

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

1 Although the law in this area is sparse, and much discretion resides with the trial judge,
 2 Plaintiffs have no right to double up on the Defendant at any stage of this trial. *See, e.g., Deeds v.*
 3 *Univ. of Pennsylvania Med. Ctr.*, 110 A.3d 1009, 1016-17 (Pa. Sup. App. 2015) (trial court abused
 4 its discretion by permitting counsel for co-defendants to effectively tag team at trial, examining
 5 witnesses and presenting arguments individually to the jury despite the fact the defendants interests
 6 were aligned, some defendants had only contingent liability, none of them had asserted cross-
 7 claims against other, they shared expert witnesses, and they were members of the same group of
 8 parties).

9 Although this case comes from another jurisdiction, Nevada law is in accord. NRS 16.040
 10 makes it clear that *voir dire* is conducted by each side -- not each party. [NRS 16.040(1) (Each
 11 side is entitled to four peremptory challenges)]. The exception to this general rule is the allowance
 12 of additional strikes only [i]f there are two or more parties on any side and their interests are
 13 diverse ... [NRS 16.040(2)]. This language is similar to that used in Nevada Supreme Court Rule
 14 48.1 dealing with preemption of judges, which provides a preemption to each side, as opposed to
 15 each party. Nev. Sup. Ct. R. 48.1 (...each side is entitled, as a matter of right, to one change of
 16 judge by peremptory challenge. ***Each action or proceeding, whether single or consolidated, shall***
 17 ***be treated as having only two sides.***)(emphasis added). Similarly, NRS 16.090 deals with the
 18 order of proceedings after the jury has been sworn. There is an allowance for separate
 19 presentation of evidence and separate argument only if the parties have separate claims and appear
 20 by different counsel. [NRS 16.090(5) (If several plaintiffs or defendants, having separate claims
 21 or defenses, appear by different counsel, the court shall determine their relative order in the
 22 evidence and argument)].

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1 This trial has begun. Plaintiffs' lead counsel has already introduced himself as representing
 2 all Plaintiffs. Regardless of whether the Plaintiffs try to doctor up the record to artificially create
 3 an argument they are entitled to multiple attorneys at multiple stages of this trial because of
 4 separate representation, it will not be true. Plaintiffs' counsel should not be permitted to double
 5 team Defendant.

6 DATED this 20th day of February, 2018.

7
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February, 2018, a true and correct copy of the foregoing **DEFENDANT'S TRIAL BRIEF IN SUPPORT OF A LEVEL PLAYING FIELD** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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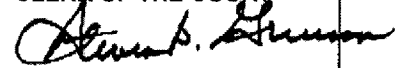
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EXHIBIT A

EXHIBIT A

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11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 KEON KHIABANI and ARIA KHIABANI,
14 minors by and through their natural mother,
KATAYOUN BARIN; and KATAYOUN
15 BARIN, individually,

16 Plaintiffs,

17 vs.

18 MOTOR COACH INDUSTRIES, INC.,
19 a Delaware corporation; MICHELANGELO
LEASING INC. d/b/a RYAN'S EXPRESS,
20 an Arizona corporation; EDWARD
HUBBARD, a Nevada resident; VISTA
21 OUTDOOR INC. d/b/a GIRO SPORT
DESIGN, a Delaware corporation;
22 DOES 1 through 20; and ROE
CORPORATIONS 1 through 20.

23 Defendants.

Case No.: A-17-755977-C

Dept. No.: Department 31

COMPLAINT AND
DEMAND FOR JURY TRIAL

ARBITRATION EXEMPTION CLAIMED
Damages Exceed \$50,000.00

25 COME NOW Plaintiffs, KEON KHIABANI and ARIA KHIABANI, minors by and
26 through their natural mother, KATAYOUN ("KATY") BARIN and KATY BARIN,
27 individually, by and through their attorneys, Will Kemp, Esq. and Eric Pepperman, Esq. of the
28 law firm KEMP, JONES & COULTHARD, LLP and Peter S. Christiansen, Esq. and Kendelee

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L. Works, Esq. of CHRISTIANSEN LAW OFFICES, and for their claims against the Defendants, and each of them, complain and allege as follows:

THE PARTIES

1. At all relevant times, Plaintiff minors KEON KHIABANI and ARIA KHIABANI ("Plaintiff minors") were and are residents of Clark County, Nevada. Plaintiff minors are the natural children of Dr. Kayvan Khiabani (Decedent) and Plaintiff Katy Barin.

2. At all relevant times, Plaintiff KATY BARIN was and is a resident of Clark County, Nevada. At the time of the incident described herein, Decedent and Plaintiff Katy Barin were husband and wife and resided with the Plaintiff minors in Clark County, Nevada.

3. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant MOTOR COACH INDUSTRIES, INC. ("MCI") was and is a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Nevada, including Clark County. MCI designs, manufacturers, markets, and sells commercial tour buses (aka Motor Coaches). Defendant MCI designed, manufactured, and sold the 2008, full-size Motor Coach involved in the incident described herein.

4. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS ("Ryan's Express") was and is a corporation organized and existing under the laws of the State of Arizona and authorized to do business in the State of Nevada. Ryan's Express is a ground transportation company that provides charter bus services for group transportation. Defendant Ryan's Express owned and operated the MCI bus involved in the incident described herein.

5. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant EDWARD HUBBARD was and is a resident of Clark County, Nevada. Edward Hubbard is employed by Ryan's Express as a bus driver. As part of his duties and responsibilities, Hubbard operates full-size Motor Coaches and was operating the MCI bus at the time of the incident described herein.

6. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant VISTA OUTDOOR, INC. d/b/a GIRO SPORT DESIGN ("Giro") was and is a

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1 corporation organized and existing under the laws of the State of Delaware and authorized to do
2 business in the State of Nevada, including Clark County. GIRO designs, manufactures,
3 markets, and sells protective gear and accessories for sport activities, including cycling helmets.
4 Defendant Giro designed, manufactured, and sold the helmet that Dr. Kayvan Khiabani was
5 wearing at the time of the incident described herein.

6 7. The true names and capacities, whether individual, corporate, association or otherwise of
7 the Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1 through 20, inclusive,
8 are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs
9 are informed and believe, and thereupon allege, that each of the Defendants designated herein as
10 DOES and/or ROE CORPORATIONS is responsible in some manner for the events and
11 happenings herein referred to, and in some manner caused the injuries and damages to Plaintiffs
12 alleged herein. Plaintiffs will ask leave of the court to amend this Complaint to insert the true
13 names and capacities of said Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1
14 through 20, inclusive when the same have been ascertained by Plaintiffs, together with the
15 appropriate charging allegations, and to join such Defendants in this action.

16 8. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is
17 meant that such Defendant's officers, agents, servants, employees, or representatives did such
18 act or thing and at the time such act or thing was done, it was done with full authorization or
19 ratification of such Defendant or was done in the normal and routine course and scope of
20 business, or with the actual, apparent and/or implied authority of such Defendant's officers,
21 agents, servants, employees, or representatives. Specifically, Defendants are liable for the
22 actions of its officers, agents, servants, employees, and representatives.

24 9. All of the Defendants as named herein are jointly and severally liable to Plaintiffs for
25 Plaintiffs' damages.

26 10. Plaintiffs are informed and believe, and thereupon allege, that Defendants, and each of
27 them, jointly and in concert undertook to perform the acts as alleged herein, that Defendants and
28

1 each of them had full knowledge of the acts of each co-Defendant as alleged herein, and that
2 each Defendant authorized or subsequently ratified the acts of each co-Defendant as alleged
3 herein, making each co-Defendant an agent of the other Defendants and making each Defendant
4 jointly responsible and liable for the acts and omissions of each co-Defendant as alleged herein.
5

6 JURISDICTION AND VENUE

7 11. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00),
8 exclusive of costs, interest, and attorneys' fees.

9 12. Venue is proper in this Court because the incident giving rise to this lawsuit occurred in
10 Clark County, Nevada.

11 GENERAL ALLEGATIONS

12 13. On or about April 18, 2017, Dr. Kayvan Khiabani was riding his Scott Solace 10 Disc
13 road bicycle southbound in a designated bicycle lane on S. Pavilion Center Drive near the Red
14 Rock Resort and Casino in Las Vegas, Nevada. At the time, Dr. Khiabani was wearing a
15 bicycle helmet designed, manufactured, and sold by Giro.

16 14. Upon information and belief, at approximately 10:34 AM, as he approached the
17 intersection of S. Pavilion Center Drive and Griffith Peak Drive, Dr. Khiabani was overtaken by
18 a large tour bus on his left side.

19 15. The bus was a 2008, full-size Motor Coach that was designed, manufactured, and sold
20 by Defendant MCI. Upon information and belief, the subject bus was designed and
21 manufactured without proximity sensors to alert the driver of adjacent pedestrians and/or
22 bicyclists that may be difficult to see or to alert such pedestrians and/or bicyclists.

23 16. At the time, the bus was owned and operated by Defendant Ryan's Express and being
24 driven by Defendant Edward Hubbard, an employee of Ryan's Express.

25 17. Upon information and belief, at the time that it overtook Dr. Khiabani, the bus was
26 traveling in excess of the posted speed limit and traversing out of the right-hand turn lane and
27 crossing over the designated bicycle lane from the right side of Dr. Khiabani to the left side of
28 Dr. Khiabani.

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1 18. As it crossed over the designated bicycle lane to overtake Dr. Khiabani on the left, the
2 bus and Decedent's bicycle collided.

3 19. As a direct and proximate result of this collision, Dr. Khiabani suffered catastrophic
4 internal and external injuries, including to his head, severe shock to his nervous system, and
5 great pain and suffering. Dr. Khiabani was transported from the scene of the accident and
6 ultimately died from his injuries.

7 **FIRST CLAIM FOR RELIEF**

8 **(STRICT LIABILITY: DEFECTIVE CONDITION OR**
9 **FAILURE TO WARN AGAINST DEFENDANT MCI)**

10 20. Plaintiffs incorporate by this reference each and every allegation previously made in
11 this Complaint, as if fully set forth herein.

12 21. Defendant MCI, or its predecessors and/or affiliates, were responsible for the design,
13 manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the
14 subject bus.

15 22. At the time of the above-described incident, the subject bus was being used in a manner
16 foreseeable by Defendant MCI.

17 23. As so used, and from the time the bus left the hands of Defendant MCI, the subject bus
18 was defective, unfit, and unreasonably dangerous for its foreseeable use.

19 24. The subject bus was further defective and unreasonably dangerous in that Defendant
20 MCI failed to provide adequate warnings about dangers that were known or should have been
21 known by MCI and/or failed to provide adequate instructions for the bus' safe and proper use.

22 25. The aforementioned incident was a direct and proximate result of a defect or defects in
23 the bus and/or the failure of Defendant MCI to warn of defects that were either known or should
24 have been known or to instruct in the safe and proper use of the bus. As a result, Defendant
25 MCI should be held strictly liable in tort to Plaintiffs.

26 26. As a direct and proximate result of the defective nature of the subject bus, Decedent Dr.
27 Kayvan Khiabani suffered catastrophic personal injuries and died.

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1 27. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent
2 sustained past, present, and future lost wages, which would otherwise have been gained in his
3 employment if not for his death proximately caused by this accident, far in excess of Fifteen
4 Thousand Dollars (\$15,000.00).

5 28. As a direct and proximate result of the acts and omissions of Defendant MCI, the
6 Plaintiff minors each have been deprived of their father's comfort, support, companionship,
7 society, and consortium, and further, each has suffered great grief, sorrow, and extreme
8 emotional distress as a result of the death of their father, to each for general damages far in
9 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen
10 Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain, suffering,
11 and disfigurement of their father.

12 29. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiff
13 Katy Barin has been deprived of her husband's comfort, support, companionship, society, and
14 consortium, and further, has suffered great grief, sorrow, and extreme emotional distress as a
15 result of the death of her husband, for general damages far in excess of Fifteen Thousand
16 Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars
17 (\$15,000.00). Plaintiff Katy Barin also seeks to recover for the pain, suffering, and
18 disfigurement of her husband.

19 30. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiffs
20 have suffered general and special damages in an amount far in excess of Fifteen Thousand
21 Dollars (\$15,000.00).

22 31. In carrying out its responsibilities for the design, manufacture, construction, assembly,
23 testing, labeling, distribution, marketing, and sale of the subject bus, Defendant MCI acted with
24 fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others.
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1 As a direct and proximate result of the conduct of Defendant MCI, Plaintiffs are entitled to
 2 punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

3 32. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
 4 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

5 **SECOND CLAIM FOR RELIEF**

6 **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS** 7 **AND EDWARD HUBBARD)**

8 33. Plaintiffs incorporate by this reference each and every allegation previously made in this
 9 Complaint, as if fully set forth herein.

10 34. Defendant Ryan's Express is vicariously liable for the wrongful acts or omissions of its
 11 employee, Defendant Hubbard, in connection with the subject accident because: (i) at the time
 12 of the subject accident, Defendant Hubbard was under the control of Defendant Ryan's Express,
 13 and (ii) at the time of the subject accident, Defendant Hubbard was acting within the scope of
 14 his employment with Ryan's Express.

15 35. Defendants Ryan's Express and Edward Hubbard owed a duty of care to Dr. Khiabani
 16 and Plaintiffs to exercise due care in the operation of the 2008, full-size commercial tour bus.

17 36. Defendants were negligent and breached this duty of care, *inter alia*: (i) by overtaking
 18 Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted
 19 speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr.
 20 Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to
 21 ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing
 22 to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the
 23 time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr.
 24 Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane
 25 while Dr. Khiabani was traveling therein.

26 37. As a direct and proximate result of these negligent acts and omissions, Decedent Dr.
 27 Kayvan Khiabani suffered catastrophic personal injuries and died.
 28

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1 38. As a direct and proximate result of the negligent acts and omissions of Defendants
2 Ryan's Express and Edward Hubbard, Decedent sustained past, present, and future lost wages,
3 which would otherwise have been gained in his employment if not for his death proximately
4 caused by this accident, far in excess of Fifteen Thousand Dollars (\$15,000.00).

5 39. As a direct and proximate result of the negligent acts and omissions of Defendants
6 Ryan's Express and Edward Hubbard, the Plaintiff minors each have been deprived of their
7 father's comfort, support, companionship, society, and consortium, and further, each has
8 suffered great grief, sorrow, and extreme emotional distress as a result of the death of their
9 father, to each for general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and
10 economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00). The minor children
11 also seek to recover for the pain, suffering, and disfigurement of their father.

12 40. As a direct and proximate result of the negligent acts and omissions of Defendants
13 Ryan's Express and Edward Hubbard, Plaintiff Katy Barin has been deprived of her husband's
14 comfort, support, companionship, society, and consortium, and further, has suffered great grief,
15 sorrow, and extreme emotional distress as a result of the death of her husband, for general
16 damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in
17 excess of Fifteen Thousand Dollars (\$15,000.00). Plaintiff Katy Barin also seeks to recover for
18 the pain, suffering, and disfigurement of her husband.

19 41. As a direct and proximate result of the negligent acts and omissions of Defendants
20 Ryan's Express and Edward Hubbard, Plaintiffs have suffered general and special damages in
21 an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

22 42. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
23 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

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THIRD CLAIM FOR RELIEF

(NEGLIGENCE PER SE AGAINST DEFENDANTS

RYAN'S EXPRESS AND EDWARD HUBBARD)

43. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

44. When the subject bus overtook Dr. Khiabani at the time of the incident, Defendants Ryan's Express and Edward Hubbard violated Nev. Rev. Stat. § 484B.270, *inter alia*: (i) by overtaking Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr. Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr. Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane while Dr. Khiabani was traveling therein.

45. These violations, and each of them, were a legal cause of the incident and Plaintiffs' resulting injuries.

46. Plaintiffs belong to the class of persons that the safety requirements in NRS 484B.270 are intended to protect.

47. As a direct and proximate cause of Defendants violations of NRS 484B.270, and each of them, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

48. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

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FOURTH CLAIM FOR RELIEF

(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)

49. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

50. Defendant Ryan's Express owed a duty of care to Dr. Khiabani and Plaintiffs to adequately train its drivers, including Defendant Edward Hubbard, to safely operate its commercial tour busses, including the bus involved in the subject incident.

51. Defendant Ryan's Express was negligent and breached this duty of care by failing to adequately train its drivers, including Edward Hubbard, to safely operate its commercial tour busses, including the bus involved in the subject incident. Defendant Ryan's Express further breached this duty of care by entrusting the subject tour bus to an inadequately trained person (i.e., Defendant Hubbard).

52. These negligent acts and omissions, and each of them, were a legal cause of the incident and Plaintiffs' resulting injuries.

53. As a direct and proximate result of these negligent acts and omissions, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

54. In carrying out its responsibility to adequately train its drivers, Defendant Ryan's Express acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Ryan's Express, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

55. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

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FIFTH CLAIM FOR RELIEF

**(STRICT LIABILITY: DEFECTIVE CONDITION OR
FAILURE TO WARN AGAINST DEFENDANT GIRO)**

56. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

57. Defendant Giro, or its predecessors and/or affiliates, were responsible for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the helmet that Dr. Khiabani was wearing at the time of the above-described accident.

58. At the time of the subject accident, and at all other times material hereto, the helmet was being used in a manner foreseeable by Defendant Giro.

59. As so used, the subject helmet was defective, unfit, and unreasonably dangerous for its foreseeable use in that there was inadequate protection of the head by the helmet, which caused or contributed to the death of Dr. Khiabani.

60. The subject helmet was further defective and unreasonably dangerous in that Defendant Giro failed to provide adequate warnings about dangers that were either known or should have been known by Giro and/or failed to provide adequate instructions regarding the helmet's safe and proper use.

61. The aforementioned death of Dr. Khiabani was a direct and proximate result of a defect or defects in the helmet and/or the failure of Defendant Giro to warn of defects that were either known or should have been known or to instruct in the safe and proper use of the helmet. As a result, Defendant Giro should be held strictly liable in tort to Plaintiffs.

62. As a direct and proximate result of the defective nature of the helmet and said deficiencies in warnings and/or instructions, Decedent Dr. Kayvan Khiabani suffered a catastrophic head injury and ultimately died.

63. As a direct and proximate result of the acts and omissions of Defendant Giro, Decedent sustained past, present, and future lost wages, which would otherwise have been gained in his employment if not for his death, far in excess of Fifteen Thousand Dollars (\$15,000.00).

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1 64. As a direct and proximate result of the acts and omissions of Defendant Giro, the
2 Plaintiff minors each have been deprived of their father's comfort, support, companionship,
3 society, and consortium, and further, each has suffered great grief, sorrow, and extreme
4 emotional distress as a result of the death of their father, to each for general damages far in
5 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen
6 Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain, suffering,
7 and disfigurement of their father.

9 65. As a direct and proximate result of the acts and omissions of Defendant Giro, Plaintiff
10 Katy Barin has been deprived of her husband's comfort, support, companionship, society, and
11 consortium, and further, has suffered great grief, sorrow, and extreme emotional distress as a
12 result of the death of her husband, for general damages far in excess of Fifteen Thousand
13 Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars
14 (\$15,000.00). Plaintiff Katy Barin also seeks to recover for the pain, suffering, and
15 disfigurement of her husband.

17 66. As a direct and proximate result of the acts and omissions of Defendant Giro, Plaintiffs
18 have suffered general and special damages in an amount far in excess of Fifteen Thousand
19 Dollars (\$15,000.00).

21 67. In carrying out its responsibilities for the design, manufacture, construction, assembly,
22 testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted
23 with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of
24 others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled
25 to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

27 68. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
28 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

SIXTH CLAIM FOR RELIEF

**(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A
PARTICULAR PURPOSE AGAINST DEFENDANT GIRO)**

69. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

70. Giro and Decedent, Dr. Khiabani, entered into a contract for the sale of goods (i.e., the Giro helmet).

71. Defendant Giro had reason to know of the particular purpose for which the helmet was required by Dr. Khiabani (i.e., to wear while riding his road bicycle).

72. Dr. Khiabani relied on Defendant Giro's skill or judgment to furnish suitable goods for this purpose.

73. The helmet sold by Defendant Giro to Dr. Khiabani was not fit for said purpose and, as a direct and proximate result, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

74. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

75. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

SEVENTH CLAIM FOR RELIEF

(WRONGFUL DEATH AGAINST ALL DEFENDANTS)

76. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

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1 77. Plaintiff minors and Plaintiff Katy Barin are the heirs of Decedent and are entitled to
2 maintain an action for damages against the Defendants for the wrongful death of Dr. Kayvan
3 Khiabani.

4 78. As a result of the injuries to and death of Dr. Khiabani, Plaintiffs are entitled to
5 damages, including, but not limited to: pecuniary damages for their grief and sorrow, loss of
6 probable support, companionship, society, comfort and consortium, and damages for pain,
7 suffering and disfigurement of the Decedent.
8

9 79. As a direct and proximate result of the wrongful death of Dr. Khiabani, Plaintiffs have
10 been damaged in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

11 80. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
12 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.
13

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment of this Court as follows:

1. Past and future general damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
2. Past and future special damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
3. Past and future damages for the wrongful death of Dr. Kayvan Khiabani, as set forth in NRS 41.085, in an amount in excess of fifteen thousand dollars (\$15,000.00);
4. Punitive damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
5. Prejudgment and post-judgment interest, as allowed by law;
6. Costs of suit and reasonable attorneys' fees, as allowed by law, in an amount to be determined; and
7. For such other and further relief that the Court may deem just and proper.

DATED this 25 day of May, 2017.

KEMP, JONES & COULTHARD, LLP


 WILL KEMP (ESQ. (#1205))
 ERIC PEPPERMAN, ESQ. (#11679)
 3800 Howard Hughes Parkway, 17th Floor
 Las Vegas, Nevada 89169

-and-

PETER S. CHRISTIANSEN, ESQ. (#5254)
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DEMAND FOR JURY TRIAL

Plaintiffs by and through their attorneys of record, KEMP, JONES & COULTHARD, LLP and CHRISTIANSEN LAW OFFICES, hereby demand a jury trial of all of the issues in the above matter.

DATED this 25 day of May, 2017.

KEMP, JONES & COULTHARD, LLP



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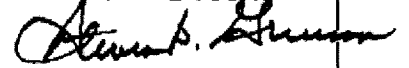
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EXHIBIT B

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Steven D. Grierson
CLERK OF THE COURT



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10 *Attorneys for Plaintiffs*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

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

18 Plaintiffs,

19 vs.

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

27 Defendants.
28

Case No.: A-17-755977-C

Dept. No.: XIV

**SECOND AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

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COME NOW Plaintiffs, 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); by and through their attorneys, Will Kemp, Esq. and Eric Pepperman, Esq. of the law firm KEMP, JONES & COULTHARD, LLP and Peter S. Christiansen, Esq. and Kendele L. Works, Esq. of CHRISTIANSEN LAW OFFICES, and for their claims against the Defendants, and each of them, complain and allege as follows:

THE PARTIES

1. Plaintiff minors, KEON KHIABANI and ARIA KHIABANI, are the natural children of Dr. Kayvan Khiabani (Decedent) and Katayoun "Katy" Barin (Decedent).

2. Plaintiff minor KEON KHIABANI is a citizen of the United States. Keon lives and attends school in Montreal, Canada with his duly appointed Guardians.

3. Plaintiff minor ARIA KHIABANI is a citizen of the United States. Aria lives and attends school in Montreal, Canada with his duly appointed Guardians.

4. Plaintiff MARIE-CLAUDE RIGAUD is the duly authorized Guardian of Keon Khiabani and Aria Khiabani. She is a citizen and resident of Montreal, Canada. As Guardian, MARIE-CLAUDE RIGAUD is authorized to bring this action on behalf of the Plaintiff Minors.

5. Plaintiff SIAMAK BARIN is a duly authorized Executor of the Estate of Kayvan Khiabani, M.D. (Decedent). As Executor, Siamak Barin is authorized to bring this action on behalf of Plaintiff the Estate of Kayvan Khiabani, M.D. (Decedent).

6. Plaintiff SIAMAK BARIN is a duly authorized Executor of the Estate of Katayoun Barin, DDS (Decedent). As Executor, Siamak Barin is authorized to bring this action on behalf of Plaintiff the Estate of Katayoun Barin, DDS (Decedent).

7. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant MOTOR COACH INDUSTRIES, INC. ("MCI") was and is a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Nevada, including Clark County. MCI designs, manufacturers, markets, and sells

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1 commercial tour buses (aka Motor Coaches). Defendant MCI designed, manufactured, and sold
2 the 2008, full-size Motor Coach involved in the incident described herein.

3 8. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,
4 Defendant MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS ("Ryan's Express")
5 was and is a corporation organized and existing under the laws of the State of Arizona and
6 authorized to do business in the State of Nevada. Ryan's Express is a ground transportation
7 company that provides charter bus services for group transportation. Defendant Ryan's Express
8 owned and operated the MCI bus involved in the incident described herein.

9 9. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,
10 Defendant EDWARD HUBBARD was and is a resident of Clark County, Nevada. Edward
11 Hubbard is employed by Ryan's Express as a bus driver. As part of his duties and
12 responsibilities, Hubbard operates full-size Motor Coaches and was operating the MCI bus at
13 the time of the incident described herein.

14 10. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,
15 Defendant BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN ("Giro") was and is a
16 corporation organized and existing under the laws of the State of California and authorized to
17 do business in the State of Nevada, including Clark County. GIRO designs, manufactures,
18 markets, and sells protective gear and accessories for sport activities, including cycling helmets.
19 Defendant Giro designed, manufactured, and sold the helmet that Dr. Kayvan Khiabani was
20 wearing at the time of the incident described herein.

21 11. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,
22 Defendant SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY ("Pro Cyclery") was and is
23 a corporation organized and existing under the laws of the State of Nevada and authorized to do
24 business in the State of Nevada, including Clark County. Pro Cyclery is engaged in the retail
25 sale of bicycles and cycling accessories, including cycling helmets. Upon information and
26 belief, Defendant Pro Cyclery sold to Dr. Kayvan Khiabani the helmet that Dr. Khiabani was
27 wearing at the time of the incident described herein.

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1 12. The true names and capacities, whether individual, corporate, association or otherwise of
2 the Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1 through 20, inclusive,
3 are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs
4 are informed and believe, and thereupon allege, that each of the Defendants designated herein as
5 DOES and/or ROE CORPORATIONS is responsible in some manner for the events and
6 happenings herein referred to, and in some manner caused the injuries and damages to Plaintiffs
7 alleged herein. Plaintiffs will ask leave of the court to amend this Complaint to insert the true
8 names and capacities of said Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1
9 through 20, inclusive when the same have been ascertained by Plaintiffs, together with the
10 appropriate charging allegations, and to join such Defendants in this action.

11 13. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is
12 meant that such Defendant's officers, agents, servants, employees, or representatives did such
13 act or thing and at the time such act or thing was done, it was done with full authorization or
14 ratification of such Defendant or was done in the normal and routine course and scope of
15 business, or with the actual, apparent and/or implied authority of such Defendant's officers,
16 agents, servants, employees, or representatives. Specifically, Defendants are liable for the
17 actions of its officers, agents, servants, employees, and representatives.
18

19 14. All of the Defendants as named herein are jointly and severally liable to Plaintiffs for
20 Plaintiffs' damages.

21 15. Plaintiffs are informed and believe, and thereupon allege, that Defendants, and each of
22 them, jointly and in concert undertook to perform the acts as alleged herein, that Defendants and
23 each of them had full knowledge of the acts of each co-Defendant as alleged herein, and that
24 each Defendant authorized or subsequently ratified the acts of each co-Defendant as alleged
25 herein, making each co-Defendant an agent of the other Defendants and making each Defendant
26 jointly responsible and liable for the acts and omissions of each co-Defendant as alleged herein.
27
28

JURISDICTION AND VENUE

16. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of costs, interest, and attorneys' fees.

17. Venue is proper in this Court because the incident giving rise to this lawsuit occurred in Clark County, Nevada.

GENERAL ALLEGATIONS

18. On or about April 18, 2017, Dr. Kayvan Khiabani was riding his Scott Solace 10 Disc road bicycle southbound in a designated bicycle lane on S. Pavilion Center Drive near the Red Rock Resort and Casino in Las Vegas, Nevada. At the time, Dr. Khiabani was wearing a bicycle helmet designed, manufactured, and sold by Giro. Upon information and belief, Dr. Khiabani purchased the Giro helmet at the retail level from Defendant Pro Cyclery.

19. Upon information and belief, at approximately 10:34 AM, as he approached the intersection of S. Pavilion Center Drive and Griffith Peak Drive, Dr. Khiabani was overtaken by a large tour bus on his left side.

20. The bus was a 2008, full-size Motor Coach that was designed, manufactured, and sold by Defendant MCI and further identified by Vehicle Identification No. 2M93JMHA28W064555 and Utah License Plate No. Z044712. Upon information and belief, the subject bus was designed and manufactured without proximity sensors to alert the driver of adjacent pedestrians and/or bicyclists that may be difficult to see or to alert such pedestrians and/or bicyclists.

21. At the time, the bus was owned and operated by Defendant Ryan's Express and being driven by Defendant Edward Hubbard, an employee of Ryan's Express.

22. Upon information and belief, at the time that it overtook Dr. Khiabani, the bus was traversing out of the right-hand turn lane and crossing over the designated bicycle lane from the right side of Dr. Khiabani to the left side of Dr. Khiabani.

23. As it crossed over the designated bicycle lane to overtake Dr. Khiabani on the left, the bus and Decedent's bicycle collided.

24. As a direct and proximate result of this collision, Dr. Khiabani suffered catastrophic internal and external injuries, including to his head, severe shock to his nervous system, and

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1 great pain and suffering. Dr. Khiabani was transported from the scene of the accident and
2 ultimately died from his injuries.

3 **FIRST CLAIM FOR RELIEF**

4 **(STRICT LIABILITY: DEFECTIVE CONDITION OR**
5 **FAILURE TO WARN AGAINST DEFENDANT MCI)**

6 25. Plaintiffs incorporate by this reference each and every allegation previously made in
7 this Complaint, as if fully set forth herein.

8 26. Defendant MCI, or its predecessors and/or affiliates, were responsible for the design,
9 manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the
10 subject bus.

11 27. At the time of the above-described incident, the subject bus was being used in a manner
12 foreseeable by Defendant MCI.

13 28. As so used, and from the time the bus left the hands of Defendant MCI, the subject bus
14 was defective, unfit, and unreasonably dangerous for its foreseeable use.

15 29. The subject bus was further defective and unreasonably dangerous in that Defendant
16 MCI failed to provide adequate warnings about dangers that were known or should have been
17 known by MCI and/or failed to provide adequate instructions for the bus' safe and proper use.

18 30. The aforementioned incident was a direct and proximate result of a defect or defects in
19 the bus and/or the failure of Defendant MCI to warn of defects that were either known or should
20 have been known or to instruct in the safe and proper use of the bus. As a result, Defendant
21 MCI should be held strictly liable in tort to Plaintiffs.

22 31. As a direct and proximate result of the defective nature of the subject bus, Decedent Dr.
23 Kayvan Khiabani suffered catastrophic personal injuries and died.

24 32. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent
25 sustained past, present, and future lost wages, which would otherwise have been gained in his
26 employment if not for his death proximately caused by this accident, far in excess of Fifteen
27 Thousand Dollars (\$15,000.00).

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1 33. As a direct and proximate result of the acts and omissions of Defendant MCI, the
2 Plaintiff minors each have been deprived of their father's comfort, support, companionship,
3 society, and consortium, and further, each has suffered great grief, sorrow, and extreme
4 emotional distress as a result of the death of their father, to each for general damages far in
5 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen
6 Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain, suffering,
7 and disfigurement of their father.
8

9 34. As a direct and proximate result of the acts and omissions of Defendant MCI, prior to
10 her death, Katy Barin was deprived of her husband's comfort, support, companionship, society,
11 and consortium, and further, had suffered great grief, sorrow, and extreme emotional distress as
12 a result of the death of her husband, for general damages far in excess of Fifteen Thousand
13 Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars
14 (\$15,000.00).
15

16 35. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent
17 Kayvan Khiabani, MD's Estate and/or Executor Siamak Barin has incurred medical, funeral and
18 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars
19 (\$15,000.00).
20

21 36. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent
22 Katy Barin, DDS's Estate and/or Executor Siamak Barin has incurred medical, funeral and
23 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars
24 (\$15,000.00).
25

26 37. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiffs
27 have suffered general and special damages in an amount far in excess of Fifteen Thousand
28 Dollars (\$15,000.00).

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38. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject bus, Defendant MCI acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant MCI, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

39. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

SECOND CLAIM FOR RELIEF

(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS AND EDWARD HUBBARD)

40. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

41. Defendant Ryan's Express is vicariously liable for the wrongful acts or omissions of its employee, Defendant Hubbard, in connection with the subject accident because: (i) at the time of the subject accident, Defendant Hubbard was under the control of Defendant Ryan's Express, and (ii) at the time of the subject accident, Defendant Hubbard was acting within the scope of his employment with Ryan's Express.

42. Defendants Ryan's Express and Edward Hubbard owed a duty of care to Dr. Khiabani and Plaintiffs to exercise due care in the operation of the 2008, full-size commercial tour bus.

43. Defendants were negligent and breached this duty of care, *inter alia*: (i) by overtaking Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr. Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr.

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1 Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane
2 while Dr. Khiabani was traveling therein.

3 44. As a direct and proximate result of these negligent acts and omissions, Decedent Dr.
4 Kayvan Khiabani suffered catastrophic personal injuries and died.

5 45. As a direct and proximate result of the negligent acts and omissions of Defendants
6 Ryan's Express and Edward Hubbard, Decedent sustained past, present, and future lost wages,
7 which would otherwise have been gained in his employment if not for his death proximately
8 caused by this accident, far in excess of Fifteen Thousand Dollars (\$15,000.00).

9 46. As a direct and proximate result of the negligent acts and omissions of Defendants
10 Ryan's Express and Edward Hubbard, the Plaintiff minors each have been deprived of their
11 father's comfort, support, companionship, society, and consortium, and further, each has
12 suffered great grief, sorrow, and extreme emotional distress as a result of the death of their
13 father, to each for general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and
14 economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00). The minor children
15 also seek to recover for the pain, suffering, and disfigurement of their father.
16

17 47. As a direct and proximate result of the negligent acts and omissions of Defendants
18 Ryan's Express and Edward Hubbard, prior to her death, Katy Barin was deprived of her
19 husband's comfort, support, companionship, society, and consortium, and further, had suffered
20 great grief, sorrow, and extreme emotional distress as a result of the death of her husband, for
21 general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages
22 far in excess of Fifteen Thousand Dollars (\$15,000.00).
23

24 48. As a direct and proximate result of the negligent acts and omissions of Defendants
25 Ryan's Express and Edward Hubbard, Decedent's Estate and/or Executor Siamak Barin has
26 incurred medical, funeral and burial expenses, and other expenses relating thereto, far in excess
27 of Fifteen Thousand Dollars (\$15,000.00).
28

1 49. As a direct and proximate result of the negligent acts and omissions of Defendants
 2 Ryan's Express and Edward Hubbard, Plaintiffs have suffered general and special damages in
 3 an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

4 50. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
 5 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.
 6

7 THIRD CLAIM FOR RELIEF

8 (NEGLIGENCE PER SE AGAINST DEFENDANTS

9 RYAN'S EXPRESS AND EDWARD HUBBARD)

10 51. Plaintiffs incorporate by this reference each and every allegation previously made in this
 11 Complaint, as if fully set forth herein.

12 52. When the subject bus overtook Dr. Khiabani at the time of the incident, Defendants
 13 Ryan's Express and Edward Hubbard violated Nev. Rev. Stat. § 484B.270, *inter alia*: (i) by
 14 overtaking Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded
 15 the posted speed limit; (ii) by failing to give an audible warning with the horn before overtaking
 16 Dr. Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by
 17 failing to ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v)
 18 by failing to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his
 19 bicycle at the time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way
 20 to Dr. Khiabani; and (vii) by entering, crossing over, and/or driving within the designated
 21 bicycle lane while Dr. Khiabani was traveling therein.

22 53. These violations, and each of them, were a legal cause of the incident and Plaintiffs'
 23 resulting injuries.

24 54. Plaintiffs belong to the class of persons that the safety requirements in NRS 484B.270
 25 are intended to protect.
 26
 27
 28

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1 55. As a direct and proximate cause of Defendants violations of NRS 484B.270, and each of
 2 them, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand
 3 Dollars (\$15,000.00), as outlined above.

4 56. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
 5 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

6 **FOURTH CLAIM FOR RELIEF**

7 **(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)**

8
 9 57. Plaintiffs incorporate by this reference each and every allegation previously made in this
 10 Complaint, as if fully set forth herein.

11 58. Defendant Ryan's Express owed a duty of care to Dr. Khiabani and Plaintiffs to
 12 adequately train its drivers, including Defendant Edward Hubbard, to safely operate its
 13 commercial tour busses, including the bus involved in the subject incident.

14 59. Defendant Ryan's Express was negligent and breached this duty of care by failing to
 15 adequately train its drivers, including Edward Hubbard, to safely operate its commercial tour
 16 busses, including the bus involved in the subject incident. Defendant Ryan's Express further
 17 breached this duty of care by entrusting the subject tour bus to an inadequately trained person
 18 (i.e., Defendant Hubbard).

19 60. These negligent acts and omissions, and each of them, were a legal cause of the incident
 20 and Plaintiffs' resulting injuries.

21 61. As a direct and proximate result of these negligent acts and omissions, Plaintiffs have
 22 suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as
 23 outlined above.

24 62. In carrying out its responsibility to adequately train its drivers, Defendant Ryan's
 25 Express acted with fraud, malice, express or implied, oppression, and/or conscious disregard of
 26 the safety of others. As a direct and proximate result of the conduct of Defendant Ryan's
 27
 28

1 Express, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars
2 (\$15,000.00).

3 63. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
4 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.
5

6 **FIFTH CLAIM FOR RELIEF**

7 **(STRICT LIABILITY: DEFECTIVE CONDITION OR FAILURE**

8 **TO WARN AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

9 64. Plaintiffs incorporate by this reference each and every allegation previously made in this
10 Complaint, as if fully set forth herein.

11 65. Defendant Giro, or its predecessors and/or affiliates, were responsible for the design,
12 manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the
13 helmet that Dr. Khiabani was wearing at the time of the above-described accident.

14 66. Upon information and belief, Defendant Pro Cyclery, or its predecessors and/or
15 affiliates, were part of the subject helmet's chain of distribution and sold to Dr. Khiabani at the
16 retail level the helmet that Dr. Khiabani was wearing at the time of the above-described
17 accident.

18 67. At the time of the subject accident, and at all other times material hereto, the helmet was
19 being used in a manner foreseeable by Defendants Giro and Pro Cyclery.

20 68. As so used, the subject helmet was defective, unfit, and unreasonably dangerous for its
21 foreseeable use in that there was inadequate protection of the head by the helmet, which caused
22 or contributed to the death of Dr. Khiabani.

23 69. The subject helmet was further defective and unreasonably dangerous in that Defendants
24 Giro and Pro Cyclery failed to provide adequate warnings about dangers that were either known
25 or should have been known by Giro and Pro Cyclery and/or failed to provide adequate
26 instructions regarding the helmet's safe and proper use.
27
28

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1 70. The aforementioned death of Dr. Khiabani was a direct and proximate result of a defect
2 or defects in the helmet and/or the failure of Defendants Giro and Pro Cyclery to warn of
3 defects that were either known or should have been known or to instruct in the safe and proper
4 use of the helmet. As a result, Defendants Giro and Pro Cyclery should be held strictly liable in
5 tort to Plaintiffs.

6 71. As a direct and proximate result of the defective nature of the helmet and said
7 deficiencies in warnings and/or instructions, Decedent Dr. Kayvan Khiabani suffered a
8 catastrophic head injury and ultimately died.

9 72. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
10 Cyclery, Decedent sustained past, present, and future lost wages, which would otherwise have
11 been gained in his employment if not for his death, far in excess of Fifteen Thousand Dollars
12 (\$15,000.00).

13 73. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
14 Cyclery, the Plaintiff minors each have been deprived of their father's comfort, support,
15 companionship, society, and consortium, and further, each has suffered great grief, sorrow, and
16 extreme emotional distress as a result of the death of their father, to each for general damages
17 far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of
18 Fifteen Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain,
19 suffering, and disfigurement of their father.

20
21 74. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro
22 Cyclery, prior to her death, Katy Barin was deprived of her husband's comfort, support,
23 companionship, society, and consortium, and further, had suffered great grief, sorrow, and
24 extreme emotional distress as a result of the death of her husband, for general damages far in
25 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen
26 Thousand Dollars (\$15,000.00).
27
28

75. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, Decedent's Estate and/or Executor Siamak Barin has incurred medical, funeral, and burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars (\$15,000.00).

76. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, Plaintiffs have suffered general and special damages in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

77. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

78. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

SIXTH CLAIM FOR RELIEF

(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AGAINST DEFENDANTS GIRO AND PRO CYCLERY)

79. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

80. Giro/Pro Cyclery and Decedent, Dr. Khiabani, entered into a contract for the sale of goods (i.e., the Giro helmet).

81. Defendants Giro/Pro Cyclery had reason to know of the particular purpose for which the helmet was required by Dr. Khiabani (i.e., to wear while riding his road bicycle).

82. Dr. Khiabani relied on the skill or judgment of Defendants Giro/Pro Cyclery to furnish suitable goods for this purpose.

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83. The helmet sold by Defendants Giro/Pro Cyclery to Dr. Khiabani was not fit for said purpose and, as a direct and proximate result, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

84. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

85. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

SEVENTH CLAIM FOR RELIEF

(WRONGFUL DEATH OF KAYVAN KHIABANI, MD AGAINST ALL DEFENDANTS)

86. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

87. Plaintiff minors are the heirs of Decedent and are entitled to maintain an action for damages against the Defendants for the wrongful death of Dr. Kayvan Khiabani.

88. Pursuant to NRS 41.085, Siamak Barin is the Executor of the Estate of the Decedent and may also maintain an action for damages against the Defendants for special damages and penalties, including but not limited to exemplary or punitive damages as set forth in NRS 41.085(5).

89. As a result of the injuries to and death of Dr. Khiabani, Plaintiffs are entitled to damages, including, but not limited to: pecuniary damages for their grief and sorrow, loss of

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1 probable support, companionship, society, comfort and consortium, and damages for pain,
 2 suffering and disfigurement of the Decedent.

3 90. As a direct and proximate result of the wrongful death of Dr. Khiabani, Plaintiffs have
 4 been damaged in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

5 91. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
 6 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

7 **EIGHTH CLAIM FOR RELIEF**

8 **(WRONGFUL DEATH OF KATY BARIN, DDS**

9 **AGAINST ALL DEFENDANTS)**

10 92. Plaintiffs incorporate by this reference each and every allegation previously made in this
 11 Complaint, as if fully set forth herein.

12 93. As a direct and proximate result of the stress caused by the wrongful death of her
 13 husband, Dr. Kayvan Khiabani, Katy Barin lost her battle against cancer.

14 94. Plaintiff minors are the heirs of Decedent Katy Barin and are entitled to maintain an
 15 action for damages against the Defendants for the wrongful death of their mother, Dr. Katy
 16 Barin.

17 95. Pursuant to NRS 41.085, Siamak Barin is the Executor of the Estate of Katy Barin
 18 (Decedent) and may also maintain an action for damages against the Defendants for special
 19 damages and penalties, including but not limited to exemplary or punitive damages as set forth
 20 in NRS 41.085(5).

21 96. As a result of the death of Dr. Barin, Plaintiffs are entitled to damages, including, but not
 22 limited to: pecuniary damages for their grief and sorrow, loss of probable support,
 23 companionship, society, comfort and consortium, and damages for pain, suffering and
 24 disfigurement of the Decedent.

1 97. As a direct and proximate result of the wrongful death of Dr. Barin, Plaintiffs have been
2 damaged in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

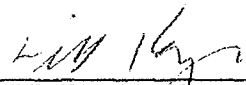
3 98. Plaintiffs have been required to retain legal counsel to prosecute this action, and are
4 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.
5

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment of this Court as follows:

- 8 1. Past and future general damages in an amount in excess of fifteen thousand dollars
9 (\$15,000.00);
- 10 2. Past and future special damages in an amount in excess of fifteen thousand dollars
11 (\$15,000.00);
- 12 3. Past and future damages for the wrongful death of Dr. Kayvan Khiabani, as set forth in
13 NRS 41.085, in an amount in excess of fifteen thousand dollars (\$15,000.00);
- 14 4. Past and future damages for the wrongful death of Dr. Katy Barin, as set forth in NRS
15 41.085, in an amount in excess of fifteen thousand dollars (\$15,000.00);
- 16 5. Punitive damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
- 17 6. Prejudgment and post-judgment interest, as allowed by law;
- 18 7. Costs of suit and reasonable attorneys' fees, as allowed by law, in an amount to be
19 determined; and
- 20 8. For such other and further relief that the Court may deem just and proper.

21 DATED this 17th day of November, 2017.

22 
23 WILL KEMP, ESQ. (#1205)
24 ERIC PEPPERMAN, ESQ. (#11679)
25 KEMP, JONES & COULTHARD, LLP
26 3800 Howard Hughes Parkway, 17th Floor
27 Las Vegas, Nevada 89169
28 -and-
PETER S. CHRISTIANSEN, ESQ. (#5254)
KENDELEE L. WORKS, ESQ. (#9611)
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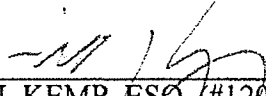
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DEMAND FOR JURY TRIAL

Plaintiffs by and through their attorneys of record, KEMP, JONES & COULTHARD, LLP and CHRISTIANSEN LAW OFFICES, hereby demand a jury trial of all of the issues in the above matter.

DATED this 17th day of November, 2017.

KEMP, JONES & COULTHARD, LLP


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 ERIC PEPPERMAN, ESQ. (#11679)
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-and-

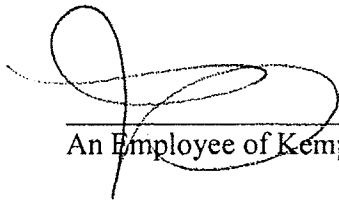
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November, 2017, the foregoing **SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** was served on all parties currently on the electronic service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.



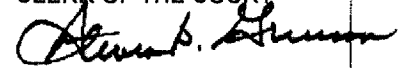
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EXHIBIT C

EXHIBIT C

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Steven D. Grierson
CLERK OF THE COURT



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18 *Attorneys for Plaintiffs*

19
20 DISTRICT COURT
21 CLARK COUNTY, NEVADA

22 KEON KHIABANI and ARIA
23 KHIABANI, minors, by and through their
24 Guardian, MARIE-CLAUDE RIGAUD;
25 SIAMAK BARIN, as Executor of the
26 Estate of Kayvan Khiabani, M.D.
27 (Decedent), the Estate of Kayvan
28 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,

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; BELL SPORTS, INC.
d/b/a GIRO SPORT DESIGN, a Delaware
corporation; SEVENPLUS BICYCLES,
INC. d/b/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

JOINT PRETRIAL MEMORANDUM

Trial Date: February 12, 2018

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JOINT PRETRIAL MEMORANDUM

COME NOW Plaintiffs, 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), by and through their attorneys of record, and Defendant Motor Coach Industries, Inc., by and through its attorneys of record, and submit their Joint Pretrial Memorandum pursuant to EDCR 2.67.

I.

STATEMENT OF FACTS

A. Plaintiffs' Statement of the Case (Defendant objects to Plaintiffs' Statement in its entirety as EDCR 2.67 only allows a "brief statement of facts of the case", not arguments by the parties, and Defendant denies Plaintiffs' allegations and characterizations herein. Defendant's agreement to the form of other portions of this Pretrial Memorandum should not be construed as a tacit admission or concession of anything listed under "Plaintiffs' Statement of the Case".)

MCI is and has for decades been the largest bus manufacturer in North America and sold thousands of buses each year. Unlike makers of cars, large trucks or high speed trains and even other bus makers (including MCI's parent company New Flyer), MCI refuses to adopt widely recognized design improvements such as aerodynamic streamlining, proximity sensors or barrier guards. Instead, MCI has sold basically the same blunt shaped bus for decades. MCI itself characterizes the J4500 as a "boxy" bus in MSJ Product Defect, 19:1. MCI does not even provide rudimentary safety features such as passenger seat belts as standard equipment (although passenger seatbelts have been placed in all US cars for the last 50 years). Other critical safety features such as streamlining, proximity sensors or barrier guards are anathema to MCI.

The appalling reason that MCI deliberately omits multiple salutary safety features on MCI buses is that MCI greedily strives to build the "boxy" J4500 bus as cheaply as possible -- a classic case of profits over safety. The fundamental issue for the jury is whether strict liability

1 demands that a bus seller use readily available safety technology (just as car makers and all
2 other product manufacturers must) or whether a bus seller is immune simply because many of
3 them chose to keep making dangerous buses.

4 **B. Defendant's Statement of the Case**

5 On April 18, 2017, Dr. Kayvan Khiabani was riding a bicycle on Pavilion Center Drive
6 near Red Rock Hotel & Casino. Dr. Khiabani was killed when the bicycle collided with a
7 motor coach sold by Motor Coach Industries, Inc. ("MCI"). Dr. Khiabani is survived by his two
8 sons; 17-year-old Aria Khiabani and 14-year-old Keon Khiabani. At the time of his death, Dr.
9 Khiabani was also survived by his wife, Dr. Katayoun Barin, who has since passed away.

10 The Khiabani family alleges that MCI failed to warn about dangerous conditions of the
11 bus and/or that the bus was defectively designed. MCI contends that the bus was not
12 defectively designed and there was no failure to warn of any alleged dangerous condition.

13 **C. Procedural Status**

14 A Jury Trial in this matter is scheduled to commence on Monday, February 12, 2018.
15 All parties to this litigation met and conferred in accordance with EDCR 2.67 on Monday,
16 February 5, 2018 at 1:30 p.m. at the offices of Kemp, Jones & Coulthard, 3800 Howard Hughes
17 Pkwy., 17th floor, Las Vegas, Nevada. The parties have agreed to continue to meet periodically
18 in an attempt to reach further stipulations with regard to authenticity and admissibility of
19 exhibits and narrowing the facts for trial.

20 **II.**

21 **LIST OF CLAIMS FOR RELIEF**

22 **A. Plaintiffs' Claims**

- 23 1. Strict Liability: Failure to Warn of Defective Condition;
- 24 2. Strict Liability: Design Defect;
- 25 3. Wrongful Death of Kayvan Khiabani, M.D.; and
- 26 4. Punitive Damages.

III.

LIST OF AFFIRMATIVE DEFENSES

The following affirmative defenses have been asserted by MCI (as asserted in its Answer to Second Amended Complaint):

1. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief can be granted.
2. Necessary and indispensable parties may not have been joined and/or parties may have been improperly joined, including Defendant.
3. Plaintiffs' claims are barred by the doctrines of laches, waiver and estoppel.
4. Plaintiffs have failed to mitigate their damages.
5. Defendant owed no duty to Plaintiffs and to the extent owed, breached no duty alleged.
6. Defendant, at all times relevant to the allegations contained in Plaintiffs' Second Amended Complaint, acted with reasonable care in the performance of any and all duties, if any.
7. Plaintiffs' decedent failed to exercise ordinary care, caution or prudence for his own safety, thereby proximately causing or contributing to the cause of Plaintiffs' damages, if any, through Plaintiffs' decedent's own negligence.
8. The negligence of Plaintiffs' decedent exceeded that of Defendant, if any, and therefore, Plaintiffs are barred from recovery.
9. Plaintiffs' decedent knowingly and voluntarily accepted, and/or assumed all risks.
10. Damages sustained by Plaintiffs, if any, were caused by the acts of third persons who were not acting on the part of Defendant in any manner or form, and as such, Defendant is not liable.
11. The liability, if any, of Defendant must be reduced by the percentage of fault of others, including Plaintiffs' decedent.
12. The alleged injuries and damages complained of by Plaintiffs were caused in whole or in part by a new, independent and superseding intervening cause over which Defendant had no control.
13. The liability, if any, of Defendant is several and not joint and several and based upon its own acts and not the acts of others.
14. If Plaintiffs have settled with any other parties, Defendant is entitled to credit and set-off in the amount of such settlement.
15. Plaintiffs' and their decedent's injuries are the result of material alterations or modifications of the subject product, without the consent of the manufacturer, distributor or seller, in a manner inconsistent with the product's intended use.

16. Plaintiffs' injuries are the result of unforeseeable misuse of the product at issue.

17. Plaintiffs' claim for punitive damages cannot be sustained because an award of punitive damages that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount of punitive damages that may be imposed, would: (1) violate Defendant's Due Process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution; (2) violate Defendant's right not to be subjected to an excessive award; and (3) be improper under the Constitution, common law and public policies of Nevada.

IV.

LIST OF CLAIMS STRICKEN OR ABANDONED

Consistent with this Court's ruling at the hearing on Defendant's Motion to Dismiss Wrongful Death Claim for Death of Katayoun Barin, DDS on January 23, 2018, Plaintiffs understand that their claims against Defendants for the wrongful death of Katayoun Barin, DDS have been stricken. Plaintiffs do not abandon any of their remaining claims against Defendants as stated in Plaintiffs' Second Amended Complaint filed on November 17, 2017.

V.

LIST OF PLAINTIFFS' EXHIBITS

1. **For Plaintiffs:** See Exhibit 1, attached hereto. Plaintiffs reserve the right to supplement this list prior to trial. Plaintiff does not represent that it *will* use any of said exhibits at trial, only that it may. In addition, Plaintiff reserves the right to use any document identified in the exhibit list of any other party. Exhibits included on the list may become admissible if a proper foundation is laid for admissibility at trial. The presence of a document on this exhibit list does not constitute an admission that a document is admissible.
2. **For Defendant:** Defendant submits a list of exhibits attached as Exhibit 2. Defendant reserves the right to supplement this list prior to trial. Defendant does not represent that it *will* use any of said exhibits at trial, only that it may. In addition, Defendant reserves the right to use any document identified in the exhibit list of any other party. Exhibits included on the list may become admissible if a proper

foundation is laid for admissibility at trial. The presence of a document on this exhibit list does not constitute an admission that a document is admissible.

3. Objections of the Parties to Proposed Trial Exhibits are incorporated into the list of exhibits exchanged by the parties and attached hereto as **Exhibits 1 and 2**. A list of the objection codes is attached as **Exhibit 3**.

VI.

AGREEMENTS AS TO THE LIMITATION OR EXCLUSION OF EVIDENCE

There are no agreements at this time. The parties have agreed to continue to meet periodically in an attempt to reach further stipulations with regard to authenticity and admissibility of exhibits and narrowing the facts for trial.

VII.

LIST OF TRIAL WITNESSES

A. Plaintiffs may call the following witnesses at trial:

Katayoun Barin, (Deceased) (Deposition only), individually

Aria Khiabani, individually

Keon Khiabani, individually

Siamak Barin, as Executor of the Estates of Kayvan Khiabani, M.D. (Decedent) and Katayoun Barin, DDS (Decedent)

Marie-Claude Rigaud, as Guardian of Aria Khiabani and Keon Khiabani

Glenn Asham, New Flyer Industries, Inc. Treasurer

Will Bartlett, Safety Director for Defendant Michelangelo Leasing, Inc. d/b/a Ryan's Express

Mark Barron

Erika Marie Bradley

Aaron Bradley

Robert Breidenthal, PhD, MS, BSA.E.

Tiffany Brown, in her capacity as Investigator for the Clark County Coroner's office

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kjc@kempjones.com

1 Fadi Braiteh, M.D., in her capacity as treating physician for Dr. Barin
2
3 Custodian of Records, University Medical Center
4
5 Custodian of Records, American Medical Response
6
7 Custodian of Records, Clark County Fire Department
8
9 Custodian of Records, Nevada Department of Motor Vehicles
10
11 Custodian of Records, Las Vegas Metropolitan Police Department
12
13 Robert Caldwell, Ponderosa Consulting Engineers
14
15 Joshua Cohen, Fat Pencil Studio
16
17 Bryan Couch
18
19 Robert J. Cunitz, Ph.D.
20
21 Laden Daneshmand
22
23 Brad Ellis, Bus Engineer
24
25 Pablo Fierros (By deposition)
26
27 Tom Flanagan, BSME
28
29 Lisa Gavin, as a representative of the Clark County Coroner's office
30
31 Frederick Goodine
32
33 James Green, P.E., GE Engineering, PLLC
34
35 Chris Groepler
36
37 Shaun Harney, as employee of American Medical Response
38
39 Claude Sonny Hildreth
40
41 Virgil Hoogestraat, as representative of Motor Coach Industries, Inc.
42
43 Dale Horba, as paramedic with the Clark County Fire Department
44
45 Edward Hubbard, bus driver
46
47 Jack Hubbard, M.D.

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- 1 Erik Johnson, as Person Most Knowledgeable for Rimkus Consulting Group, Inc.
- 2
- 3 Jeff Justice
- 4
- 5 Steven Kalas, M.Th.
- 6
- 7 Zach Kieft
- 8
- 9 Samantha Kolch
- 10
- 11 Brad Lamothe
- 12
- 13 Alexander W. LaRiviere
- 14
- 15 Andrew Louis, as employee of American Medical Response
- 16
- 17 Anthony Nguyen, M.D.
- 18
- 19 NRCP Rule 30(b)(6) Representative or Person Most Knowledgeable, University
- 20 Medical Center
- 21
- 22 NRCP Rule 30(b)(6) Representative or Person Most Knowledgeable, Comprehensive
- 23 Cancer Center
- 24
- 25 Jose Parada, Jr.
- 26
- 27 Robert Anthony Pears
- 28
- Michael Plantz
- Jay Rosenthal, CCM (Rebuttal only)
- Luis Sacarias
- Detective Kenneth Salisbury, in his capacity as detective with Las Vegas Metropolitan Police Department
- Brian Sherlock
- Larry Smith, as Person Most Knowledgeable for Nevada Digital Forensics
- Larry Stokes, Ph.D.
- Richard Stalnaker, Ph.D.
- David Thom, Collision Dynamics
- Mary Witherell

Plaintiffs reserve the right to call witnesses listed by Defendant.

B. Defendants may call the following witnesses at trial: See Exhibit 4

VIII.

**BRIEF STATEMENT OF PRINCIPAL ISSUES OF LAW WHICH
MAY BE CONTESTED AT THE TIME OF TRIAL**

By Plaintiffs: See Sections I and II above.

By Defendant:

- a. Whether the subject motor coach was unreasonably dangerous pursuant to the consumer-expectation test by being defective in design;
- b. Whether the subject motor coach was unreasonably dangerous pursuant to the consumer-expectation test by being defective through a failure to warn;
- c. Whether Plaintiffs' decedent's death was a legal and proximate cause of any defect in the subject motor coach;
- d. The amount of damages to be awarded under NRS 41.085;
- e. Whether there is clear and convincing evidence of actual malice to permit an award of punitive damages.

IX.

ESTIMATED TIME FOR TRIAL

Trial is estimated to last approximately 3 weeks.

X.

**IDENTIFICATION OF ORDERS ON ALL MOTIONS IN LIMINE OR MOTIONS FOR
PARTIAL SUMMARY JUDGMENT PREVIOUSLY MADE**

A. Motions in Limine

Plaintiffs' and Defendant's Motions in Limine have been heard and orders issued by the Court.

B. Motions for Summary Judgment

The Court heard the parties' motions for summary judgment on January 23, 2018. The Court announced its rulings at the hearing but has not yet entered any orders.

1. Plaintiffs' Motions

1. Motion for Summary Judgment On Foreseeability of Bus Interaction With Pedestrians or Bicyclists (Including Sudden Bicycle Movement), filed on October 27, 2017 (GRANTED)

2. Defendant's Motions

1. Motion for Summary Judgment on Punitive Damages, filed on December 1, 2017 (DENIED)
2. Motion for Summary Judgment on All Claims Alleging a Product Defect, filed on December 4, 2017 (DENIED)

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XI.

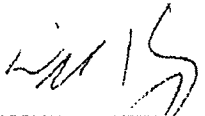
**ANY OTHER MATTER WHICH COUNSEL DESIRES TO BRING TO THE
ATTENTION OF THE COURT PRIOR TO TRIAL**

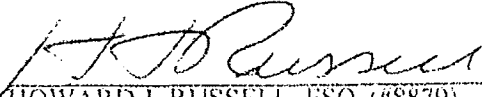
The Parties anticipate they will bring timely NRCP 50 motions, that they will bring timely post-trial motions, and that they may file and serve trial memoranda pursuant to EDCR 7.27 through the course of trial.

DATED this 8th day of February, 2018.

KEMP, JONES & COULTHARD, LLP

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC


WILL KEMP, ESQ. (#1205)
ERIC PEPPERMAN, ESQ. (#11679)
3800 Howard Hughes Parkway, 17th Floor
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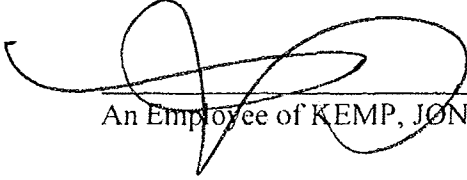

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-and-
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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2018, I served a true and correct copy of the foregoing **Joint Pre-Trial Memorandum** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.


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EXHIBIT D

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EXHIBIT D

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 MONDAY, FEBRUARY 12, 2018

25 RECORDED BY: SANDY ANDERSON, COURT RECORDER

TRANSCRIBED BY: KRISTY L. CLARK, NV CCR No. 708

1 APPEARANCES:

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

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25 - AND -

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BY: MICHAEL G. TERRY, ESQ.
HARTLINE DACUS BARGER DREYER
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Dallas, Texas 75231
(214) 369-2100

* * * * *

1 The clerk in Department 14 is Mr. Collin
2 Jayne. He's here to my right. He's an attorney and a
3 very important part of our team.

4 Our judicial executive assistant is Diana
5 Powell. She will be present in the courtroom, at least
6 during portions of the trial, as they assist me in our
7 duties. We pretty much work as a team here.

8 I'm now going to have each of the attorneys
9 stand and introduce themselves, introduce their
10 clients, identify the other lawyers in their respective
11 law firms, briefly tell you the nature of the case.
12 And they will also list for you -- normally they list
13 the name of the jurors, but I've -- they've stipulated
14 waiving that -- excuse me -- a list of the witnesses.
15 They've stipulated to waiving that because it's so
16 long. You had it in your questionnaires. Okay.

17 So counsel for plaintiff?

18 MR. CHRISTIANSEN: Good morning. My name is
19 Pete Christiansen. Along with Mr. Will Kemp, Kendelea
20 Works, and Whitney Barrett, we represent the plaintiffs
21 in this case.

22 And can I use the overhead, Judge, just kind
23 of a --

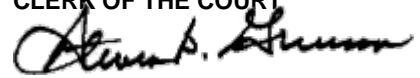
24 THE COURT: Yes.

25 MR. CHRISTIANSEN: The plaintiffs in this

72

72

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Steven D. Grierson
CLERK OF THE COURT

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)
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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
DEPARTMENT XIV

23 DATED TUESDAY, FEBRUARY 20, 2018

24 RECORDED BY: SANDY ANDERSON, COURT RECORDER

25 TRANSCRIBED BY: KRISTY L. CLARK, NV CCR No. 708

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3 Kayvan Khiabani, M.D.:

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12 BY: KENDELEE WORKS, ESQ.
13 BY: WHITNEY J. BARRETT, ESQ.
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19 For the Defendant Motor Coach Industries, Inc.:

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18 - AND -

19 BY: DARRELL BARGER, ESQ.
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22 8750 North Central Expressway
23 Suite 1600
24 Dallas, Texas 75231
25 (214) 369-2100

24 * * * * *

1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 20, 2018;

2
3 P R O C E E D I N G S

4 * * * * *

5
6 THE COURT: Good afternoon. Please be
7 seated.

8 How was everyone's weekend. Okay?

9 MR. ROBERTS: Yes, Your Honor.

10 THE COURT: Okay. Okay. First, I would like
11 you to -- is it Padilla? Marshal Ragsdale is very sick
12 today. So might be carrying the microphone. Who
13 knows? But he's very ill. All right. And so thank
14 you for helping us today, sir.

15 THE MARSHAL: You're very welcome.

16 THE COURT: I've just been informed -- is
17 this correct? Is that Ms. Padilla?

18 THE MARSHAL: Yes, ma'am.

19 THE COURT: Is ill?

20 THE MARSHAL: Yes, ma'am. She's here now,
21 but it's -- she's -- she's claiming that she has the
22 flu. She looks sick too. She's sweating, coughing up
23 a storm up there.

24 MR. ROBERTS: As Your Honor knows --

25 THE COURT: One moment. And Ms. Turpin has a

1 flight.

2 MR. ROBERTS: What?

3 THE COURT: Ms. Turpin apparently has a
4 flight.

5 MR. KEMP: A flight?

6 MR. BARGER: Like an airplane.

7 THE MARSHAL: Yeah. Yeah. Leaving town
8 Sunday. It was prearranged. And she related to -- she
9 said she related to the Court's last week.

10 THE COURT: Yes. Well, what I've done is,
11 since we've started voir dire, I haven't excused anyone
12 that we didn't contemplate before. So you can chat
13 with her briefly. Shall we bring Ms. Padilla in?

14 MR. KEMP: Why don't we do Turpin first so we
15 don't have to disinfect the mic?

16 THE COURT: You have to speak louder,
17 Mr. Kemp.

18 MR. KEMP: Why don't we do Turpin first so we
19 don't have to wait to disinfect the mic.

20 THE COURT: Good idea. Marshal Padilla, will
21 you please bring in Ms. Turpin.

22 Good afternoon, Ms. Turpin. If you would you
23 sit down, please. You're name and badge number please.

24 PROSPECTIVE JUROR NO. 11-1193: Amy Turpin,
25 11-1193.

1 THE COURT: Okay. And I understand you have
2 a flight today?

3 PROSPECTIVE JUROR NO. 11-1193: No. It's on
4 Thursday.

5 THE COURT: On Thursday. All right. I know
6 that I probably received something from you, but I
7 haven't dismissed anyone since the counsel and I have
8 agreed on -- we have a list.

9 Would you please remind me where it is you're
10 going?

11 PROSPECTIVE JUROR NO. 11-1193: Well, I -- I
12 am going to Colorado for my nephew's birthday, but I
13 didn't make a reference to it until Friday afternoon.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR 11-1193: I just didn't.
16 And the Marshal Ragsdale said, "Why are you just
17 telling me this now?"

18 I said, "I didn't know when I was supposed to
19 tell you."

20 I didn't indicate it on my questionnaire
21 because I didn't realize at that time how far the
22 process was going to be. And I booked it just the day
23 before, and it wasn't in my head. I'm like, it's not
24 until the end of February, so I should be fine. But
25 now here we are, and it's Thursday.

1 THE COURT: You understood it was going to be
2 a five-week trial, four to five weeks?

3 PROSPECTIVE JUROR NO. 11-1193: When I filled
4 out the questionnaire, I just didn't do the math to
5 write that.

6 THE COURT: All right. Are you flying?

7 PROSPECTIVE JUROR NO. 11-1193: I am.

8 THE COURT: Mr. Kemp?

9 MR. KEMP: Can we ask what time she's leaving
10 Thursday.

11 PROSPECTIVE JUROR NO. 11-1193: On Thursday?
12 Sorry.

13 THE COURT: So I don't believe I remember a
14 Colorado one, so you haven't said anything yet?

15 PROSPECTIVE JUROR NO. 11-1193: No, I
16 haven't. It's, like, the first flight out. Sorry.
17 It's pulling up.

18 THE COURT: Do you have your itinerary there?

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

20 It's -- it leaves at Thursday morning at 6:10
21 a.m. And then I return on Sunday.

22 THE COURT: I'm sorry?

23 MR. KEMP: I have nothing more.

24 THE COURT: Okay. Do you, Mr. Roberts?

25 MR. ROBERTS: And do you have on your

1 itinerary what date you booked the travel?

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

3 THE COURT: I'd like to see it, please.

4 THE MARSHAL: Can I borrow your phone?

5 PROSPECTIVE JUROR NO. 11-1193: Of course.

6 THE COURT: Thank you. Okay. It looks like

7 January 16th.

8 PROSPECTIVE JUROR NO. 11-1193: Right.

9 THE COURT: At 3:28. Right. So
10 January 16th, and you have been here since 10:00 a.m.
11 on the -- Thursday, the 22nd.

12 PROSPECTIVE JUROR NO. 11-1193: No. It
13 should say 6:10. Oh, yes. 6:10 a.m.

14 THE COURT: Oh, yeah. All right. Thank you.

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

17 THE COURT: Ms. Turpin, would you go ahead
18 and take a seat outside.

19 PROSPECTIVE JUROR NO. 11-1193: Of course.

20 THE COURT: Thank you.

21 All right. Back on the record.

22 THE COURT RECORDER: No, Your Honor.

23 THE COURT: Sorry for the delay. I have a
24 copy of the summons.

25 THE COURT RECORDER: I'm sorry.

1 THE COURT: All right.

2 THE COURT RECORDER: Yes.

3 THE COURT: I have a copy of the jury
4 summons, and it just says reporting date, 1/18. It
5 doesn't say -- the day that they arrived they know what
6 date we start but not before.

7 MR. ROBERTS: So sounds like a valid excuse,
8 then. Is that what you think, Your Honor? Yes?

9 THE COURT: I suppose so. I mean --

10 MR. KEMP: She seems innocent.

11 THE COURT: Pardon me?

12 MR. KEMP: She seems innocent. Doesn't
13 seem --

14 THE COURT: Right, right. So I'll go ahead
15 and excuse her. She seems innocent. Okay. All right.

16 MR. KEMP: Do you want to bring her in to
17 excuse her so we don't have to disinfect the mic?

18 THE COURT: Yeah. So, Ms. Turpin, Badge
19 11-1193, Ms. Turpin is excused. It's not for cause.
20 She had reservations to travel on Thursday and Friday
21 of this week before reporting and knowing what day the
22 trial was starting. So we will go ahead and excuse her
23 pursuant to NRS 6.03 -- I don't know -- C. Okay.

24 MR. KEMP: Judge, I don't know if we need her
25 back in. The marshal can just tell her.

1 THE COURT: No. I will go ahead and do that.
2 We need the marshal.

3 MR. ROBERTS: And while we're waiting, Your
4 Honor, I will remind the Court that the defense did
5 have a pending challenge for cause on Ms. Padilla, so
6 we would consent to excuse her, as we have other jurors
7 with the flu, and that would moot our pending
8 challenge.

9 THE COURT: Okay. Let's -- I don't know
10 where the marshal went. So -- and I don't -- he's back
11 there?

12 THE COURT RECORDER: Yes, Your Honor.

13 THE COURT: The marshal? Okay. Let's
14 just -- all right.

15 Marshal Padilla, I'm going to excuse
16 Ms. Turpin.

17 THE MARSHAL: Okay.

18 THE COURT: Okay? Please ask her to go back
19 to the jury services on the third floor. And please
20 bring in Ms. Padilla.

21 THE MARSHAL: Yes, ma'am.

22 THE COURT: Good afternoon.

23 PROSPECTIVE JUROR NO. 11-1222: Hello.

24 THE COURT: I'd like your name and badge
25 number, please.

1 PROSPECTIVE JUROR NO. 11-1222: Sorry. Carol
2 Padilla, 11-1222.

3 THE COURT: Okay. Ms. Padilla, I've been
4 informed that you are feeling unwell. Is that correct?

5 PROSPECTIVE JUROR NO. 11-1222: Yes, ma'am.

6 THE COURT: What is wrong?

7 PROSPECTIVE JUROR NO. 11-1222: I don't think
8 I have the flu yet, but my nephew's had the flu this
9 weekend, so I'm starting to cough and little bit of a
10 fever.

11 THE COURT: You have a fever?

12 PROSPECTIVE JUROR NO. 11-1222: Yes. Yes.

13 THE COURT: Okay. Counsel?

14 MR. KEMP: And you know that from touching or
15 measuring or --

16 PROSPECTIVE JUROR NO. 11-1222: I measured
17 this morning.

18 MR. KEMP: Measured?

19 PROSPECTIVE JUROR NO. 11-1222: Just -- just
20 a little bit. It was, like, little over 100.

21 MR. KEMP: I don't have any further
22 questions, Your Honor.

23 THE COURT: Okay.

24 MR. ROBERTS: No questions, Your Honor.

25 THE COURT: All right. I hope you feel well.

1 I'm going to go ahead and excuse you.

2 PROSPECTIVE JUROR NO. 11-1222: Thank you.

3 THE COURT: Thank you.

4 We need a quick break. In the meantime, we
5 can -- who is going to --

6 THE CLERK: Seat 14.

7 THE COURT: Seat what?

8 THE CLERK: In Seat 14 will be Brian Stokes,
9 Badge 11-1246. And in Seat 23 will be Heidi Wooters,
10 Seat 11 -- or Badge 11-1255.

11 THE COURT: Wooters is badge --

12 THE CLERK: Wooters is Badge 11-1255.

13 THE COURT: Okay. Thank you. We're off the
14 record.

15 (Whereupon a short recess was taken.)

16 THE COURT: Let's go on the record.

17 THE MARSHAL: All rise for the jury.

18 (The following proceedings were held in
19 the presence of the jury.)

20 THE MARSHAL: All present and accounted for,
21 Your Honor.

22 THE COURT: Thank you.

23 Please be seated. Good afternoon, ladies and
24 gentlemen.

25 IN UNISON: Good afternoon.

1 THE COURT: Welcome back to those of you who
2 are patiently here for several days. And I welcome
3 everyone else on the panel today. Thank you all of you
4 for your service and for being here.

5 So for those of you who have already heard
6 the introduction, it's something that I need to review
7 with everyone that's here, the new panel.

8 So this is the time, has been for a few days,
9 set for trial, Case No. A-17-755977-C. This is Barin
10 v. Motor Coach Industries, Inc. The Court will reflect
11 the presence of the parties and their counsel.

12 And I think you are ready to proceed.

13 Correct?

14 MR. KEMP: Yes, Your Honor.

15 THE COURT: And you? Okay.

16 All right. Ladies and gentlemen, good
17 afternoon. You have been summoned here to
18 Department 14 of the Eighth Judicial District to serve
19 as prospective jurors in a civil case. Before I begin,
20 I'm going to introduce myself. I'm Judge Adriana
21 Escobar. This is Department 14 of the Eighth Judicial
22 District.

23 Our marshal, who's helping us today, is --
24 was Marshal Padilla, and then Marshal Hernandez.
25 Generally, it's Marshal Ragsdale, but he's apparently

1 caught something like the flu bug.

2 You will have the most contact with the
3 marshal who's acting in our -- as the Department 14
4 marshal. And I will tell you now that -- I've already
5 spoken to many of you, but if you notice that the --
6 anyone on the court team or any of the parties or the
7 lawyers are avoiding eye contact with you, not saying
8 hello, distancing themselves, do not take that
9 personally and do not hold that against anyone. We
10 have a duty not to have any contact with you
11 whatsoever. Okay? So if that were happening, that
12 would be inappropriate and contrary to the legal
13 requirements. So that is why you may notice that.

14 All right. The rest of our team in
15 Department 14 is Sandy Anderson. She's to my far left,
16 and she's the recorder. And it's important to speak
17 one at a time, clearly, and, you know, into the
18 speaker, because we need to make sure that the record
19 is very, very good.

20 We also have Denise Husted, who is our court
21 clerk. And she's responsible for taking care of
22 exhibits, organizing evidence, administering the oaths,
23 and many other things.

24 We also have Kristy Clark here, right in
25 front of the bench, a little bit to my right. And

1 she's here working as a reporter taking down all of
2 your -- everything that we say so that we have dailies
3 as well. Okay?

4 Our judicial executive is Diana Powell, and
5 Collin Jayne is our law clerk. And you will see them
6 present in the courtroom from time to time.

7 So I'd like the attorneys to now stand and
8 introduce themselves and introduce their client,
9 identify the other lawyers that they're working with in
10 their law firm, and briefly -- briefly -- tell you the
11 nature of the case. And they will also -- well, I'm
12 going to waive reading all of the potential witnesses.
13 They were in the questionnaire.

14 Mr. Christiansen.

15 MR. CHRISTIANSEN: Thank you.

16 Good afternoon. My name's Pete Christiansen.
17 This is Will Kemp, Kendelee Works, and Whitney Barrett.
18 And there's another lawyer named Eric Pepperman who
19 works with Mr. Kemp that you-all will see. We
20 collectively represent two minor -- 17-year-old boy and
21 a 14-year-old boy, and they are Aria -- one second. I
22 get the technical snafu.

23 Can we have the TV? Do I need to turn it on?

24 THE MARSHAL: Here you go, sir.

25 MR. CHRISTIANSEN: Thank you. Thank you.

1 THE MARSHAL: You are welcome.

2 MR. CHRISTIANSEN: So I'll start off while
3 we're doing it.

4 This is a products case. This is a
5 product -- defective products case where the plaintiff
6 has alleged that a bus manufactured by and sold by
7 Motor Coach Industries, the defendant, was defective
8 and that those defects resulted in the death of the
9 gentleman depicted right here. His name was Dr. Kayvan
10 Khiabani.

11 Last April, April 18th of 2017, Dr. Khiabani
12 and the motor coach collided up near the Red Rock
13 Station up near Summerlin area, and Dr. Khiabani fell
14 off of his bike and the coach ran over his head. He
15 was killed as a result.

16 Katy Barin, Dr. Khiabani's wife, had cancer
17 at the time. She succumbed to her cancer in October of
18 last year. So us lawyers on this side represent the
19 two boys, and those boys, because they're under age,
20 are represented by some other people I'll just show you
21 photos of.

22 This is Marie-Claude Rigaud. She is the
23 guardian. She's the aunt of the two boys, Aria and
24 Keon Khiabani. And the estates of both the mom -- I'm
25 sorry -- the father, Kayvan, and the mom, Katy Barin,

1 are represented by Katy's younger brother, Siamak
2 Barin.

3 All of these folks, as well as the boys,
4 these days live in Montreal, and you'll see them as the
5 case progresses through jury selection and the trial.

6 Thank you.

7 THE COURT: Mr. Roberts.

8 MR. ROBERTS: Thank you, Your Honor.

9 Good afternoon. My name is Lee Roberts. I'm
10 an attorney here in Las Vegas, and I represent Motor
11 Coach Industries, the defendant in this action.

12 Here at the table with me is my client. This
13 is Mr. Tim Nalepka. He's a vice president, part of the
14 senior management team at Motor Coach Industries,
15 Incorporated.

16 Motor Coach Industries takes the position
17 that the coach is not defective and, while this was a
18 very tragic accident, it was not caused by any defect
19 in the motor coach.

20 There are two other lawyers at my firm that
21 are trying the -- helping me with the trial, whom you
22 may see in the courtroom. One is Mr. Howard Russell,
23 and the other is Ms. Marisa Rodriguez. She was -- has
24 been here very briefly, and I had not introduced her
25 before.

1 Sitting at counsel table with me and acting
2 as cocounsel, trying the case with me, is Mr. Darrell
3 Barger and Mr. Michael Terry. Darrell and Mike are
4 from Corpus Christi, Texas.

5 There are also two other attorneys who
6 probably won't be taking any witnesses, but you need to
7 know they're involved, and that's Dan Polsenberg and
8 Joel Henriod of the Lewis & Roca law firm.

9 And finally, assisting the lawyers with the
10 trial of the case, we've got Ms. Audra Bonney and Trent
11 Kelso.

12 Thanks very much, Your Honor.

13 THE COURT: Thank you. All right. Before we
14 go into the roll call, I'd like to see counsel at the
15 bench.

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

18 THE COURT: We're going to begin roll call
19 now, and just raise your hands and say that you're
20 present when you hear your name, please.

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

22 PROSPECTIVE JUROR NO. 11-0798: Here.

23 THE CLERK: 11-0802, John Toston.

24 PROSPECTIVE JUROR NO. 11-0802: Here.

25 THE CLERK: 11-0830, Michelle Peligro.

1 PROSPECTIVE JUROR NO. 11-0830: Here.
2 THE CLERK: 11-0834, Joseph Dail.
3 PROSPECTIVE JUROR NO. 11-0834: Here.
4 THE CLERK: 11-0844, Raphael Javier.
5 PROSPECTIVE JUROR NO. 11-0844: Here.
6 THE CLERK: 11-0853, Dylan Domingo.
7 PROSPECTIVE JUROR NO. 11-0853: Here.
8 THE CLERK: 11-0860, Aberash Getaneh.
9 PROSPECTIVE JUROR NO. 11-0860: Here.
10 THE CLERK: 11-0867, Jenny Gagliano.
11 PROSPECTIVE JUROR NO. 11-0867: Here.
12 THE CLERK: 11-0879, Vanessa Rodriguez.
13 PROSPECTIVE JUROR NO. 11-0879: Here.
14 THE CLERK: 11-0885, Constance Brown.
15 PROSPECTIVE JUROR NO. 11-0885: Here.
16 THE CLERK: 11-0902, Sherry Hall.
17 PROSPECTIVE JUROR NO. 11-0902: Here.
18 THE CLERK: 11-0915, Ruth McLain.
19 PROSPECTIVE JUROR NO. 11-0915: Here.
20 THE CLERK: 11-0926, Enrique Tuquero.
21 PROSPECTIVE JUROR NO. 11-0926: Here.
22 THE CLERK: 11-0937, Raquel Romero.
23 PROSPECTIVE JUROR NO. 11-0937: Here.
24 THE CLERK: 11-0940, Caroline Graf.
25 PROSPECTIVE JUROR NO. 11-0940: Here.

1 THE CLERK: 11-0999, Janelle Reeves.
2 PROSPECTIVE JUROR NO. 11-0999: Here.
3 THE CLERK: 11-1035, Pamela Chong.
4 PROSPECTIVE JUROR NO. 11-1035: Here.
5 THE CLERK: Phillips-Chong. I'm sorry.
6 11-1047, Glenn Krieger.
7 PROSPECTIVE JUROR NO. 11-1047: Here.
8 THE CLERK: 11-1125, Michael Kaba.
9 PROSPECTIVE JUROR NO. 11-1125: Here.
10 THE CLERK: 11-1127, Gregg Stephens.
11 PROSPECTIVE JUROR NO. 11-1127: Here.
12 THE CLERK: 11-1155, Emilie Mosqueda.
13 PROSPECTIVE JUROR NO. 11-1155: Here.
14 THE CLERK: 11-1164, Kimberly Flores.
15 PROSPECTIVE JUROR NO. 11-1164: Here.
16 THE CLERK: 11-1186, Ashley Vandevanter.
17 PROSPECTIVE JUROR NO. 11-1186: Here.
18 THE CLERK: 11-1200, April Hannewald.
19 PROSPECTIVE JUROR NO. 11-1200: Here.
20 THE CLERK: 11-1207, Hani Noshi.
21 PROSPECTIVE JUROR NO. 11-1207: Here.
22 THE CLERK: 11-1229, Jaymi Johnson.
23 PROSPECTIVE JUROR NO. 11-1229: Here.
24 THE CLERK: 11-1246, Brian Stokes.
25 PROSPECTIVE JUROR NO. 11-1246: Here.

1 THE CLERK: 11-1255, Heidi Wooters.
2 PROSPECTIVE JUROR NO. 11-1255: Here.
3 THE CLERK: 11-1256, Robert Summerfield.
4 PROSPECTIVE JUROR NO. 11-1256: Here.
5 THE CLERK: 11-1268, Katherine Beswick.
6 PROSPECTIVE JUROR NO. 11-1268: Here.
7 THE CLERK: 11-1278, Elizabeth Mundo.
8 PROSPECTIVE JUROR NO. 11-1278: Here.
9 THE CLERK: 11-1293, Kim Schell.
10 PROSPECTIVE JUROR NO. 11-1293: Here.
11 THE CLERK: 11-1296, Alan Castle.
12 PROSPECTIVE JUROR NO. 11-1296: Here.
13 THE CLERK: 11-1297, Anna Campbell.
14 PROSPECTIVE JUROR NO. 11-1297: Here.
15 THE CLERK: 11-1314, Pragnit Thakor.
16 PROSPECTIVE JUROR NO. 11-1314: Here.
17 THE CLERK: 11-1328, Sarah Oelke.
18 PROSPECTIVE JUROR NO. 11-1328: Here.
19 THE CLERK: 11-1336, E. Lemons.
20 PROSPECTIVE JUROR NO. 11-1336: Here.
21 THE CLERK: 11-1349, Mohamed Hosain.
22 THE COURT: He was?
23 THE CLERK: Uh-huh.
24 THE COURT: Okay. So --
25 THE CLERK: I'll just put him in.

1 11-1351, Kenneth Prince.
2 PROSPECTIVE JUROR NO. 11-1351: Here.
3 THE CLERK: 11-1358, Adam Elliott.
4 PROSPECTIVE JUROR NO. 11-1358: Here.
5 THE CLERK: 11-1373, Chante Webb.
6 PROSPECTIVE JUROR NO. 11-1373: Here.
7 THE CLERK: 11-1385, Stephanie Swann.
8 PROSPECTIVE JUROR NO. 11-1385: Here.
9 THE CLERK: 11-1396, Nichole Bibilone.
10 PROSPECTIVE JUROR NO. 11-1396: Here.
11 THE CLERK: 11-1411, Priscilla Hatch.
12 PROSPECTIVE JUROR NO. 11-1411: Here.
13 THE CLERK: 11-1416, Randall Nitta.
14 PROSPECTIVE JUROR NO. 11-1416: Here.
15 THE CLERK: 11-1430, Sara Smith.
16 PROSPECTIVE JUROR NO. 11-1430: Here.
17 THE CLERK: 11-1431, Analie Lacuesta.
18 PROSPECTIVE JUROR NO. 11-1431: Here.
19 THE CLERK: 11-1457, Edward Nespo.
20 PROSPECTIVE JUROR NO. 11-1457: Here.
21 THE CLERK: 11-1468, Cynthia Burdg.
22 PROSPECTIVE JUROR NO. 11-1468: Here.
23 THE CLERK: 11-1474, Monica Flores-Woods.
24 PROSPECTIVE JUROR NO. 11-1474: Here.
25 THE CLERK: 11-1477, Maria Dungca.

1 PROSPECTIVE JUROR NO. 11-1477: Here.
2 THE CLERK: 11-1498, Craig Soucy.
3 PROSPECTIVE JUROR NO. 11-1498: Here, ma'am.
4 THE CLERK: 12-0005, Kathy Maxfield.
5 PROSPECTIVE JUROR NO. 12-0005: Here.
6 THE CLERK: 12-0006, Nancy McLouth.
7 PROSPECTIVE JUROR NO. 12-0006: Here.
8 THE CLERK: 12-0013, Arthur Gil.
9 PROSPECTIVE JUROR NO. 12-0013: Here.
10 THE CLERK: 12-0017, Kelly McCarthy.
11 PROSPECTIVE JUROR NO. 12-0017: Here.
12 THE CLERK: 12-0018, Cora Blakey.
13 PROSPECTIVE JUROR NO. 12-0018: Here.
14 THE CLERK: 12-0022, Marie Heurta.
15 PROSPECTIVE JUROR NO. 12-0022: Here.
16 THE CLERK: 12-0038, Ed Hall.
17 PROSPECTIVE JUROR NO. 12-0038: Here.
18 THE CLERK: 12-0040, Pamela Obeslo.
19 PROSPECTIVE JUROR NO. 12-0040: Here.
20 THE CLERK: 12-0052, Dae Chang.
21 PROSPECTIVE JUROR NO. 12-0052: Here.
22 THE CLERK: 12-0054, Cynthia Blank.
23 PROSPECTIVE JUROR NO. 12-0054: Here.
24 THE CLERK: 12-0056, Victor Hospina.
25 PROSPECTIVE JUROR NO. 12-0056: Here.

1 THE CLERK: 12-0096, Terry Ormond.

2 PROSPECTIVE JUROR NO. 12-0096: Here.

3 THE CLERK: 12-0106, Wendy LaCrosse.

4 PROSPECTIVE JUROR NO. 12-0106: Here.

5 THE CLERK: 12-0108, Maria Valdez-Parra.

6 12-0108?

7 12-0112, Roemello Brandon?

8 12-0115, Bradley Ellington?

9 Something must be wrong.

10 12-0118, Elisabeta Lovas-Clem?

11 So the last person that said they were here
12 is Wendy LaCrosse; right?

13 PROSPECTIVE JUROR NO. 12-0106: Yes. I was
14 the last person in the back of my line as well.

15 THE CLERK: Okay. So that's where we got.

16 I think we're good now, Your Honor. I don't
17 think they brought those other people up.

18 THE COURT: Okay. Very good.

19 Counsel, you will please approach.

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

22 THE COURT: All right. Is there anyone
23 present whose name was not called?

24 Okay. Do the parties stipulate to the
25 presence of the jurors?

1 MR. KEMP: Yes, Your Honor.

2 MR. ROBERTS: Yes, Your Honor.

3 THE COURT: All right. Very good.

4 Let's see. We're now going to begin or
5 continue the jury selection process, and that's
6 conducted under oath. So madam clerk is going to swear
7 you in now. Please raise your right hand.

8 THE CLERK: Please stand. You do solemnly
9 swear that you will well and truly answer such
10 questions that may be put to you touching upon your
11 qualifications as jurors in the case at issue, so help
12 you God?

13 IN UNISON: I do.

14 THE CLERK: Thank you.

15 THE COURT: All right. I have already asked
16 some of you this question, but I'm asking this for
17 everyone who's just come in or if someone remembers
18 anything, please raise your hand.

19 Is there anyone here -- in order to qualify
20 as a juror, you must be a citizen of the United States.
21 Please raise your hand if you are not a citizen of the
22 United States.

23 Okay. No hands. I show no hands.

24 All right. Also to qualify as a juror, an
25 individual cannot be convicted -- a convicted felon

1 whose rights have not been restored.

2 Please raise your hand if you have ever been
3 convicted of a felony and have not had your rights
4 restored.

5 Okay. I show no hands.

6 All right. So in a -- in this trial, we're
7 going to have eight jurors and we're going to have six
8 alternates. And all have the same responsibility to
9 listen, to review, to pay attention. It's very, very
10 important, and it's a duty should you be selected and
11 now that you are here and you're under oath. Okay?
12 Because the questions, some of them you'll find I have
13 to ask over and over again, but it's how the process
14 works.

15 So the eight that end up being the actual
16 jurors will be deliberating, but the alternates, in my
17 experience in trial as an attorney and as a judge, many
18 times we -- something may happen, and the alternates
19 need to be up to speed and know everything that the
20 jurors who are deliberating know. So it's very
21 important that everyone here listen carefully. Okay?
22 And during the trial.

23 All right. The attorneys, the parties, and I
24 are all very concerned with having this matter tried by
25 a jury composed of jurors who are completely

1 open-minded, neutral, objective, and unbiased in their
2 thinking. To accomplish this result, I will first ask
3 you some general questions, and then I will allow the
4 attorneys to follow up and ask additional questions to
5 determine your ability to be fair and impartial jurors
6 in this case.

7 You may feel that some of the questions are
8 quite personal. And it is not our intention to
9 embarrass you or intrude into your personal life.
10 However, it is very important that both sides are able
11 to ask you questions so that they can make an
12 intelligent decision as to your ability to serve fairly
13 and impartially in this case.

14 And all of us, we all have personal prejudice
15 and biases based on our educational background, our
16 political affiliation, our religious experiences, our
17 financial situations, and -- and other aspects. The
18 fact that you have a certain bias or prejudice may mean
19 that you are not able to participate in this particular
20 jury, but such bias or prejudice may not disqualify you
21 from sitting as a juror in a different case.

22 Please do not hide anything in responding to
23 any of the questions that are asked that might indicate
24 a bias or prejudice of any sort. Please be completely
25 honest and forthright. It really is very important.

1 If you fail to answer truthfully or if you hide or
2 withhold anything that may affect your qualifications
3 that may tend to contaminate your verdict and cause
4 problems for all involved, it's a tremendous problem.

5 Try not to be offended by any of the
6 questions that are asked. And if you have some thought
7 in the back of your mind anything that you think may be
8 relevant to the questions that are asked, please err on
9 the side of disclosing it and letting us know.

10 I'm going to start with the general
11 examination --

12 Oh, we'd like to seat the next two jurors,
13 please.

14 THE CLERK: Yes, Your Honor.

15 THE COURT: Have you sat them yet?

16 Okay. Please seat them.

17 THE CLERK: Badge No. 11-1246, Brian Stokes,
18 in Seat 14.

19 And Badge No. 11-1255, Heidi Wooters, in
20 Seat 23.

21 THE COURT: So I am going to start with the
22 examination of the jurors to my right, the two that
23 have just been seated specifically.

24 Those are -- all of you who are in the
25 gallery should listen carefully to the questions that

1 are asked, as you may be called upon to take the place
2 of the jurors who are currently in the jury box. If
3 that occurs, I will want you to be able to respond to
4 all of the questions that were previously asked.

5 During the course of selecting a jury, the
6 attorneys for both sides will have the right to ask
7 that a particular person not serve as a juror. These
8 are called challenges. We can have challenges for
9 cause or peremptory challenges. Please do not be
10 offended if you are excused by any one of the challenge
11 procedures. The attorneys for both sides are simply
12 trying to do their best to get what they believe would
13 be the most fair and unbiased jury for this case.

14 I'm going to tell you and not read off the
15 script that I think it's really important that we have
16 the jury process in our country. I honestly think it
17 distinguishes -- it's one of the most vital aspects of
18 our great country that distinguishes us from many other
19 countries in this world. The ability to be judged by a
20 peer of jurors that are unfair and impartial is a
21 tremendous right that we have. Our forefathers fought
22 for this, and I want you to take your jury selection
23 and your being here very, very seriously.

24 It goes on and on and talks about -- you
25 know, the bottom line is, I understand that everybody

1 has a life that's very busy and, you know, sometimes
2 hardships and responsibilities and a lot of stress,
3 financial issues, medical issues, everything else.
4 But, honestly, aside from being in the armed forces,
5 this is one of the only other ways to serve our
6 country.

7 And it's really -- I -- I hope that you
8 embrace it and don't look at it as a burden but as a --
9 as a duty and as something very important to give back
10 as citizens of our country and understand what a
11 privilege -- privilege it is to serve on a jury. And I
12 really mean that. I mean everything I'm saying to you,
13 but I mean that from my heart. I think that this
14 distinguishes us and makes our country so much greater.

15 So without people such as yourselves who are
16 willing to give of your time and serve as jurors in
17 cases like this, it would be a very different
18 civilization that we live in. So this is a service. I
19 hope you take the opportunity to perform it if you're
20 chosen. And it's your duty. It's your civic duty.

21 And I also want to thank you all for taking
22 the time and filling out the jury questionnaire. I
23 know it is -- you know, it was a fairly significant
24 questionnaire in length, but those questions are very
25 important for the parties and for the Court to

1 understand more details about your backgrounds and your
2 thoughts on different areas. So thank you for that.

3 So this case is estimated to last four weeks.
4 And I indicated -- I'll let you know that on Monday,
5 Wednesday, and Fridays we start at 9:30 and go through
6 pretty close to 5:00. Perhaps some days we may have to
7 go a little bit later on those days. We try to stay as
8 close to 5:00 as possible. And on Tuesdays and
9 Thursdays we will either be starting at 1:00 p.m. or
10 earlier, depending on my morning calendar, which I will
11 try to perform thoroughly but expediently.

12 So that is our schedule. So that four weeks
13 sounds like a long time. It may sound like an
14 unreasonable request, but so you know, we have
15 construction defect trials that really do take up to
16 six months sometimes. And -- and the jurors must be
17 here pretty much every day for six months. So four
18 weeks is -- you know, pales in comparison to the six
19 months in my mind.

20 And if you're not picked for this jury, your
21 service may still be required in another trial. There
22 may be events in your life that simply make it
23 impossible for you to serve during this week. Possibly
24 you have nonrefundable tickets or a prearranged family
25 get-together, such as a marriage. Jury services does

1 not know about that, so that's -- and if you didn't put
2 it in your questionnaire, I'm not inviting you to do
3 that, but should you have something, the Court would
4 require confirmation of everything.

5 And -- let's see. I understand that this is
6 a difficult economy for most of us, not all of us. And
7 95 percent, or a very high percent, of you may consider
8 it a financial hardship to serve on a jury for a period
9 of time, a significant hardship. That is not usually a
10 basis for disqualification for jury services.
11 Consequently, if you want to tell the Court or discuss
12 how that's going to -- to lead you into a financial
13 struggle, I would be happy to listen, but it will not
14 result necessarily in your being excused from jury
15 duty.

16 If I ask a question that elicits a response
17 from you, you need to raise your hand, and, first, you
18 need to give us your badge number and then your name
19 every time that you are going to be answering a
20 question. The -- the court reporter needs a record of
21 everything. So you need to speak clearly and into the
22 mic.

23 So question to everyone out here, and I've
24 already asked it of those of you who are seated.

25 Is there anyone who has difficulty

1 understanding the English language?

2 Yes? Can you please pass the mic?

3 PROSPECTIVE JUROR NO. 12-0022: Yeah, my name
4 is Maria Huerta.

5 THE COURT: I'm sorry?

6 PROSPECTIVE JUROR NO. 12-0022: Badge No. 22,
7 and I do -- I can speak English, but I don't understand
8 everything.

9 THE COURT: Okay. Ms. -- is it Huerta?

10 PROSPECTIVE JUROR NO. 12-0022: Yeah.

11 THE COURT: Ms. Huerta, how long have you
12 been in the United States?

13 PROSPECTIVE JUROR NO. 12-0022: Like, 30
14 years.

15 THE COURT: 30 years?

16 PROSPECTIVE JUROR NO. 12-0022: Uh-huh.

17 THE COURT: And in your work do you speak
18 English?

19 PROSPECTIVE JUROR NO. 12-0022: Not really.
20 I mean, I do speak English, but not a lot, mostly in
21 Spanish.

22 THE COURT: Okay. But it sounds like you --
23 you understand everything I'm saying to you.

24 PROSPECTIVE JUROR NO. 12-0022: I do. But, I
25 mean, if -- if -- like in the questionnaire, I mean, I

1 wasn't -- I cannot answer all the questions. I don't
2 know if you noticed that.

3 THE COURT: Okay. All right. Thank you very
4 much.

5 All right. Is there anyone else who does --
6 has difficulty understanding the English language?

7 Yes? I see another hand.

8 Your badge number and your name, please?

9 PROSPECTIVE JUROR NO. 12-0052: My --

10 THE COURT: Louder.

11 PROSPECTIVE JUROR NO. 12-0052: My number is
12 1252. My name is Dae Chang.

13 THE COURT: Yes.

14 PROSPECTIVE JUROR NO. 12-0052: I cannot
15 speak English well. I don't understand everything.

16 THE COURT: You don't?

17 PROSPECTIVE JUROR NO. 12-0052: Yeah.

18 THE COURT: Okay. Have you -- how long have
19 you been here in the United States?

20 PROSPECTIVE JUROR NO. 12-0052: Around 15
21 years.

22 THE COURT: Okay. Have you ever studied
23 English?

24 PROSPECTIVE JUROR NO. 12-0052: A little bit.

25 THE COURT: What does that mean?

1 PROSPECTIVE JUROR NO. 12-0052: I'm not
2 really go to school. As an international student, it's
3 a little bit understand, but it's not clearly.

4 THE COURT: Were your courses in English?

5 PROSPECTIVE JUROR NO. 12-0052: Excuse me?

6 THE COURT: Were your courses in English?

7 PROSPECTIVE JUROR NO. 12-0052: No.

8 THE COURT: Okay. What were you studying?

9 PROSPECTIVE JUROR NO. 12-0052: Skin care
10 (inaudible).

11 THE COURT: All right. Do you speak English
12 in your work on a daily basis?

13 PROSPECTIVE JUROR NO. 12-0052: (No audible
14 response.)

15 THE COURT: Do you use English at work?

16 PROSPECTIVE JUROR NO. 12-0052: A little bit.

17 THE COURT: A little bit?

18 PROSPECTIVE JUROR NO. 12-0052: Most of my
19 country people. Sorry.

20 THE COURT: So what -- speak -- what language
21 is your --

22 PROSPECTIVE JUROR NO. 12-0052: Korean.

23 THE COURT: Korean. Thank you very much.

24 Okay. Does anyone else have any difficulty
25 understanding the English language?

1 Okay. I see no other hands.

2 All right. Are any of you that have come
3 today, even those that have been here before, recognize
4 either of the attorneys -- any of the attorneys in
5 this -- involved in this case? This goes to the two
6 jurors that have just been seated as well.

7 Okay. Are any of you acquainted with or
8 recognize the names of any of the witnesses who were
9 identified in the questionnaire?

10 Okay. I show one hand.

11 PROSPECTIVE JUROR NO. 11-1255: Heidi
12 Wooters, No. 11-1255.

13 THE COURT: Okay. Ms. Wooters.

14 PROSPECTIVE JUROR NO. 11-1255: I recognize
15 names; I don't know that I know any of them. I have
16 plenty of students -- I teach at a private school, and
17 so these are the -- the types of people that send their
18 kids to my school. So I know last names, but I'm not
19 sure that I know anybody.

20 THE COURT: What school?

21 PROSPECTIVE JUROR NO. 11-1255: Las Vegas Day
22 School.

23 THE COURT: Very good school. Okay.

24 PROSPECTIVE JUROR NO. 11-1255: Thank you.

25 THE COURT: But are you -- are you personally

1 familiar -- you've heard some of the names, but are you
2 personally familiar?

3 PROSPECTIVE JUROR NO. 11-1255: No.

4 THE COURT: Okay. Thank you.

5 And, oh, there's another hand. Okay.

6 PROSPECTIVE JUROR NO. 12-0005: Your Honor --

7 oh, I'm sorry. It's Badge No. 12-0005, Kathy Maxfield.

8 Took me a minute to remember, 'cause it's
9 been a while. And the only recognition I had were some
10 medical professionals that I was a patient at their
11 office. And it was Leslie Jacobs, and the practice was
12 Jacobs, Parvin Modaber, and then another name was added
13 on. But I was their patient for about 20 years.

14 THE COURT: Okay. Thank you very much. I
15 believe there's another hand over here.

16 PROSPECTIVE JUROR NO. 11-1328: Badge --
17 Badge 11-1328. Sarah Oelke. The doctor, Leslie
18 Jacobs, is my M.D.

19 THE COURT: Okay.

20 All right. Does anyone else recognize any of
21 the witnesses in this that were in your questionnaire?

22 All right. Are any of you acquainted with or
23 recognize any of the parties in the case?

24 PROSPECTIVE JUROR NO. 11-1256:

25 Badge No. 11-1256.

1 THE COURT: Your name, please?

2 PROSPECTIVE JUROR NO. 11-1256: Robert
3 Summerfield.

4 THE COURT: Mr. Summerfield.

5 PROSPECTIVE JUROR NO. 11-1256: I recognize
6 MCI, Motor Coach. About -- what is it? -- 12, 13 years
7 ago now, when I worked for Ohio State University, I was
8 in charge of procurement of buses. And we did business
9 with MCI as a part of that work. I haven't had
10 anything to deal with the company since then, and I
11 don't know the individual representing the company, but
12 I'm still technically on a mailing list from MCI and
13 occasionally get an e-mail about buses for sale, so ...

14 THE COURT: Okay. Thank you very much.

15 All right. Is there anyone else that
16 recognizes any of the parties in the case? Please
17 raise your hand.

18 Okay. Your badge number again and your name?

19 PROSPECTIVE JUROR NO. 12-0005: Badge
20 number --

21 THE COURT: Speak louder, please.

22 PROSPECTIVE JUROR NO. 12-0005: I can't get
23 it to work. How does it work?

24 THE COURT: Did we run out of battery?

25 PROSPECTIVE JUROR NO. 12-0005: There we go.

1 I'm sorry, Your Honor.

2 Badge No. 12-0005, Kathy Maxfield.

3 I did recognize the -- the plaintiffs' names
4 only because I followed it in the newspaper and the
5 news reports, but I didn't know if that -- you said to
6 be thorough rather than --

7 THE COURT: Yes, absolutely.

8 PROSPECTIVE JUROR NO. 12-0005: And I did
9 recognize that and then the follow-up on the mother
10 having passed away afterward.

11 THE COURT: Okay. Thank you very much.

12 Okay. Anyone else?

13 Okay. I show no other hands.

14 Are there of you in any way obligated to any
15 of the parties or the lawyers in this case, or any of
16 them obligated in any way to any of you?

17 Okay. I show no hands.

18 Do any of you know any of the other members
19 of the jury panel?

20 Okay. One hand. Far -- to your far left,
21 Marshal Padilla.

22 Your badge number and your name.

23 PROSPECTIVE JUROR NO. 11-1373: 11-1373,
24 Chante Webb.

25 THE COURT: Okay. Ms. Webb?

1 PROSPECTIVE JUROR NO. 11-1373: I know
2 Ms. Sherry Hill [sic]. She picks up a student from my
3 after-school program. I work for City of Las Vegas
4 Dolittle Community Center, zone program.

5 And I also know Ms. Sandy Anderson.

6 THE COURT: Okay. All right. So you know
7 Ms. Anderson?

8 PROSPECTIVE JUROR NO. 11-1373: She also
9 picks up her grandson from the after-school program.

10 THE COURT: And the other person?

11 PROSPECTIVE JUROR NO. 11-1373: Ms. Sherry
12 Hill -- Ms. Sherry Hall.

13 THE COURT: Ms. Hall? Okay.

14 All right. Thank you very much.

15 All right. So you've answered a little bit
16 of this. Ms. Webb, does -- I see no other -- oh, are
17 there other hands?

18 Oh, I'm sorry. I missed that.

19 Hello. Can you please pass the mic.

20 Your badge number and name, please.

21 PROSPECTIVE JUROR NO. 11-1296: 11-1296, Alan
22 Castle.

23 THE COURT: Speak a little bit louder,
24 please.

25 PROSPECTIVE JUROR NO. 11-1296: Can you hear

1 me?

2 THE COURT: I can hear you now, yes.

3 PROSPECTIVE JUROR NO. 11-1296: I know

4 Mr. Kaba, who's the husband of a coworker.

5 THE COURT: I'm sorry?

6 PROSPECTIVE JUROR NO. 11-1296: He's -- he's

7 the husband of a coworker of mine.

8 THE COURT: Okay. And I believe we've met

9 before?

10 PROSPECTIVE JUROR NO. 11-1296: I know.

11 Yeah, I know you.

12 THE COURT: Yes.

13 PROSPECTIVE JUROR NO. 11-1296: I know the

14 attorneys on both sides of the -- plaintiff and the

15 defendant.

16 THE COURT: Thank you.

17 All right. So anyone else?

18 So the next question is specifically -- all

19 right. I think I already asked it. So you -- does

20 anyone else know -- think you know me or any members of

21 the Department 14 staff that I identified?

22 Okay. I show no other hands. All right.

23 All right. Understanding that this should --

24 this trial should last another four weeks and based on

25 the schedule I just discussed with you, is there anyone

1 who feels that serving for that period of time would
2 present a physical or medical hardship?

3 Okay. I have one hand.

4 Yes. Your badge number, please, and your
5 name?

6 PROSPECTIVE JUROR NO. 12-0018: My badge
7 number is 12-00018. My name is Cora -- Cora Blakey.

8 Ma'am, I do have some disabilities. And I
9 have rheumatoid arthritis, and I have a -- several
10 disks in my back that are messed up which prevents me
11 from sitting for long periods of time or walking for
12 distances.

13 THE COURT: Okay. Thank you for your further
14 information, Ms. Blakey.

15 Is there anyone else that the four -- that
16 being here for four weeks may present a physical or
17 medical hardship?

18 Yes, sir. Your badge number and name,
19 please?

20 Let's just keep the mic on.

21 THE MARSHAL: We need a new battery.

22 THE COURT: We need a new battery? Okay.

23 I believe they may be in the drawer in that
24 desk.

25 How we doing? Okay?

1 THE MARSHAL: Yes, ma'am.

2 THE COURT: Very good. Thank you, Marshal.

3 All right, sir. Your badge and your name,
4 please?

5 PROSPECTIVE JUROR NO. 11-1336: Badge number
6 is 11-1336.

7 THE COURT: Okay. And your name?

8 PROSPECTIVE JUROR NO. 11-1336: E. Lemons.

9 THE COURT: Mr. Lemons. All right. And
10 you -- will you please describe the physical or medical
11 hardship that you may have.

12 PROSPECTIVE JUROR NO. 11-1336: I too have a
13 disk problem in my back. It's called degenerative
14 arthritis. And I do have a doctor's appointment
15 scheduled for the 5th of March which took me a while to
16 get. So I don't know if that counts.

17 THE COURT: Okay. Thank you very much for
18 the information. All right.

19 THE MARSHAL: We have another one.

20 THE COURT: We have another one? Okay.

21 PROSPECTIVE JUROR NO. 11-1431: Badge
22 No. 11-1431, Analie Lacuesta.

23 I too -- I am under care for migraines
24 because I do, every three months, Botox -- 31 Botox
25 shots to help with the pain. And I just recently --

1 just -- the second month of starting a acupunctures to
2 help kind of manage the migraines. As a matter of
3 fact, I still have some of the pins that were actually
4 on my ears right now to help with the pain.

5 THE COURT: Okay. And so -- so you're in
6 treatment -- Botox treatment for migraines and also
7 acupuncture; is that correct?

8 PROSPECTIVE JUROR NO. 11-1431: Yes, Your
9 Honor.

10 THE COURT: Okay. So does having the Botox
11 injections or the acupuncture make you unable to sit
12 through the trial?

13 PROSPECTIVE JUROR NO. 11-1431: I have been
14 on the Botox treatment the last three and a half years,
15 but since it's been that long period of time, that my
16 body actually kind of used to the medication, that we
17 had started a new therapy, which is we incorporate the
18 acupuncture to help with managing it.

19 And, as a matter of fact, as I'm sitting here
20 and talking with you, I am having migraine, not because
21 of you guys but just because having migraine.

22 THE COURT: I'm sorry to hear that. Okay.
23 Thank you.

24 Yes. Your badge number and your name,
25 please.

1 PROSPECTIVE JUROR NO. 12-0054: Badge
2 12-0054, Cynthia Blank.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 12-0054: I'm currently
5 undergoing --

6 THE COURT: I would like you to speak louder,
7 please.

8 PROSPECTIVE JUROR NO. 12-0054: I'm currently
9 undergoing treatment for dry eyes in order to get my
10 corneas unscratched so I can have cataract surgery.
11 And if I interrupt that treatment, it will just delay
12 it.

13 THE COURT: What treatment -- what treatment
14 are you having?

15 PROSPECTIVE JUROR NO. 12-0054: I am getting
16 what's called Prokera lenses put on my eyes. And when
17 I have one on, I can't drive.

18 THE COURT: You can't what?

19 PROSPECTIVE JUROR NO. 12-0054: Drive.

20 THE COURT: Can someone else drive you?

21 PROSPECTIVE JUROR NO. 12-0054: No.

22 THE COURT: Okay. Thank you. When are you
23 having these lenses put on?

24 PROSPECTIVE JUROR NO. 12-0054: Well, I
25 tried -- I was going to make another appointment for

1 this week, but since I was on call all last week, I did
2 not make it. But my ophthalmologist would like for me
3 to continue it on a regular basis.

4 THE COURT: Okay. That's a week-long
5 treatment; correct?

6 PROSPECTIVE JUROR NO. 12-0054: I have one
7 done -- one every week, yeah.

8 THE COURT: Okay. Thank you.

9 Okay. I see no other hands.

10 The next question is does anyone, for some
11 other reason, feel that serving on this jury would
12 present them with a severe or undue hardship?

13 Okay. Please pass the mic to your far right.

14 PROSPECTIVE JUROR NO. 12-0056: Good
15 afternoon. My name is Victor Hospina, Badge
16 No. 12-0056.

17 And I was placed on holiday for six days of
18 jury duty, but I'm a part-time employee since 2009 at a
19 casino. And I'm off some days. And my availability is
20 for all three shifts, 2:00 to 10:00 a.m., 10:00 to
21 6:00 p.m., and any -- anytime in the afternoon. So
22 it's very hard for me to serve the jury duty and --
23 'cause I don't know what day I can serve.

24 And, today, I was lucky to be off to assist
25 with jury duty, but any day of the week change my

1 schedule. Every day, I have different shift. Every
2 day, I have different days off.

3 So I don't know how I can be -- I mean, I
4 don't mind to help, but it's very hard for me.

5 THE COURT: Where do you work, sir?

6 PROSPECTIVE JUROR NO. 12-0056: I work at
7 ARIA Resort & Casino since 2009. I'm a part-time
8 employee since 2009.

9 THE COURT: What capacity do you work in?

10 PROSPECTIVE JUROR NO. 12-0056: I'm sorry --
11 excuse me?

12 THE COURT: What area -- what is your work?

13 PROSPECTIVE JUROR NO. 12-0056: I'm a
14 bartender.

15 THE COURT: Bartender. Okay. Thank you.

16 Are there any other hands, anyone that would
17 endure -- it would present a severe or undue hardship
18 to serve on this jury?

19 Yes? Your badge number and your name,
20 please.

21 PROSPECTIVE JUROR NO. 11-1477: My badge
22 number is 11-1477. My name is Maria Dungca. I'm the
23 only one working full-time in our family. And -- and
24 I -- I don't think I -- I can afford to take off.

25 THE COURT: Okay. Does anyone else work in

1 your family?

2 PROSPECTIVE JUROR NO. 11-1477: My husband.
3 He works part-time.

4 THE COURT: And you support yourself and your
5 husband, or do you support one another?

6 PROSPECTIVE JUROR NO. 11-1477: My kids too.

7 THE COURT: How many children?

8 PROSPECTIVE JUROR NO. 11-1477: They're in
9 college.

10 THE COURT: In college? Okay.

11 And what area of work -- where are you
12 employed?

13 PROSPECTIVE JUROR NO. 11-1477: El Cortez.

14 THE COURT: And in what capacity?

15 PROSPECTIVE JUROR NO. 11-1477: (No audible
16 response.)

17 THE COURT: What do you do at the El Cortez?

18 PROSPECTIVE JUROR NO. 11-1477: Slots floor
19 person.

20 THE COURT: I'm sorry? Slots?

21 PROSPECTIVE JUROR NO. 11-1477: Slots floor
22 person.

23 THE COURT: Okay. Thank you.

24 All right. Anyone else?

25 PROSPECTIVE JUROR NO. 12-0018: My badge

1 number is 12-0018, Cora Blakey.

2 Ma'am, I had to retire -- do a medical
3 retirement from my job, and I have no -- just my
4 retirement as income. But my main issue is my little
5 one that's in second grade in school, I have absolutely
6 no one to keep her or to watch her if I was on jury
7 duty. And she is somewhat of a special needs child.
8 And even if there -- I could luck out and find someone,
9 I don't have the means to pay someone for babysitting
10 or anything like that.

11 And I do have to pick her -- as a matter of
12 fact, I'm stressing because I didn't know if we were
13 going to be here long today to where I would be able to
14 get her from school, to pick her up.

15 THE COURT: Do you have family that could
16 help?

17 PROSPECTIVE JUROR NO. 12-0018: Not anyone
18 that can actually get her and keep her, no. I'm the
19 only one.

20 THE COURT: Any neighbors?

21 PROSPECTIVE JUROR NO. 12-0018: No, no.

22 THE COURT: Is there any program through her
23 school?

24 PROSPECTIVE JUROR NO. 12-0018: Yeah, you
25 have to pay for it. That's my problem. I don't have

1 anything -- I have no extra income.

2 THE COURT: Okay. Thank you. I think I saw
3 a hand to your left, Marshal.

4 PROSPECTIVE JUROR NO. 11-1314: Yeah. Badge
5 No. 11-1314. I have a commission job where I don't
6 show up, I don't get paid.

7 THE COURT: Your name, please.

8 PROSPECTIVE JUROR NO. 11-1314: Oh, name is
9 Pragnit Thakor. So, basically, if I don't show up, I
10 don't get paid. And being -- as being four weeks long,
11 it's going to honestly make me late on my mortgage
12 payment and then I'm going to have late fees. Not just
13 on my mortgage but on my other bills. So I see my
14 payments going up.

15 THE COURT: What area of work are you in,
16 sir?

17 PROSPECTIVE JUROR NO. 11-1314: I'm a driver
18 for a cab company in town.

19 THE COURT: Okay. Thank you.

20 Yes? I show a hand to your right, Marshal
21 Padilla.

22 PROSPECTIVE JUROR NO. 12-0096: Hello. My
23 name is Terry Ormond, Badge No. 12-0096. I'm the only
24 one that's in my home. I don't have any help, no
25 support. I finally became full-time 9/18 of last year.

1 I have no sick days. I have no vacation. I don't have
2 anything. And I didn't know how long it was going to
3 be today to be here, and I'm already missing work as it
4 is because I'm already supposed to be there.

5 THE COURT: Where do you work, sir?

6 PROSPECTIVE JUROR NO. 12-0096: USF Reddaway.
7 I'm a dock worker.

8 THE COURT: I'm sorry. Repeat that.

9 PROSPECTIVE JUROR NO. 12-0096: USF Reddaway.
10 I'm a dock worker.

11 THE COURT: Okay. I see no other hands.

12 All right. I'm going to ask the specific
13 questions to the jurors that were just seated here now.
14 Okay?

15 Let's start with -- is it Ms. Wooters?

16 PROSPECTIVE JUROR NO. 11-1255: Wooters.

17 THE COURT: Ms. Wooters. Okay. Ms. Wooters,
18 have you ever been involved in a car accident?

19 PROSPECTIVE JUROR NO. 11-1255: Yes, ma'am.

20 THE COURT: Okay. And please describe what
21 type of car accident or any type of vehicular accident
22 you had injuries.

23 PROSPECTIVE JUROR NO. 11-1255: When -- when
24 I was 16, I was involved in a head-on collision in
25 which I was the only survivor. I was the driver of one

1 of the vehicles. It was -- we lived in the country,
2 and I -- it was spring, and the weather had heated up.
3 So I went to turn on the air-conditioner in the
4 vehicle, and it blew a bunch of stuff at me. At the
5 time I thought it was smoke, so I reached down to shut
6 it off and crossed the centerline and head-onned into
7 an oncoming vehicle. And there were two fatalities.
8 No lawsuit.

9 THE COURT: No lawsuit. Okay.

10 All right. As a juror in -- let's see. Let
11 me ask the same question of juror -- is it Ms. Noshi?

12 I'm sorry. Your name, sir?

13 PROSPECTIVE JUROR NO. 11-1246: Brian Stokes.

14 THE COURT: Brian Stokes.

15 PROSPECTIVE JUROR NO. 11-1246: 11-1246.

16 THE COURT: Mr. Stokes. That's right.
17 Mr. Stokes, have you ever been in an automobile
18 accident?

19 PROSPECTIVE JUROR NO. 11-1246: Just when I
20 was 14, 15, went off the road. I wasn't driving. A
21 friend of mine. No damage.

22 THE COURT: Were you injured?

23 PROSPECTIVE JUROR NO. 11-1246: No.

24 THE COURT: Okay. Very good.

25 All right. All right. So this is to both of

1 you. As jurors, you will be asked to listen to
2 witnesses, review evidence, and make a determination
3 based on the facts. You, the jury, would be -- are the
4 finder of facts, and the Court's job is to make sure
5 the trial is fair and to instruct you on the law that
6 you will apply to the facts.

7 Some of you may disagree with how some of our
8 laws are written. It would be a violation of a juror's
9 duty, however, if he or she tried to render a verdict
10 based upon what he or she believed the law to be if it
11 was different from the Court's instructions.

12 Do either of you feel that you would not be
13 able to follow all of the instructions of the Court on
14 the law, even if the instructions -- instructions
15 differ from your personal opinions or conceptions of
16 what the law ought to be?

17 That's a no from both of you. Okay.

18 Have either of you heard anything about this
19 case in the media, any type of media -- print,
20 television, internet?

21 Yes, Ms. Wooters.

22 PROSPECTIVE JUROR NO. 11-1255: I remember
23 hearing that somebody was hit by a bus by the Red Rock
24 about the time this happened. That's all I know about
25 it.

1 THE COURT: Okay. Thank you.

2 And Mr. Stokes? Have you heard of anything
3 about this in the media?

4 PROSPECTIVE JUROR NO. 11-1246: I would --
5 the same circumstances as hers. Just heard it on the
6 radio.

7 THE COURT: So -- okay. Thank you.

8 All right. Do either of you have such a
9 sympathy, prejudice, or bias relating to age, religion,
10 race, gender, or national origin that you feel would
11 affect your ability to be open-minded, fair, and
12 impartial jurors?

13 PROSPECTIVE JUROR NO. 11-1255: No.

14 THE COURT: No. Okay.

15 Do any of you believe that, for any other
16 reason, you would be unable to be fair and serve as
17 jurors in this particular case?

18 That's a no from both of you? Okay.

19 And then who has the mic? Mr. Stokes. Okay.

20 Mr. Stokes, how long have you lived in
21 Las Vegas?

22 PROSPECTIVE JUROR NO. 11-1246: 38 years.

23 THE COURT: Okay. And what area of work are
24 you in or what is your profession?

25 PROSPECTIVE JUROR NO. 11-1246: I'm a --

1 THE COURT: Speak into the mic, please.

2 PROSPECTIVE JUROR NO. 11-1246: I'm sorry.

3 I'm a heavy-truck mechanic for Federal Express.

4 THE COURT: Okay. And how long have you been
5 in that area?

6 PROSPECTIVE JUROR NO. 11-1246: 21 years at
7 FedEx.

8 THE COURT: Okay. In the same capacity?

9 PROSPECTIVE JUROR NO. 11-1246: Yes.

10 THE COURT: Okay. All right. And before
11 that?

12 PROSPECTIVE JUROR NO. 11-1246: I worked for
13 Hughes Aviation on Las Vegas Boulevard for 13 years.

14 THE COURT: And what did you do there?

15 PROSPECTIVE JUROR NO. 11-1246: I was a lead
16 supervisor, then manager for the ground support unit.

17 THE COURT: Okay. Are you married or do you
18 have a significant other?

19 PROSPECTIVE JUROR NO. 11-1246: I have a
20 significant other.

21 THE COURT: Okay. And what does your
22 significant other do?

23 PROSPECTIVE JUROR NO. 11-1246: She's a
24 payroll regional rep for ASIG.

25 THE COURT: How long has she done that?

1 PROSPECTIVE JUROR NO. 11-1246: 40-plus
2 years.

3 THE COURT: Okay. Have you been married in
4 the past?

5 PROSPECTIVE JUROR NO. 11-1246: Yes.
6 Divorced.

7 THE COURT: And what -- what is -- what does
8 your ex-spouse do?

9 PROSPECTIVE JUROR NO. 11-1246: I'm not sure.
10 She wasn't -- that was years ago.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 11-1246: So lost
13 touch.

14 THE COURT: Do you have children?

15 PROSPECTIVE JUROR NO. 11-1246: I have a son,
16 31 years old.

17 THE COURT: All right. And what does --
18 where is he employed or what area is he in?

19 PROSPECTIVE JUROR NO. 11-1246: He works for
20 an audiovisual company. He sets up convention shows.

21 THE COURT: Here in Las Vegas?

22 PROSPECTIVE JUROR NO. 11-1246: He travels
23 the country.

24 THE COURT: Okay. And what specifically does
25 he do?

1 PROSPECTIVE JUROR NO. 11-1246: He sets up
2 the matrix screens and drives the computers that drive
3 them.

4 THE COURT: Okay. Very good. Any other
5 children?

6 PROSPECTIVE JUROR NO. 11-1246: Just a
7 stepdaughter. Hers.

8 THE COURT: Yes.

9 PROSPECTIVE JUROR NO. 11-1246: She lives in
10 Maine. Married. Two children.

11 THE COURT: Has she worked in the past or --

12 PROSPECTIVE JUROR NO. 11-1246: She's a
13 physical therapist back there in Maine.

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

16 PROSPECTIVE JUROR NO. 11-1246: Yes.

17 THE COURT: Okay. Was the case a civil case
18 or a criminal case?

19 PROSPECTIVE JUROR NO. 11-1246: Civil and a
20 criminal.

21 THE COURT: Okay. Two. Or at least two.
22 Okay. Without telling us what the verdict was in the
23 civil case, did you reach a verdict?

24 PROSPECTIVE JUROR NO. 11-1246: Yes.

25 THE COURT: Okay. Were you the foreperson?

1 PROSPECTIVE JUROR NO. 11-1246: Yes.

2 THE COURT: Okay. And the criminal case,
3 without telling us what the verdict was in that case,
4 did you reach a verdict?

5 PROSPECTIVE JUROR NO. 11-1246: We did.

6 THE COURT: Okay. Were you the foreperson in
7 that case?

8 PROSPECTIVE JUROR NO. 11-1246: No.

9 THE COURT: Okay. Thank you very much. You
10 will please pass the mic to Ms. Wooters.

11 Ms. Wooters, how long have you lived in
12 Las Vegas area?

13 PROSPECTIVE JUROR NO. 11-1255: 27 years.

14 THE COURT: Okay. And before that?

15 PROSPECTIVE JUROR NO. 11-1255: Durango,
16 Colorado.

17 THE COURT: Okay. What area of work are you
18 in?

19 PROSPECTIVE JUROR NO. 11-1255: I'm a
20 teacher.

21 THE COURT: Okay. What area of teaching?

22 PROSPECTIVE JUROR NO. 11-1255: I teach
23 seventh and eighth grade math, pre-algebra, and
24 algebra 1.

25 THE COURT: Wow. How long have you been in

1 that area?

2 PROSPECTIVE JUROR NO. 11-1255: 34 years.

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

5 PROSPECTIVE JUROR NO. 11-1255: I have a
6 significant other.

7 THE COURT: Okay. And what area of work is
8 your significant other in?

9 PROSPECTIVE JUROR NO. 11-1255: He's
10 self-employed. He owns a barber shop, and he is a
11 personal driver.

12 THE COURT: Okay. How long has he been in
13 this area of work, the barber shop?

14 PROSPECTIVE JUROR NO. 11-1255: Barber shop,
15 less than a year.

16 THE COURT: Okay. And what about the
17 personal driving?

18 PROSPECTIVE JUROR NO. 11-1255: He has
19 been -- he drove for Frias, for Las Vegas Limos for
20 five years until he was released on medical discharge.
21 And he's been driving for his own personal clients for
22 the last year and a half.

23 THE COURT: Okay. What about before he
24 worked for Frias or for himself?

25 PROSPECTIVE JUROR NO. 11-1255: He --

1 THE COURT: Before.

2 PROSPECTIVE JUROR NO. 11-1255: -- worked in
3 retail as a manager, for someone in the Forum Shops
4 who's no longer there. I can't remember. Oh,
5 Christian Lacroix.

6 THE COURT: Oh, okay. All right. Do you
7 have children?

8 PROSPECTIVE JUROR NO. 11-1255: Yes, I do.

9 THE COURT: What ages?

10 PROSPECTIVE JUROR NO. 11-1255: 29 and 23.

11 THE COURT: Okay. What does your 29-year-old
12 do?

13 PROSPECTIVE JUROR NO. 11-1255: She is
14 licensed as a massage therapist, but she is currently a
15 housewife and mother of three young ones.

16 THE COURT: Has she ever been in any other
17 line of work?

18 PROSPECTIVE JUROR NO. 11-1255: She worked in
19 retail in high school and college.

20 THE COURT: Okay. Very good. And what about
21 your 23-year-old?

22 PROSPECTIVE JUROR NO. 11-1255: He is
23 employed for RevZilla. They are a motorcycle parts
24 distributor here in Las Vegas, and they have a
25 warehouse also in Philadelphia.

1 THE COURT: Okay. Is that -- has he been
2 employed in any other areas?

3 PROSPECTIVE JUROR NO. 11-1255: He worked in
4 food service for a Little Caesars in high school, and
5 he also worked for Best Buy for a short time.

6 THE COURT: Okay. Very good. Thank you.

7 Have you ever served on a jury before?

8 PROSPECTIVE JUROR NO. 11-1255: No, ma'am.

9 THE COURT: Okay. Thank you very much.

10 Mr. Christiansen, would you like to continue,
11 please?

12 MR. CHRISTIANSEN: Sure. Can we approach
13 just real quick, judge?

14 THE COURT: Yes.

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

17 THE COURT: Thank you. So by law, for those
18 of you that are new to us today, I'm going to have to
19 read -- I -- I must read this admonishment every time I
20 let you go. And, otherwise, could lead to a mistrial.
21 And it's actually very important that you listen
22 because this is really the map that we use to make sure
23 that everyone who is fair and impartial remains that
24 way throughout, you know, the entirety of this trial.
25 All right. And then I'm going to ask some of you to

1 stay behind and wait just outside. We have a couple of
2 follow-up questions for you.

3 After I read the admonition, I'm going to ask
4 Ms. Maxfield, Badge No. 12-0005, to wait just outside;
5 Ms. Wooters, 11-1255; Mr. Stokes; and Ms. Oelke and
6 Ms. Blakey, just to wait right outside of the
7 courtroom. All right.

8 This is going to be a 20-minute break.
9 You're instructed not to talk with each other or anyone
10 else about any subject or issue connected with this
11 trial. You are not to read, watch, or listen to any
12 report of or commentary on the trial by any person
13 connected with this case or by any medium of
14 information, including, without limitation, newspapers,
15 television, the internet, or radio.

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

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

1 research without -- with regard to any issue, party,
2 witness, or attorney involved in this case. You are
3 not to form or express any opinion on any subject
4 connected with this trial until the case is finally
5 submitted to you.

6 Marshal, please make sure take a look at the
7 time. This is a 20-minute break. Okay. Thank you.

8 THE MARSHAL: All rise for the jury.

9 (The following proceedings were held
10 outside the presence of the jury.)

11 THE COURT: All right. Counsel, you may be
12 seated.

13 Shall we take the difficulties speaking
14 the -- or understanding the English language first?

15 MR. KEMP: Yes, Your Honor. I think she's
16 going to be quick.

17 THE COURT: I'm sorry?

18 MR. KEMP: I think she's going to be quick.

19 MR. ROBERTS: Ms. Huerta or Ms. Chang?

20 MR. KEMP: Ms. Chang.

21 THE COURT: Okay. So will you please bring
22 Ms. Chang in? That's her name; right? Chang?

23 MR. ROBERTS: Yes. Dae Chang. Dae Chang or
24 Dae Chang, D-a-e.

25 THE MARSHAL: Give me that name again.

1 THE CLERK: You want a badge number? Do we
2 have a badge number?

3 MS. WORKS: 12-0040.

4 THE CLERK: 12-0040.

5 MS. WORKS: For Ms. Chang. Oh, no. I'm
6 sorry. That's 052.

7 MR. KEMP: Yeah.

8 THE CLERK: Okay. 12-0052, Ms. Chang?

9 MS. WORKS: Yes.

10 THE COURT: Okay. Shall we move on to
11 someone else while we're waiting?

12 Counsel? Shall we move on to someone else
13 while she's in the restroom?

14 MR. ROBERTS: Sure. That's fine.

15 THE COURT: Would you like to speak to
16 Ms. Huerta? Okay.

17 MR. KEMP: Do you want me to tell the
18 marshal, Your Honor?

19 THE COURT: Thank you, Mr. Kemp.

20 MS. WORKS: She's 12-0022.

21 THE COURT: Okay. This is Ms. Maxfield.

22 PROSPECTIVE JUROR NO. 12-0005: I'm so sorry.
23 I misunderstood, Your Honor. I'm sorry.

24 THE COURT: That's not a problem.

25 You will please just step forward. This

1 is -- this is Ms. Maxfield; correct?

2 PROSPECTIVE JUROR NO. 12-0005: Yes. Yes,
3 Your Honor.

4 THE COURT: That's badge 12 --

5 PROSPECTIVE JUROR NO. 12-0005: 005. 0005.

6 THE COURT: Okay. Very good. Let's see.
7 It's my understanding that you know -- you're familiar
8 with Dr. Jacobs.

9 PROSPECTIVE JUROR NO. 12-0005: Yes. I was
10 her patient for many years.

11 THE COURT: Okay. And also did I -- I
12 believe you raised your hand concerning hearing this in
13 the media. Are you stating --

14 PROSPECTIVE JUROR NO. 12-0005: Oh, yeah. I
15 was -- I was very much disturbed by the story of the
16 children and what they were going to live through
17 through their lives. I'm a retired mental health
18 counselor, and I was working with children for most of
19 my life. So when I heard that their mother had passed
20 away right after their father, I thought, oh, my
21 goodness. You know, my heart broke for them.

22 THE COURT: Okay. Thank you.

23 Do you have any other questions?

24 MR. KEMP: Your Honor, she can sit down.

25 THE COURT: Yeah. Please be seated.

1 PROSPECTIVE JUROR NO. 12-0005: I'm so sorry.
2 Do you want me right here?

3 THE COURT: Yes, please.

4 MR. KEMP: Ma'am, you said you heard
5 something about it in the -- in the newspaper?

6 PROSPECTIVE JUROR NO. 12-0005: Yeah. I read
7 the newspaper every day, and I listen to the -- the
8 evening news generally. I'm not a news junkie, but...

9 MR. KEMP: Okay. And what is it you heard?

10 PROSPECTIVE JUROR NO. 12-0005: Well, I -- I
11 had initially read in the Nevada section, where they
12 give the regular stuff around the valley, that -- that
13 a doctor had been riding his bike and had been killed
14 by a bus.

15 MR. KEMP: And did you -- do you remember
16 anything more about how the accident happened from your
17 reading in the newspaper?

18 PROSPECTIVE JUROR NO. 12-0005: About how it
19 happened, no, I don't. No.

20 MR. KEMP: Okay. And the same for anything
21 you heard on TV? You didn't hear anything about how it
22 happened?

23 PROSPECTIVE JUROR NO. 12-0005: If I did, it
24 didn't register into my memory. So I just was struck
25 by the fact of the children being left.

1 MR. KEMP: Okay. The fact there's two
2 minors?

3 PROSPECTIVE JUROR NO. 12-0005: Uh-huh.

4 MR. KEMP: Yes? You have to answer yes or
5 no.

6 PROSPECTIVE JUROR NO. 12-0005: Oh, yes.
7 I'm -- I'm so very sorry.

8 MR. KEMP: No. My fault.

9 PROSPECTIVE JUROR NO. 12-0005: No, sir.
10 I -- I -- as I -- as I said, I worked with children for
11 most of my life as a mental health counselor and just
12 was very, maybe probably, attracted to follow-up
13 stories just because I was aware of what had happened,
14 you know, and just was curious. And I was actually
15 glad to hear that they're in the guardianship of
16 relatives. Just now I just learned that.

17 MR. KEMP: Did you see any follow-up stories?

18 PROSPECTIVE JUROR NO. 12-0005: About where
19 the children were?

20 MR. KEMP: No. About -- you said attracted
21 to follow-up stories. Did you see any follow-up
22 stories?

23 PROSPECTIVE JUROR NO. 12-0005: Just after
24 the mother died.

25 MR. KEMP: Just that the mother died?

1 PROSPECTIVE JUROR NO. 12-0005: Uh-huh.

2 MR. KEMP: And, again, nothing in -- that you
3 saw about dad, about the cause of the accident or about
4 how the accident occurred?

5 PROSPECTIVE JUROR NO. 12-0005: Not -- not --
6 not necessarily, no. No, sir, I don't think I did.

7 MR. KEMP: And you said you are sympathetic
8 to the children because their parents died?

9 PROSPECTIVE JUROR NO. 12-0005: Very much so.

10 MR. KEMP: Nothing about these two children,
11 though. Just any -- any two children whose parents
12 died, you would be sympathetic to.

13 PROSPECTIVE JUROR NO. 12-0005: In general,
14 yes. Specifically these two, no, I have no other
15 reason than just knowing what trauma is.

16 MR. KEMP: So when you say you're
17 sympathetic, it's just general empathy?

18 PROSPECTIVE JUROR NO. 12-0005: Yes. Yes,
19 sir.

20 MR. KEMP: And that would be the same if --
21 if anyone had died and left small children. Same kind
22 of general empathy?

23 PROSPECTIVE JUROR NO. 12-0005: For the
24 children? Absolutely.

25 MR. KEMP: Okay. No further questions, Your

1 Honor.

2 THE COURT: Thank you. Mr. Roberts?

3 MR. ROBERTS: May we approach, Your Honor?

4 THE COURT: Yes.

5 MR. ROBERTS: Thank you.

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

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

9 PROSPECTIVE JUROR NO. 12-0005: Okay.

10 MR. ROBERTS: Your Honor, I do have one
11 follow-up question.

12 THE COURT: I'm sorry.

13 MR. ROBERTS: And just to confirm, ma'am,
14 everything that you've read in the media, from what you
15 recall, has it caused you to have any opinions as to
16 the liabilities of the bus manufacturer in this case,
17 as you sit here today? Not having heard any evidence
18 but what you've been exposed to, have you already
19 formed an opinion or are you leaning one -- to one
20 party or another?

21 PROSPECTIVE JUROR NO. 12-0005: May I --

22 THE COURT: There's no wrong answer. Just
23 say what you feel.

24 PROSPECTIVE JUROR NO. 12-0005: What I --
25 what I want to answer as thoroughly and as honestly as

1 I feel I can muster while I'm feeling stressed. Okay?

2 As a mental health counselor for all my life,
3 I was constantly trained and retrained and tested in
4 the aspects of clinical neutrality. Okay? Because I
5 had to be able to face people that came into my office
6 that may have abused their children, and I had to work
7 with them in terms of trying to make sure that families
8 were whole.

9 So I have a bias toward children. Okay?
10 That's a natural bias that I grew into something that I
11 considered to be an avocation for my life. In saying
12 that as the backdrop, I probably already have a -- I
13 hate to use the term -- a prejudice toward the bigness
14 of this, the juggernaut of the company, versus the --
15 whatever the resources of what the family is.

16 And, as I said, I -- it's -- it's hard for me
17 because I'm struggling -- I know I'm retired now. You
18 know, I don't have to maintain the ethics of my license
19 anymore, but I do have to -- I -- honestly, I'm
20 probably biased. I -- I probably would be biased
21 toward what the children's needs are, if I'm being
22 honest.

23 MR. ROBERTS: And I appreciate your honesty.
24 And -- and this type of bias that you've had maybe
25 toward children and maybe against large corporations,

1 is these long-held beliefs?

2 PROSPECTIVE JUROR NO. 12-0005: Oh, for
3 children, it's been the -- like I said, it's been my
4 career. And -- and for large corporations, I probably
5 tend toward thinking that they have more power than the
6 average Joe for most of my life. I probably am left of
7 center in terms of my, you know, my leanings, you know,
8 in terms of my democratic socialism kind of thing. You
9 know, I want to -- to stereotype myself, I'm pretty
10 liberal but left of center, and grew up in the '60s
11 where there was kind of a movement of
12 antidisestablishmentarianism, which I don't always
13 follow -- I'm not a radical in any way -- but that's --
14 I tend -- I lean toward the left rather than ...

15 MR. ROBERTS: And based on, as you've
16 characterized them, these biases and prejudices that
17 are somewhat deeply held, you think it would be
18 difficult for you to set those aside and be fair to my
19 client? That would be hard for you to do?

20 PROSPECTIVE JUROR NO. 12-0005: I -- I
21 honestly have to tell you it would depend upon what I
22 heard. Honestly, I'd have to tell you, because in
23 working with people that were maybe child molesters or
24 child abusers that were ordered to -- who somehow
25 achieved some sort of ability to try to, you know,

1 atone and -- and mend with their families and with
2 their children, it would take a great deal of human
3 effort on my part to achieve the clinical neutrality
4 that I needed to in order to do that.

5 In order to do that, I was clinically
6 briefed. You know, we did a triage -- you know what I
7 mean? -- kind of thing. Who do you think would be best
8 for being able to manage this kind of situation or that
9 kind of person?

10 So there were certain times that I would say
11 I can't 'cause once I'd learn the situation, I'd say,
12 "Somebody else. I can't go there."

13 And maybe some of that based on my own
14 personal experiences, you know, in my own lifetime, but
15 the honesty is and the answer is the -- very long --
16 and I'm sorry I'm wordy, but, once again, I'm nervous
17 with everybody looking at me.

18 THE COURT: That's okay. It's normal.

19 PROSPECTIVE JUROR NO. 12-0005: I've been a
20 sworn expert witness in court, but it's been a long
21 time.

22 It would depend upon what I heard about the
23 real facts of what happened in terms of -- I would make
24 my determination of who I thought was probably at
25 fault. You know? That would be my mind working,

1 thinking anything like was the driver impaired? Is the
2 bus okay but the driver wasn't okay? Was the doctor
3 who was doing his exercise impaired? Was he in the
4 wrong? Was he in -- I would be turning my wheels like
5 that trying to figure it out.

6 But it would depend upon what I heard
7 actually from the defendants, I think, for me to sway
8 hard your way.

9 MR. ROBERTS: Thank you. And I want to make
10 sure I understand what you're saying. You're saying
11 your verdict would depend totally on what you heard, or
12 whether or not your own life experiences and biases and
13 prejudice would come at play might depend on what you
14 heard? You're concerned that some things might -- that
15 you hear might bring up those deeply held feelings?

16 PROSPECTIVE JUROR NO. 12-0005: That's
17 possible.

18 MR. ROBERTS: Okay.

19 PROSPECTIVE JUROR NO. 12-0005: That's
20 possible, sir. I don't know. I'm a wounded healer.
21 You know? So ...

22 MR. ROBERTS: So once you heard some facts at
23 work, occasionally you'd have to say, "I'm sorry.
24 Someone else. This is not my case"?

25 PROSPECTIVE JUROR NO. 12-0005: Oh, that was

1 definitely expected at work if there was something that
2 came up. And there was a pool of us; it wasn't as if
3 we were stranding somebody without help or counseling.

4 But it wasn't expected of us to be as clear
5 as we could be about what we could or could not manage
6 in terms of trying to help somebody. Because the idea
7 was to help a family --

8 MR. ROBERTS: Sure.

9 PROSPECTIVE JUROR NO. 12-0005: -- and benefit
10 the children by helping the parents.

11 MR. KEMP: Judge, can we approach?

12 MR. ROBERTS: Thank you.

13 THE COURT: Yes.

14 PROSPECTIVE JUROR NO. 12-0005: I'm sorry I'm
15 so wordy.

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

18 THE COURT: Go on, Mr. Kemp.

19 MR. KEMP: Okay. Ma'am, several more
20 questions.

21 PROSPECTIVE JUROR NO. 12-0005: Yes.

22 MR. KEMP: You said that you have been
23 trained to be clinically neutral towards child
24 molesters; correct? You've been trained --

25 PROSPECTIVE JUROR NO. 12-0005: Clinical

1 neutrality for anybody who walked into my office --
2 okay? -- that was assigned to me to provide counseling
3 for.

4 MR. KEMP: Including child molesters?

5 PROSPECTIVE JUROR NO. 12-0005: Including
6 child molesters.

7 MR. KEMP: And you did that?

8 PROSPECTIVE JUROR NO. 12-0005: I'm going to
9 say I didn't take -- volunteer for as many of the child
10 molestation cases as other people had other abilities
11 to do. I was better with -- I was better with
12 nonmolesting abusers that were maybe ex-drug or trying
13 to get clean from drugs, you know, people -- people who
14 genuinely, I believe, didn't really have a penchant
15 for, you know, pedophilia that were -- in the course of
16 having maybe been abusing drugs and/or alcohol, would
17 have mistreated their children and abused their
18 children as an offshoot of that and that were
19 truthfully remorseful and -- and were working hard at
20 staying clean and were not jumping through hoops by
21 coming to my office but were genuinely concerned about
22 what the welfare of their children was.

23 MR. KEMP: But there were occasions where you
24 were clinically neutral towards child molesters in some
25 cases?

1 PROSPECTIVE JUROR NO. 12-0005: Oh, boy, can
2 I tell you that for true or not? I don't know.

3 MR. KEMP: You were clinically neutral
4 towards bad people; right?

5 PROSPECTIVE JUROR NO. 12-2005: Yes, I've
6 been clinically neutral towards some bad people. Yes.

7 MR. KEMP: And you understand this is a
8 product liability case where the issue is whether or
9 not the bus was a safe product? You understand that?

10 PROSPECTIVE JUROR NO. 12-0005: Okay.

11 MR. KEMP: Because you talked about whether
12 the bus driver was negligent, things like -- this is
13 not a car accident case; this is a product case.

14 PROSPECTIVE JUROR NO. 12-0005: Okay. Okay.

15 MR. KEMP: Do you understand that?

16 PROSPECTIVE JUROR NO. 12-0005: I'm more
17 clear about that now.

18 MR. KEMP: All right. Now, Mr. Roberts asked
19 you -- well, strike that.

20 And you do understand that, under the law,
21 that you have to treat corporations the same way you
22 treat individuals?

23 PROSPECTIVE JUROR NO. 12-0005: I didn't
24 understand that, but you can tell me that.

25 MR. KEMP: Okay. If the judge instructs you

1 that, you would follow the law?

2 PROSPECTIVE JUROR NO. 12-0005: Oh, of
3 course.

4 MR. KEMP: And you could do that? You could
5 treat corporations the same way you would treat an
6 individual?

7 PROSPECTIVE JUROR NO. 12-0005: It would be
8 new for me, but if I'm instructed to do so, I would
9 certainly do my best to -- to -- to comply.

10 MR. KEMP: If the judge tells you that's the
11 law, you'll follow the law?

12 PROSPECTIVE JUROR NO. 12-0005: Yes, sir.

13 MR. KEMP: Okay. Now -- and I think there
14 was some discussion with Mr. Roberts about how you need
15 to hear the evidence before you decide who's --
16 who's -- who's right and who's wrong in this case?

17 PROSPECTIVE JUROR NO. 12-0005: Yes.

18 MR. KEMP: And you will listen to hear the
19 evidence before you decide who's right and who's wrong
20 in this case?

21 PROSPECTIVE JUROR NO. 12-0005: Yes.

22 MR. KEMP: Okay. And you don't have any --
23 any -- like, the bus company, you haven't made any
24 decision in your mind that they're wrong; right?

25 Without hearing any evidence, you have not made that

1 decision?

2 PROSPECTIVE JUROR NO. 12-0005: As I told the
3 other gentleman, it's not a yes-or-no answer for me on
4 that regard. I'm -- I tend to be ...

5 MR. KEMP: You're skeptical of big
6 corporations?

7 PROSPECTIVE JUROR NO. 12-0005: I'm
8 skeptical -- I'm skeptical of big corporations and -- I
9 think I used the term in my questionnaire, "engineered
10 obsolescence," which is something that -- I used it
11 because it seemed it might be appropriate in this case,
12 whether or not a vehicle that was in constant use for a
13 lot of purposes, such as a transportation vehicle like
14 a bus or a van or an airplane or a train or -- you
15 know, I mean, these things that run and run and run and
16 run and still need to make money for the company, for
17 the corporation, or, you know, they still -- they -- I
18 think that I've seen what I consider -- what I would
19 consider just in the general -- in the world, neglect
20 of maintenance of airplanes, neglect of how things --
21 what the engineered obsolescence part is that the parts
22 would be made that would only last for a certain amount
23 of time.

24 MR. KEMP: Right. The company deliberately
25 makes the part to last a certain amount of time; right?

1 PROSPECTIVE JUROR NO. 12-0005: So entering
2 that into that's the corporation versus it being the
3 driver, that is still going to be in play when I'm
4 thinking about is this likely defective on --

5 MR. KEMP: Okay. If I told you engineered
6 maintenance had absolutely nothing to do with this
7 case, there's going to be no discussion about it
8 whatsoever, no argument, would that help you? Would
9 that resolve that problem?

10 PROSPECTIVE JUROR NO. 12-0005: How would you
11 know that?

12 MR. KEMP: Because I know the evidence in the
13 case. There's going to be no argument or evidence that
14 the bus company intentionally made a product so it
15 failed. Okay. There's going to be no evidence like
16 that. That's what you're worried about; right?

17 PROSPECTIVE JUROR NO. 12-0005: Well, it's
18 something that I would think about. But --

19 MR. KEMP: You would think about it even
20 though there's no evidence about it? No argument or
21 evidence about engineered obsolescence?

22 PROSPECTIVE JUROR NO. 12-0005: Let's -- if
23 we have a moment, can we do a what-if?

24 MR. KEMP: We can, but -- but we do have, you
25 know --

1 PROSPECTIVE JUROR NO. 12-0005: I'm very
2 sorry, but I'm trying to be as -- as genuine as I can
3 be and --

4 MR. KEMP: Okay. What -- if there is no
5 evidence and no argument whatsoever about engineered
6 obsolescence, would you agree with me that your
7 concerns about that have nothing to do with this case?

8 PROSPECTIVE JUROR NO. 12-0005: My honest
9 answer is I don't know how you know there's nothing
10 about engineered obsolescence because that's something
11 that would have been from the manufacturer not
12 necessarily privy to you, that something would --

13 MR. KEMP: We're not going to make any
14 argument that they should be liable because of
15 engineered obsolescence. That argument is not going to
16 be made in this case. Okay? Do you understand what
17 I'm saying? We're not going to argue that.

18 PROSPECTIVE JUROR NO. 12-0005: Okay. I
19 understand that you're not going to argue that.

20 MR. KEMP: And the type of defects we're
21 going to talk about don't have anything to do with
22 that. Okay? Do you understand that?

23 PROSPECTIVE JUROR NO. 12-0005: Okay.
24 Defects that have to do with a mechanism -- with a --
25 with a mechanical thing that don't have to do with

1 being manufactured, I -- I don't understand that.

2 MR. KEMP: Everything you've said about
3 engineered obsolescence, if there's no argument about
4 it and there's no defects about it, you will agree with
5 me that that particular issue is not going to affect
6 your thinking in this case?

7 MR. ROBERTS: Objection. Asked and answered
8 twice.

9 PROSPECTIVE JUROR NO. 12-0005: I'm sorry.
10 What?

11 MR. ROBERTS: That's just an objection for
12 the Court, ma'am.

13 PROSPECTIVE JUROR NO. 12-0005: Oh, I'm
14 sorry.

15 MR. ROBERTS: And the Court will then rule on
16 it and let you know.

17 MR. KEMP: Can you follow that?

18 PROSPECTIVE JUROR NO. 12-0005: Once again,
19 I'm not sure, because I don't know that I'm going to
20 not be thinking about that, honestly. I mean, if
21 it's -- if --

22 MR. KEMP: I have no further questions, Your
23 Honor.

24 MR. ROBERTS: No further questions, Your
25 Honor.

1 THE COURT: Okay. All right.

2 PROSPECTIVE JUROR NO. 12-0005: Sorry.

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR NO. 12-0005: Okay.

5 THE COURT: You're excused for the moment.

6 PROSPECTIVE JUROR NO. 12-0005: Thank you.

7 I'm sorry.

8 THE COURT: No, nothing to be sorry about.

9 The door has closed. Any motions on this?

10 MR. KEMP: Your Honor, it's their motion.

11 MR. ROBERTS: Yes. We would renew our motion

12 we made at the bench to excuse this juror for cause. I

13 believe that the record will reflect that the juror was

14 concerned -- she, one, admitted that she has a bias in

15 favor of children which would be active in this case

16 because of the age of the minors.

17 Two, she admitted she had a prejudice against

18 large corporations.

19 So the question then becomes, one, did she

20 unequivocally state that she could put -- set aside

21 those biases and render a verdict only on the evidence

22 and the instructions of the Court?

23 And, initially, she seemed to say that she

24 would decide the case on the evidence, but then I

25 clarified with her. And I said, "When you say

1 you're -- you'd have to hear the facts first, are you
2 saying you'd have to hear the facts first to decide
3 your verdict or you have to hear the facts before you
4 would know if these biases and prejudices might be
5 activated?"

6 And what she said was, "No, no, that's it.
7 I'd have to know more about the facts to know if these
8 biases and prejudices are going to get me and affect my
9 verdict."

10 And it's just like, even though she had to
11 employ clinical neutrality at work, she said sometimes,
12 once she heard the facts, she'd have to say, "Nope.
13 Not me. I can't be neutral in this case. Give it to
14 someone else."

15 And -- and the time that she's going to
16 discover whether she can be neutral in this case is
17 once she hears the facts and she's impaneled with the
18 jury, and that's too late.

19 Obviously, she wants to be fair. She's a
20 good citizen. But all she could say is "I would do my
21 best." She never unequivocally stated that she could
22 set aside her admitted biases and her admitted
23 prejudices.

24 And then you get to the engineered
25 obsolescence that she volunteered. It seems to me

1 she's confirmed a prejudice against large corporations.
2 Part of that prejudice arises out of her long-held
3 belief that large corporations engineer obsolescence
4 into their products and that's improper.

5 So despite the fact that Mr. Kemp has other
6 theories of liability, it was clear that she can't put
7 this idea that big corporations are bad for engineered
8 obsolescence, and she's not going to be able to set it
9 aside and be fair to my client.

10 Thank you, Your Honor.

11 MR. KEMP: Judge, the original motion was for
12 sympathy towards children, number one, and large
13 corporations.

14 On the sympathy towards children -- and,
15 again, it was arising out of media bias. That's where
16 we started this. But on the sympathy towards children,
17 she said she could set aside and that it was like any
18 children; she just likes children, Your Honor. So we
19 can't throw out jurors just because they like children.

20 She clearly said that she would treat both
21 sides equally, that she would treat individuals and
22 corporations equally if that was the law and Your Honor
23 instructed her of that.

24 On the large companies, he asked her three
25 times and he couldn't get her to say that she wouldn't

1 listen to the facts just because they were a Large
2 company. He took three passes at it, and she -- she
3 answered appropriately each time that she would want to
4 hear the evidence. So she said she's going to follow
5 the law.

6 And with regards to this engineered
7 obsolescence, there's no argument of that in this case,
8 Your Honor. Even if she was prejudiced towards
9 manufacturers because she thinks some of them do
10 engineered obsolescence, we are not arguing that. We
11 are not arguing any of the defects -- or the parts in
12 this case failed.

13 I mean, whether she has a bias or belief on
14 that one way or the other doesn't have anything to do
15 with this case. And so to throw her out just because
16 she thinks -- and a lot of people do. A lot of people,
17 I agree, think that corporations make parts fail
18 intentionally so they can replace them. But that
19 doesn't have anything to do with this case. So to
20 throw her out for that reason is not appropriate.

21 THE COURT: Well --

22 MR. ROBERTS: Two quick things, Your Honor.

23 THE COURT: Yes.

24 MR. ROBERTS: One, in case it didn't make it
25 on the record at the bench, she did say that she would

1 be open to us proving that it wasn't our fault. We
2 don't have the burden. So -- so that's also going to
3 be in the back of her mind, that she's expressed that
4 we would have to prove we're not at fault.

5 And -- and, second, I would just note her
6 demeanor while she answered the questions. Even on
7 questions where she agreed with Mr. Kemp's standard
8 rehabilitation, it was obvious that -- that she was
9 struggling to give those -- those answers.

10 Thank you, Your Honor.

11 MR. KEMP: Judge, she wasn't struggling.
12 She's what I would call a hippie. That's -- that's the
13 way -- that's a hippie. Okay? And -- and we can't
14 just throw people off the jury because they talk like
15 hippies.

16 And on the last point that he raised, he
17 didn't raise that as part of his motion, that she --
18 she would -- she hasn't even been told who has the
19 burden of proof yet. That's Mr. Christiansen's
20 standard pitch, to explain that the plaintiffs have the
21 burden of proof. The Court's going to instruct them as
22 to the burden of proof.

23 So to throw her out because she thinks -- she
24 thinks they should offer some evidence at this point,
25 before she's even been told what the burden of proof is

1 or whether she could follow that instruction, he didn't
2 ask her that. He didn't ask her if -- if she could
3 follow the Court's instruction on the burden of proof.

4 So, for those reasons, I think she's an
5 appropriate juror.

6 THE COURT: All right. Looking at the
7 totality of the answers with Ms. Maxfield, she
8 indicated that she was a mental health counselor who
9 worked with children most of her career, that she has a
10 bias toward children -- that may have been the second
11 or third word that came out of her mouth -- or phrase,
12 that she probably already has a problem of juggernaut
13 concerning the company versus the resources of the
14 children, probably biased towards what the resources of
15 the children are.

16 She's described herself as left to the
17 center, or more of a democratic socialist concerning
18 large corporations. She did say it depends on what she
19 heard. She also discussed her clinical neutrality and
20 indicated, at least it was my understanding, that,
21 depending on the case and if it was a pedophile, that
22 she would not take the case and that someone else could
23 step in for her so that they -- I think the word she
24 used was triage; in other words, they didn't -- they
25 were there to serve everyone's needs but that she

1 didn't necessarily stay on if she wasn't able to.

2 She described herself as a wounded healer.

3 She did say she would try -- she would try to follow
4 the law. But, also, I have noted that she would wait
5 until the -- I can't -- I don't want to paraphrase -- I
6 just have a couple of words -- but that the defense --
7 in other words, while we didn't discuss what the burden
8 is and who has the burden specifically, she did
9 indicate that she would be waiting for the defense to
10 put on their case. I'm paraphrasing, but something to
11 that effect, which, in my mind, means that she would
12 expect for the defendants to carry their burden of
13 proof, which they do not have.

14 And then, when Mr. Kemp was trying to
15 rehabilitate her on this -- what is it? -- the
16 engineered obsolescence -- obsolescence?

17 MR. ROBERTS: Obsolescence, yes.

18 THE COURT: Okay. Well, while Mr. Kemp
19 discussed this with her two to three times, I believe,
20 she still -- in my mind, her -- her indication was that
21 she, even after Mr. Kemp was telling her that he --
22 that that was not going to be argued in this case, that
23 that was not an issue in this case, that she wasn't
24 going to hear any -- anything about that in this case,
25 one of her comments was she still didn't understand it

1 and she wasn't sure that Mr. Kemp really knew the
2 difference because he may not really know from the
3 manufacturer what really happened with respect to the
4 product, which makes me think that that's a concern.

5 So I'm going to excuse her for all of those
6 reasons, the totality of the circumstances pursuant to
7 Jitnan and also the Sears-Page case. Pursuant to that
8 finding, I'm going to excuse her for cause.

9 MR. BARGER: Would the Court entertain a
10 two-minute break before we bring all the rest of these
11 jurors in?

12 THE COURT: Sure.

13 MR. KEMP: I think we still have --

14 MR. BARGER: It's four or five jurors left.

15 MR. KEMP: I think we still have a language
16 one and --

17 MR. BARGER: And some -- another media or
18 two, but if we could jut take two minutes.

19 MR. KEMP: I have no problem.

20 THE COURT: Let's take a quick recess. We
21 are off the record.

22 (Whereupon a short recess was taken.)

23 THE COURT: We have several others. Do we
24 want to take the language first?

25 One of the women, Ms. Blakey, wanted to come

1 next. She's the woman who takes care of her
2 granddaughter. Okay.

3 MR. BARGER: I think she's worried about
4 picking her up from school right now.

5 THE COURT: Hi. Please take a seat. Thank
6 you.

7 Okay. State your badge number and your name
8 for the record.

9 PROSPECTIVE JUROR NO. 12-0018: My badge
10 number. It's not on.

11 THE COURT: Is it 12-0018?

12 PROSPECTIVE JUROR NO. 12-0018: Yes.

13 THE COURT: Okay. Very good. It's
14 Ms. Blakley?

15 PROSPECTIVE JUROR NO. 12-0018: Yes. Blakey.

16 THE COURT: I'm sorry. Blakey.

17 PROSPECTIVE JUROR NO. 12-0018: Yes.

18 THE COURT: Okay. All right. Ms. Blakey,
19 let's see. You indicated that you are -- you have --
20 you have full custody or you care for your second --
21 your --

22 PROSPECTIVE JUROR NO. 12-0018: It's my
23 great-granddaughter. I actually adopted her. So she's
24 adopted.

25 THE COURT: You legally adopted her?

1 PROSPECTIVE JUROR NO. 12-0018: Yes.

2 THE COURT: Okay. And you -- you indicated
3 earlier that you have no one to care for her?

4 PROSPECTIVE JUROR NO. 12-0018: Yes.

5 THE COURT: And you can't afford the care at
6 the school afterwards?

7 PROSPECTIVE JUROR NO. 12-0018: Yeah.

8 Actually, after I thought about it and I was out there
9 thinking, they don't have any after-school programs at
10 her school.

11 THE COURT: They don't. Okay. All right. I
12 think you've also indicated that you -- when I asked
13 the question about disabilities, you indicated you had
14 rheumatoid arthritis?

15 PROSPECTIVE JUROR NO. 12-0018: Yes.

16 THE COURT: Is that correct?

17 PROSPECTIVE JUROR NO. 12-0018: Yeah. I have
18 lupus with rheumatoid arthritis. And then I had a
19 major fall a couple of years ago, which messed up
20 several disks in my back as well.

21 THE COURT: All right. And what age are you?

22 PROSPECTIVE JUROR NO. 12-0018: 65.

23 THE COURT: 65. Okay. Thank you.

24 Counsel, do you have follow-ups?

25 MR. KEMP: No, Your Honor.

1 MR. ROBERTS: No, Your Honor.

2 THE COURT: Okay. Thank you very much. Just
3 take a seat right outside of the courtroom.

4 Your thoughts on Ms. Blakey?

5 MR. ROBERTS: I'm fine if the Court wants to
6 let her go. It sounds sympathetic, like it would be a
7 hardship for her.

8 MR. KEMP: I'm more worried about the
9 daughter, Your Honor. I don't think it's hardship for
10 her so much as the --

11 THE COURT: As the second grader?

12 MR. ROBERTS: Right.

13 MR. KEMP: Yes.

14 THE COURT: All right. I'm going to excuse
15 Ms. Blakey pursuant to NRS 6.030(c), undue hardship.

16 All right. You will please let her know
17 she's excused and ask her to please report to the jury
18 services on the third floor.

19 And let's bring in either Ms. Huerta or
20 Ms. --

21 MR. KEMP: Chang. I think Ms. Chang is the
22 easiest one.

23 THE COURT: Let's bring Ms. Chang in if she's
24 there, please. Thank you.

25 Hi. Please take a seat in this chair. Thank

1 you.

2 Your name and your badge number, please.

3 PROSPECTIVE JUROR NO. 12-0052: My badge
4 number is 12-0052. My name is Dae Chang.

5 THE COURT: Okay. And you indicated,
6 Ms. Chang, that you had problems understanding the
7 English language?

8 PROSPECTIVE JUROR NO. 12-0052: Yes.

9 THE COURT: Okay. Counsel, do you have any
10 other questions?

11 MR. KEMP: No, Your Honor.

12 MR. ROBERTS: Ms. Chang, have you been having
13 difficulty following what's been going on in the court
14 at this --

15 PROSPECTIVE JUROR NO. 12-0052: No.

16 MR. ROBERTS: Have you been able to follow?

17 PROSPECTIVE JUROR NO. 12-0052: I'm sorry. I
18 don't know.

19 THE COURT: Have you understood? Were you
20 able to understand what's been happening in the Court?

21 PROSPECTIVE JUROR NO. 12-0052: Oh, yeah,
22 yeah.

23 MR. ROBERTS: You've understood?

24 PROSPECTIVE JUROR NO. 12-0052: Yeah, I
25 understand. But, I'm not -- detail. I'm not

1 understanding detail.

2 MR. ROBERTS: Okay.

3 THE COURT: Okay. Thank you.

4 MR. ROBERTS: No further questions, Your
5 Honor.

6 THE COURT: Thank you very much.

7 MR. ROBERTS: Thank you, Ms. Chang.

8 MR. KEMP: Your Honor, we'll stipulate to
9 that one.

10 MR. ROBERTS: We'll stipulate.

11 THE COURT: All right.

12 MR. ROBERTS: We have a stipulation.

13 THE COURT: You're going to stipulate --

14 MR. ROBERTS: Yes.

15 THE COURT: -- to excusing Ms. Chang as she
16 does not appear to understand or have a command of the
17 English language sufficient for this trial.

18 Good afternoon.

19 PROSPECTIVE JUROR NO. 12-0022: Good
20 afternoon.

21 THE COURT: Please be seated.

22 Please state your name and your badge number.

23 PROSPECTIVE JUROR NO. 12-0022: No. 22, Maria
24 Huerta.

25 THE COURT: Okay. Ms. Huerta, you indicated

1 that you have a hard time understanding or difficulties
2 with the English language?

3 PROSPECTIVE JUROR NO. 12-0022: Reading,
4 uh-huh.

5 THE COURT: Reading?

6 PROSPECTIVE JUROR NO. 12-0022: Sometimes,
7 you know, to express myself too. You know, I mean,
8 basic English -- I mean, basic questions, yeah, I can,
9 you know, answer no problem.

10 THE COURT: Okay. What about understanding
11 what the attorneys -- the attorneys haven't spoken that
12 much.

13 PROSPECTIVE JUROR NO. 12-0022: Not really,
14 because when I did that questionnaire, I could not
15 respond to all the questions because I don't understand
16 everything.

17 THE COURT: You mean the written questions?

18 PROSPECTIVE JUROR NO. 12-0022: The written,
19 uh-huh.

20 THE COURT: Do you have a better
21 understanding of speaking and of vocabulary than you do
22 of writing and reading?

23 PROSPECTIVE JUROR NO. 12-0022: What is that?

24 THE COURT: Is it easier for you to
25 understand it when people speak English and you're

1 listening than actually reading and writing?

2 PROSPECTIVE JUROR NO. 12-0022: Yeah.

3 Speaking, yes, I understand better. Uh-huh.

4 THE COURT: So it's easier to you to speak
5 English and understand English when it's spoken than
6 when you have to read or write?

7 PROSPECTIVE JUROR NO. 12-0022: Yes.

8 THE COURT: Okay. Thank you.

9 PROSPECTIVE JUROR NO. 12-0022: I mean, I
10 can -- I can understand when you speaking, but not all
11 of the -- you know, everything that you are asking.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 12-0022: See what I'm
14 saying?

15 THE COURT: Any questions, Counsel?

16 MR. KEMP: Ms. Huerta, have you taken English
17 classes?

18 PROSPECTIVE JUROR NO. 12-0022: I went in
19 California when I was, like, 17. I took, like, night
20 class.

21 MR. KEMP: In English?

22 PROSPECTIVE JUROR NO. 12-0022: Uh-huh.

23 MR. KEMP: For one year? two year? three
24 years? How long?

25 PROSPECTIVE JUROR NO. 12-0022: Maybe a year.

1 MR. KEMP: A year. Okay. So you can pretty
2 much understand English; right?

3 PROSPECTIVE JUROR NO. 12-0022: Yes.

4 MR. KEMP: When people speak. It's just
5 writing you have problems with?

6 PROSPECTIVE JUROR NO. 12-0022: Writing, yes.

7 MR. KEMP: Okay. Thank you.

8 PROSPECTIVE JUROR NO. 12-0022: And reading.

9 THE COURT: Mr. Roberts.

10 MR. ROBERTS: Yes. You mentioned that you
11 mainly use Spanish at work; is that correct?

12 PROSPECTIVE JUROR NO. 12-0022: Yes.

13 MR. ROBERTS: And explain to me your problem
14 with reading documents written in English. There are
15 going to be exhibits in this case. Do you think you're
16 going to be able to read those and understand them?

17 PROSPECTIVE JUROR NO. 12-0022: No.

18 MR. ROBERTS: No.

19 PROSPECTIVE JUROR NO. 12-0022: Not legal --
20 no, no.

21 MR. ROBERTS: Nothing further. Thank you,
22 Your Honor.

23 THE COURT: I'm sorry. You started to say
24 "not legal"?

25 PROSPECTIVE JUROR NO. 12-0022: Yeah. When

1 it's, like, something, like, I have to fill out
2 paperwork, I have to ask somebody to do it for me.

3 THE COURT: I see. Okay. Thank you.

4 Any other questions, Counsel?

5 MR. KEMP: No, Your Honor.

6 THE COURT: Okay. Thank you very much. Just
7 wait outside, please.

8 Yes, Marshal.

9 THE MARSHAL: Anyone else?

10 THE COURT: Possibly.

11 MR. ROBERTS: We'd ask that she be excused.
12 We're entitled to a juror who can read the instructions
13 from the Court and interpret them and not have to rely
14 on her oral recollection from hearing it.

15 MR. KEMP: I thought she could understand
16 English, Your Honor. Maybe she can't read it great.
17 And I thought she said -- started to say she can't read
18 legal instructions. Clearly, she can read something
19 because she filled out part of her questionnaire. She
20 didn't fill it all out, but she did fill out part of
21 it.

22 MR. ROBERTS: She didn't fill it all out.

23 THE COURT: I'm going to be giving legal
24 instructions that are very complicated and, as we
25 indicated by the request to preinstruct, and

1 understood. Also, I do believe she understands a great
2 deal of what is occurring, but it doesn't sound -- the
3 fact that she didn't fill in her questionnaire in its
4 entirety concerns me because that is, in my mind, as
5 challenging as some of the information she's going to
6 be reading. And I -- I think it's important that every
7 juror understand.

8 So while I think she can speak it fairly well
9 and understand most things, I am concerned about some
10 of the limitations she has. So I'm going to excuse
11 her.

12 Okay. Do we want to speak to the woman who
13 is having the Botox and acupuncture issues or shall
14 we -- I'm just asking you. I don't know if that's
15 necessary.

16 MR. ROBERTS: She -- the only thing that
17 concerned me is she said she had a migraine right now.
18 And I don't know if those are minor migraines, but I
19 know those can be quite debilitating if it's severe.

20 THE COURT: Okay.

21 MR. ROBERTS: I will leave it up to the
22 Court.

23 THE COURT: I'm going to wait on her. Okay.

24 What about the woman who's being treated for
25 her dry eyes and the Prokera lenses?

1 So, you know, I did have a Prokera lens in
2 each eye, and you can't see anything. You can't. It's
3 like having membrane put over your eye. So if you're
4 showing her exhibits or anything, if she's in therapy
5 at this time, she won't be able to see. She'll have
6 limited vision.

7 But that doesn't mean that she has to do it
8 right away. And, regrettably, at least in my
9 experience, it wasn't very successful. But you don't
10 want to say that to her.

11 MR. ROBERTS: I guess if we could find out
12 more. I guess the reason she can't drive is because of
13 her vision?

14 THE COURT: No. The reason she can't drive
15 is because she's going to have the Prokera lenses. But
16 those don't have to happen right away necessarily. You
17 can sort of coordinate that with your doctor for when
18 you want them. I'm just letting you know my
19 understanding of this.

20 So we're going to wait on her too.

21 All right. There's a woman -- okay.
22 Ms. Oelke, Badge 11-1328. I think I'm writing it all
23 down. She apparently is familiar with Dr. Jacobs,
24 Leslie. Is that a problem?

25 MR. KEMP: I don't think so, Your Honor.

1 MR. ROBERTS: I don't think so, Your Honor.

2 THE COURT: Okay. Very good. So we're not
3 going to -- to worry about that.

4 Then there's -- Ms. Maxfield. Gone.

5 All right. Mr. Summerfield, who's been here
6 for a few days, he indicated that he -- 12 to 13 years
7 ago at Ohio State, he worked in procurement of buses.
8 He's still on some sort of a list. And they purchased
9 from MCI coaches.

10 MR. KEMP: Yeah. Judge, I think maybe we
11 should bring him in outside the presence, but I don't
12 know that we have to do it right now. If you want to
13 do it now, he is the next alternate up.

14 MR. BARGER: He was the guy with the child
15 custody foster parent.

16 THE COURT: The infant; right?

17 MR. ROBERTS: Did he call this morning and
18 indicate he did not have the newborn?

19 THE COURT: I have not been informed.

20 MR. BARGER: I think we ought to bring him in
21 now.

22 THE COURT: That's what I'm trying to see. I
23 mean, we might as well.

24 Will you please bring, Marshal,
25 Mr. Summerfield in?

1 THE MARSHAL: Do you want somebody relieved
2 as well?

3 THE COURT: Oh, yes. Will you please excuse
4 Ms. Huerta. Ask her to go to jury services on the
5 third floor.

6 THE MARSHAL: Yes, Your Honor.

7 THE COURT: Thank you.

8 MR. KEMP: Your Honor, Mr. Christiansen
9 reminds me that Stokes and Wooters, who both took seats
10 in the box, they both had positive media responses.

11 THE COURT: Yes. We'll call them in as well.
12 Or actually call them in first.

13 Good afternoon, Mr. Summerfield. Please be
14 seated.

15 Could you state your badge number, please,
16 Mr. Summerfield for the record.

17 PROSPECTIVE JUROR NO. 11-1256: Badge
18 No. 11-1256, Robert Summerfield.

19 THE COURT: Okay. Good afternoon. One thing
20 I wanted to ask you about was the status of the infant
21 that you discussed last week.

22 PROSPECTIVE JUROR NO. 11-1256: Yes, ma'am.
23 So I'm still in holding. The mother is in rehab at
24 WestCare, which allows for infants. So right now she's
25 graduated from their program. She's supposed to stay

1 there until they try to find her housing, but the
2 question is whether or not -- since she's in a
3 supervised environment right now, they're letting the
4 infant stay with her. But per the caseworker, if she
5 leaves that environment, then that's where they -- they
6 need a determination from the DFS supervisor as to
7 whether or not the infant can stay with the mother once
8 she leaves the supervised environment she's in now. So
9 I'm up in the air.

10 THE COURT: You're up in the air.

11 PROSPECTIVE JUROR NO. 11-1256: Yes, ma'am.

12 THE COURT: And you also indicated that 12 to
13 13 years ago, you worked in procurement of buses at
14 Ohio State.

15 PROSPECTIVE JUROR NO. 11-1256: Yes, ma'am.

16 THE COURT: And some of the buses or the
17 coaches were MCI?

18 PROSPECTIVE JUROR NO. 11-1256: Yes, ma'am.

19 THE COURT: And that you are still
20 technically on one of their mailing lists?

21 PROSPECTIVE JUROR NO. 11-1256: Yes, ma'am.

22 THE COURT: Okay. Do you have any questions,
23 Counsel?

24 MR. KEMP: Just a couple, Your Honor.

25 When you say it's up in the air, does that

1 mean you may have to take care of the baby still? Or
2 how does that work?

3 PROSPECTIVE JUROR NO. 11-1256: So,
4 basically, I have a 12-year-old and a 13-month-old that
5 are the siblings of the infant that we're discussing.
6 The mother, this is unfortunately her seventh child.
7 She has none of her other children. There's a good
8 chance that this child will be removed from her care
9 when she leaves her substance abuse program that she's
10 in right now.

11 If that happens, because I have the sibling
12 group and technically I have an open -- what they call
13 an open infant bed, because my foster license is
14 presently for three children, including one infant,
15 they would be looking at me to take the baby. Because
16 I'm already in the process of adopting the 12-year-old,
17 and if the rights are terminated on the 1-year-old,
18 that I've had since he was ten days old, they would be
19 looking at me to take custody of the newborn until they
20 figure out exactly what his situation will be long
21 term.

22 MR. KEMP: And the triggering factor here is
23 her leaving the substance abuse program?

24 PROSPECTIVE JUROR NO. 11-1256: That -- my
25 understanding from the e-mail I got this morning from

1 the caseworker is yes. So the caseworker for the two
2 boys I have doesn't do the investigation. She makes a
3 recommendation to an investigating caseworker. The
4 investigating caseworker has gone out, seen where the
5 mother is in her substance abuse program, verified that
6 they can -- you know, that the baby can be there.

7 However, has still concerns about the mother
8 leaving the -- when she leaves the substance abuse
9 program -- which technically she's graduated from the
10 program, so she could leave at any time; she's just
11 staying there because I guess they're trying to get her
12 on Section 8 housing so that when she leaves -- because
13 right now she has nowhere to go when she leaves.

14 Should the supervisor for the DFS
15 investigative caseworker determine that the mother is
16 not going to be the stable environment for the infant
17 to go with when leaving WestCare, then they would be
18 calling me, asking me to take guardianship of the
19 infant.

20 MR. KEMP: You have heard the trial is going
21 to last four weeks.

22 PROSPECTIVE JUROR NO. 11-1256: I have.

23 MR. KEMP: What is the likelihood that the
24 mother is going to leave the substance abuse program
25 and you have to step in -- or you would -- you would be

1 called to step in?

2 PROSPECTIVE JUROR NO. 11-1256: I would be
3 called to step in. Honestly, there -- based on the
4 dates the mother gave me this weekend when I took the
5 1-year-old for his visit with her, we're probably
6 looking pretty close to the window. She's got about
7 four weeks that she can continue to stay there.

8 And so, based on what the caseworker said,
9 again, if this ran on time, I don't believe that there
10 would be an issue. Four weeks from now actually,
11 unfortunately, puts it at about five weeks. So that's
12 still one week too early for the baby to go to daycare.
13 So an infant can go to daycare starting at six weeks.
14 So I would be -- you know, any time between now and
15 when this trial would be over, if that situation came,
16 I would have to be able to be home with the baby.

17 MR. KEMP: So you may be called in the very
18 last week?

19 PROSPECTIVE JUROR NO. 11-1256: Yes.

20 MR. KEMP: If we go more than five weeks, you
21 would be called for sure?

22 PROSPECTIVE JUROR NO. 11-1256: Very likely,
23 the way things stand, as I understand it from the
24 caseworker.

25 MR. KEMP: Let me talk about the bus job for

1 a minute. You were in charge of buying buses for Ohio
2 State University?

3 PROSPECTIVE JUROR NO. 11-1256: So prior to
4 coming to Vegas, I worked for ten years at the Ohio
5 State University in the parking --
6 transportation/parking department. In my last six
7 years with the university, that was in full-time
8 employment; and the last four years it was as the
9 operations coordinator for the transportation division,
10 which essentially meant that I arranged for all charter
11 services for Ohio State's ground transportation,
12 including the procurement of, in my last, what would
13 have been -- probably the last 18 months that I was
14 there, we procured our two newest over-the-road motor
15 coaches, which were both ended up being MCI buses.

16 MR. KEMP: So you were the one that made the
17 decision to buy the MCI bus?

18 PROSPECTIVE JUROR NO. 11-1256: I was
19 responsible for the charter service, so I was part of
20 the department's evaluation group. But the
21 university's finance department, through its
22 procurement process, has actually procured the motor
23 coaches.

24 MR. KEMP: Did you meet with any MCI
25 personnel as a result of that? Salesmen or maintenance

1 people or training people?

2 PROSPECTIVE JUROR NO. 11-1256: Training
3 people when they came to show us, because the motor
4 coaches that we did procure were a much more advanced
5 model than our previous over-the-road motor coaches
6 that we had. So we did have some on-site training for
7 maintenance people.

8 I was not one of the people from the
9 department that actually went to the factory to sign
10 off on final acceptance of the coaches. We did have a
11 couple of drivers and, I think, one of our maintenance
12 personnel that went out and did an acceptance of the
13 vehicles at the factory floor, but I was not one of
14 those folks.

15 MR. KEMP: You used the term "motor coach."
16 So it was a motor coach as opposed to transit bus that
17 you acquired.

18 PROSPECTIVE JUROR NO. 11-1256: Correct. At
19 the university, we were responsible for both transit
20 buses, just as you see in any kind of transit
21 operation, as well as over-the-road motor coaches.
22 There's a larger MCI buses that, again, motor coach.

23 MR. KEMP: And do you remember what kind of
24 MCI motor coach it was?

25 PROSPECTIVE JUROR NO. 11-1256: No. I want

1 to say it was the -- I want to say it was, like, one of
2 the first years that the 4500s came out, but I can't
3 say that definitively.

4 MR. KEMP: When you say 4500s, you're
5 referring to the J4500?

6 PROSPECTIVE JUROR NO. 11-1256: Yes, sir, the
7 J4500.

8 MR. KEMP: And that job ended 13 years ago,
9 you said?

10 PROSPECTIVE JUROR NO. 11-1256: 2005.

11 MR. KEMP: And you're still on their
12 e-mailing list?

13 PROSPECTIVE JUROR NO. 11-1256: So as an
14 alumnus of Ohio State, I got to keep my Ohio State
15 e-mail address. And that was my both student and my
16 work e-mail address. And so I'm just -- once you're on
17 a mailing list, you know, you never get off. And so
18 even though I don't use my Ohio State mailing address
19 anymore, I still get e-mails from them, from a time
20 clock company that I worked with when I was at the
21 university, and, honestly, I get updates on what the
22 Columbus city council is doing.

23 So I get just stuff that I don't really read,
24 but I'm technically still on the list.

25 MR. KEMP: When you say you get e-mails from

1 them, you're referring to MCI?

2 PROSPECTIVE JUROR NO. 11-1256: Correct.
3 From the corporate whatever.

4 MR. KEMP: And does it tell you about new
5 products of theirs or things about buses?

6 PROSPECTIVE JUROR NO. 11-1256: I'll be
7 honest. I haven't read one in years and years and
8 years. So I'm imagining that they're all
9 sales-related, but, again, I haven't read one in a very
10 long time.

11 MR. KEMP: Okay. And would anything about
12 your past experience with the bus company, MCI, or
13 J4500 in particular, would that kind of tend to make
14 you make the bus company a little bit ahead to start in
15 this case?

16 PROSPECTIVE JUROR NO. 11-1256: No, sir. I
17 don't have a --

18 MR. KEMP: You don't have a bias either way?

19 PROSPECTIVE JUROR NO. 11-1256: Neither way,
20 sir.

21 MR. KEMP: Okay.

22 No further questions, Your Honor.

23 THE COURT: Thank you.

24 Mr. Roberts?

25 MR. ROBERTS: Thank you, Your Honor.

1 With regard to the -- the situation with
2 your -- your foster children and/or potential new
3 member of your family, is that causing you any stress
4 or anxiety as you sit here with us and you go through
5 this process?

6 PROSPECTIVE JUROR NO. 11-1256: No more for
7 this than it is for work, just because, just like this,
8 my serving or not serving, it doesn't allow me to know
9 from one day to the next because I'm at someone else's
10 kind of discretion on a decision that they make.

11 But, yeah, I mean, it's just a matter of do I
12 get my work covered? Do I -- can I go to the city
13 council meeting I'm supposed to be at? Can I do those
14 things? Again, because there will be a time period
15 where the baby can't go to daycare. Because it's DFS,
16 I can't really just call up the neighbor and say, "Hey,
17 Mary, can you watch the baby for me?" because you've
18 got to actually be approved by the DFS to watch a child
19 that's in custody.

20 MR. ROBERTS: And it sounds like, if that
21 happened, you're going to have to leave?

22 PROSPECTIVE JUROR NO. 11-1256: Yes, sir.

23 MR. ROBERTS: Okay. With regard to the
24 procurement, do you recall, during that 18 months where
25 you participated in the procurement, there's some just

1 low-bid procurements and there are other procurements
2 that balance your technical rating versus your price.
3 Do you know which type of procurement Ohio State had?

4 PROSPECTIVE JUROR NO. 11-1256: Honestly,
5 we -- I worked the budget of it more than anything. I
6 honestly don't know that we went out for bid on it. I
7 think we did a single-source bid situation because we
8 kind of knew what we wanted already. I believe we
9 looked at a couple of the other motor coach
10 manufacturers -- Prevost and a couple of the other
11 ones -- but I don't remember -- I don't remember an
12 actual bid process on it in terms of an RFP or an RFI
13 or anything like that.

14 MR. ROBERTS: When you said you were part of
15 the technical committee, is that in reviewing
16 specifications and picking what the Ohio State
17 University needed for its motor coaches?

18 PROSPECTIVE JUROR NO. 11-1256: Correct. So
19 did it have adequate seating for what we needed, the
20 A/V equipment that was inside, adequate cargo space.
21 Again, these are generally used for road trips for our
22 athletic teams, so does it have sufficient room for the
23 hockey team to store, you know, 20-some-odd guys' big
24 bags of equipment? Again, does it have sufficient
25 audiovisual, that kind of specification, not anything

1 to do with any mechanical systems.

2 MR. ROBERTS: Did you review any safety
3 features, including optional safety equipment that
4 might -- you might have been able to order with the
5 bus?

6 PROSPECTIVE JUROR NO. 11-1256: No, that
7 would have all been done by our maintenance unit.
8 Again, I was operations, so how does it operate for the
9 service we provide, not necessarily any of the safety
10 or mechanical systems.

11 MR. ROBERTS: Okay. As you've heard
12 Mr. Christiansen and Mr. Kemp state several times,
13 their claim is that the MCI motor coach J4500, 2008
14 model, is defective.

15 Based on your own experience with MCI
16 coaches, as you sit here today, do you have any opinion
17 as to whether MCI coaches are defective in any way?

18 PROSPECTIVE JUROR NO. 11-1256: I do not.
19 And that would have been after my work experience with
20 their buses, so I don't even have an idea of what they
21 might have provided or not provided in that model
22 class.

23 MR. ROBERTS: Okay. So no opinion one way or
24 another?

25 PROSPECTIVE JUROR NO. 11-1256: No, sir.

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

2 PROSPECTIVE JUROR NO. 11-1256: Yep.

3 MR. KEMP: Your Honor, just briefly something
4 he brought up.

5 THE COURT: Yes.

6 MR. KEMP: You mentioned the word "Prevost"?

7 PROSPECTIVE JUROR NO. 11-1256: Yes, sir.

8 MR. KEMP: That's another type of bus?

9 PROSPECTIVE JUROR NO. 11-1256: It's another
10 manufacturer of motor coaches.

11 MR. KEMP: So you're familiar not just with
12 MCI but with other manufacturers?

13 PROSPECTIVE JUROR NO. 11-1256: Again, in my
14 capacity at that time, I'm familiar with a few
15 different manufacturers of motor coaches and transit
16 buses.

17 MR. KEMP: So Prevost, MCI. Can you name any
18 others?

19 PROSPECTIVE JUROR NO. 11-1256: Prevost, MCI.
20 There's one that starts with a V that's out of
21 Switzerland, I believe.

22 MR. KEMP: Van Hool?

23 PROSPECTIVE JUROR NO. 11-1256: Yes. Thank
24 you. Van Hool. Let's see. The --

25 MR. KEMP: Volvo perhaps?

1 PROSPECTIVE JUROR NO. 11-1256: Volvo does
2 make one. There's another one that made a
3 mixed-unit one. I can remember seeing the -- because
4 they make one that's got a cargo unit and a bus unit
5 all kind of in a 45-foot, but I can't remember who
6 makes that.

7 At any rate, I'm familiar with a couple
8 different companies, again, just as a -- remember
9 looking at them when we went to trade show in Atlantic
10 City, again, almost 15 years ago now.

11 MR. KEMP: And you went to a bus trade show
12 in Atlantic City?

13 PROSPECTIVE JUROR NO. 11-1256: Correct.

14 MR. KEMP: And that was while you were at
15 Ohio State -- The Ohio State University?

16 PROSPECTIVE JUROR NO. 11-1256: Yes, at The
17 Ohio State University.

18 MR. KEMP: Let's get it right.

19 And when you went to the trade show, what was
20 the purpose for that visit?

21 PROSPECTIVE JUROR NO. 11-1256: Because we
22 were starting the procurement process at that time, our
23 over-the-road -- over-the-road motor coaches were
24 getting towards the end of their life expectancy
25 with -- I believe it was mileage, not years. So we

1 were going to begin the first time in forever a
2 procurement process.

3 So me and the -- I believe he was the manager
4 for our transit operations at the time, we went to
5 Atlantic City for a motor coach show -- it wasn't one
6 particular company or anything -- and we were looking
7 at various models of buses.

8 MR. KEMP: So how many buses did you
9 ultimately buy?

10 PROSPECTIVE JUROR NO. 11-1256: That
11 procurement resulted in the purchase of two motor
12 coaches.

13 MR. KEMP: Two. And when you went to
14 Atlantic City, you met with a number of different bus
15 companies.

16 PROSPECTIVE JUROR NO. 11-1256: We did.

17 MR. KEMP: And out of all those, you selected
18 the J4500?

19 PROSPECTIVE JUROR NO. 11-1256: That
20 evaluation -- or that trade show really wasn't a
21 selection criteria; we went and gathered information at
22 that time.

23 The procurement actually occurred -- I don't
24 know. I want to say we actually started in earnest
25 about six months after that. That was kind of a --

1 because we hadn't done that. We hadn't been exposed to
2 what was out in the marketplace really before that,
3 because it had been eight years since we last -- the
4 university had last purchased motor coaches.

5 We -- we were just trying to see what was
6 actually -- physically see what was out there. We had
7 tons of brochures, but we were looking at what was --
8 what was out in the marketplace.

9 MR. KEMP: And if you did this 13 years ago,
10 that would have been in 2004, 2005, the J4500 you
11 bought?

12 PROSPECTIVE JUROR NO. 11-1256: Yes, sir.

13 MR. KEMP: Okay.

14 PROSPECTIVE JUROR NO. 11-1256: 2004, I
15 believe.

16 MR. KEMP: Okay. Thank you.

17 THE COURT: Mr. Roberts, anything else?

18 MR. ROBERTS: Nothing further from us, Your
19 Honor.

20 THE COURT: Thank you, Mr. Summerfield. If
21 you could wait outside, please.

22 11-1256. Okay.

23 MR. KEMP: Your Honor, I'm troubled by the
24 fact he's going to be gone the last week, which is what
25 it sounds like -- the best case scenario, if we only go

1 four weeks. Five weeks, he's gone the last week. The
2 worst case scenario, he's going to be gone more than
3 the last week.

4 And the bus thing troubles me a little bit.
5 I know he said he could be fair, but he actually went
6 to a bus trade show, I mean, and tried different types
7 of buses out. And the 2004 J4500 with regards to the
8 issues we're talking about in this case is the same as
9 the 2008 J4500 that we're -- that we're talking about.

10 So -- so I think the fact that he's actually
11 went and been solicited by MCI at the trade show, that
12 he's part of the procurement process, that they
13 ultimately bought a J4500, so they chose that over all
14 the buses, I think that's, you know, a circumstance
15 that, when you add to the first thing, requires
16 disqualification.

17 MR. ROBERTS: Your Honor, with regard to his
18 schedule, I believe he said that the mother is in a
19 program for four weeks from just going to see her now.
20 So four weeks will actually take us to the fifth week
21 of trial, which is when we're scheduled to end. So
22 even if we go five weeks, he's got four weeks from
23 yesterday, which ought to get us to the end.

24 And with regard to his experience with MCI
25 coaches, he was pretty clear that he was in operations.

1 He never looked at safety features. He didn't evaluate
2 safety features. That wasn't part of the -- his input
3 into the selection process of the MCI bus.

4 And, under Sears-Page, life experiences and
5 knowing things and knowing people doesn't automatically
6 disqualify you. It's only if you form opinions on the
7 case from those experiences which you're unable to set
8 aside. And it wasn't -- we don't even get to whether
9 he can set aside his biases. He said he had no
10 opinions as to whether the bus was defective based on
11 his personal knowledge.

12 So -- so I don't think there's any statutory
13 basis on this record to disqualify him.

14 Thank you, Your Honor.

15 MR. CHRISTIANSEN: Judge, I just want to make
16 sure that the Court -- I'm extremely familiar with the
17 WestCare program and children with parents at the
18 WestCare program. So essentially what is being
19 suggested to you is that we all put all of the other
20 jurors and all of our time into a case that we are
21 hoping that this drug addict mom, who's on her seventh
22 child that's -- he -- this juror has two of won't walk
23 away.

24 They can't keep her there. I mean, she can
25 walk away tomorrow. And -- and I don't even want to

1 get into the statistics of the walk-away and the
2 recidivism of the drug addicts that go in and out of
3 WestCare and the family program, which is a marvelous
4 program for those that avail themselves of it, but a
5 lady who doesn't have a single one of her seven
6 children, I don't think any of us should be counting on
7 this gentleman being here tomorrow, much less for four
8 weeks.

9 THE COURT: The gentleman seems like a very
10 serious and very responsible gentleman, but the truth
11 be told, is I -- I presided over five specialty courts
12 for almost a year and a half and two others for over
13 two years. And I had numerous participants in
14 WestCare, and they can walk right out.

15 MR. CHRISTIANSEN: That's right.

16 THE COURT: And four weeks doesn't mean four
17 weeks; it could mean two weeks. It won't mean more
18 than four weeks, but it could mean two weeks. And if
19 they find housing, they need to take it immediately or
20 then the person goes to the end of the list.

21 And I'm very concerned about that because it
22 was always a moving puzzle in the -- when I had 5 and
23 600 people, I had to really -- they were -- they did a
24 great job. You know, I have no complaints about
25 WestCare, but it's almost impossible to predict how

1 long she'll be there beginning with she can walk away
2 today, literally.

3 And so I think that's the greater problem.

4 MR. KEMP: Great.

5 THE COURT: So I am concerned about that
6 because, as he indicated, he can't ask a neighbor even
7 to watch for one week because of their not being
8 certified in the D -- I'm not sure --

9 MR. CHRISTIANSEN: It's the DCFS.
10 Mr. Roberts and I had a case out of DCFS together.
11 Audra reminded us that it's not until they're six weeks
12 old that the child can even be babysat by a qualified
13 DCFS child placement center. You can't give it to
14 somebody for a day.

15 THE COURT: And he's giving you the best case
16 scenario, but my experience for close to four years --
17 close to three years -- it was -- I don't want to
18 misspeak, maybe longer -- is that, you know, I would
19 send somebody for four weeks, and a week later they'd
20 walk away or two weeks later. Or, you know, if it was
21 good, they would be placed, but they have to go
22 immediately.

23 So I don't think he -- his schedule, he can
24 control it, is the problem.

25 MR. CHRISTIANSEN: And if he's placed, Your

1 Honor, the likelihood is the child is taken from the --
2 if the mom is placed, the likelihood is this infant
3 child is taken from the mother, who can't --

4 THE COURT: Oh, they won't?

5 MR. KEMP: Right.

6 THE COURT: I don't know the specifics of
7 this case, but I -- I don't believe they'll let the
8 child go with the mother.

9 MR. CHRISTIANSEN: Of course not.

10 THE COURT: They'll let her stay supervised
11 with the mother while she's there, but they won't keep
12 the infant alone and they won't send the infant home
13 with the mother. I'm -- I'm certain of that, if
14 this -- if what he's telling us is correct.

15 So for -- for that reason, I would excuse
16 him.

17 MR. CHRISTIANSEN: Thank you, Your Honor.

18 THE COURT: Yeah.

19 MR. KEMP: Your Honor, we --

20 THE COURT: Marshal Padilla, will you please
21 tell Mr. -- is it Summerfield -- Summerfield that he's
22 excused and thank him from the Court and ask him to go
23 to jury services.

24 THE CLERK: He dropped his badge.

25 THE COURT: He dropped his badge?

1 THE CLERK: Yes.

2 MR. KEMP: Your Honor, can I go outside and
3 give it to him?

4 THE COURT: Yes. Thank you.

5 All right. I think at this point we should
6 go straight to the jurors that are seated -- that
7 indicated that they heard about the ...

8 MR. ROBERTS: Yes. Mr. Stokes said --

9 THE COURT: And Ms. Wooters. I think the
10 others can wait.

11 I will say that Ms. Webber [sic] said she's
12 familiar with -- let's see -- a couple of people. But
13 I think the next we should move forward are the one --
14 keep going for today -- or for now.

15 Marshal, you will please bring Ms. Wooters
16 in.

17 THE MARSHAL: Ms. who?

18 THE COURT: Ms. Wooters, the one that's
19 seated.

20 MR. KEMP: You want them in at the same time
21 or separately?

22 THE COURT: No, separately.

23 Oh, Mr. Stokes is here?

24 I'm sorry. Forgive me. I didn't see you,
25 Mr. Stokes.

1 PROSPECTIVE JUROR NO. 11-1246: It's quite
2 all right.

3 THE COURT: So -- I was looking down. Thank
4 you. Let's see.

5 We have some follow-up questions for you.
6 Okay?

7 Counsel, go ahead.

8 MR. KEMP: Mr. Stokes, can we get your badge
9 number, first of all.

10 THE COURT: Mr. Kemp, you need to speak a
11 little bit louder, please.

12 PROSPECTIVE JUROR NO. 11-1246: It's 11-1246,
13 Brian Stokes.

14 MR. KEMP: And, Mr. Stokes, when you filled
15 out your questionnaire, you said something about
16 hearing about this on the media somewhere? The radio,
17 I think you said.

18 PROSPECTIVE JUROR NO. 11-1246: Radio. On
19 the way to work, it came over the radio.

20 MR. KEMP: And are we just talking about
21 regular radio or FM radio? What are we talking about?

22 PROSPECTIVE JUROR NO. 11-1246: I've got
23 Sirius, I think, and -- well, hold on a second, because
24 it wouldn't have been on there.

25 The recollection I had is I heard about it I

1 think -- you know what it was? It was at work, where I
2 have an FM station, I think. And it was on one of the
3 traffic reports or something, I believe. But --

4 MR. KEMP: Okay.

5 PROSPECTIVE JUROR NO. 11-1246: -- I can't --

6 MR. KEMP: Was this at or near the time of
7 the incident?

8 If I told you the incident happened on
9 April 18th, would that help?

10 PROSPECTIVE JUROR NO. 11-1246: I remember
11 that, but, yeah, it's pretty vague. You know?

12 MR. KEMP: Okay. You heard something about
13 it on the radio?

14 PROSPECTIVE JUROR NO. 11-1246: I think so.

15 MR. KEMP: Did you also hear anything about
16 it on TV or --

17 PROSPECTIVE JUROR NO. 11-1246: No.

18 MR. KEMP: And after that one time you heard
19 about it on the radio, did you -- did you get any other
20 information at any other time about it?

21 PROSPECTIVE JUROR NO. 11-1246: No, no.

22 MR. KEMP: Okay. And do you take the paper?

23 PROSPECTIVE JUROR NO. 11-1246: No.

24 MR. KEMP: And do you read the paper on the
25 internet sometimes?

1 PROSPECTIVE JUROR NO. 11-1246: No.

2 MR. KEMP: So it's just that one little
3 mention on the radio?

4 PROSPECTIVE JUROR NO. 11-1246: It was a blip
5 on the traffic report, I seem to think. I don't know.
6 So many people have mentioned this in here too, you
7 know, it's like almost reflective. You know, you keep
8 hearing other people say the same thing.

9 MR. KEMP: You mean while you've been in
10 here?

11 PROSPECTIVE JUROR NO. 11-1246: Yeah, I think
12 so. After a point, you start thinking maybe I did hear
13 about that.

14 MR. KEMP: Did you hear about any of the
15 facts of what happened?

16 PROSPECTIVE JUROR NO. 11-1246: No. When I
17 got here, this is the first I knew about it.

18 MR. KEMP: Back to the media, though, did you
19 hear about any of the facts in the media?

20 PROSPECTIVE JUROR NO. 11-1246: No.

21 MR. KEMP: Is there anything about that that
22 would affect your judgment one way or the other on this
23 case, what you heard in the media?

24 PROSPECTIVE JUROR NO. 11-1246: No, I don't
25 think so.

1 MR. KEMP: Okay.

2 Nothing further, Your Honor.

3 THE COURT: Okay. Thank you.

4 Mr. Roberts?

5 MR. ROBERTS: Mr. Stokes, as best as you can
6 recall, what do you remember hearing? What did the
7 radio station say?

8 PROSPECTIVE JUROR NO. 11-1246: It seems like
9 it was a traffic report and there was a fatality
10 possibly. You know? I'm saying -- this is really
11 vague, you know. My recollection is not -- you know, I
12 could say probably -- I'm not even that certain about
13 it anymore. This was a year ago, so --

14 MR. ROBERTS: Right.

15 PROSPECTIVE JUROR NO. 11-1246: -- sorry.

16 MR. ROBERTS: No, I understand. Thank you,
17 sir.

18 Nothing further, Your Honor.

19 THE COURT: Okay. Thank you very much.

20 MR. KEMP: I don't think that rose to the
21 level of a concern.

22 MR. ROBERTS: I would agree, Your Honor.

23 THE COURT: No.

24 Marshal Padilla, would you please bring in
25 Ms. Wooters.

1 MR. ROBERTS: Wooters, I believe, which I've
2 never heard.

3 THE COURT: It's Wooters.

4 Ms. Wooters, please take a seat.

5 PROSPECTIVE JUROR NO. 11-1255: The hot seat.
6 All right.

7 THE COURT: If you could just state your
8 badge number for us, please, Ms. Wooters.

9 PROSPECTIVE JUROR NO. 11-1255: 11-1255.

10 THE COURT: Okay. We just have a few
11 follow-up questions for you, counsel does.

12 MR. KEMP: Ms. Wooters, my name is Will Kemp,
13 K-e-m-p.

14 You mentioned in the questionnaire that you
15 heard something about this case somewhere.

16 PROSPECTIVE JUROR NO. 11-1255: Maybe on the
17 radio or in the news, just about -- that the bicyclist
18 had been hit by a bus.

19 MR. KEMP: Okay. So you heard about it
20 somewhere?

21 PROSPECTIVE JUROR NO. 11-1255: Yeah.

22 MR. KEMP: But you don't know if it was the
23 radio or the news?

24 PROSPECTIVE JUROR NO. 11-1255: Well, it was
25 definitely the news, but I'm not sure if it was the

1 news on the radio.

2 MR. KEMP: That's what I'm asking.

3 PROSPECTIVE JUROR NO. 11-1255: Yeah.

4 MR. KEMP: You take the paper on a regular
5 basis?

6 PROSPECTIVE JUROR NO. 11-1255: Yes.

7 MR. KEMP: And which one do you subscribe to?

8 PROSPECTIVE JUROR NO. 11-1255:
9 Review-Journal.

10 MR. KEMP: Review-Journal. And, sitting here
11 today, you just remember hearing about it, but you
12 don't remember which of these two sources, radio or
13 newspaper?

14 PROSPECTIVE JUROR NO. 11-1255: I'm sure I
15 didn't read about it in the newspaper, so I heard it on
16 the TV news or on the radio news.

17 MR. KEMP: Okay. So it was either radio or
18 TV news?

19 PROSPECTIVE JUROR NO. 11-1255: Correct.

20 MR. KEMP: And do you remember any specific
21 facts that you may have heard?

22 PROSPECTIVE JUROR NO. 11-1255: No.

23 MR. KEMP: Just bus-bicycle accident?

24 PROSPECTIVE JUROR NO. 11-1255: Just
25 bus-bike.

1 MR. KEMP: Okay.

2 I have no further questions.

3 THE COURT: Thank you.

4 MR. ROBERTS: I have no questions, Your
5 Honor. Thank you.

6 THE COURT: Thank you very much.

7 Okay.

8 MR. KEMP: Judge, we have to inform jury
9 services by 3:00 as to what we want tomorrow. And I
10 think since we had -- out of the 50, we had 25
11 no-shows, and I assume that's 'cause, you know, we are
12 in the middle of a bad flu epidemic, but, for whatever
13 reason, out of those 25 that showed up, I think we just
14 got rid of between 10 and 12 of them.

15 So I submit we probably need to bring in
16 another 50?

17 MR. ROBERTS: Yeah, that's fine, Your Honor.

18 MR. BARGER: Reluctantly, we can shake our
19 head in agreement.

20 MR. ROBERTS: Which means we may get another
21 25. No, no. I think 50 -- I think 25 who actually
22 show up will be enough.

23 THE COURT: All right.

24 MR. KEMP: It is the worst flu season in 20
25 years.

1 MR. ROBERTS: It is. It's awful.

2 MR. CHRISTIANSEN: Judge, can I have two
3 quick minutes to scoot back to the bathroom?

4 THE COURT: No.

5 MR. CHRISTIANSEN: Please. Thank you, Your
6 Honor.

7 MR. ROBERTS: We're off.

8 (Discussion was held off the record.)

9 THE COURT: So we are going to start with
10 Mr. Christiansen.

11 MR. CHRISTIANSEN: The two new folks.

12 THE COURT: Yes. All right.

13 Marshal Padilla, please bring the jury in.
14 Okay.

15 Do you want me to have the roll call at this
16 point?

17 MR. CHRISTIANSEN: I don't think you need to,
18 Judge. You did it earlier.

19 THE COURT: Good. Just making sure.
20 Preserving my record.

21 (Discussion was held off the record.)

22 MR. KEMP: On The Venetian issue, I asked
23 Mr. Pepperman to call general counsel again because we
24 want to check with the departments. So we may know
25 something later today if not early tomorrow morning.

1 THE COURT: Thank you.

2 THE MARSHAL: Waiting on a couple.

3 THE COURT: We are off the record?

4 THE COURT RECORDER: Yes, Your Honor.

5 (Discussion was held off the record.)

6 THE MARSHAL: All rise for the jury.

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

9 THE MARSHAL: All accounted for, Your Honor.

10 THE COURT: All right. Thank you, Marshal.
11 Please be seated. Do the parties stipulate
12 to the presence of the jury?

13 MR. CHRISTIANSEN: Yes, Your Honor.

14 MR. ROBERTS: Yes, Your Honor.

15 THE COURT: Mr. Christiansen, would you
16 please proceed?

17 MR. CHRISTIANSEN: I will, Your Honor.

18 VOIR DIRE EXAMINATION

19 MR. CHRISTIANSEN: Good afternoon again.
20 Somebody really just say uh-huh?

21 For the sake of the folks that are in the
22 audience that are new, this is a process some of us
23 have been going through for a week. And so that
24 everybody understands what we're looking at, you all
25 came in and filled out these questionnaires. Everybody

1 remember that?

2 From that, I caused to be made some summaries
3 that you'll see me looking at. That's just nothing
4 more than my work of summarizing what you all put down.
5 And then I got a seating chart for all the folks that
6 are up here, because that's who I'm going to talk to
7 next. But for those of you that are here today as your
8 first day, as the judge said, it's important you pay
9 attention to the questions and answers because, likely,
10 some of you make your way up here and, to the extent we
11 can, we'll expedite the process. Sound good? All
12 right.

13 All right. Ms. Wooters.

14 PROSPECTIVE JUROR NO. 11-1255: Yes.

15 MR. CHRISTIANSEN: And Mr. Stokes. Who's got
16 the microphone? Anybody? Everybody?

17 Just give it to Ms. Wooters, if you would
18 please.

19 PROSPECTIVE JUROR NO. 11-1255: Thank you.

20 MR. CHRISTIANSEN: All right. Ms. Wooters,
21 Mr. Stokes, you heard last week me describe the process
22 for those that were sitting up here and asked them if
23 they had any problem participating in a process where
24 lawyers fight with each other sometimes by way of
25 objections, approach the judge, get rulings. And those

1 persons that are still here all said that they were
2 okay with that process.

3 Do either of you have a problem with the
4 process? Ms. Wooters?

5 PROSPECTIVE JUROR NO. 11-1255: No.

6 MR. CHRISTIANSEN: Mr. Stokes.

7 PROSPECTIVE JUROR NO. 11-1246: No.

8 MR. CHRISTIANSEN: Great. You also heard me
9 explain that in this courtroom, the process necessarily
10 involves or can involve jurors who can write their own
11 question at the conclusion of a particular witness,
12 hand it to the marshal, who gives it to Her Honor, who
13 just like she does with the lawyers and decides if it's
14 an appropriate question to ask a potential witness.

15 Would either of you have a problem doing
16 that?

17 PROSPECTIVE JUROR NO. 11-1255: No.

18 MR. CHRISTIANSEN: Both of you heard us talk
19 about, in a courtroom, issues of bias or leaning. My
20 sort of silly example is I'm biased against tomatoes.
21 I hate them.

22 Either of you have a bias that you think
23 would affect your ability to be fair and impartial in
24 this case? Not theoretically, but in this particular
25 case the Khiabani boys versus Motor Coach Industries?

1 Ms. Wooters?

2 PROSPECTIVE JUROR NO. 11-1255: No.

3 THE COURT: Mr. Stokes?

4 PROSPECTIVE JUROR NO. 11-1246: I think not.

5 THE COURT: You want to hand that back to
6 Mr. Stokes just so I can ask him what he meant by that.

7 Badge number too, sir. I'm sorry.

8 PROSPECTIVE JUROR NO. 11-1246: 1246. I
9 don't know if this is the right timing for this, but I
10 have a problem with punitive.

11 MR. CHRISTIANSEN: All right. I had -- I had
12 a feeling you might. I read your questionnaire,
13 obviously, Mr. Stokes.

14 Is it fair for me to assume by your answer to
15 that question that you have similar viewpoints to
16 others that you heard last week who were excused?

17 PROSPECTIVE JUROR NO. 11-1246: Possibly.

18 MR. CHRISTIANSEN: Tell me what you mean
19 where you have a trouble with punitives. I don't want
20 to put words in your mouth. So help me.

21 PROSPECTIVE JUROR NO. 11-1246: Okay.
22 Punitive damages translate for me in a product --
23 product liability. Product liability drives up costs,
24 and those costs are passed on to all of us in here.

25 MR. CHRISTIANSEN: Okay. Remember -- and

1 that's a notion, I think -- do you have your own
2 business?

3 PROSPECTIVE JUROR NO. 11-1246: I have a side
4 business, yes.

5 MR. CHRISTIANSEN: Separate from your
6 full-time employment.

7 PROSPECTIVE JUROR NO. 11-1246: That's
8 correct.

9 MR. CHRISTIANSEN: My recollection was you
10 did something with the airport or airport services?

11 PROSPECTIVE JUROR NO. 11-1246: Yeah. I
12 repair all types of GSE, fuel trucks, things like that.

13 MR. CHRISTIANSEN: Great. And as a small
14 business owner -- I think the gentleman that was in
15 your seat was a small business owner last week. Oh,
16 no. He might have been the nice lady to your left.

17 But you heard -- I think his name was
18 Browning. Mr. Browning had concerns that he said he
19 just couldn't get out of the back of his mind the
20 effect on other things an award of punitive damages
21 might have.

22 Is that similar to what you're telling me?

23 PROSPECTIVE JUROR NO. 11-1246: I think so.

24 MR. CHRISTIANSEN: And you heard me tell
25 everybody last week that, when focusing on your job as

1 a juror, you have to follow the law as Her Honor gives
2 it to you. Remember that?

3 PROSPECTIVE JUROR NO. 11-1246: Correct.

4 MR. CHRISTIANSEN: And no matter what any of
5 us lawyers say or instructions you get, you're still
6 going to be thinking to yourself, if we got to a
7 punitive damage portion, of the other -- sort of the
8 trickle-down effect, I think somebody might have used
9 the word last week, of an award of punitive damages.
10 Fair?

11 PROSPECTIVE JUROR NO. 11-1246: Right.

12 MR. CHRISTIANSEN: That's not -- I'm not
13 going to change your mind by asking you questions about
14 that belief, am I?

15 PROSPECTIVE JUROR NO. 11-1246: I have a
16 preconceived notion about punitive damages.

17 MR. CHRISTIANSEN: And that preconceived
18 notion is a -- not in a bad way -- it's a bias that
19 would lean against the Khiabani boys in this case who
20 were making a claim for punitive damages?

21 PROSPECTIVE JUROR NO. 11-1246: It's not
22 personal, but it's something I think about.

23 MR. CHRISTIANSEN: Understood. I didn't mean
24 it -- I didn't mean you to think I was making it
25 personal. It's a belief you've had for a period of

1 years. Is that fair?

2 PROSPECTIVE JUROR NO. 11-1246: Because of my
3 background.

4 MR. CHRISTIANSEN: And I'm not going to
5 change that belief by asking you some questions, am I?

6 PROSPECTIVE JUROR NO. 11-1246: I wouldn't
7 think so.

8 MR. CHRISTIANSEN: And because I'm not going
9 to change that belief, in this particular case, you're
10 probably not suited to be a fair and impartial juror.
11 Fair?

12 PROSPECTIVE JUROR NO. 11-1246: Say that
13 again.

14 MR. CHRISTIANSEN: Sure. Because of that
15 leaning that you told me you've got, for a case where
16 punitive damages are at play, you would not be
17 impartial?

18 PROSPECTIVE JUROR NO. 11-1246: That's right.

19 MR. CHRISTIANSEN: You would lean one way and
20 wouldn't -- parties aren't at an even starting point?

21 PROSPECTIVE JUROR NO. 11-1246: Quite likely
22 because of where we are with this whole case.

23 MR. CHRISTIANSEN: I appreciate your candor.
24 And no question by me or any other lawyer is going to
25 change your opinion about that?

1 PROSPECTIVE JUROR NO. 11-1246: I don't think
2 so.

3 MR. CHRISTIANSEN: All right. And so you
4 cannot tell me unequivocally you'll be fair to the
5 plaintiffs in this case where punitive damages are at
6 play?

7 PROSPECTIVE JUROR NO. 11-1246: I can't.

8 MR. CHRISTIANSEN: Thank you, sir.

9 May I approach, Your Honor?

10 THE COURT: Yes.

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

13 MR. CHRISTIANSEN: Mr. Stokes, you want to
14 hand that mic down to Ms. Wooters? And, Mr. Stokes,
15 thank you for your candor, by the way.

16 All right. Ms. Wooters, do you have any of
17 the same feelings that Mr. Stokes expressed?

18 PROSPECTIVE JUROR NO. 11-1255: No.

19 MR. CHRISTIANSEN: Do you remember the
20 explanation of the burden of proof in a civil case
21 being more likely than not, or we call it -- us lawyers
22 call preponderance of the evidence?

23 PROSPECTIVE JUROR NO. 11-1255: Yes.

24 MR. CHRISTIANSEN: Any problem with that
25 standard?

1 PROSPECTIVE JUROR NO. 11-1255: No.

2 MR. CHRISTIANSEN: Would the standard stay
3 the same for you even if I was asking -- even when I
4 ask for tens of millions of dollars?

5 PROSPECTIVE JUROR NO. 11-1255: Yes.

6 MR. CHRISTIANSEN: And, you know, sort of
7 that gut feeling that people have, like, well, if
8 you're really going to -- that funny young man last
9 week said I better bring my game, if you remember that
10 guy -- if I wanted that.

11 Can you resist that sort of natural gut
12 instinct and just apply the laws and burden as the
13 judge gives it to you?

14 PROSPECTIVE JUROR NO. 11-1255: Yes.

15 MR. CHRISTIANSEN: Any problem listening to
16 experts testify?

17 PROSPECTIVE JUROR NO. 11-1255: No.

18 MR. CHRISTIANSEN: Don't remember from your
19 questionnaire. Children?

20 PROSPECTIVE JUROR NO. 11-1255: Yes.

21 MR. CHRISTIANSEN: More than one?

22 PROSPECTIVE JUROR NO. 11-1255: Two.

23 MR. CHRISTIANSEN: Remember my kid question
24 to other jurors about two kids with different versions
25 and having to use your sort of common sense as a mom?

1 PROSPECTIVE JUROR NO. 11-1255: Yes.

2 MR. CHRISTIANSEN: You can use -- do nothing
3 different in this case, just use that same common sense
4 for people that hit the stand in here?

5 PROSPECTIVE JUROR NO. 11-1255: Yes.

6 MR. CHRISTIANSEN: Your, I think it's,
7 significant other is a driver?

8 PROSPECTIVE JUROR NO. 11-1255: Yes.

9 MR. CHRISTIANSEN: Sounds like for a while he
10 worked sort of in the industry, in the limo industry?

11 PROSPECTIVE JUROR NO. 11-1255: Correct.

12 MR. CHRISTIANSEN: And now he maybe does it
13 privately or independently?

14 PROSPECTIVE JUROR NO. 11-1255: Yes.

15 MR. CHRISTIANSEN: Anything about the fact
16 that I represent a family of a man who was on a cycle,
17 a bicycle, as opposed to, you know, a common carrier, a
18 limo or bus -- limo is why I'm talking to you about
19 it -- that would cause you to lean one way or another?

20 PROSPECTIVE JUROR NO. 11-1255: No.

21 MR. CHRISTIANSEN: Same question, about your
22 experience when you were young. I think in your
23 teenage years you had a -- sounds like a bad accident.

24 PROSPECTIVE JUROR NO. 11-1255: Uh-huh.

25 MR. CHRISTIANSEN: You have to say yes.

1 PROSPECTIVE JUROR NO. 11-1255: Yes.

2 MR. CHRISTIANSEN: I don't do that to be
3 mean, but this nice young lady will turn around and
4 give me the business if I don't get a yes or no.

5 PROSPECTIVE JUROR NO. 11-1255: I understand.

6 MR. CHRISTIANSEN: And persons lost their
7 lives as a result of the incident you were involved
8 with, as I understand it?

9 PROSPECTIVE JUROR NO. 11-1255: Yes.

10 MR. CHRISTIANSEN: And I think you told Her
11 Honor earlier this afternoon that it was in a
12 rural-type area? I think you said the country.

13 PROSPECTIVE JUROR NO. 11-1255: Yes.

14 MR. CHRISTIANSEN: Whereabouts was that? In
15 Nevada, like up in the cow counties?

16 PROSPECTIVE JUROR NO. 11-1255: Parker,
17 Colorado.

18 MR. CHRISTIANSEN: So a different state.

19 PROSPECTIVE JUROR NO. 11-1255: (Witness nods
20 head.)

21 MR. CHRISTIANSEN: And you also told Her
22 Honor that -- a couple of things. One is that the
23 accident, it sounded like, got caused because something
24 happened internally in the car you were in and you
25 inadvertently went across the middle line.

1 PROSPECTIVE JUROR NO. 11-1255: Correct.

2 MR. CHRISTIANSEN: As a result of the
3 accident, which you explained to us led to fatalities,
4 there was no lawsuit filed, you told us.

5 PROSPECTIVE JUROR NO. 11-1255: Correct.

6 MR. CHRISTIANSEN: So I have to ask the
7 obvious question. In this case there's a fatality, and
8 Mr. Kemp and I filed a lawsuit on behalf of the
9 Khiabani family and then just the children because the
10 mom passed away.

11 Anything about your prior experience where
12 there were fatalities and no lawsuit got filed that
13 would cause you to be partial towards one side or
14 another in here?

15 PROSPECTIVE JUROR NO. 11-1255: No.

16 MR. CHRISTIANSEN: And I did also write down
17 that your significant other for about the last year has
18 been an owner of a barber shop?

19 PROSPECTIVE JUROR NO. 11-1255: Correct.

20 MR. CHRISTIANSEN: Mr. Stokes behind you,
21 Mr. Browning last week were small business owners and
22 they had, you know, concerns that are particular to
23 them.

24 Anything about your significant other having
25 a small business for the last year that would make you

1 partial or lean one way or another in this case?

2 PROSPECTIVE JUROR NO. 11-1255: No.

3 MR. CHRISTIANSEN: In your questionnaire, you
4 checked off that you might know a whole bunch of
5 people. I was one of them. But I think you probably
6 got in here and figured out you don't know me?

7 PROSPECTIVE JUROR NO. 11-1255: No.

8 MR. CHRISTIANSEN: You don't know Will,
9 Mr. Kemp?

10 PROSPECTIVE JUROR NO. 11-1255: No.

11 MR. CHRISTIANSEN: You checked off that
12 there's another lawyer with my name, different middle
13 initial. That's my dad. You don't know him?

14 PROSPECTIVE JUROR NO. 11-1255: I don't think
15 so.

16 MR. CHRISTIANSEN: Okay. You just had
17 checked off that you knew a number of people, and I
18 wanted to make sure that we were clear.

19 PROSPECTIVE JUROR NO. 11-1255: I checked
20 names who had the same last name as kids I've had in my
21 class or have in my class currently.

22 MR. CHRISTIANSEN: That's right. You teach
23 at the day school.

24 PROSPECTIVE JUROR NO. 11-1255: Correct.

25 MR. CHRISTIANSEN: I think you may have had a

1 niece or nephew of mine go through there with the same
2 last name. Is that going to cause you to lean one way
3 or another?

4 PROSPECTIVE JUROR NO. 11-1255: No.

5 MR. CHRISTIANSEN: I've never had any
6 interaction with you, to my knowledge.

7 PROSPECTIVE JUROR NO. 11-1255: No.

8 MR. CHRISTIANSEN: You also put down you knew
9 Mr. Barger.

10 PROSPECTIVE JUROR NO. 11-1255: I did.

11 MR. CHRISTIANSEN: He lives in Corpus
12 Christi. You don't teach over there a little bit too?

13 PROSPECTIVE JUROR NO. 11-1255: I might have
14 checked that accidentally.

15 MR. CHRISTIANSEN: I was just pointing it was
16 a mistake all the way around.

17 PROSPECTIVE JUROR NO. 11-1255: Correct.

18 MR. CHRISTIANSEN: The vehicle, Ms. Wooters,
19 that you drive, does have proximity sensors on it?

20 PROSPECTIVE JUROR NO. 11-1255: Yes.

21 MR. CHRISTIANSEN: And help me understand
22 what type of proximity sensors it has.

23 PROSPECTIVE JUROR NO. 11-1255: The -- if I'm
24 closing in on somebody too quickly, it screams at me to
25 brake. Backup sensors and a backup camera. And I can

1 also turn on the -- if I'm moving out of my lane or
2 whatever, it will --

3 MR. CHRISTIANSEN: Scream at you?

4 PROSPECTIVE JUROR NO. 11-1255: -- scream at
5 me.

6 MR. CHRISTIANSEN: It will alert you somehow?
7 Is it audible and maybe lights come on as well, so both
8 audibly and visually?

9 PROSPECTIVE JUROR NO. 11-1255: Yes.

10 MR. CHRISTIANSEN: And I wrote down that one
11 of your children works at a place called RevZilla.

12 PROSPECTIVE JUROR NO. 11-1255: Correct.

13 MR. CHRISTIANSEN: Help me understand what
14 that is.

15 PROSPECTIVE JUROR NO. 11-1255: It's a
16 motorcycle parts distribution warehouse. They ship
17 motorcycle parts to various places and companies, as I
18 understand it.

19 MR. CHRISTIANSEN: And remember that section
20 of questions that talked about lawsuits and your
21 feelings about lawyers and lawsuits? Looks to me from
22 your answers that you've used lawyers for various
23 things in your life.

24 PROSPECTIVE JUROR NO. 11-1255: Yes.

25 MR. CHRISTIANSEN: You answered that, when

1 asked about your feelings on lawsuit, it said,
2 "Sometimes they're necessary and deserved; others are
3 not."

4 PROSPECTIVE JUROR NO. 11-1255: Correct.

5 MR. CHRISTIANSEN: Does that reflect sort of
6 your willingness to judge things on a case-by-case
7 basis?

8 PROSPECTIVE JUROR NO. 11-1255: Yes.

9 MR. CHRISTIANSEN: You went -- a couple of
10 questions down from there, it asked what percentage of
11 lawsuits do you think are frivolous. You answered
12 50 percent.

13 Is that a number you picked simply because,
14 depending on the facts, you want to make a decision
15 that's fair?

16 PROSPECTIVE JUROR NO. 11-1255: Correct.

17 MR. CHRISTIANSEN: You heard that this is a
18 products case, a case where the plaintiffs have alleged
19 that a bus is defective or unreasonably dangerous and
20 that that caused the death of their father.

21 PROSPECTIVE JUROR NO. 11-1255: Yes.

22 MR. CHRISTIANSEN: And this type of case, not
23 in the theoretical or in the long questionnaire, do you
24 have a leaning one way or another? Is everybody at an
25 even starting point?

1 PROSPECTIVE JUROR NO. 11-1255: Even.

2 MR. CHRISTIANSEN: If the football is at the
3 50-yard line -- see if you were listening last week --
4 for the plaintiff to prevail, do I got to score a
5 touchdown?

6 PROSPECTIVE JUROR NO. 11-1255: No.

7 MR. CHRISTIANSEN: I just got to move the
8 football where?

9 PROSPECTIVE JUROR NO. 11-1255: 51.

10 MR. CHRISTIANSEN: That a standard you're
11 okay with?

12 PROSPECTIVE JUROR NO. 11-1255: Yes.

13 MR. CHRISTIANSEN: Now, the standard for
14 punitive damages is different. Her Honor will tell you
15 folks what that is. Simply put, it has to be satisfied
16 by clear and convincing evidence.

17 Are you open to listening to evidence that
18 may amount -- may or may not, depending on the jury's
19 determination -- to a finding of punitive damages?

20 PROSPECTIVE JUROR NO. 11-1255: Yes.

21 MR. CHRISTIANSEN: And if you check that box,
22 would you be able to listen to economists tell you what
23 type of monetary award would deter this particular
24 company based on their financials?

25 PROSPECTIVE JUROR NO. 11-1255: Yes.

1 MR. CHRISTIANSEN: Any problem doing that?

2 PROSPECTIVE JUROR NO. 11-1255: No.

3 MR. CHRISTIANSEN: I asked the question. I
4 think that lady might have been sitting in your seat.
5 Her name was Ms. Smith. She was a little bitty lady,
6 and I asked the question -- and I forgot to follow up
7 with everybody else -- about photographs.

8 There -- there could be in this case -- not
9 there could be. There's going to be photos that are
10 unpleasant of Dr. Khiabani.

11 Would you be able to look at those photos and
12 give them whatever judgment or you need to in the
13 course of the case?

14 PROSPECTIVE JUROR NO. 11-1255: Able to, yes.

15 MR. CHRISTIANSEN: Right. None of us want
16 to, but it's a fact in the case. And specifically
17 there's a video from a gardener who is blowing leaves
18 or doing something on the corner right near the
19 accident. Real close. And the video reflects sort of
20 the aftereffect, and it's a minute or two long. I
21 don't know that persons will be able to watch or -- the
22 whole thing will be played.

23 Is that something you could watch?

24 PROSPECTIVE JUROR NO. 11-1255: I believe so.

25 MR. CHRISTIANSEN: Is there anybody that

1 thinks they would be unable to watch that video?

2 Ms. Vandevanter, want to hand that mic down to -- and,

3 Ms. Vandevanter, let me try to give you some background

4 for why I asked the question.

5 One of the issues that all the lawyers agree
6 is at play in this case is whether or not Dr. Kayvan
7 Khiabani suffered pain and suffering as a result of the
8 accident. Defense has one position; plaintiff has a
9 different position. And there is evidence that is
10 relevant to that that a jury would need to consider.

11 So that's not in a vacuum, that's sort of me
12 telling you a preview of things to come without
13 coloring it one way or another. Tell me what your
14 concern is about pictures, maybe gruesome pictures?

15 PROSPECTIVE JUROR NO. 11-1186: June 16th, an
16 extremely close family friend -- nearly a family
17 member -- was in a very serious motorcycle accident on
18 the 15 and Washington. And so, since that time, he was
19 in the hospital until October. And we have been taking
20 care of his children as well as visiting and seeing him
21 pre and post over 60 surgeries. So it's just an
22 extremely similar case that is physically affecting me
23 just thinking about it.

24 MR. CHRISTIANSEN: Okay. That's -- see, it
25 was a good thing I followed up and asked the question;

1 right?

2 What happened to your friend in June is over
3 on Washington and the 15?

4 PROSPECTIVE JUROR NO. 11-1186: Uh-huh.

5 MR. CHRISTIANSEN: Can we agree that's
6 unrelated completely to what happened to Dr. Khiabani
7 back in April of last year?

8 PROSPECTIVE JUROR NO. 11-1186: Absolutely
9 unrelated.

10 MR. CHRISTIANSEN: Sounds like your friend
11 suffered one set of injuries, and you heard a little
12 bit. You will hear more about what Dr. Khiabani's
13 injuries were. But it sounds like they're different;
14 fair?

15 PROSPECTIVE JUROR NO. 11-1186: Similar,
16 possibly, but different.

17 MR. CHRISTIANSEN: Okay. Could you consider
18 what happened to Dr. Khiabani in a fair and impartial
19 manner in this case based on the evidence that you hear
20 from the witness stand and the law Judge Escobar gives
21 you?

22 PROSPECTIVE JUROR NO. 11-1186: Yes.

23 MR. CHRISTIANSEN: And everybody's got life
24 experiences; right? You've heard about them. Our goal
25 in choosing jurors, that we get impartial ones that

1 say, hey, I can leave my life experiences outside and
2 judge this case based on what happens in here and the
3 law Her Honor gives you.

4 Sounds like you're okay with doing that?

5 PROSPECTIVE JUROR NO. 11-1186: Yes.

6 MR. CHRISTIANSEN: Thank you,

7 Ms. Vandevanter. I appreciate you volunteering that.

8 Others -- let's get back to the general
9 question, because, my fault, I didn't follow up with
10 anybody.

11 Anybody else have an issue determining
12 whether or not -- or hearing evidence about whether or
13 not Dr. Khiabani suffered pain and suffering -- or pain
14 and anguish? Everybody think they would be able to do
15 that? Maybe not looking forward to it, but could all
16 of you do it?

17 Anybody that couldn't, put your hand up.

18 Ms. Vandevanter, you want to reach that
19 microphone right over your shoulder to Ms. McLain.

20 PROSPECTIVE JUROR NO. 11-0915: Oh, good.

21 MR. CHRISTIANSEN: You want the microphone?

22 Ms. McLain, how are you this morning or this
23 afternoon?

24 PROSPECTIVE JUROR NO. 11-0915: I'm good.

25 11-0915.

1 MR. CHRISTIANSEN: All right. Ms. McLain, my
2 recollection is that you worked at the Nevada
3 Department of Prisons for some period of time?

4 PROSPECTIVE JUROR NO. 11-0915: Yes, I did.

5 MR. CHRISTIANSEN: As a corrections officer?

6 PROSPECTIVE JUROR NO. 11-0915: Yes.

7 MR. CHRISTIANSEN: What prison did you work
8 at?

9 PROSPECTIVE JUROR NO. 11-0915: Southern
10 Desert up in Indian Springs.

11 MR. CHRISTIANSEN: Southern Desert is the
12 newer of the two; is that right?

13 PROSPECTIVE JUROR NO. 11-0915: It was the
14 only one out there at the time.

15 MR. CHRISTIANSEN: Okay. Nowadays, there's
16 two of them -- two out there. There's Indian Springs
17 and Southern Desert?

18 PROSPECTIVE JUROR NO. 11-0915: Right. When
19 I was out there, it was only Southern Desert and the
20 honor camp.

21 MR. CHRISTIANSEN: Which is like the boot
22 camp?

23 PROSPECTIVE JUROR NO. 11-0915: Probably,
24 yeah.

25 MR. CHRISTIANSEN: Okay. And when was it,

1 Ms. McLain, that you quit -- ceased being -- or quit
2 being a corrections officer for the Nevada Department
3 of Prisons?

4 PROSPECTIVE JUROR NO. 11-0915: '89.

5 MR. CHRISTIANSEN: All right. So some time
6 ago?

7 PROSPECTIVE JUROR NO. 11-0915: Right.

8 MR. CHRISTIANSEN: How long were you a
9 corrections officer? 20 years?

10 PROSPECTIVE JUROR NO. 11-0915: For about
11 nine years.

12 MR. CHRISTIANSEN: Nine years. I bet over
13 that time, you saw your fair share of interesting
14 things?

15 PROSPECTIVE JUROR NO. 11-0915: Yes.

16 MR. CHRISTIANSEN: The question I posed
17 around to everybody else about being able to consider
18 maybe graphic-ish or graphic photos and video, is that
19 something you could do?

20 PROSPECTIVE JUROR NO. 11-0915: I believe so,
21 yes.

22 MR. CHRISTIANSEN: You also, to my
23 recollection, have some experience -- I can't remember
24 if you told us you were a nurse at a mental health
25 hospital or a nurse assistant.

1 PROSPECTIVE JUROR NO. 11-0915: They called
2 us a therapy aide. We were basically a nurse's aide at
3 a psychiatric hospital.

4 MR. CHRISTIANSEN: Did you have to have some
5 medical training to do that job?

6 PROSPECTIVE JUROR NO. 11-0915: No. We did,
7 like, about six weeks of training, different training.

8 MR. CHRISTIANSEN: Would you be able to,
9 Ms. McLain, in this case, listen to doctors and
10 witnesses testify about what they saw -- well, first,
11 let's stick with first things first.

12 Would you be able to listen to witnesses --
13 like, eyewitnesses -- testify about what they saw
14 immediately after the accident?

15 PROSPECTIVE JUROR NO. 11-0915: Yes.

16 MR. CHRISTIANSEN: Okay. You all will also
17 learn that Dr. Khiabani ultimately was transported to
18 the Clark County Medical Examiner's office, and there's
19 a potential that Lisa Gavin, who's a coroner, may
20 testify in this case.

21 Anybody think they're -- not be able to
22 listen to a medical -- their true title is they're a
23 forensic pathologist, but they're -- we -- by
24 shorthand, we call them coroners.

25 Anybody be unable to listen to a coroner

1 testify?

2 Ms. McLain, you're unlucky enough to have the
3 mic, so we'll start with you. Could you listen to
4 Dr. Gavin if she hit the stand in this case?

5 PROSPECTIVE JUROR NO. 11-0915: Yes.

6 MR. CHRISTIANSEN: Could you listen to
7 experts, expert physicians, about whether or not
8 Dr. Khiabani's death was instantaneous? Would you be
9 okay doing that?

10 PROSPECTIVE JUROR NO. 11-0915: Yes.

11 MR. CHRISTIANSEN: Anybody that thinks they
12 could not do that?

13 Nobody's hand is up in the air. Nobody's
14 volunteering for the mic.

15 All right. Ms. McLain wants to give it away.

16 Ms. McLain, you also, on the issue -- on the
17 questions about lawsuits, answered that you -- if
18 you -- that you would, if you had -- were given a
19 choice, vote for a change in the law to put caps on
20 damages in lawsuits like this one.

21 Do you remember answering that question?

22 PROSPECTIVE JUROR NO. 11-0915: Not really.
23 It's been so long ago.

24 MR. CHRISTIANSEN: Okay. So I just wanted to
25 circle back with you. And we've been doing this a

1 week, and you've been here, you know, a good chunk of
2 it.

3 Any -- do you have any feelings, as you sit
4 here now, that are inconsistent with what you've heard
5 a juror would be tasked with doing in this case?

6 PROSPECTIVE JUROR NO. 11-0915: No, not
7 really.

8 MR. CHRISTIANSEN: The question about do you
9 have some artificial ceiling in your mind about what's
10 a limit of a compensatory award you could make, do you
11 have such a ceiling?

12 PROSPECTIVE JUROR NO. 11-0915: I don't think
13 so.

14 MR. CHRISTIANSEN: Okay. Would you be
15 willing to listen to the facts of the particular case?

16 PROSPECTIVE JUROR NO. 11-0915: Yes.

17 MR. CHRISTIANSEN: And make a decision based
18 on the evidence in the case --

19 PROSPECTIVE JUROR NO. 11-0915: Yes.

20 MR. CHRISTIANSEN: -- to the standard we've
21 talked about, more likely than not?

22 PROSPECTIVE JUROR NO. 11-0915: More likely
23 than not.

24 MR. CHRISTIANSEN: Any problem with that?

25 PROSPECTIVE JUROR NO. 11-0915: No.

1 MR. CHRISTIANSEN: And you have not been a
2 juror before; is that right?

3 PROSPECTIVE JUROR NO. 11-0915: No. I've
4 been called, but I've never made it.

5 MR. CHRISTIANSEN: Great. Would you hand the
6 phone to Mr. Kaba, the gentleman to your left.

7 Mr. Kaba.

8 PROSPECTIVE JUROR NO. 11-1125: 11-1125.

9 MR. CHRISTIANSEN: All right. Already ahead
10 of me. Thank you.

11 Mr. Castle, who's seated out -- Mr. Castle is
12 a court clerk who -- who said he knew your wife.

13 Remember that this morning?

14 PROSPECTIVE JUROR NO. 11-1125: Right.

15 MR. CHRISTIANSEN: And then over the course
16 of last week, I believe I saw you maybe at lunch or
17 something, walking with your wife. And so my question
18 for you initially is, your wife works in the
19 courthouse?

20 PROSPECTIVE JUROR NO. 11-1125: Correct.

21 MR. CHRISTIANSEN: She deals with lawyers
22 like us and has been for years.

23 PROSPECTIVE JUROR NO. 11-1125: Yeah, she
24 don't really deal with lawyers much. She's an office
25 manager.

1 MR. CHRISTIANSEN: Okay. Are you -- are you
2 able to -- well, have you discussed with your wife who
3 the lawyers are in this case?

4 PROSPECTIVE JUROR NO. 11-1125: No, I
5 haven't.

6 MR. CHRISTIANSEN: Great. And could you
7 continue to not discuss with your wife her --

8 PROSPECTIVE JUROR NO. 11-1125: Yeah.

9 MR. CHRISTIANSEN: What we don't want you to
10 do, go down and say, "Hey, here's Mr. Roberts -- Lee
11 Roberts is in this case," and have your wife saying --
12 she wouldn't, because Mr. Roberts is a gentleman, but,
13 "Well, that Roberts guy is a jerk. You should vote
14 against him."

15 That would be unfair; right?

16 PROSPECTIVE JUROR NO. 11-1125: Right.

17 MR. CHRISTIANSEN: And none of us on my side,
18 nobody wants a case to be decided on whether I was not
19 polite to your wife one day in the courtroom or anybody
20 else. Can you hold off from doing that?

21 PROSPECTIVE JUROR NO. 11-1125: Yes.

22 MR. CHRISTIANSEN: And similar question that
23 I posed to Ms. McLain, I noted over the weekend, when I
24 was looking back over my summary of your questionnaire,
25 that you thought about 50 percent of lawsuits were

1 frivolous. And so I wanted to just circle back with
2 you and make sure I understood what you meant when you
3 wrote that in your questionnaire.

4 PROSPECTIVE JUROR NO. 11-1125: Well, I guess
5 I didn't really have a good idea, so I just went 50-50
6 because I wouldn't know how many were frivolous and how
7 many aren't.

8 MR. CHRISTIANSEN: Do you have any problem
9 with the standard more likely than not that we've
10 talked about in here?

11 PROSPECTIVE JUROR NO. 11-1125: No, I don't.

12 MR. CHRISTIANSEN: And do you have any amount
13 in your mind that is -- you could never vote to
14 compensate a plaintiff more than?

15 PROSPECTIVE JUROR NO. 11-1125: No, I have no
16 amount.

17 MR. CHRISTIANSEN: Similar question that I
18 posed to Ms. McLain right before you about the punitive
19 damages portion of the case. Are you somebody that can
20 fairly and impartially consider punitive damages?

21 PROSPECTIVE JUROR NO. 11-1125: I believe so.

22 MR. CHRISTIANSEN: Do you have any of those
23 feelings that some of the other gentlemen have
24 expressed that, well, punitive damages don't make sense
25 because they affect things and other aspects of our

1 lives?

2 PROSPECTIVE JUROR NO. 11-1125: No, I don't.

3 MR. CHRISTIANSEN: And if Her Honor tells you
4 that that's not -- that you're only supposed to focus
5 on what she tells you the law is and the facts that
6 apply to it, could you do that?

7 PROSPECTIVE JUROR NO. 11-1125: Yes, I could.

8 MR. CHRISTIANSEN: All right. Pass that mic
9 down to Ms. Adams-Reeves one row in the front and a
10 couple to your right, to her left.

11 PROSPECTIVE JUROR NO. 11-0999:
12 Janelle Reeves, 11-0999.

13 MR. CHRISTIANSEN: Good afternoon,
14 Ms. Reeves.

15 PROSPECTIVE JUROR NO. 11-0999: Hello.

16 MR. CHRISTIANSEN: Ms. Reeves, last week when
17 we were talking with you, you and I talked, and then,
18 to my recollection, you had a change in your status at
19 work that caused you to be -- I might not use the right
20 vernacular -- on call more than usual?

21 PROSPECTIVE JUROR NO. 11-0999: I'm on call
22 24/7; it doesn't matter.

23 MR. CHRISTIANSEN: But somebody else was sick
24 or had gone -- had left and you needed to make up their
25 work -- not only your own work, but their work as well?

1 PROSPECTIVE JUROR NO. 11-0999: Correct.

2 MR. CHRISTIANSEN: You -- you've been a
3 couple of days now doing that, so, me being blunt, the
4 question is, can you give us your full time and
5 attention in here, or is the stress of what you got
6 going on at work making that too tough for you to do?

7 PROSPECTIVE JUROR NO. 11-0999: No, you'll
8 have my 100 percent attention. I do that for
9 everything I do.

10 MR. CHRISTIANSEN: All right. Dad's a
11 paralegal for a plaintiffs' firm that does --

12 PROSPECTIVE JUROR NO. 11-0999: The United
13 States Coast Guard.

14 MR. CHRISTIANSEN: Oh, dad's a paralegal for
15 the Coast Guard?

16 PROSPECTIVE JUROR NO. 11-0999: Now he is.

17 MR. CHRISTIANSEN: Now. Historically, he was
18 at some point, and you and your siblings would give
19 him -- kid him relative to things he did at work; yes?

20 PROSPECTIVE JUROR NO. 11-0999: Uh-huh. We
21 would discuss it.

22 MR. CHRISTIANSEN: Okay. Over the last few
23 days, I've been asking lots of questions about
24 standards and caps on damages and tort reform, and
25 you're sort of nonvocally an easy person to see when

1 you're interested in something because your head nods
2 and --

3 PROSPECTIVE JUROR NO. 11-0999: I'm an active
4 person. I have to be moving all the time.

5 MR. CHRISTIANSEN: Okay. My questions -- and
6 so then that caused me to -- you know, you agreeing --
7 seeming to agree by nods of the heads with a person --
8 and Ms. Graf is the same next to you. She nods her
9 head too with others.

10 I went back and took a look at my summary of
11 your questionnaire and noted that you thought about
12 half of all lawsuits were frivolous and that you would
13 vote for caps on compensatory damages?

14 PROSPECTIVE JUROR NO. 11-0999: I think I
15 would. If it was put up, I would study a lot more to
16 make a decision. It wouldn't be something I'd just
17 kind of watch the TV commercials on.

18 MR. CHRISTIANSEN: Okay. In this particular
19 case, one of the questions that you're going to be
20 asked is to make an award of damages. And you're going
21 to be told you're supposed to only consider in the
22 compensatory portion of the case the harms and losses
23 suffered by Dr. Khiabani, his wife Katy Barin, and then
24 ultimately their two sons, Aria and Keon Khiabani.

25 Is -- is that something you think you can do

1 fairly and impartially?

2 PROSPECTIVE JUROR NO. 11-0999: Absolutely.

3 MR. CHRISTIANSEN: And in doing that, the
4 judge is going to tell you that sympathy -- everybody
5 has empathy and sympathy. That's not something you can
6 base an award on. Are you okay with that?

7 PROSPECTIVE JUROR NO. 11-0999: Yes. I
8 compartmentalize very well due to my job.

9 MR. CHRISTIANSEN: When I ask this question
10 to some people, they say, "Hey, you should only think
11 about the harm suffered by the persons that we
12 represent." And then others say, "Well, you should
13 also think about, you know, money can't take pain
14 away."

15 PROSPECTIVE JUROR NO. 11-0999: That's true.
16 Money doesn't heal anything.

17 MR. CHRISTIANSEN: Okay. Which -- if there's
18 a group of persons that say, "Well, we're only going to
19 consider the harms and losses to the plaintiffs," and
20 then there's a group of persons that say, "Well, money
21 can't take the pain away," which way do you lean one
22 way or another?

23 PROSPECTIVE JUROR NO. 11-0999: It's -- it's
24 really a generalized question. I guess I -- I -- I
25 think of it just like I do my politics, right down the

1 middle. It's case by case. I can't make a decision on
2 generalized terms.

3 MR. CHRISTIANSEN: Okay. Can you commit that
4 none of the things -- none of the trickle-down effects
5 or things -- prices may go up as a result of a verdict.
6 Are you going to be thinking about those things as a
7 juror in here?

8 PROSPECTIVE JUROR NO. 11-0999: Not that I
9 can say I would. I haven't, I guess, personally seen
10 it happen. So I don't think of it as a fact.

11 MR. CHRISTIANSEN: All right. Well, what
12 about -- do you think you would wonder or consider
13 yourself whether the defendant can pay?

14 PROSPECTIVE JUROR NO. 11-0999: I don't think
15 it's my responsibility to worry about whether they can
16 pay it or not.

17 MR. CHRISTIANSEN: Okay. Good answer.

18 Anybody think that they would be in their
19 mind think -- wondering whether the defendant could pay
20 a particular award?

21 All right. Want to hand that mic to your
22 neighbor, Ms. Graf.

23 PROSPECTIVE JUROR NO. 11-0940: Caroline
24 Graf, 11-0940.

25 MR. CHRISTIANSEN: Ms. Graf, how are you this

1 afternoon?

2 PROSPECTIVE JUROR NO. 11-0940: Okay.

3 MR. CHRISTIANSEN: You and I discussed
4 briefly last week the difference between what you wrote
5 in your written questionnaire and sort of what you've
6 come to learn by sitting through this
7 not-so-stimulating process --

8 PROSPECTIVE JUROR NO. 11-0940: Yes.

9 MR. CHRISTIANSEN: -- fair?

10 Then, after you, I had a whole -- I've talked
11 to a whole bunch of people, and you, like
12 Ms. Adams-Reeves are a visual person, and you're
13 shaking your head. I could -- and so I wanted to
14 circle back with you and see if some of the things you
15 were agreeing with -- sort of wanted to revisit the
16 things you were agreeing with.

17 Because I was asking questions of
18 Mr. Browning last week, the gentleman behind you, and
19 he was talking about the effects on business of awards
20 of punitive damages, and you were sort of shaking your
21 head. I don't know if you were shaking your head
22 agreeing with him or shaking your head just so that I
23 would hurry up sit down.

24 PROSPECTIVE JUROR NO. 11-0940: I'm not a
25 very patient person, so I was probably just shaking my

1 head just because I get antsy very quickly.

2 MR. CHRISTIANSEN: Okay. Do you -- same
3 question I posed to your neighbor. Are you going to be
4 worried about things other than the harms and losses
5 suffered by the plaintiff when rendering an award in
6 this case?

7 PROSPECTIVE JUROR NO. 11-0940: No.

8 MR. CHRISTIANSEN: Can you tell us you
9 won't -- all right.

10 The judge instructed everybody last week that
11 you can't talk or think about insurance. Everybody
12 fine with that?

13 PROSPECTIVE JUROR NO. 11-0940: Yeah,
14 insurance is not on my mind.

15 MR. CHRISTIANSEN: All right. Anybody that
16 can't follow that rule? It's the judge's rule. And if
17 Her Honor makes the rule, we all have to follow it.
18 Can everybody agree to follow that rule? One way or
19 another, you can't talk about it or think about it or
20 let it play a role in your deliberations.

21 PROSPECTIVE JUROR NO. 11-0940: About what?

22 MR. CHRISTIANSEN: Insurance, whether or not
23 anybody has it. It can't be considered.

24 Is everybody okay with that?

25 Ms. Graf, are you --

1 PROSPECTIVE JUROR NO. 11-0940: Yes.

2 MR. CHRISTIANSEN: Anything about the
3 questioning in the last week, Ms. Graf, that caused you
4 to change your opinion about whether or not you could
5 be fair and impartial in a case where the standard is
6 more likely than not and the plaintiff is going to --
7 plaintiff through Mr. Kemp and myself -- plaintiffs --
8 boys -- are going to come ask for tens of millions of
9 dollars?

10 PROSPECTIVE JUROR NO. 11-0940: No.

11 The only thing is I did think about my answer
12 last time about caps.

13 MR. CHRISTIANSEN: Sure.

14 PROSPECTIVE JUROR NO. 11-0940: I guess I
15 didn't really articulate myself very well, but I
16 thought about I don't have a number in my head for
17 caps. I guess my issue is always with, like, I figure
18 if company A and company B committed exactly the same
19 crime, I think I would want, like, the caps to be a
20 percentage of the value of the company, because if you
21 say a million dollars is the cap and you charge company
22 A million bucks and they're only worth 2 million, well,
23 then you've hurt them. But if you charge company B a
24 million and they're worth a billion, well, that's
25 pocket change. So it doesn't hurt them.

1 So my cap isn't really an amount, but I guess
2 I would say a percentage of the value of the company to
3 make it -- for them to feel it.

4 But my other issue was -- and I can't change
5 those laws -- and I won't and -- is that the punishment
6 part goes to your plaintiffs, but that's the only way
7 it can be done. That's the way the laws are written.
8 I guess I think the punitive damages should go to the
9 society they've done wrong to, not to one individual.

10 MR. CHRISTIANSEN: Okay.

11 PROSPECTIVE JUROR NO. 11-0940: But since I
12 have no choice, and that's the way they got to go,
13 well, then that's the way it's got to go if you prove
14 your case.

15 MR. CHRISTIANSEN: Okay. A lot of
16 information in that answer.

17 PROSPECTIVE JUROR NO. 11-09450: There you
18 go.

19 MR. CHRISTIANSEN: So let me see if I can
20 separate it.

21 Initially, it sounds to me like you got a
22 pretty good sense for what the purpose of punitive
23 damages are. And -- and, to use your analogy, you
24 don't want to annihilate a \$2 million company with a
25 \$1 million award, but you don't want to give a windfall

1 to a \$10 billion company with a \$1 million award; you
2 want it to make sense?

3 PROSPECTIVE JUROR NO. 11-09450: Correct.

4 MR. CHRISTIANSEN: All right. That's a bit
5 how you'll hear punitive damages work. Is that --
6 you'll hear from experts that will actually testify,
7 how much money can Motor Coach Industries suffer by way
8 of a verdict and not be annihilated. Make sense?

9 PROSPECTIVE JUROR NO. 11-09450: Yes.

10 MR. CHRISTIANSEN: Can you consider that type
11 of testimony?

12 PROSPECTIVE JUROR NO. 11-0940: Yes.

13 MR. CHRISTIANSEN: I'm using Ms. Graf as my
14 guinea pig.

15 Anybody else that -- anybody in the panel, up
16 here, you folks, that could not consider that type of
17 testimony, with the exception of you, Mr. Stokes?
18 Anybody think that's something they couldn't do?

19 No hands? All right.

20 Now, I'll circle back to the second part of
21 your answer to me, which is, as you sort of noted, by
22 way of the third part of your answer, there's no
23 vehicle in our system for which you can spread a
24 punitive damage award, if the jury finds it, to society
25 as a whole. It goes to the -- to the plaintiffs in the

1 case.

2 PROSPECTIVE JUROR NO. 11-0940: Yes.

3 MR. CHRISTIANSEN: That brought the case. So
4 does that cause you a pause?

5 PROSPECTIVE JUROR NO. 11-0940: No. I'll do
6 it. I don't have to agree with it. Like you said,
7 whatever the law is, it is. It's the only way, the
8 only vehicle we have to impose any punishment. So
9 that's the way it will have to be done until I write
10 the laws.

11 MR. CHRISTIANSEN: Will you be thinking to
12 yourself are you giving a windfall to the Khiabani
13 boys?

14 PROSPECTIVE JUROR NO. 11-0940: Well, that's
15 what is going to happen, but I don't have a problem
16 with that. Like I said, I have no other vehicle of
17 doing it, if you prove your case, of course.

18 MR. CHRISTIANSEN: All right. So now
19 we're -- all we've been talking about -- great answer.
20 All we've been talking about is the punitive damage
21 aspect. That's the second part of the case if you get
22 there. Okay? We think we're going to get there; they
23 don't agree with us.

24 The initial part of the case that I wanted to
25 make sure we're on the same page with is compensatory

1 awards. And that is awards that compensate the boys
2 for grief and sorrow. Is that something you think you
3 can consider?

4 PROSPECTIVE JUROR NO. 11-0940: Yeah. I've
5 had no issue with that part of it.

6 MR. CHRISTIANSEN: Okay.

7 PROSPECTIVE JUROR NO. 11-0940: Yeah.

8 MR. CHRISTIANSEN: And the loss of economic
9 support, or we call probable support, for losing their
10 father. And is that something you also could consider?

11 PROSPECTIVE JUROR NO. 11-0940: Yeah. That
12 part is fine. I'm A-OK with the compensatory.

13 MR. CHRISTIANSEN: So all your concerns were
14 sort of in the second phase of the trial. And even
15 though, when you get to write the laws, they might be a
16 little bit different, you'll follow Judge Escobar's
17 version of the law if selected to be a juror in this
18 case?

19 PROSPECTIVE JUROR NO. 11-0940: Correct.

20 MR. CHRISTIANSEN: Got it.

21 Has everybody figured out up here that, in a
22 courtroom, we all got rules we have to follow?
23 Everybody sort of understand that now that they've
24 heard us talk at great length about it?

25 Does anybody think that they couldn't follow

1 the rules as given to them by Judge Escobar? I'm not
2 going to give you any rules. Her Honor is. And you
3 all have to be able to follow them. Anybody think they
4 won't be able to do that? If you don't think you can,
5 raise your hand.

6 Anybody believe that safety rules aren't
7 important?

8 No hands.

9 At times in cases, arguments are presented to
10 attempt to undermine the rules.

11 Can everybody promise that they will not
12 listen to arguments that undermine the rules?

13 MR. ROBERTS: Objection, Your Honor.

14 THE COURT: Sustained.

15 MR. CHRISTIANSEN: Okay. Does anyone
16 disagree with the notion that no one is allowed to
17 needlessly endanger the community? Anybody disagree
18 with that?

19 How about that a business is not allowed to
20 needlessly endanger the community? Anybody on the
21 panel disagree with that idea?

22 Can we approach just real quick, Your Honor?

23 THE COURT: Yes.

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

1 THE COURT: Okay. At this time, I'd like to
2 thank and excuse Mr. Brian Stokes, Badge 11-1240.

3 Mr. Stokes, thank you very much for your
4 service and for your candor. I'd like you to go to the
5 third floor where jury services are and check in,
6 please. Thank you, sir, for your time.

7 Call our next juror, please.

8 THE CLERK: Badge 11-1268, Katherine Beswick,
9 in Seat 14.

10 THE COURT: Good afternoon.

11 PROSPECTIVE JUROR NO. 11-1268: Good
12 afternoon.

13 THE COURT: Okay. So today I started a
14 little bit differently. I asked questions of the
15 entire panel. So I'm going to ask you now for your
16 specific information. Okay?

17 PROSPECTIVE JUROR NO. 11-1268: Yes, ma'am.

18 THE COURT: All right. How long have you
19 lived in Las Vegas area?

20 PROSPECTIVE JUROR NO. 11-1268: Seven years.

21 THE COURT: Seven years?

22 PROSPECTIVE JUROR NO. 11-1268: Yes.

23 THE COURT: And before that?

24 PROSPECTIVE JUROR NO. 11-1268: I lived in
25 Dubai, United Arab Emirates, and Philippines. That's

1 where I'm from.

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

4 PROSPECTIVE JUROR NO. 11-1268: Oh, I'm a
5 licensed banker for Wells Fargo.

6 THE COURT: How long have you been in this
7 area?

8 PROSPECTIVE JUROR NO. 11-1268: Three and a
9 half years.

10 THE COURT: Okay. And before that?

11 PROSPECTIVE JUROR NO. 11-1268: Sales adviser
12 for a car company here in Vegas. And before that, I
13 was working in Dubai.

14 THE COURT: What about Dubai? What area?

15 PROSPECTIVE JUROR NO. 11-1268: I was an
16 assistant manager for an exhibition company. So it's
17 more like events, an events company, in Dubai.

18 THE COURT: Events?

19 PROSPECTIVE JUROR NO. 11-1268: Yes.

20 THE COURT: Okay. What type of events?

21 PROSPECTIVE JUROR NO. 11-1268: We set up
22 booths, for instance at GES. So I'm in charge, like,
23 project managements. I'm in charge with the client and
24 the company that I worked for.

25 THE COURT: And have you been in any other

1 line of work before that?

2 PROSPECTIVE JUROR NO. 11-1268: I was a
3 marketing manager for Mercedes-Benz in Philippines.
4 And before that, I was an advertising supervisor for
5 Honda cars, Philippines as well.

6 THE COURT: And are you married or do you
7 have a significant other?

8 PROSPECTIVE JUROR NO. 11-1268: I am married.

9 THE COURT: And what does your spouse do?

10 PROSPECTIVE JUROR NO. 11-1268: He's teacher.

11 THE COURT: What area of work -- what area of
12 teaching is he in?

13 PROSPECTIVE JUROR NO. 11-1268: He's a
14 Spanish teacher for a private school as well here in
15 Vegas.

16 THE COURT: Okay. And how long has he worked
17 as a teacher?

18 PROSPECTIVE JUROR NO. 11-1268: I believe
19 it's ten years here in Vegas, but before that he was
20 living in New York as a teacher as well.

21 THE COURT: In New York he was a teacher as
22 well? What ages does he teach?

23 PROSPECTIVE JUROR NO. 11-1268: Right now, he
24 teaches first grade to fourth grade. Before that, he
25 was with a charter school, so he was teaching high

1 school as well.

2 THE COURT: Okay. All right. Do you have
3 children?

4 PROSPECTIVE JUROR NO. 11-1268: Yes. 16
5 months baby. 16 months old.

6 THE COURT: Congratulations.

7 PROSPECTIVE JUROR NO. 11-1268: Thank you.

8 THE COURT: Let's see. Have you ever been a
9 juror before?

10 PROSPECTIVE JUROR NO. 11-1268: No. I just
11 got my citizenship two years ago. So yes. I was here
12 two years ago.

13 THE COURT: Congratulations.

14 PROSPECTIVE JUROR NO. 11-1268: Thank you.

15 THE COURT: All right. That's the only
16 questions I have for you at this time. Okay?

17 PROSPECTIVE JUROR NO. 11-1268: Thank you.

18 THE COURT: Mr. Christiansen.

19 VOIR DIRE EXAMINATION

20 MR. CHRISTIANSEN: Good afternoon,
21 Ms. Beswick.

22 PROSPECTIVE JUROR NO. 11-1268: Good
23 afternoon, sir.

24 MR. CHRISTIANSEN: Beswick?

25 PROSPECTIVE JUROR NO. 11-1268: Yes.

1 MR. CHRISTIANSEN: All right. Ms. Beswick,
2 you were here all last week, listening to all these
3 questions; right?

4 PROSPECTIVE JUROR NO. 11-1268: That's
5 correct, since Wednesday.

6 MR. CHRISTIANSEN: Put you in the right pile
7 of stickers so I can -- Ms. Beswick, you're Badge 1268.

8 PROSPECTIVE JUROR NO. 11-1268: Yes, 11-1268.

9 MR. CHRISTIANSEN: And tell me again -- I'm
10 sorry; I was taking notes -- as to why you lived in the
11 United Emirates.

12 PROSPECTIVE JUROR NO. 11-1268: Oh, I worked
13 there for three years. So, yeah, I was hired to do
14 project management for an events company.

15 MR. CHRISTIANSEN: What kind of events were
16 you the project manager for?

17 PROSPECTIVE JUROR NO. 11-1268: So we
18 built -- like, for instance, when we have like GES,
19 like the technology show that we have here in Vegas, so
20 we erect those exhibits, I believe, is what you call
21 it. Like stands, booths. That's what we call it back
22 there.

23 MR. CHRISTIANSEN: Okay. For conventions.

24 PROSPECTIVE JUROR NO. 11-1268: Correct.
25 Yes.

1 MR. CHRISTIANSEN: In Dubai?

2 PROSPECTIVE JUROR NO. 11-1268: Correct?

3 MR. CHRISTIANSEN: How is living in Dubai?

4 PROSPECTIVE JUROR NO. 11-1268: Love it. No
5 taxes.

6 MR. CHRISTIANSEN: You heard, just 'cause
7 it's unique to have persons that have been or are from
8 the Middle East, the gentleman to your left a couple of
9 spots is from Egypt. Anything about -- I've got
10 Iranian clients. Anything about that that's going to
11 make you fair or --

12 PROSPECTIVE JUROR NO. 11-1268: I'm good with
13 them.

14 MR. CHRISTIANSEN: You're okay?

15 PROSPECTIVE JUROR NO. 11-1268: Yes.

16 MR. CHRISTIANSEN: You're not going to favor
17 them or disfavor them one way or another?

18 PROSPECTIVE JUROR NO. 11-1268: No. No.

19 MR. CHRISTIANSEN: You remember my questions
20 about Lady Justice being blind?

21 PROSPECTIVE JUROR NO. 11-1268: Yes.

22 MR. CHRISTIANSEN: And you're unique in that
23 you just became a citizen somewhat recently.

24 PROSPECTIVE JUROR NO. 11-1268: Two years
25 ago. Like, it was February 13th when I got my

1 citizenship. So yes.

2 MR. CHRISTIANSEN: Approximately February 13?

3 PROSPECTIVE JUROR NO. 11-1268: No, it was
4 February 13th. No, because I have a reminder on my
5 Facebook.

6 MR. CHRISTIANSEN: And in fairness to you,
7 that's kind of a big deal; right? You went through
8 that whole thing over at federal court?

9 PROSPECTIVE JUROR NO. 11-1268: Yes.

10 MR. CHRISTIANSEN: The court over at
11 Las Vegas Boulevard and a federal judge comes in and
12 swears you in once you pass the test.

13 PROSPECTIVE JUROR NO. 11-1268: That's
14 correct. I still have the flag in my car.

15 MR. CHRISTIANSEN: It's a big --

16 PROSPECTIVE JUROR NO. 11-1268: Big deal.

17 MR. CHRISTIANSEN: Big deal that on Fridays
18 there's lots of people over there wanting to become and
19 trying hard to become American citizens.

20 PROSPECTIVE JUROR NO. 11-1268: That's
21 correct.

22 MR. CHRISTIANSEN: And lots of the questions
23 that you dealt with on that test, good number of them,
24 dealt with this process.

25 PROSPECTIVE JUROR NO. 11-1268: That's

1 correct.

2 MR. CHRISTIANSEN: Right? And there's lots
3 of surveys that show that persons that become citizens
4 and take that test as adults have a better
5 understanding for how this process works than those of
6 us that learned it in school.

7 PROSPECTIVE JUROR NO. 11-1268: That's
8 correct.

9 MR. CHRISTIANSEN: Did you enjoy the process
10 of becoming a citizen?

11 PROSPECTIVE JUROR NO. 11-1268: I did. I
12 really did.

13 MR. CHRISTIANSEN: More than jury selection?

14 PROSPECTIVE JUROR NO. 11-1268: Oh, I don't
15 care. I love -- I love that I'm actually experiencing
16 this now.

17 MR. CHRISTIANSEN: And we haven't heard tons
18 of it, but almost every person that goes through jury
19 selection, and those that did on the questionnaire,
20 almost to a person, right, that they found the
21 experience to be positive. So as bad as this seems,
22 history shows us that most people really think it's a
23 great process once they're all done with it and are
24 glad they participated.

25 PROSPECTIVE JUROR NO. 11-1268: Yes.

1 MR. CHRISTIANSEN: Do you think you would be
2 a good juror?

3 PROSPECTIVE JUROR NO. 11-1268: Yes.

4 MR. CHRISTIANSEN: How come?

5 PROSPECTIVE JUROR NO. 11-1268: Because we
6 don't have this back home.

7 MR. CHRISTIANSEN: Tell me where back home
8 is.

9 PROSPECTIVE JUROR NO. 11-1268: Manila,
10 Philippines. Because back home, we only deal with the
11 judge. So the judge makes the rules, and then that's
12 it.

13 MR. CHRISTIANSEN: Okay. Why do you like
14 the -- the jury by your -- jury of your peers system
15 better?

16 PROSPECTIVE JUROR NO. 11-1268: Because
17 you're representing the people. So pretty much at
18 least people has the say for what needs to be done, I
19 guess, is how I should put it.

20 MR. CHRISTIANSEN: Okay. The burden of proof
21 that we talked about in here being more likely than
22 not -- you're a banker or have some banking background?

23 PROSPECTIVE JUROR NO. 11-1268: Yes.

24 MR. CHRISTIANSEN: Bankers typically like to
25 be very positive about their conclusions, very

1 meticulous people by nature at times.

2 PROSPECTIVE JUROR NO. 11-1268: Yes.

3 Because, like, I deal with customers every day. And at
4 least I sit down with them with at least an hour and I
5 listen to their stories. So, for instance, if a bank
6 says, "Okay. You can't afford to have this loan," I
7 need to actually fight for -- like, I need to know the
8 details of everything before we can say no, if that
9 makes sense.

10 MR. CHRISTIANSEN: Sure. Makes great sense.

11 Those standards -- we'll use your example to
12 go get a loan. Those are different depending on what
13 you're doing in your business; right?

14 PROSPECTIVE JUROR NO. 11-1268: That's
15 correct.

16 MR. CHRISTIANSEN: None of them, I bet -- are
17 any of them the same standards you have in a court of
18 law in a civil case, more likely than that?

19 PROSPECTIVE JUROR NO. 11-1268: Sorry. I
20 don't know. Like clarify --

21 MR. CHRISTIANSEN: I will try to ask a
22 better -- I will try to ask a better question.

23 You've heard the standard the plaintiff has
24 to meet in order to win in the case; right?

25 PROSPECTIVE JUROR NO. 11-1268: Yes.

1 MR. CHRISTIANSEN: You remember the statue of
2 Lady Justice holding the scales. And I grabbed a
3 tissue paper a couple of times and said, just putting a
4 tissue --

5 PROSPECTIVE JUROR NO. 11-1268: 51 percent.

6 MR. CHRISTIANSEN: You got it. That
7 standard, I bet you that's different than what
8 standards you have to make in your daily work as a
9 banker.

10 PROSPECTIVE JUROR NO. 11-1268: Yes, way
11 different.

12 MR. CHRISTIANSEN: Bankers have to be, like,
13 super sure. You've got to really bring your game if
14 you're banker; right?

15 PROSPECTIVE JUROR NO. 11-1268: Yes.

16 MR. CHRISTIANSEN: Okay. So I want to ask
17 you whether you can leave your banker standards outside
18 and apply the standards Judge Escobar tells you work in
19 a court of law if chosen as a juror in this case.

20 PROSPECTIVE JUROR NO. 11-1268: Yes.

21 MR. CHRISTIANSEN: In your questionnaire,
22 when you were -- a month ago you came in and filled out
23 the big, thick questionnaire.

24 PROSPECTIVE JUROR NO. 11-1268: That's
25 correct.

1 MR. CHRISTIANSEN: When it got to the section
2 about feelings about lawyers and lawsuits and the like,
3 do you remember some of the things you wrote?

4 PROSPECTIVE JUROR NO. 11-1268: I -- I was
5 trying to, like, go back, but I don't really remember
6 what I wrote. So if you can refresh my mind.

7 MR. CHRISTIANSEN: I'll try. And don't feel
8 bad. Nobody -- nobody remembers. I've been doing this
9 a long time, and nobody can remember what they wrote.
10 They just remember trying to get home fast.

11 So you -- you wrote that 70 percent of
12 lawsuits are frivolous, you thought, and that you would
13 vote yes to make -- to change the law and put limits on
14 damage awards.

15 PROSPECTIVE JUROR NO. 11-1268: I guess when
16 I was answering that questionnaire, Wells Fargo is
17 very -- right now, we just -- we just had a lawsuit
18 that we lost on. So I guess that's where I'm coming
19 from.

20 MR. CHRISTIANSEN: Okay. Tell me what --
21 you're talking about the big lawsuit where Wells Fargo
22 was prosecuted --

23 PROSPECTIVE JUROR NO. 11-1268: Where we need
24 to pay, like, billions of dollars. And I think that
25 was necessary, because I worked with the company and I

1 know firsthand what was going on, but not to that
2 extent. Does that make sense? So when we found out
3 that we lost -- we lost it, I was like, you know what?
4 Makes sense. But...

5 MR. CHRISTIANSEN: Help me understand. I
6 don't want to misquote what that case was about.

7 PROSPECTIVE JUROR NO. 11-1268: Deceptive
8 practice when they were -- when people in California --
9 when bankers in California were opening accounts for
10 people.

11 MR. CHRISTIANSEN: That they shouldn't have
12 been; right?

13 PROSPECTIVE JUROR NO. 11-1268: Correct.

14 MR. CHRISTIANSEN: And so this company had a
15 policy or a practice whereby persons were opening bank
16 accounts for unwitting individuals doing transactions
17 and the like and they got caught.

18 PROSPECTIVE JUROR NO. 11-1268: Correct.

19 MR. CHRISTIANSEN: And there was a lawsuit;
20 is that right?

21 PROSPECTIVE JUROR NO. 11-1268: There was a
22 lawsuit. That's correct.

23 MR. CHRISTIANSEN: There was a compensatory
24 award?

25 PROSPECTIVE JUROR NO. 11-1268: There was a

1 compensatory, and I believe there was a punitive reward
2 as well, because right now we're changing. We're
3 trying to make it better for the customers, so they
4 have this -- I can't -- I can't remember the system,
5 but we're actually paying some customers that we think
6 we opened accounts for.

7 MR. CHRISTIANSEN: So a punitive award
8 changed a big business is what you're telling me?

9 PROSPECTIVE JUROR NO. 11-1268: That's
10 correct.

11 MR. CHRISTIANSEN: For the better of the
12 community.

13 PROSPECTIVE JUROR NO. 11-1268: That's
14 correct. And for the people that work for the company
15 as well, because I still love working for the company.

16 MR. CHRISTIANSEN: Okay. Are you open to
17 hearing evidence about that type of a thing in this
18 case?

19 PROSPECTIVE JUROR NO. 11-1268: Yes.

20 MR. CHRISTIANSEN: And if the evidence
21 supported hundreds of millions of dollar punitive
22 damage award against Motor Coach Industries, could you
23 award it?

24 PROSPECTIVE JUROR NO. 11-1268: Yes.

25 MR. CHRISTIANSEN: And that's coming from

1 your own experience working for a big company?

2 PROSPECTIVE JUROR NO. 11-1268: Correct.

3 Paid a lot of money.

4 MR. CHRISTIANSEN: They paid a lot of money
5 and then changed?

6 PROSPECTIVE JUROR NO. 11-1268: Correct.

7 MR. CHRISTIANSEN: How about the issue of
8 compensatory damages? Do you -- I want to go back to
9 your questionnaire because nobody --

10 PROSPECTIVE JUROR NO. 11-1268: I don't
11 really have a problem with that.

12 MR. CHRISTIANSEN: Are you okay with all the
13 things you've heard me discuss about probable support
14 of the father, Dr. Khiabani, for his boys?

15 PROSPECTIVE JUROR NO. 11-1268: Yes.

16 MR. CHRISTIANSEN: Grief and sorrow suffered
17 by Dr. Khiabani, his wife, Katy, in the six months that
18 she survived him, and his two boys?

19 PROSPECTIVE JUROR NO. 11-1268: Yes.

20 MR. CHRISTIANSEN: You okay listening to
21 evidence about all of those things?

22 PROSPECTIVE JUROR NO. 11-1268: Yes.

23 MR. CHRISTIANSEN: Today, I remembered that I
24 did a poor job last week of asking people if they could
25 look at graphic type of evidence. I don't think

1 anybody's excited about it, but is it something you
2 yourself could evaluate objectively and try to decide
3 what the truth of the matter is?

4 PROSPECTIVE JUROR NO. 11-1268: Yes.

5 MR. CHRISTIANSEN: Could you listen to
6 doctors and coroners and people of that nature?

7 PROSPECTIVE JUROR NO. 11-1268: Yes.

8 MR. CHRISTIANSEN: How about eyewitnesses?

9 PROSPECTIVE JUROR NO. 11-1268: Yes.

10 MR. CHRISTIANSEN: You have lots of customers
11 at the bank, I bet?

12 PROSPECTIVE JUROR NO. 11-1268: Yes.

13 MR. CHRISTIANSEN: I know your new baby is
14 young. Do you have an older child?

15 PROSPECTIVE JUROR NO. 11-1268: No.

16 MR. CHRISTIANSEN: Just the baby.

17 PROSPECTIVE JUROR NO. 11-1268: Just him.

18 MR. CHRISTIANSEN: But your new baby is not
19 lying to you yet.

20 PROSPECTIVE JUROR NO. 11-1268: No.

21 MR. CHRISTIANSEN: You ever experience when
22 customers come to the bank and maybe they color the
23 truth a little bit?

24 PROSPECTIVE JUROR NO. 11-1268: Quite a few
25 times, yes.

1 MR. CHRISTIANSEN: All right. Can you use
2 that same common sense you use at the bank and apply it
3 to the people that hit the stand and testify?

4 PROSPECTIVE JUROR NO. 11-1268: Yes.

5 MR. CHRISTIANSEN: When people color what
6 they tell you at the bank, do you oftentimes have to
7 look at the motives of why they might be telling you
8 not all of the truth?

9 PROSPECTIVE JUROR NO. 11-1268: I just listen
10 to what they have to say and go from there. Make a
11 sound judgment.

12 MR. CHRISTIANSEN: Okay. Oh, where does your
13 husband teach? You said he taught Spanish at a private
14 school.

15 PROSPECTIVE JUROR NO. 11-1268: Henderson
16 International school.

17 MR. CHRISTIANSEN: All right. And you -- I
18 think I know the answer to this question, but you have
19 worked for several car dealerships?

20 PROSPECTIVE JUROR NO. 11-1268: That's
21 correct.

22 MR. CHRISTIANSEN: My bet is you've worked
23 in -- you've not been a mechanic or an aerodynamic
24 engineer or -- you've been sort of on the business end
25 or the finance end?

1 PROSPECTIVE JUROR NO. 11-1268: That's
2 correct. I remembered -- because I was -- I had
3 training before, but when -- when we launch a product,
4 like, for instance, in Manila, when we launch a
5 product, we get those product trainings. And then we
6 just need to find out whether the products that we need
7 to push for the public to hear.

8 For instance, we were talking about, like,
9 the new -- the proximity sensors. So that's something
10 that's new for the car that we need to advertise. So
11 we need to learn about how it works but not very
12 detailed.

13 Does that make sense?

14 MR. CHRISTIANSEN: Sure. Do you think that
15 companies should give warnings of known dangers of
16 products?

17 PROSPECTIVE JUROR NO. 11-1268: Yes.

18 MR. CHRISTIANSEN: If they know something's
19 dangerous, they should warn the consumers?

20 PROSPECTIVE JUROR NO. 11-1268: Yes. I
21 thought it was already part of -- because you always
22 see those warnings in the ads and stuff like that.

23 MR. CHRISTIANSEN: Anybody disagree with that
24 idea, that -- that a company producing a product should
25 warn of known dangers?

1 Okay.

2 Ms. Beswick, you ride bikes?

3 PROSPECTIVE JUROR NO. 11-1268: I did before
4 I got pregnant.

5 MR. CHRISTIANSEN: Okay. Help me
6 understand -- there's lots of different bikes. Did you
7 ride road bikes?

8 PROSPECTIVE JUROR NO. 11-1268: Road bikes.
9 I rode road bikes with my husband. And we usually ride
10 dirt bikes 30 miles before I got pregnant, because now
11 I have excuse.

12 MR. CHRISTIANSEN: And what part of town
13 would you ride bikes in?

14 PROSPECTIVE JUROR NO. 11-1268: Everywhere.
15 We live in Henderson, so we like riding our bikes in
16 Henderson because I love the roads that they have.
17 We've ridden in Mountain's Edge area. We've ridden in
18 Red Rock as well. And we also take our bikes to -- we
19 love Zion. We always bring our bikes there because
20 they have, like, a dedicated bike lane. And also
21 California.

22 MR. CHRISTIANSEN: Okay. Have you ever had
23 an experience where a big vehicle has passed you on
24 your bike and you felt the wind?

25 PROSPECTIVE JUROR NO. 11-1268: Yes.

1 Usually, I stop if I feel like it's a bigger car. So
2 usually I stop and be on the safer side of the road.

3 MR. CHRISTIANSEN: What was it you yourself
4 experienced?

5 PROSPECTIVE JUROR NO. 11-1268: Oh, it's
6 just, like, sometimes a wobble, because I'm not really
7 good with brakes. And my husband always makes me --
8 makes fun of that, but I try to be safe. So I always
9 just -- if I feel like it's a bigger truck, I always
10 stop most of the time.

11 MR. CHRISTIANSEN: You kind of motioned with
12 your hand. You try to stay as far away as you can or
13 stop?

14 PROSPECTIVE JUROR NO. 11-1268: Correct.
15 Yes.

16 MR. CHRISTIANSEN: Because you yourself have
17 experienced the air gust cause you to wobble on your
18 bike?

19 PROSPECTIVE JUROR NO. 11-1268: That's
20 correct.

21 MR. CHRISTIANSEN: Does that air -- or the --
22 the feeling of the air, if the vehicle's bigger, is it
23 stronger or less?

24 PROSPECTIVE JUROR NO. 11-1268: It's
25 stronger.