECTIVE JUROR NO. 11-1222: Yes.

2 MR. CHRISTIANSEN: And any problem, if
3 the evidence supported it, returning a verdict for
4 hundreds of millions of dollars?

5 PROSPECTIVE JUROR NO. 11-1229: No, sir.

6 PROSPECTIVE JUROR NO. 11-1222: No
7 problem.

8 MR. CHRISTIANSEN: Great.

9 Do either one of you ride a bike?

10 PROSPECTIVE JUROR NO. 11-1229: No, sir.

11 PROSPECTIVE JUROR NO. 11-1222: I do.

12 MR. CHRISTIANSEN: You do? I remember
13 sort of thinking in your questionnaire that you
14 like the outdoors.

15 PROSPECTIVE JUROR NO. 11-1222: Yes.

16 MR. CHRISTIANSEN: Where is your bike
17 riding?

18 PROSPECTIVE JUROR NO. 11-1222: Red
19 Rock.

20 MR. CHRISTIANSEN: In the mountains or
21 on the road going up and down?

22 PROSPECTIVE JUROR NO. 11-1222: Both.
23 At the loop and the road going up.

24 MR. CHRISTIANSEN: All right. And by
25 Red Rock, I know what you mean. You mean the

1 canyon, not the casino.

2 PROSPECTIVE JUROR NO. 11-1222: Correct.

3 We would park at the casino sometimes and --

4 MR. CHRISTIANSEN: Sure.

5 PROSPECTIVE JUROR NO. 11-1222 -- and
6 ride up or just do the loop, you know, from the
7 visitors center.

8 MR. CHRISTIANSEN: Ride the four and a
9 half miles up to the visitors center from sort
10 of --

11 PROSPECTIVE JUROR NO. 11-1222: Right.

12 MR. CHRISTIANSEN: -- the edge of town.

13 PROSPECTIVE JUROR NO. 11-1222: Correct.

14 MR. CHRISTIANSEN: Then drop your
15 stuff -- your car there and ride that loop.

16 PROSPECTIVE JUROR NO. 11-1222: Yes,
17 sir.

18 MR. CHRISTIANSEN: And sometimes all the
19 way down from Red Rock --

20 PROSPECTIVE JUROR NO. 11-1222: Yes.

21 MR. CHRISTIANSEN: -- Casino to Red Rock
22 Canyon.

23 PROSPECTIVE JUROR NO. 11-1222: In that
24 vicinity anyway.

25 MR. CHRISTIANSEN: And how often do you

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1 ride bikes, Ms. Padilla?

2 PROSPECTIVE JUROR NO. 11-1222: Two,
3 three times a month, depending on the weather --

4 MR. CHRISTIANSEN: Got it.

5 PROSPECTIVE JUROR NO. 11-1222 -- and
6 time of year.

7 MR. CHRISTIANSEN: Are either of you
8 familiar with that area of town, sort of just
9 generically?

10 PROSPECTIVE JUROR NO. 11-1229: Yes.

11 PROSPECTIVE JUROR NO. 11-1222: Yes.

12 MR. CHRISTIANSEN: Okay. Sounds to
13 me -- Ms. Johnson, will you hand the mic down to
14 Ms. Padilla, because I'm going to ask her, since
15 she has a bike, some questions. And then the
16 court recorder will like me if I get your badge
17 number and your name.

18 PROSPECTIVE JUROR NO. 11-1222: Carol
19 Padilla, 11-1222.

20 MR. CHRISTIANSEN: When you park your
21 bike -- your bike. When you park your vehicle at
22 Red Rock Casino and ride on the surface streets up
23 to the loop, which is sequestered and cars
24 don't -- don't go on it, when you're on the
25 surface streets, have you had occasion for big

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1 vehicles like buses or trucks to go by you?

2 PROSPECTIVE JUROR NO. 11-1222: Yes.

3 MR. CHRISTIANSEN: And have you felt
4 that windblast or air displacement when they go by
5 you?

6 PROSPECTIVE JUROR NO. 11-1222: Yes.
7 It's a gust of wind. It may blow you over or
8 it -- you know, when you're riding, you tend to
9 veer to the right, so it doesn't affect you as
10 much, especially in Las Vegas.

11 MR. CHRISTIANSEN: Why do you say that?

12 PROSPECTIVE JUROR NO. 11-1222: Crazy
13 drivers.

14 MR. CHRISTIANSEN: And how -- when you
15 say it blows you, tell me which direction, in your
16 experience, it will --

17 MR. ROBERTS: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. CHRISTIANSEN: Why don't you just
20 tell me your experience riding a bike with cars
21 and vehicles passing you.

22 MR. ROBERTS: Objection, Your Honor, as
23 well.

24 THE COURT: Sustained.

25 MR. CHRISTIANSEN: May we approach,

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1 Judge?

2 THE COURT: Yes.

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

5 THE COURT: You may proceed,
6 Mr. Christiansen.

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

9 Ms. Padilla, you have guardianship of, I
10 think you said, a nephew?

11 PROSPECTIVE JUROR NO. 11-1222: Yes.

12 MR. CHRISTIANSEN: How long have you
13 been your nephew's guardian?

14 PROSPECTIVE JUROR NO. 11-1222: 12
15 years.

16 MR. CHRISTIANSEN: So since he was
17 five-ish?

18 PROSPECTIVE JUROR NO. 11-1222: Correct.

19 MR. CHRISTIANSEN: Okay. Have you
20 gone -- are you familiar with the guardianship
21 process, that you sort of have to check in with
22 the courts on occasion and make sure your
23 supervision's going --

24 PROSPECTIVE JUROR NO. 11-1222: Yes.

25 MR. CHRISTIANSEN: I do guardianship

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1 stuff. And I know there's a guardianship judge,
2 and you've sort of got to stay in compliance with
3 he or -- him or her.

4 PROSPECTIVE JUROR NO. 11-1222: Yes.

5 MR. CHRISTIANSEN: Are you open to
6 hearing evidence in this case that Aria and Keon
7 Khiabani are now the guardians of their aunt and
8 uncle -- I said that backwards -- are now the --
9 their aunt and uncle are their guardians. So
10 their mom, Katy's older brother, Babak, and the
11 woman I showed a picture of, Marie-Claude, are the
12 guardians of Aria and Keon Khiabani up in
13 Montreal. I ask of you because you're the first
14 person that has said anything about guardianship.
15 Are you open to hearing testimony relative to
16 that?

17 PROSPECTIVE JUROR NO. 11-1222: Yes.

18 MR. CHRISTIANSEN: I didn't ask the
19 panel as a whole because the opportunity didn't
20 present itself. Anybody not open or able to hear
21 testimony about the boys being relocated to
22 Montreal and living with their aunt and uncle?
23 Anybody can't do that, consider it? All right.

24 Now, back just to the -- you two ladies,
25 Ms. Johnson and Ms. Padilla. Do either one of

1 you -- I'll ask you, Ms. Johnson, because I got my
2 summary of your questionnaire.

3 Would you hand the mic back. Thank you,
4 Mr. Kaba.

5 You wrote, Ms. Johnson, in your answer
6 to question in the questionnaire that you believed
7 in caps on damages or would vote to change the law
8 so there would be caps on damages when you filled
9 out your written questionnaire weeks ago. Is that
10 still how you feel today or has it changed since
11 listening from this week?

12 PROSPECTIVE JUROR NO. 11-1229: Since
13 listening to the process, I understand it
14 differently.

15 MR. CHRISTIANSEN: And how did you --
16 that happens all the time. Right? You remember
17 the one young man who thought he knew everybody in
18 the courtroom and turns out it was the wrong case
19 and he was mistaken. So how did you understand it
20 back when you were filling it out?

21 PROSPECTIVE JUROR NO. 11-1229: I wasn't
22 looking at it as separate, compensatory and
23 punitive damages, not understanding that punitive
24 damages are handed out as a punishment to a
25 company versus compensatory damages are for just

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1 the compensation of, like, lost wages and things
2 of that sort, understanding they're two separate
3 things.

4 MR. CHRISTIANSEN: Okay. Are you a
5 person that can consider an award for grief,
6 sorrow, and anguish?

7 PROSPECTIVE JUROR NO. 11-1229: Yes,
8 sir.

9 MR. CHRISTIANSEN: The Court will
10 instruct the jury that there's no formula --
11 there's no, like, you know, X times Y plus --
12 there's no algebraic formula. It's what the
13 consensus of the jury is in their reasonable minds
14 that make up that determination of what that award
15 should be. Could you do something like that?

16 PROSPECTIVE JUROR NO. 11-1229: Yes,
17 sir.

18 MR. CHRISTIANSEN: Ms. Padilla, could
19 you as well?

20 PROSPECTIVE JUROR NO. 11-1222: Yes.

21 MR. CHRISTIANSEN: And, Ms. Padilla, I
22 don't recall on that particular question, I think
23 you answered you didn't have any feelings -- yeah,
24 you did. You don't have any feelings one way or
25 another about tort reform or damage caps?

1 PROSPECTIVE JUROR NO. 11-1222: No.

2 MR. CHRISTIANSEN: Anything that you
3 ladies have heard today or in the last couple of
4 days that have changed that in your mind, from
5 when you filled out the questionnaire through
6 today?

7 PROSPECTIVE JUROR NO. 11-1222: No.

8 MR. CHRISTIANSEN: Other than what you
9 explained to me, Ms. Johnson?

10 PROSPECTIVE JUROR NO. 11-1229: No, sir.

11 MR. CHRISTIANSEN: All right.

12 Ms. Johnson, hand that mic to the gentleman right
13 in front of you, Mr. Tuquero, if you would,
14 please.

15 Mr. Tuquero, you're at the Venetian in
16 engineering; correct?

17 PROSPECTIVE JUROR NO. 11-0926: 11-0926.

18 MR. CHRISTIANSEN: Okay.

19 PROSPECTIVE JUROR NO. 11-0926: That's
20 correct.

21 MR. CHRISTIANSEN: Thank you.

22 And a few days ago when I asked the
23 question about lawsuit reform and caps on damages
24 or limitations on damages, you were one of the
25 persons that put your hand up that said it was

1 something you thought about. Do you remember
2 that?

3 PROSPECTIVE JUROR NO. 11-0926: I don't
4 think I rose my hand.

5 MR. CHRISTIANSEN: I could have missed
6 it. Okay, you didn't.

7 PROSPECTIVE JUROR NO. 11-0926: I
8 didn't.

9 MR. CHRISTIANSEN: I must have just
10 wrote it down wrong, so I apologize. I'm trying
11 to keep track of multiple people.

12 One question I did have for you is that
13 there's an area of the questionnaire that asks the
14 question if something bad happens to a person,
15 that they sort of -- you know, it just sort of was
16 meant to be. Karma is the way I think of it. And
17 you put that you somewhat agreed with that. Do
18 you remember those questions that --

19 PROSPECTIVE JUROR NO. 11-0926: Can
20 you add --

21 MR. CHRISTIANSEN: Sure.

22 Dr. Khiabani was killed April the 18th,
23 2017, when he and the bus made contact and the bus
24 ran him over. Do you think that was somehow
25 divine destiny, that was predestined to have --

1 you know, predestined to occur?

2 PROSPECTIVE JUROR NO. 11-0926: I don't
3 think it like that, though. But if something
4 would have -- what I meant to write on that is
5 what comes around goes around in the karma part.

6 MR. CHRISTIANSEN: Okay. That could
7 play out a number of ways if -- in a court of law.
8 I want to -- all of us here want to just make sure
9 that karma or the thought behind karma -- and
10 there's nothing wrong with the thought behind
11 it -- won't be what makes up your decision if
12 chosen as a juror in this courtroom. Instead, it
13 will be what the judge tells you the law is as you
14 apply the facts. Can you commit that karma's not
15 going to weigh into that?

16 PROSPECTIVE JUROR NO. 11-0926: It all
17 depends on the situation.

18 MR. CHRISTIANSEN: Okay. Help me
19 understand what you mean by that, Mr. Tuquero.

20 I'm sorry, Ms. Court Reporter, I'm
21 walking behind you, but I feel like I'm talking
22 over ten people to talk to you.

23 PROSPECTIVE JUROR NO. 11-0926: Well,
24 again, if the situation occurs, if it wasn't his
25 fault and then -- let's see, how would I phrase

1 that? We're talking about safety-wise, then. If
2 it wasn't his fault, then they're going to have to
3 do something about that on the safety part.

4 MR. CHRISTIANSEN: When you say
5 "they're," who do you mean? The bus company?

6 PROSPECTIVE JUROR NO. 11-0926: Yes.

7 MR. CHRISTIANSEN: Okay. Well, the way
8 that our legal system works is that if something
9 happens and a claim is brought, a jury is asked to
10 decide to do something to compensate the plaintiff
11 and potentially even to punish the defendant. And
12 I'm trying to understand if that's something you
13 could bring yourself to do in this case.

14 PROSPECTIVE JUROR NO. 11-0926: Sure.

15 MR. CHRISTIANSEN: Okay. You -- some
16 persons that have sort of a general belief in
17 karma think that, you know, it's all just going to
18 work itself out in life. You know, the karma is
19 going to come back and fix things on its own.
20 That's the way the, sort of, universe metes out
21 justice. And I just -- I think all of us just
22 want to understand that our jury, whoever gets
23 picked to be on it, will agree to apply the
24 judge's law and not the karma law, to be simple
25 about it.

1 PROSPECTIVE JUROR NO. 11-0926: Yes.

2 MR. CHRISTIANSEN: Can you do that?

3 PROSPECTIVE JUROR NO. 11-0926: Sure.

4 Yes.

5 MR. CHRISTIANSEN: Do you have any
6 problem with awarding, if the evidence supports
7 it, compensatory verdicts in the tens of millions
8 of dollars?

9 PROSPECTIVE JUROR NO. 11-0926: No.

10 MR. CHRISTIANSEN: You gave me the kind
11 of, like -- the half a wink. You had to think
12 about it for a second.

13 PROSPECTIVE JUROR NO. 11-0926: Yes.

14 MR. CHRISTIANSEN: What did you mean by
15 that?

16 PROSPECTIVE JUROR NO. 11-0926: Oh.
17 It's all depending on how big the settlement is.

18 MR. CHRISTIANSEN: Are you telling me it
19 depends on what the facts are from the jury box?

20 PROSPECTIVE JUROR NO. 11-0926: Yes.

21 MR. CHRISTIANSEN: And if the facts
22 support a very large award, you could give it?

23 PROSPECTIVE JUROR NO. 11-0926: Yes.

24 MR. CHRISTIANSEN: Would you be doing so
25 kind of reluctantly?

1 PROSPECTIVE JUROR NO. 11-0926: No.

2 MR. CHRISTIANSEN: Okay. And the
3 standard by which you do it -- you heard me talk
4 most recently to the lady behind you, Ms. Johnson,
5 about the standard's more likely than not. I've
6 got to move that football off the 50 yard line to
7 the 49. Can you use that standard?

8 PROSPECTIVE JUROR NO. 11-0926: Yes.

9 MR. CHRISTIANSEN: Would you hold me to
10 a higher standard the more the request is for?

11 PROSPECTIVE JUROR NO. 11-0926: No.

12 MR. CHRISTIANSEN: Okay. Similarly,
13 Mr. Tuquero, do you have thoughts on the
14 punishment damages or punitive damages?

15 PROSPECTIVE JUROR NO. 11-0926: No.

16 MR. CHRISTIANSEN: Some people say,
17 well, if you've already compensated the plaintiff,
18 I don't see any use to punish anybody else. Do
19 you tend to lean more that way or more -- are you
20 more open to punitive damages?

21 PROSPECTIVE JUROR NO. 11-0926: Again,
22 we're going to start out fairly.

23 MR. CHRISTIANSEN: Okay. And Her Honor
24 will explain to you what clear and convincing
25 evidence is, but if the plaintiff can prove that

1 the conduct rises to the level of punitive damages
2 by clear and convincing evidence, would you have
3 any trouble considering an award in the hundreds
4 of millions of dollars to punish the defendant in
5 this case?

6 PROSPECTIVE JUROR NO. 11-0926: Whatever
7 the judge says, I'll follow that.

8 MR. CHRISTIANSEN: Great. Mr. Tuquero,
9 can you hand that microphone up front to
10 Mr. Krieger, if you would, please.

11 Good afternoon, Mr. Krieger.

12 PROSPECTIVE JUROR NO. 11-1047: Good
13 afternoon. 11-1047.

14 MR. CHRISTIANSEN: Mr. Krieger, I missed
15 it yesterday and I caught it in my notes as I was
16 looking back last night. Your son is the oral
17 surgeon; is that right?

18 PROSPECTIVE JUROR NO. 11-1047: Yeah.
19 Yes.

20 MR. CHRISTIANSEN: Okay. Does he
21 practice here in town?

22 PROSPECTIVE JUROR NO. 11-1047: Yes.

23 MR. CHRISTIANSEN: And what part of town
24 does he practice in?

25 PROSPECTIVE JUROR NO. 11-1047:

1 Summerlin. I guess it would -- no. Actually,
2 it's sometimes called -- 215 and Town Center. I
3 don't know what you would call that.

4 MR. CHRISTIANSEN: I think that's
5 Summerlin.

6 Dr. Barin, Katy Barin, her dentist
7 office was right there at 215 and Town Center. Do
8 you know where that library is in that roundabout
9 by Agassi Fitness Center?

10 PROSPECTIVE JUROR NO. 11-1047: No, I'm
11 not sure. That's on Sahara, isn't it? The
12 library? Sahara and Canyon --

13 MR. CHRISTIANSEN: Maybe it's the
14 ballet. I can't remember. It's something over
15 there. The 215 -- so I've seen your son's
16 practice and it's near, in geographic location, to
17 Dr. -- where Katy Barin's dental practice was. I
18 just wanted to see if you knew that or if they had
19 any relationship with each other.

20 PROSPECTIVE JUROR NO. 11-1047: No.
21 I -- no.

22 MR. CHRISTIANSEN: Not that you know of.

23 PROSPECTIVE JUROR NO. 11-1047: Not that
24 I know of, no.

25 MR. CHRISTIANSEN: Okay, great.

1 To the questions I was posing to
2 Mr. Tuquero relative to caps on damages, when you
3 filled out your questionnaire, Mr. Krieger, you
4 thought that 50 percent of lawsuits were frivolous
5 and that there should be legal limits or
6 legislative caps on damage awards. Do you
7 remember --

8 PROSPECTIVE JUROR NO. 11-1047: Yes, I
9 do.

10 MR. CHRISTIANSEN: Have you heard --

11 PROSPECTIVE JUROR NO. 11-1047: Like
12 many of the others, I think --

13 MR. CHRISTIANSEN: Sure.

14 PROSPECTIVE JUROR NO. 11-1047 -- that
15 after listening to this process, I've kind of come
16 to understand that there's -- and I didn't know
17 this before -- sort of a measured response now. I
18 think that, at least for me as the general public,
19 when you hear these things, you just think they're
20 numbers grabbed from nowhere, and you explained
21 that there's actually -- I didn't know this
22 either -- a finance --

23 MR. CHRISTIANSEN: That's right.

24 PROSPECTIVE JUROR NO. 11-1047: -- sort
25 of give some relevance to what's happening. I

1 also learned that on the jury, we can -- we're --
2 we can ask questions and we have some input and so
3 forth.

4 MR. CHRISTIANSEN: Okay. So it sounds
5 like you got --

6 PROSPECTIVE JUROR NO. 11-1047: So I
7 would be listening to the facts as they're
8 presented. I will be making my decisions based on
9 the law and what I hear.

10 MR. CHRISTIANSEN: Great. I think the
11 marshal is looking to replace the battery in the
12 microphone.

13 THE MARSHAL: Yeah, I am, yeah.

14 MR. CHRISTIANSEN: He's showing -- he's
15 flashing me the battery, Judge, so --

16 THE COURT: Okay. Very good.

17 PROSPECTIVE JUROR NO. 11-1047: So I say
18 that again?

19 THE MARSHAL: It was off. Here you go.

20 PROSPECTIVE JUROR NO. 11-1047: Whatever
21 I said.

22 MR. CHRISTIANSEN: She got it.

23 PROSPECTIVE JUROR NO. 11-1047: Okay.

24 MR. CHRISTIANSEN: Similarly,
25 Mr. Krieger, there was a question about if you had

1 any feelings about the bus manufacturers, and your
2 answer was that they produce a quality product
3 that transports thousands of people every day.

4 PROSPECTIVE JUROR NO. 11-1047: Again,
5 my reference comes from school. We're out there
6 loading them up and shipping them out. For the
7 most part, it's -- you know, I think we're doing a
8 good job with those Bluebells.

9 MR. CHRISTIANSEN: Bluebell is the
10 bus --

11 PROSPECTIVE JUROR NO. 11-1047: Brand.

12 MR. CHRISTIANSEN: -- that the kids,
13 school children; right?

14 PROSPECTIVE JUROR NO. 11-1047: Yes.
15 That's correct.

16 MR. CHRISTIANSEN: Have you experienced
17 a little bit like -- or anything like
18 Ms. Vandevanter this morning who told me she feels
19 those buses go by her sort of twice a day, five or
20 six of them?

21 PROSPECTIVE JUROR NO. 11-1047: Sure,
22 but not at the frequency she does. You know, when
23 you're helping out with -- as an advisor for team
24 events and those kind of things, they come less
25 frequently, seasonally or whatever.

1 MR. CHRISTIANSEN: And you're not
2 teaching --

3 PROSPECTIVE JUROR NO. 11-1047: At the
4 current time, no, I'm not teaching students, but I
5 have taught in middle school and high school. So
6 I had eight years or so with students and buses
7 and trips and teams and stuff like that.

8 MR. CHRISTIANSEN: Okay. Great.

9 Lastly, from your questionnaire that I
10 neglected to ask you yesterday, you were asked
11 about feelings on lawsuits. And you wrote, "In
12 general, our U.S. society looks for opportunities
13 to create lawsuits. People use the court for
14 financial gain."

15 And understanding this is what you were
16 writing in a vacuum down in jury services on a
17 30-page questionnaire that probably wasn't --

18 PROSPECTIVE JUROR NO. 11-1047: Right.

19 MR. CHRISTIANSEN: Help me understand.

20 PROSPECTIVE JUROR NO. 11-1047: And,
21 again, I think that we are inundated through the
22 media on a frequent basis with only half
23 information on lawsuits and things. And perhaps
24 I'm responding to -- I guess you would call it a
25 knee-jerk reaction.

1 MR. CHRISTIANSEN: You think maybe the
2 media blows stuff out of proportion sometimes?

3 PROSPECTIVE JUROR NO. 11-1047: Yes.

4 MR. CHRISTIANSEN: A natural, as you
5 call it, knee-jerk reaction maybe when you see
6 something in a question on a questionnaire, you
7 just regurgitate something you've heard that maybe
8 now that you've sat through the process --

9 PROSPECTIVE JUROR NO. 11-1047: Yeah,
10 absolutely. I admit I was probably a little bit
11 in a hurry as well.

12 MR. CHRISTIANSEN: No.

13 So, as you sit here today, having, you
14 know, listened to this process for the better part
15 of a week, do you have in your mind, like others
16 behind you have had and been honest with me, an
17 artificial ceiling of what you could award --

18 PROSPECTIVE JUROR NO. 11-1047: No, I do
19 not have an artificial ceiling. I don't have a
20 problem with the cap. Based on the information
21 you said, you're going to be presenting those
22 facts, or the witnesses will.

23 MR. CHRISTIANSEN: Same question as it
24 pertains to punitive damages. Would I get the
25 same answer?

1 PROSPECTIVE JUROR NO. 11-1047: Yes, you
2 would.

3 MR. CHRISTIANSEN: Okay. Thank you very
4 much.

5 Your Honor, maybe this is a good time
6 for a break. Is that okay?

7 THE COURT: Yes. Let's take a 15-minute
8 break.

9 You are instructed not to talk with each
10 other or with anyone else about any subject or
11 issue connected with this trial. You are not to
12 read, watch, or listen to any report of or
13 commentary on the trial by any person connected
14 with this case or by any medium of information,
15 including, without limitation, newspapers,
16 television, the internet, or radio.

17 You are not to conduct any research on
18 your own relating to this case, such as consulting
19 dictionaries, using the internet, or using any
20 reference materials. You are not to conduct any
21 investigation, test any theory of the case,
22 re-create any aspect of the case, or in any way --
23 excuse me -- any other way investigate or learn
24 about the case on your own.

25 You are not to talk with others, text

1 others, tweet others, message others, google
2 issues, or conduct any other kind of book or
3 computer research with regard to any issue, party,
4 witness, or attorney involved in this case.

5 You are not to form or express any
6 opinion or any subject connected with this trial
7 until this case is finally submitted to you.

8 Return, please, in 15 minutes.

9 Marshal Ragsdale, will you come back
10 after?

11 THE MARSHAL: All rise.

12 THE COURT: Jerry, will you please bring
13 Ms. Padilla back.

14 THE MARSHAL: All rise.

15 Please be seated. Come to order.

16 THE COURT: Please state your name and
17 badge number for the record.

18 PROSPECTIVE JUROR NO. 11-1222: Carol
19 Padilla, 11-1222.

20 THE COURT: Thank you. I think counsel
21 has some follow-up questions for you.

22 MR. CHRISTIANSEN: Ms. Padilla, tell me
23 about your experience with the wind disturbance on
24 your bike when passed by big vehicles up at Red
25 Rock.

1 PROSPECTIVE JUROR NO. 11-1222: It would
2 just move you over, you know, blow you off or lose
3 a little bit of balance on the bike.

4 MR. CHRISTIANSEN: Cause you to wobble a
5 bit on the bike?

6 PROSPECTIVE JUROR NO. 11-1222: Yes.

7 MR. CHRISTIANSEN: Pushing you at first
8 away from the vehicle as it passed?

9 PROSPECTIVE JUROR NO. 11-1222: Correct.

10 MR. CHRISTIANSEN: Is that something
11 you've experienced your own self?

12 PROSPECTIVE JUROR NO. 11-1222: Yes, I
13 have. I've actually lost control of the bike,
14 but, fortunately, I went that way, to the right
15 instead of the left.

16 MR. CHRISTIANSEN: So I understand you
17 correctly, are you telling me that some vehicle
18 passed you, there was an air disturbance that
19 caused you to lose control of the bike you were
20 riding, and you went down into, like, the borrow
21 ditch -- or whatever you call that -- as opposed
22 to into the vehicle?

23 PROSPECTIVE JUROR NO. 11-1222: Correct.

24 MR. CHRISTIANSEN: Does the disturbance
25 that you've experienced change based on the size

1 of the vehicle that's passing you, in your
2 experience?

3 PROSPECTIVE JUROR NO. 11-1222: Yes, as
4 opposed to a car. A car is lower and then the bus
5 is taller. So it seems like if a car comes by,
6 you get a little jolt. And, you know, as the
7 vehicles get bigger, the jolt is bigger.

8 MR. CHRISTIANSEN: Have you had
9 experiences with buses passing you?

10 PROSPECTIVE JUROR NO. 11-1222: Yes,
11 especially between the 215 and Red Rock area, and
12 then as you get up -- before, when I used to ride
13 there, there was no houses. There wasn't anything
14 there. But now, since it's grown, there are buses
15 that go up that way. But traditionally, it would
16 just be cars going by.

17 MR. CHRISTIANSEN: Can you still be fair
18 to the bus company?

19 PROSPECTIVE JUROR NO. 11-1222: Yes. I
20 mean --

21 MR. CHRISTIANSEN: Nobody has got a head
22 start in here because you've experienced air
23 disturbance from a bus, do they?

24 PROSPECTIVE JUROR NO. 11-1222: No.

25 MR. CHRISTIANSEN: Nothing else from me,

1 Your Honor. Thank you.

2 THE COURT: Need a break?

3 MR. CHRISTIANSEN: I'm sorry.

4 Mr. Kemp --

5 THE COURT: Just one moment. Are you
6 all right?

7 Okay. Very good. Go on.

8 MR. CHRISTIANSEN: I'm sorry. You okay?

9 The defendant in this case is Motor
10 Coach Industries, a seller of buses. I just want
11 to make sure that you can unequivocally state
12 you'll be fair to them as well.

13 PROSPECTIVE JUROR NO. 11-1222: Yes.

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

15 THE COURT: Mr. Roberts, did you have
16 some questions?

17 MR. ROBERTS: Yes, I do. Thank you,
18 Your Honor.

19 THE COURT: Also, did you hear about
20 this in the media?

21 PROSPECTIVE JUROR NO. 11-1222: Yes.

22 And I knew of riders that rode. I didn't ever
23 know him personally, but I just knew -- you know,
24 the biking community is small, and so you hear of
25 things like that.

1 THE COURT: Okay. And when you say --
2 was it in the media? Did you see it on television
3 or read about it?

4 PROSPECTIVE JUROR NO. 11-1222: Yes,
5 both, in the newspaper as well as on the media.

6 THE COURT: Okay. And then how have
7 you -- I understand the biking community is small.
8 I do.

9 So please give me an example of your
10 acquaintances, your friends that also bike, what
11 discussions you've had concerning this case.

12 PROSPECTIVE JUROR NO. 11-1222: Not
13 really. I mean, probably when it happened, it was
14 just -- you know, there may have been some of the
15 people that I knew knew the doctor or rode with --
16 I never personally did. I call them real riders.
17 I'm not a real rider. I ride, but -- and so I
18 didn't know of him personally but just knew of
19 people that knew or had ridden with him.

20 THE COURT: And what type of comments
21 were they making concerning this incident, your
22 mutual acquaintances?

23 PROSPECTIVE JUROR NO. 11-1222: Just
24 safety, sorrow, how unfortunate, things of that
25 nature as far as that goes.

1 THE COURT: What about safety?

2 PROSPECTIVE JUROR NO. 11-1222: You
3 know, when you're riding, staying to the right;
4 you know, helmets, the gear and making sure your
5 bike is in good order. And, you know, just
6 general things like that.

7 THE COURT: What cyclists can do?

8 PROSPECTIVE JUROR NO. 11-1222: Correct.

9 THE COURT: Thank you.

10 Mr. Roberts -- or do you have any more
11 questions, Mr. Kemp? If you think of some, I'll
12 let you ask them. Okay?

13 Mr. Roberts.

14 MR. ROBERTS: Thank you so much, Your
15 Honor.

16 Hi, Ms. Padilla.

17 PROSPECTIVE JUROR NO. 11-1222: Correct.

18 MR. ROBERTS: Do you consider yourself
19 part of the Las Vegas biking community?

20 PROSPECTIVE JUROR NO. 11-1222: I'm more
21 recreational. I'm not a racer. I don't wear all
22 the gear. I mean, I have some, but, like I said,
23 I'm not a real rider; I'm just a rider.

24 MR. ROBERTS: You've mentioned that
25 you've ridden up to Red Rock both on the

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1 Charleston Highway going up and sometimes you
2 start at the loop; right?

3 PROSPECTIVE JUROR NO. 11-1222: Correct.

4 MR. ROBERTS: When you take those rides,
5 do you go alone, with a friend, or do you go with
6 an organized group?

7 PROSPECTIVE JUROR NO. 11-1222: Usually
8 with one or two friends.

9 MR. ROBERTS: So not as part of a club?

10 PROSPECTIVE JUROR NO. 11-1222: Correct.
11 I'm not a member of a club, but I have friends
12 that are members of clubs.

13 MR. ROBERTS: Because you and the doctor
14 who got killed are both bikers, do you feel any
15 special empathy toward him or his family based on
16 what happened?

17 PROSPECTIVE JUROR NO. 11-1222: No.
18 Anybody that gets injured or hurt or killed like
19 that, I mean, I would have empathy with the -- not
20 because I'm a rider but just because I'm a person.

21 MR. ROBERTS: Right. Not an undue
22 amount, the same amount anyone would feel?

23 PROSPECTIVE JUROR NO. 11-1222: Correct.
24 Yes.

25 MR. ROBERTS: And, certainly, any decent

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1 person is going to feel sympathy and empathy for a
2 family when something like this has happened. The
3 question for a juror is whether you would allow
4 that to influence your decision on this case or
5 whether you'd decide it in accordance with the
6 instructions from the Court or whether that
7 sympathy and empathy would be sort of in the back
8 of your mind throughout the trial.

9 PROSPECTIVE JUROR NO. 11-1222: My
10 nephew's mother was killed in a car accident, and
11 I got guardianship of him because of that. So,
12 you know, it's just one of those kinds of
13 situations.

14 MR. ROBERTS: So you're in the same
15 position as the uncle here?

16 PROSPECTIVE JUROR NO. 11-1222: Correct.
17 And, you know, you can feel for the kids because
18 of -- you know, it's an accident. I mean, that's
19 what happens. Things happen. Unfortunately, now
20 they're without parents.

21 MR. ROBERTS: Part of the testimony in
22 this case is going --

23 MR. KEMP: Judge, he's going into his
24 general voir dire. This was a restricted area
25 that we brought her in for. I'm not saying he

1 can't get back to this in a general voir dire, but
2 this is beyond what we brought her in for.

3 MR. ROBERTS: I think it would be more
4 efficient to handle it right now, Your Honor. I
5 don't think there's any rule regarding the scope
6 of voir dire and what has to be done with --

7 MR. KEMP: If you bring a person in for
8 a specific reason, that's what it should be
9 limited to. It shouldn't be an expanded thing
10 when we have 27 people outside.

11 MR. ROBERTS: May we approach, Your
12 Honor?

13 THE COURT: Yes.

14 MR. ROBERTS: Thank you.

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

17 MR. ROBERTS: So, Ms. Padilla, getting
18 back to the air that you felt from vehicles when
19 they passed you.

20 PROSPECTIVE JUROR NO. 11-1222: Okay.

21 MR. ROBERTS: You mentioned that
22 sometimes you start, drive up Charleston
23 Highway -- and there's no bike lane on Charleston
24 Highway up toward Red Rock; correct?

25 PROSPECTIVE JUROR NO. 11-1222: Not

1 until you get past the 215, basically.

2 MR. ROBERTS: So my question is, the
3 push that's destabilized you, have you felt that
4 when vehicles are doing 55 miles an hour or
5 higher, or, in your personal experience, has that
6 occurred to you when vehicles are doing less than
7 55?

8 PROSPECTIVE JUROR NO. 11-1222: Well, I
9 would assume it's less, because I don't think that
10 road is 55 miles an hour. So it would probably be
11 less.

12 MR. ROBERTS: Okay. Have you ever been
13 pulled toward a vehicle when a big bus or truck
14 passed you?

15 PROSPECTIVE JUROR NO. 11-1222: I think
16 most of my experience has been it's been moving me
17 to the right, pushing me off. And, like I said, a
18 lot of time it's -- you may just lose balance, you
19 know, wobble a little bit or something like that
20 or -- if a vehicle comes too close as it's going
21 by.

22 MR. ROBERTS: Based on your own personal
23 experiences with large vehicles and bicycles
24 interacting, do you already have a preconceived
25 feeling that the bus seller is at fault in this

1 case?

2 PROSPECTIVE JUROR NO. 11-1222: Being
3 a -- riding a bike and a bus, the bus is always
4 going to win. I mean -- but as far as not knowing
5 all the circumstances of what happened or what
6 didn't happen, you know, I don't know.

7 Preconceived? No. But, you know, I
8 mean, I work with kids. I tell them, you're not
9 going to challenge a car because the car is going
10 to win. You know, if you're trying to cross the
11 street or whatever, you know, it's just common
12 sense. But sometimes you don't -- kids don't get
13 it.

14 And, you know, I mean, a bus is however
15 many thousands of pounds. A car is however many
16 thousands of pounds. And, you know, we're
17 200 pounds or 100 pounds. So if it hits you, it's
18 not a good outcome.

19 MR. ROBERTS: And in this case, the
20 question is going to be whether the bus seller is
21 liable and whether the children are entitled to
22 damages under the law. So putting aside who's
23 going to win in this type of interaction, before
24 you've heard evidence, are you already feeling one
25 way or another about who you think should win in

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1 this case?

2 PROSPECTIVE JUROR NO. 11-1222: Well, I
3 can honestly say I have empathy for the kids and
4 the families. And I feel like I could listen to
5 the evidence or the facts and whatnot, and, you
6 know, hopefully be able to make, you know, an
7 informed decision. But, you know, I still -- you
8 know, I mean, I have emotions. I'm not going to
9 say, oh, no, it's -- you know, but, you know, I
10 guess I do have some bias possibly towards the
11 kids.

12 MR. ROBERTS: And I'm going to ask this
13 question, no insult. Do you know what
14 unequivocally means? We've been using that.

15 PROSPECTIVE JUROR NO. 11-1222: Right.
16 Correct. Yes.

17 MR. ROBERTS: You're comfortable with
18 that word?

19 PROSPECTIVE JUROR NO. 11-1222: Yes.

20 MR. ROBERTS: Can you unequivocally
21 state that your feelings and bias towards the
22 family is not going to affect your verdict?

23 PROSPECTIVE JUROR NO. 11-1222: No, I
24 cannot say that.

25 MR. ROBERTS: You cannot unequivocally

1 say that?

2 PROSPECTIVE JUROR NO. 11-1222: I
3 cannot, no.

4 MR. ROBERTS: So would you be probably
5 not a good juror for this case based on those
6 feelings?

7 PROSPECTIVE JUROR NO. 11-1222: Probably
8 not.

9 MR. ROBERTS: Okay. Thank you so much
10 for your honesty.

11 Thank you, Judge.

12 THE COURT: Mr. Christiansen?

13 MR. CHRISTIANSEN: Thank you, Judge.

14 Ms. Padilla, everybody is going to have
15 sympathy for these kids.

16 PROSPECTIVE JUROR NO. 11-1222: Yes.

17 MR. CHRISTIANSEN: That's what humans
18 have; right? You have a heart. So that doesn't
19 make you a biased juror. The question is, can you
20 apply the law as the judge gives it to you to the
21 facts that you hear in this courtroom? Can you do
22 that equally with both sides? Or are you going to
23 say, well, you're going to vote against the bus
24 company just because you've got empathy?

25 PROSPECTIVE JUROR NO. 11-1222: I want

1 to say that I could listen to everything and make
2 an unbiased opinion, but, you know, you still have
3 that in the back of your mind. And so it's going
4 to be very difficult. And I don't know if -- you
5 know, when the day is done, if it's like, oh,
6 yeah, I'm just going to go with the kids or go
7 with the bus company.

8 MR. CHRISTIANSEN: You don't know any
9 facts yet.

10 PROSPECTIVE JUROR NO. 11-1222: Exactly.
11 And that's the thing. I was, like, you know, when
12 I wrote on my questionnaire about biking, because
13 I do, and I was, like, oh, God, now, is this going
14 to be good or bad? You know, not knowing how
15 that's going to affect what's going to happen.

16 MR. CHRISTIANSEN: So if you had to vote
17 right now, not knowing any facts, you would have
18 to vote for the defendant because you don't know
19 any facts; right? I didn't carry my burden. I
20 didn't prove it more likely than not because you
21 don't know a single fact; right?

22 PROSPECTIVE JUROR NO. 11-1222: Yes.

23 MR. CHRISTIANSEN: And if, at the end of
24 the trial, I haven't met my burden, I haven't
25 proven it more likely than not the defects in the

1 bus caused the death of Kayvan Khiabani, you could
2 come back in and vote for the bus company? If
3 that was the evidence you heard and those were the
4 facts as applied to the law Her Honor gave you,
5 and you took an oath to follow it, you could do
6 that, couldn't you?

7 PROSPECTIVE JUROR NO. 11-1222: I would
8 try, definitely try.

9 MR. CHRISTIANSEN: And you can
10 unequivocally tell us you'd give us your best
11 efforts and follow the law the judge gives you;
12 right?

13 PROSPECTIVE JUROR NO. 11-1222: I
14 definitely would follow the law, yes.

15 MR. CHRISTIANSEN: Unequivocally?

16 PROSPECTIVE JUROR NO. 11-1222:
17 Unequivocally.

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

19 MR. KEMP: The issue here is whether
20 you're going to let sympathy decide the case or
21 the evidence decide the case. You understand
22 that?

23 PROSPECTIVE JUROR NO. 11-1222: Yes.

24 MR. KEMP: And what's your answer?

25 PROSPECTIVE JUROR NO. 11-1222: I would

1 listen to the evidence.

2 MR. KEMP: Okay. And, for example, if
3 the children had sued some other entity, like the
4 Red Rock Casino, for example, you're not saying
5 that you would unequivocally decide for the
6 children based on sympathy?

7 PROSPECTIVE JUROR NO. 11-1222: Correct.

8 MR. KEMP: You're going to listen to the
9 evidence?

10 PROSPECTIVE JUROR NO. 11-1222: Yes.

11 MR. KEMP: So when you made the comment
12 to Mr. Roberts that the sympathy would
13 unequivocally affect your vote, did you really
14 understand what we were trying to get to?

15 PROSPECTIVE JUROR NO. 11-1222: Possibly
16 not. I don't know. It's difficult to go between
17 the sympathy, empathy, and what's going on.

18 MR. KEMP: Right. We understand
19 sympathy is a factor, but the issue is whether
20 that's going to be the overriding end-all, be-all
21 that makes the decision factor.

22 PROSPECTIVE JUROR NO. 11-1222: I feel
23 like I could listen to the facts and make a
24 decision based on the facts and what the judge
25 gives us.

1 MR. KEMP: And not base the decision
2 solely on sympathy?

3 PROSPECTIVE JUROR NO. 11-1222: Correct.

4 MR. KEMP: Or even overwhelmingly on
5 sympathy?

6 PROSPECTIVE JUROR NO. 11-1222: No, or
7 emotional.

8 MR. KEMP: Thank you.

9 MR. ROBERTS: May we approach, Your
10 Honor?

11 THE COURT: Yes.

12 MR. ROBERTS: Thank you.

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

15 THE COURT: Ms. Padilla, I already
16 admonished you when I admonished the entire group.
17 I'm going to ask you to step outside for a few
18 minutes. If you need to use the restroom or
19 anything like that, please feel free.

20 THE MARSHAL: All rise.

21 THE COURT: Thank you.

22 THE MARSHAL: Please be seated.

23 THE COURT: Let's go off the record for
24 a moment.

25 (Whereupon, a recess was taken.)

1 THE MARSHAL: Department 14 now in
2 session.

3 THE COURT: Please remain seated. We
4 need a couple housekeeping matters.

5 Apparently, the questionnaires for the
6 Wynn v. Okada, that case, they're starting them on
7 Monday at noon sharp. It's a six-month-long
8 trial, I think, approximately.

9 MR. KEMP: I don't think so, Your Honor.

10 THE COURT: I mean, that's what I've
11 been told. I really don't jump into other
12 people's -- you know, like, research a lot.

13 MR. ROBERTS: You're thinking noon may
14 not be a good time for people to report.

15 THE COURT: I'm going to be doing that
16 trial on the 17th floor so that that trial can be
17 held in this courtroom. So that's why I know a
18 little bit about it. So it's going to be
19 inundated with people at noon.

20 MR. KEMP: What time are they coming in,
21 at noon?

22 THE COURT: Yes. And she's going to
23 give the presentation and whatever she does, hand
24 out the questionnaires. So she's requested -- the
25 jury commissioner has requested that we bring our

1 jurors in at 11:30 or at 1:00, which I think is
2 too late.

3 MR. KEMP: 11:30, Your Honor.

4 MR. BARGER: They can eat before they
5 come that way.

6 THE COURT: And we'll be prepared to
7 review this issue, the issue that we were
8 reviewing just before the break -- or during the
9 break.

10 MR. CHRISTIANSEN: Do we get with your
11 court clerk or the court recorder to order the
12 proper transcript?

13 Yeah, I figured it out. I got the nod
14 from the reporter, Your Honor.

15 THE COURT: Okay. All right.

16 I'm going to bring this jury in and let
17 them know that they should come back at 11:30 on
18 Tuesday.

19 MR. KEMP: One more thing, Your Honor.
20 Since this is a three-day weekend, could you be
21 double-tough with them on the admonishment?

22 THE COURT: Yes.

23 MR. CHRISTIANSEN: Thank you for letting
24 us go a little short, Your Honor. I'm beat.

25 MR. ROBERTS: As I understand it, the

1 potential jurors have to come in the front door.
2 Our jurors can come in the back door since they
3 have badges?

4 THE COURT: Let me ask Marshal Ragsdale.

5 MR. ROBERTS: It might be a good idea to
6 direct them to the back door if that's the case,
7 the south side.

8 (Discussion off the record.)

9 THE MARSHAL: All rise.

10 All the jurors are present, Your Honor.
11 Please be seated. Come to order.

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

14 MR. ROBERTS: Yes, Your Honor.

15 THE COURT: Mr. Kemp?

16 MR. KEMP: Yes, Your Honor.

17 THE COURT: Ladies and gentlemen, I have
18 good news. I think we're going to wrap it up for
19 today. It's been a long week. You've all been
20 very, very patient. And, actually, I can't take
21 the credit. Both counsel wanted to give you a
22 little bit of a break.

23 This is really important because we have
24 a three-day weekend. And I'm not going to be
25 admonishing you after this last one for this

1 afternoon. So I want you to keep in mind -- this
2 goes to everyone that's here whether you're behind
3 the bar or in front of the bar.

4 This is very, very important that you
5 heed and follow directly this admonishment because
6 anything that deviates from this could result in a
7 mistrial. And that would just be a terrible thing
8 to happen. Okay?

9 Also, before I forget to tell you about
10 this, this is very important. On Tuesday at noon
11 we have a case -- think about this. I've been
12 told, because I'm going to be going to the 17th
13 floor and they're going to hear that case in this
14 courtroom that I use, my courtroom, for six
15 months.

16 So those jurors are going to be filling
17 out their questionnaires. They'll be here at noon
18 on Tuesday for a six-month case. So anytime that
19 you think about four weeks over the weekend or at
20 any point, just remember they'll be here for six
21 months.

22 In any case, I believe your jury summons
23 directed you to go to the south gate; is that
24 correct?

25 Well, there may be a lot of jurors --

1 because they're coming in for the first time to
2 fill out their questionnaires -- at the south
3 gate. So you may consider also the north gate if
4 you see a lot of traffic there. Okay? That might
5 bring you in a little quicker. We have three
6 roads there, and you have your badges.

7 I'm going to admonish you. Remember,
8 this is really important. So at 11:30 on Tuesday
9 you should be here, because, that way, you will
10 avoid a lot of the traffic and a lot of the issues
11 coming up with the next jury.

12 Also, I'd like to make sure that you've
13 eaten before you come because we won't be taking
14 the traditional lunch break. All right? Okay.
15 Very good.

16 All right. Again, you are instructed
17 not to talk with each other or with anyone else
18 about any subject or issue connected with this
19 trial. You are not to read, watch, or listen to
20 any report of or commentary on the trial by any
21 person connected with this case or by any medium
22 of information, including, without limitation,
23 newspapers, television, the internet, or radio.

24 You are not to conduct any research on
25 your own relating to this case, such as consulting

1 a dictionary, using the internet in any form or
2 any way, or using any reference materials. You
3 are not to conduct any investigation, test any
4 theory of the case, re-create any aspect of the
5 case, or in any other way investigate or learn
6 about the case on your own.

7 That includes talking to neighbors,
8 family, friends, acquaintances, anyone. You are
9 not to talk with others, text others, tweet
10 others, message others, google issues, or conduct
11 any other kind of book or computer research with
12 regard to any issue, party, witness, or attorney
13 involved in this case.

14 You are not to form or express any
15 opinion on any subject connected with this trial
16 until the case is finally submitted to you.
17 Please make sure you follow this closely.

18 I hope you have a very enjoyable
19 weekend, safe weekend. Okay?

20 Thank you very much.

21 THE MARSHAL: All rise.

22 THE COURT: So 11:30 on Tuesday.

23 Is there anything we need to discuss so
24 that it doesn't interfere with our time on Tuesday
25 aside from the issue with Ms. Padilla?

1 MR. CHRISTIANSEN: Judge, I guess my
2 only question to you is the 50 new folks. Will
3 you seat them in the courtroom, go through from
4 beginning to end, and then -- you know, your
5 generic -- initial questions with them? Generic
6 was a bad term. I'm sorry.

7 THE COURT: It's okay.

8 MR. CHRISTIANSEN: And then just have me
9 get back at the folks that have been here, or do
10 you want to wait for the 50 until we finish with
11 the folks that have been here before you bring in
12 the 50? And I'm just inquiring so we're all are
13 on the same page.

14 THE COURT: We're starting in the
15 afternoon.

16 MR. KEMP: I think it's going to take a
17 while for the 50 to get up here because they
18 didn't get some tipoff to come early and use the
19 gate.

20 MR. ROBERTS: So maybe wait and bring
21 them up at a break when we need them so that we
22 aren't waiting for all 50 to show up.

23 MR. KEMP: If they show up by 12:30,
24 bring them up by 12:30; if they show up by 1:00,
25 bring them up at 1:00. But if you have everybody

1 here, why wait for the others?

2 Because the 50, they are not going to
3 know to come at 11:30; they're going to come at
4 12:00.

5 THE COURT: No. Actually, they get -- I
6 sent word that I wanted them here at 11:30.
7 Because I would have -- I had a choice of 11:30 or
8 1:00 --

9 MR. KEMP: Got it.

10 THE COURT: -- because it's going to be
11 so congested, and I don't want to wait until
12 1:00 because I think we should get through that
13 motion beforehand. So here's --

14 MR. KEMP: I think it's more likely the
15 people that are here now will be here first.

16 THE COURT: Okay. If they are, then we
17 can get going. And my concern is -- and I'll take
18 care of this -- is where to place them. There are
19 going to be so many people in jury services that
20 I'll have to find a creative place to house them
21 once Marshal Ragsdale is able to, you know, get
22 them together.

23 MR. ROBERTS: That's a good point.

24 THE COURT: Yeah. All right. Anything
25 else?

1 MR. CHRISTIANSEN: No. We'll be here on
2 time ready to do the first --

3 THE COURT: So you're going to be here
4 at --

5 MR. CHRISTIANSEN: You want to put --
6 you want us here --

7 MR. ROBERTS: Are we coming at noon or
8 11:30?

9 THE COURT: We have jurors coming at
10 11:30.

11 MR. ROBERTS: Okay.

12 THE COURT: So --

13 MR. ROBERTS: 11:30.

14 THE COURT: -- let's start at 11:30.

15 MR. CHRISTIANSEN: Let's do that.

16 THE COURT: I should be done with my
17 calendar by 11:00.

18 MR. CHRISTIANSEN: Thank you, Your
19 Honor.

20 THE COURT: Okay. All right.

21 MR. CHRISTIANSEN: Off the record?

22 MR. ROBERTS: I was worried about the
23 hour lunch for your staff.

24 THE COURT: Yes, I realized that. I'll
25 just --

1 THE CLERK: We'll be fine.

2 THE MARSHAL: Your Honor, I have a few
3 questions. We have three people. I'm not sure if
4 you want to entertain them. One has a flight for
5 Thursday, one has a family emergency, and I guess
6 the one that knows one of the doctors.

7 THE COURT: Why don't we take them now
8 and get them done. I know you all --

9 MR. KEMP: I don't know about the
10 Thursday flight, but the family emergency I think
11 we should take.

12 THE COURT: Yes.

13 MR. KEMP: And the one knowing the
14 doctor, there's a lot of doctors on the witness
15 list. There's probably --

16 THE COURT: Oh, the doctor that's a
17 female.

18 MR. CHRISTIANSEN: There's only one
19 female doctor that I know of and it's Leslie
20 Jacobs --

21 THE COURT: Is it Leslie?

22 MR. CHRISTIANSEN: -- whom we don't
23 believe's going to testify.

24 MR. ROBERTS: And there was a juror who
25 checked that she knew Dr. Leslie Jacobs. I

1 remember seeing that.

2 THE MARSHAL: Yes, so she does say that.

3 So she's fine?

4 MR. CHRISTIANSEN: She's not going to
5 testify, Judge, so no issue, I don't think.

6 (Discussion off the record.)

7 THE MARSHAL: All rise.

8 Please be seated. Come to order.

9 THE COURT: Good afternoon.

10 PROSPECTIVE JUROR NO. 11-1256: Good
11 afternoon, Your Honor.

12 THE COURT: Your name and badge number,
13 please.

14 PROSPECTIVE JUROR NO. 11-1256: Robert
15 Summerfield, Badge No. 111256.

16 THE COURT: Okay. Mr. Summerfield, it's
17 my understanding that you have some sort of family
18 emergency?

19 PROSPECTIVE JUROR NO. 11-1256: Yes,
20 ma'am. I am a foster dad, a single foster dad.
21 My two foster sons are a sibling group. Their
22 mother, who is in rehab, gave birth to a new baby,
23 apparently, this week. The caseworker for the two
24 boys that I have informed me today during the
25 first break that the emergency worker, apparently,

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1 at the hospital didn't pay attention to the
2 emergency alert that they had on for that baby to
3 come into care potentially. So that baby kind of
4 slipped through the cracks. So an emergency
5 worker has to go out and make the determination on
6 whether or not that baby will be having to come
7 into care.

8 As the foster parent for that little
9 brand-new baby's two older brothers, they will be
10 looking to me to take that baby if they end up
11 taking that child into care. So that will be a
12 newborn. A newborn can't go to day care.

13 Without having that baby in my custody,
14 I can't set up through the foster system a -- an
15 authorized childcare provider for me to come. So
16 I'm not trying to get out. I just needed to make
17 sure that the Court knew that, if something
18 happens over the weekend and I have to take
19 custody of that child, that's going to present an
20 issue for me to be able to attend court on
21 Tuesday, just like it would create an issue for me
22 to be at work on Tuesday.

23 So I just want to make you guys aware
24 that -- again, not trying to get out. I just got
25 the email during the first break this afternoon

1 and let the marshal know that, if I didn't make
2 the box to explain this when you asked the family
3 questions, that I just needed to make sure that
4 the Court was aware of it before I left today.
5 And that's it.

6 THE COURT: Thank you.

7 Any questions?

8 MR. KEMP: No, judge. We have a
9 potential solution.

10 THE COURT: Okay. Please approach.

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

13 THE COURT: Mr. Summerfield, this is
14 just a suggestion. I think this is a very good
15 idea. I'm not sure what's going to happen, as
16 you're not sure what's going to happen; right? So
17 what I'd like you to do is to call the court
18 Tuesday at 10:00.

19 PROSPECTIVE JUROR NO. 11-1256: Okay.

20 THE COURT: First you'll -- I think you
21 should call jury services, but I also think you
22 should call our department, my department, and
23 speak to either Ms. Powell or Mr. Jayne.

24 PROSPECTIVE JUROR NO. 11-1256: Okay.

25 THE COURT: Okay? And do you have the

1 phone number for Department 14?

2 PROSPECTIVE JUROR NO. 11-1256: I don't,
3 ma'am.

4 THE COURT: I can provide that to you.
5 And let us know whether or not Tuesday at 10:00
6 you have the infant in your custody.

7 PROSPECTIVE JUROR NO. 11-1256: I will
8 do that.

9 THE COURT: Okay. And let's see. The
10 number for our department is --

11 THE MARSHAL: I can grab him a card.

12 THE COURT: That's fine. Okay. Very
13 good. All right?

14 PROSPECTIVE JUROR NO. 11-1256: Okay.

15 THE COURT: Thank you. Make sure to
16 call our chambers as well.

17 PROSPECTIVE JUROR NO. 11-1256: Yes,
18 ma'am.

19 THE COURT: Thank you.

20 THE MARSHAL: All rise.

21 THE COURT: All right. Is that it?

22 (Discussion off the record.)

23 THE COURT: Okay. See you Tuesday at
24 11:30. Enjoy your weekend.

25 (Proceedings adjourned at 4:09 p.m.)

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



/S/ Kimberly A. Farkas, RPR

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,
v.

MOTOR COACH INDUSTRIES, INC., a
Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS,
an Arizona corporation; EDWARD
HUBBARD, a Nevada resident; BELL
SPORTS, INC. d/b/a GIRO SPORT
DESIGN, a Delaware corporation;
SEVENPLUS BICYCLES, INC. d/v/a
PRO CYCLERY, a Nevada corporation,
DOES 1 through 20; and ROE
CORPORATIONS 1 through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**MOTOR COACH INDUSTRIES, INC.'S
RESPONSE TO "BENCH BRIEF ON
CONTRIBUTORY NEGLIGENCE"**

Beware. As we warned, plaintiffs' counsel keep trying to stretch this Court's straightforward rulings that (correctly) excluded the affirmative defenses of contributory or comparative negligence into something else (that would be clear error): preventing MCI from contesting even the proximate cause element of plaintiffs' prima facie case by excluding the evidence relevant thereto. And as they exaggerate this Court's orders, they shamelessly accuse MCI of violating those orders. Respectfully, the Court should not encourage such gamesmanship.

A. Plaintiffs Obscure the Issue and Misrepresent the Law

Plaintiffs' new demand is not about contributory negligence. This now is about MCI's right to contest sole proximate causation. The fact-finding jury must be permitted to *hear the facts* of how the accident happened, that Dr. Khiabani left the bicycle lane and entered the bus travel lane. It is up to plaintiffs to establish that some defect in the bus caused him to do that; Motor Coach is entitled to argue that no such defect caused him to do that. Presenting the essential evidence on causation—expressly permitted under Nevada law—does not violate this Court's order precluding Motor Coach from arguing contributory negligence as such.

1. Plaintiffs' Misleading Discussion of Legal Authority

Plaintiffs again ignore the most recent authority that is directly on point, *Banks ex rel. Banks v. Sunrise Hospital*, 120 Nev. 822, 845, 102 P.3d 52, 67 (2004).¹ There, the Supreme Court upheld the defendant's right to argue that the allegedly defective product² did not cause the plaintiff's injury; rather, the

¹ See RPC 3.3(a)(2) ("A lawyer shall not knowingly . . . [f]ail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel . . .").

² In *Banks*, the plaintiffs theorized that injury occurred during surgery because an anesthesia-disbursing machine malfunctioned, perhaps due to improper maintenance. Although plaintiffs raised a negligence rather than strict-liability

1 “the sole proximate cause” of the plaintiff’s injury was the conduct of another.
 2 *Id.* at 841, 845, 102 P.3d at 65, 68. And defendant was not precluded from
 3 pointing to that other conduct merely because that conduct could be considered
 4 negligent. *Id.* The Court held that such an argument would not encourage the
 5 jury to “compare” negligence so as to affect its award of damages. *Id.* at 845,
 6 102 P.3d at 68. Plaintiffs’ argument in this case flies in the face of *Banks*; by
 7 their logic, the outcome of *Banks* would have been the opposite of what it was.³

8 Plaintiffs also misrepresent by omission the holding of *Young’s Machine*
 9 *Co. v. Long*, 100 Nev. 692, 692 P.2d 24 (1984), tempting this Court to depart
 10 from the approach the Supreme Court actually endorsed in *Young’s Machine*
 11 *Co.*. In that case, “the lower court *permitted the appellant to argue that the*
 12 *decedent’s negligence was the sole proximate cause of his death*, [but] the court
 13 refused to instruct the jury that it could use comparative fault principles to
 14 reduce the award.” *Id.* at 693, 692 P.2d at 24 (emphasis added). The Supreme
 15 Court upheld that correct application of Nevada law: Even in strict products-
 16 liability cases, the defendant can argue that the injury or death was solely
 17 caused by the his own actions rather than a defect. That is consistent with
 18 *Sunrise Hospital*.

19 **2. To the Extent the Court’s Order Was Unclear, MCI Assumed**
 20 **the Court Intended it to be Consistent with Nevada Law**

21 The order does not indicate whether the Court is restricting MCI from
 22 disputing the sole proximate cause in this case or precluding the evidence that

23 claim, they argued that had the hospital preserved the equipment, it “would
 24 have been found in a defective condition.” *Id.* at 840, 102 P.3d at 64.

25 ³ Plaintiffs suggest that the jury should be barred from drawing the inference
 26 that Dr. Khiabani entered the motor coach’s lane and that that action—not a
 27 defect—caused his death. (Pls.’ Br. 4:18–19.) For that to be true, however, the
 28 Supreme Court would have gone the opposite way in *Sunrise Hospital*, where
 comparative negligence was likewise precluded—forbidding, rather than
 approving, the argument that other factors were the sole cause of the plaintiff’s
 injury.

1 remains relevant to contesting that element of plaintiffs’ prima facie burden.
2 That is significant because there was extensive discussion during the motion-in-
3 *limine* hearing regarding plaintiffs’ desire to abuse the order, to restrict those
4 permissible arguments and exclude that still-relevant evidence merely because
5 they *happen to overlap* with an affirmative defense of contributory negligence.

6 Without contrary direction, MCI does not assume that this Court’s order
7 precludes a sole-proximate-cause defense contrary to Nevada law, as set out in
8 both *Banks* and *Young’s Machine Co.*, or the evidence relevant thereto. Rather,
9 MCI understands that this Court granted plaintiffs’ motion to preclude
10 argument “that Dr. Khiabani’s negligence can absolve Defendant of liability
11 even *if the product is found to be defective*.” (Supp. FFCL, at 3:6–7 (emphasis
12 added).) This also harmonizes with this Court’s recognition that the
13 “determination of causation . . . is not implicated by granting” summary
14 judgment on the issue of foreseeable misuse.⁴ (Hr’g Tr. 1/23/18, at 33:17–20.).
15 In other words, this Court has not gone (and should not go) where plaintiffs
16 encourage the Court to go, precluding MCI from talking about how the collision
17 happened, and that Dr. Khiabani’s injury arose *solely* from events and actions—
18 including his own—other than a defect.

19 MCI’s right to present this evidence to the jury is critical. For instance,
20 suppose the jury believes that Khiabani deliberately turned left at the
21 intersection—exactly where someone who intended to turn would be turning—

22 ⁴ The bar to a comparative-negligence defense arises from the policy
23 determination that when a defect combines with the user’s foreseeable misuse
24 to cause the user injury, the user should not bear partial blame for the misuse.
25 Here, however, this Court found that Mr. Hubbard, not Dr. Khiabani, was the
26 sole “user” of the motor coach. (Supp. FFCL, at 3:2–3.) Because Dr. Khiabani
27 was not a user of the bus, the policy goals of limiting comparative negligence
are not in play. Admitting evidence about how the collision occurred, and Dr.
Khiabani’s role in causing it, does not run the risk that the jury will partially
blame Dr. Khiabani for misusing an otherwise defective product. The jury will
view the evidence for its proper purpose—to show what caused Dr. Khiabani’s
injury.

1 before he was aware that the motor coach was then to his left, just behind him.
2 And suppose the jury believes that under the circumstances, no aerodynamic
3 redesign, proximity sensors, or S-1 Gard could have saved him. This does not
4 present a question of comparative negligence—whether an ordinary, prudent
5 person would have acted differently. MCI does not need to get into any duty of
6 self-care. Rather, the point is that any alleged defects in the motor coach were
7 causally unrelated to the collision. Plaintiffs have a contrary theory that the
8 alleged defects may have at least contributed to the collision, and that’s fine.
9 But they are not entitled to a pretrial determination that their theory is true.
10 Defendants must not be “admonished” for doing what Nevada law expressly
11 allows.

12 **3. The Description of Causation Does Not Necessarily Imply**
13 **Negligence**

14 “The general negligence rule is that a mere happening of an accident or
15 injury will not give rise to the presumption of negligence.” *Carver v. El-Sabawi*,
16 121 Nev. 11, 15, 107 P.3d 1283, 1285 (2005) (citing *Gunlock v. New Frontier*
17 *Hotel*, 78 Nev. 182, 370 P.2d 682 (1962)). (See also FFCL re MILs, at 3:8–12
18 (malfunction theory does not apply here).) MCI does not need or intend to
19 argue that Dr. Khiabani breached a duty of care to say that his actions, rather
20 than a defect, led to the collision. That evidence does not imply fault, just
21 causation.

22 **B. Enough: The Court Should Discourage Counsel’s**
23 **Unprofessional Slurs and Frivolous Accusations of Misconduct**

24 MCI is not seeking to “circumvent the Court’s order.” (See Pls.’ Br. 3:7.)
25 Far from it—as the Court may recall, undersigned counsel expressly asked the
26 Court to be specific in its orders resolving the motions in *limine* precisely to
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1 avoid these aspersions at the integrity of defense counsel.⁵ (Hr’g Tr. 1/29/18, at
 2 16:7–11.) We anticipated this kind of gamesmanship: plaintiffs file a vague and
 3 simple motion; defendants seek clarity on its implications of granting it;
 4 plaintiffs accuse defendants of violating what they now interpret as a sweeping
 5 order. (Hr’g Tr. 1/29/18, at 16:7–11.)

6 The Court should not encourage these cynical “shenanigans” (to use
 7 plaintiffs’ word). Judges frequently counsel young lawyers—at C.L.E.’s, Inns-
 8 of-Court meetings, bar functions, etc.—to refrain from impugning the integrity
 9 and motives of opposing counsel. And that is essential advice; *ad hominem*
 10 attacks are obnoxious and debase the profession.⁶ That admonition rings
 11 hollow, however, as long as it appears that insulting the character and good
 12 faith of opposing attorneys actually works. “Courts need to send a clear
 13 message to counsel that mean-spirited litigation will not be tolerated. ‘It should
 14 have the disapproval rather than the tacit approval of the court.’” Ty Tasker,
 15 *Sticks and Stones: Judicial Handling of Invective in Advocacy*, 42 JUDGE’S

16 ⁵ See *Rish v. Simao*, 132 Nev., Adv. Op. 17, 368 P.3d 1203, 1211 (2016) (an order
 17 in *limine* “must be specific [and] the violation must be clear” to constitute
 18 attorney misconduct (quoting *BMW v. Roth*, 127 Nev. 122, 126, 252 P.3d 649,
 652 (2011))).

19 ⁶ See generally *Butler v. State*, 120 Nev. 879, 898, 102 P.3d 71, 84 (2004)
 20 (“Disparaging remarks directed toward defense counsel ‘have absolutely no
 21 place in a courtroom, and clearly constitute misconduct.’”); see also *Davis v.*
 22 *Chiles*, 139 F.3d 1414, 1425 n.22 (11th Cir. 1998), *cert. denied*, 526 U.S. 1003
 23 (1999) (stating that party’s repeated characterization of another party as
 24 “feckless” in submissions to the court were *ad hominem* attacks that were not
 25 helpful to the court’s decision and that such abandonment of decorum was
 26 surprising and regrettable); *Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306
 27 (11th Cir. 2002) (holding that the district court did not abuse its discretion by
 sanctioning party for submitting documents to the court that contained *ad*
hominem attacks upon opposing counsel); *In re Cygnus Telecomms. Tech., LLC,*
Patent Litig., 536 F.3d 1343, 1360-61 (Fed. Cir. 2008), *reh’g denied*, 2008 U.S.
 App. LEXIS 25159 (Fed. Cir. Oct. 7, 2008), *cert. denied*, 129 S. Ct. 1906, 173 L.
 Ed. 2d 1057 (2009) (“This court does not condone *ad hominem* attacks” such as
 accusations that “AT&T is not telling the truth” and “AT&T lied to the court”);
In re First City Bancorp. of Tex., Inc., 270 B.R. 807 (N.D. Tex. 2001) (affirming
 order imposing sanctions where an attorney denigrated other parties and made
ad hominem arguments).

JOURNAL 17, 21 (2003) (quoting *People v. Travis*, 276 P.2d 193, 199 (Cal. Ct. App. 1954)). It will continue as long as it appears to work.

CONCLUSION

This is about causation, not contributory negligence. Motor Coach will not argue that Dr. Khiabani was negligent. Nevertheless, without ascribing a breach of duty to Dr. Khiabani, the jury still must hear much of the evidence that would have been relevant to comparative negligence to the extent that it goes to the “sole proximate cause” defense guaranteed by *Young’s Machine Co.* and *Sunrise Hospital*.

DATED this 16th day of February, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2018, a true and correct copy of the foregoing **MOTOR COACH INDUSTRIES, INC.'S RESPONSE TO "BENCH BRIEF ON CONTRIBUTORY NEGLIGENCE"** was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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6 *and*
7 *Edward Hubbard*

8 /s/ Adam Crawford
9 An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT A

004737

EXHIBIT A

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, et)
25 al.,)

Defendants.)

21 REPORTER'S TRANSCRIPTION OF PROCEEDINGS

22 BEFORE THE HONORABLE ADRIANA ESCOBAR
23 DEPARTMENT XIV

24 DATED TUESDAY, JANUARY 23, 2018

25 RECORDED BY: SANDY ANDERSON, COURT RECORDER

TRANSCRIBED BY: KRISTY L. CLARK, NV CCR No. 708

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25 * * * * *

1 product theory. You know, they come up and say, oh,
2 well, you know, this motion for summary judgment should
3 be granted with regards to the S-1 Gard but not the
4 proximity sensors. What kind of sense -- what -- what
5 kind of rationale is that, Your Honor? It's the exact
6 same harm. How could they foresee the harm in one case
7 and not the other? It's the exact same harm. And for
8 that reason the summary judgment should be granted,
9 Your Honor.

10 THE COURT: I'm -- I'm ready to -- the
11 Court -- I would say I'm in receipt of everything you
12 provided me with, all parties, and this Court grants
13 plaintiffs' motion. In -- in my view, and relying on
14 *Andrews v. Harley-Davidson, Price v. Blair*, any
15 collision between a bus and a bicycle that was caused
16 by a bus driver would be foreseeable as a matter of law
17 under both of these cases. The Court may decide issues
18 of foreseeability as a matter of law, as opposed to
19 determination of causation, which is not implicated by
20 granting this motion. So for those reasons, and the
21 light -- in light of the evidence presented by
22 plaintiff, this motion is granted.

23 All right. Next, we move to the Motion for
24 Summary Judgment on Punitive Damages.

25 Do you want to take -- I'm sorry. I

EXHIBIT B

004742

EXHIBIT B

A-17-755977-C • 01/29/2018

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA)
 KHIABANI, minors by and)
 through their natural mother,)
 KATAYOUN BARIN; KATAYOUN)
 BARIN, individually; KATAYOUN)
 BARIN as Executrix of the)
 Estate of Kayvan Khiabani,)
 M.D. (Decedent) and the Estate)
 of Kayvan Khiabani, M.D.)
 (Decedent),)

Plaintiffs,

CASE NO.: A-17-755977-C

DEPT. NO.: XIV

vs.

MOTOR COACH INDUSTRIES, INC.,)
 a Delaware corporation;)
 MICHELANGELO LEASING, INC.)
 d/b/a RYAN'S EXPRESS, an)
 Arizona corporation; EDWARD)
 HUBBARD, a Nevada resident, et)
 al.,)

Defendants.

REPORTER'S TRANSCRIPTION OF MOTIONS IN LIMINE

BEFORE THE HONORABLE ADRIANA ESCOBAR

DEPARTMENT XIV

DATED MONDAY, JANUARY 29, 2018

RECORDED BY: SANDY ANDERSON, COURT RECORDER

TRANSCRIBED BY: AMBER M. McCLANE, NV CCR No. 914

A-17-755977-C • 01/29/2018

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(Cont. on next page)

A-17-755977-C • 01/29/2018

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1 Mr. Hubbard regarding the voracity of his claims that
2 are so easy to make.

3 Now, if we need to get into substantive
4 theory and what is going to be admissible at the end of
5 the day, I would understand if Your Honor wants to
6 reserve judgment on this motion until after all the
7 substantive theories are heard. But I know nobody at
8 this table wants to violate your orders, and I'm not
9 clear exactly what comes in and what does not, if you
10 were to grant this. So I would ask for some
11 specificity.

12 **MR. KEMP:** Judge, the three points he raised,
13 that -- that --

14 **THE COURT:** Can you speak a little bit
15 louder, please? Thank you.

16 **MR. KEMP:** Your Honor, the three points he
17 raised: One, he said that they -- that the driver saw
18 Dr. Khiabani on Charleston. I've always said that they
19 can -- they can argue that. I've never asked that that
20 be excluded. The second point, that there's some sort
21 of statute and that Dr. -- or, excuse me, that the
22 driver violated the statute, that's just trying to tell
23 the jury that he was negligent per se. So that should
24 be completely out. Okay? And then the third point
25 that he's brought up is the heeding, and I've already

A-17-755977-C • 01/29/2018

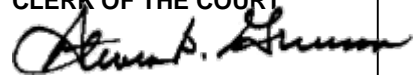
-o0o-

ATTEST: I hereby certify that I have truly and
correctly transcribed the audio/video proceedings in
the above-entitled case to the best of my ability.

Amber M. McClane
Amber M. McClane, CCR No. 914

71

71



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

Case No.: A-17-755977-C

Dept. No.: XIV

**DEFENDANT'S TRIAL BRIEF IN
SUPPORT OF A
LEVEL PLAYING FIELD**

MOTOR COACH INDUSTRIES, INC., a Delaware corporation; MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS, an Arizona corporation; EDWARD HUBBARD, a Nevada resident; BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN, a Delaware corporation; SEVENPLUS BICYCLES, INC. d/v/a PRO CYCLERY, a Nevada corporation, DOES 1 through 20; and ROE CORPORATIONS 1 through 20,

Defendants.

Defendant Motor Coach Industries, Inc. (MCI), by and through its attorneys of record, hereby submits this trial brief pursuant to EDCR 7.27.

A. Introduction

This trial began on the morning of February 12, 2018. Pete Christiansen, as counsel for Plaintiffs, began *voir dire* on February 12 and has not yet passed the panel for cause. Based on information and belief, Mr. Kemp will ask permission to *voir dire* the panel after Mr. Christiansen has completed his *voir dire*. Mr. Kemp claims to represent different Plaintiffs than Mr. Christiansen. This is not true. Separate representation of the Plaintiffs is a fiction concocted for the purpose of creating an unfair strategic advantage at trial.

Both sides should play by the same rules. Both Plaintiffs and Defendant should be represented by one lawyer in each phase of the trial. This is customary and appropriate and will result in a level playing field. It will also promote judicial efficiency in a trial that is already anticipated to exceed its original planned duration of four weeks.

B. Separate Representation of Different Plaintiffs is a Fiction

This action was initiated by the filing of a Complaint and Demand for Jury Trial. Both the caption and the COMES NOW introductory paragraph indicate that all Plaintiffs were represented by CHRISTIANSEN LAW OFFICES and KEMP, JONES & COULTHARD, LLP. Peter S. Christiansen, Esq., Will Kemp, Esq., Kendele L. Works, Esq. and Eric Pepperman, Esq. are all listed as *Counsel for Plaintiffs*. No further distinction is drawn. [See Complaint at Exhibit A].

///

1 After the death of Dr. Barin, Plaintiffs amended their complaint to substitute the proper
 2 parties. The Second Amended Complaint and Demand for Jury Trial changed some of the
 3 Plaintiffs, but it did not separate out counsel representing the Plaintiffs. Both the caption and the
 4 COMES NOW introductory paragraph continued to indicate that all Plaintiffs were still
 5 represented by Peter S. Christiansen, Esq., Will Kemp, Esq., Kendelee L. Works, Esq. and Eric
 6 Pepperman, Esq. [See Second Amended Complaint at Exhibit B].

7 Just days before the start of *voir dire*, the parties filed their Joint Pretrial Memorandum.
 8 This pleading once again confirmed that by Peter S. Christiansen, Esq., Will Kemp, Esq., Kendelee
 9 L. Works, Esq. and Eric Pepperman, Esq. still all represented all Plaintiffs [See Joint Pretrial
 10 Memorandum at Exhibit C].

11 The fact that all of the Plaintiffs are represented by all Plaintiffs' counsel of record was
 12 confirmed by Mr. Christiansen in front of the venire on February 12, 2018:

13 MR. CHRISTIANSEN: Good morning. My name is Pete
 14 Christiansen. Along with Mr. Will Kemp, Kendelee Works, and
 Whitney Barrett, we represent the plaintiffs in this case.

15 (See Transcript 2/12/2018 at 28:18-21 at Exhibit D).

16 Despite the fact that Mr. Christiansen and Mr. Kemp represent exactly the same parties as a
 17 matter of record, they have contended in open court that they represent different Plaintiffs and are
 18 therefore entitled to two arguments during motion practice. Defendant anticipates that they will
 19 also ask for two bites at *voir dire*, opening statements, examination of witnesses and closing
 20 argument. This would be unfair and unnecessarily prolong the trial.

21 **C. Plaintiffs are not Entitled to Double Up on Defendant**

22 Even if Plaintiff's counsel scramble to correct the record to match their new fiction, it will
 23 still be a fiction. Mr. Kemp will still earn a fee for any jury award to Mr. Christiansen's nominal
 24 Plaintiffs; and Mr. Christiansen will still earn a fee from parties nominally assigned to Mr. Kemp.
 25 The Plaintiff interests are completely aligned and they are represented in fact by the same lawyers.
 26 Indeed, if their interests conflicted then the current and prior joint representation would have been
 27 inappropriate.

28 ///