

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
VOLUME 21
PAGES 5001-5250**

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CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

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

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

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

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

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

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

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

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

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

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

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

Filed Under Seal

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

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

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

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

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

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

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

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

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

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

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

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

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

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

1 MR. CHRISTIANSEN: So a bus would have more
2 than a motorcycle?

3 PROSPECTIVE JUROR NO. 11-1268: Yes.

4 MR. CHRISTIANSEN: And you pull over so that
5 you don't wobble or lose control of your bike?

6 PROSPECTIVE JUROR NO. 11-1268: That's
7 correct.

8 MR. CHRISTIANSEN: Your Honor, may we
9 approach just real quickly?

10 THE COURT: Yes.

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

13 THE COURT: Ladies and gentlemen, we're going
14 to take a 10 -- a 15-minute break. And I don't want
15 anyone to leave the floor. Okay? How's that for being
16 specific? I'm going to admonish you.

17 You're instructed not to talk with each other
18 or with anyone else about any subject or issue
19 connected with this trial. You are not to read, watch,
20 or listen to any report of or commentary on the trial
21 by any person connected with this case or by any medium
22 of information, including, without limitation,
23 newspapers, television, the internet, or radio.

24 You are not to conduct any research on your
25 own relating to this case, such as consulting

1 dictionaries, using the internet, or using any
2 reference materials. You are not to conduct any
3 investigation, test any theory of the case, re-create
4 any aspect of the case, or in any other way investigate
5 or learn about the case on your own.

6 You are not to talk with others, text others,
7 tweet others, messenger others, google issues, or
8 conduct any other kind of book or computer research
9 with regard to any issue, party, witness, or attorney
10 involved in this case.

11 You are not to conduct -- excuse me -- you
12 are not to form or express any opinion on any subject
13 connected with this trial until the case is finally
14 submitted to you.

15 See you back in 15 minutes.

16 THE MARSHAL: All rise for the jury.

17 (The following proceedings were held
18 outside the presence of the jury.)

19 THE COURT: We can go off the record.

20 (Whereupon a short recess was taken.)

21 THE COURT: Go back on.

22 MR. ROBERTS: So whenever Pete is done,
23 we'll -- it's going to -- anticipate close to 5:00, but
24 we'll go ahead and break then and I'll start in the
25 morning?

1 THE COURT: Yes.

2 MR. KEMP: Judge, we still have to waive for
3 cause too. After Pete's done, I have to waive for
4 cause too.

5 MR. ROBERTS: Our position is that you don't,
6 but --

7 MR. KEMP: Well, I do, though.

8 Judge, I don't really have any questions, but
9 I just want to make sure the record is clear that I
10 represent separate plaintiffs, so I have to waive for
11 cause too.

12 MR. ROBERTS: And as you know from our trial
13 brief, Your Honor, the record is clear that he -- that
14 they don't represent separate plaintiffs. As a matter
15 of record, they have both entered an appearance for all
16 of the plaintiffs consistently throughout this
17 litigation.

18 MR. KEMP: That is not true, Your Honor.
19 And, you know, for them to file a trial brief this
20 morning, after eight days of -- however long it's
21 been -- seven days of trial, and try to flip-flop the
22 rules, I think that's totally inappropriate.

23 Because you'll recall the very first time we
24 came in here, we made it clear on the record who
25 represents who. The very first time we came in here,

1 we did that.

2 And Mr. Roberts didn't object to it at that
3 time, and he hasn't objected to it at any time until
4 today when he filed this brief.

5 MR. ROBERTS: Was the jury commissioner
6 notified to bring in more jurors for tomorrow morning?

7 THE COURT: Yes.

8 MR. ROBERTS: Very good.

9 THE MARSHAL: All rise for the jury.

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

12 THE MARSHAL: Jury is accounted for, Your
13 Honor.

14 THE COURT: Okay. Thank you.

15 Do the parties stipulate to the presence of
16 the jury?

17 MR. KEMP: Yes, Your Honor.

18 MR. CHRISTIANSEN: Yes, Your Honor.

19 MR. ROBERTS: Yes, Your Honor.

20 THE COURT: Mr. Christiansen, go on.

21 MR. CHRISTIANSEN: Thank you, Your Honor.

22 VOIR DIRE EXAMINATION

23 MR. CHRISTIANSEN: All right. We had -- the
24 judge gave us a little break so we could look at our
25 notes, sort of coming to the end of our part of it.

1 Mr. Dail?

2 PROSPECTIVE JUROR NO. 11-0834: Yes, sir.

3 MR. CHRISTIANSEN: Who's got the mic?

4 Somebody hand it back to Mr. Dail. Marshal has got it.

5 PROSPECTIVE JUROR NO. 11-0834: Okay. Yes,
6 sir.

7 MR. CHRISTIANSEN: Badge number, Mr. Dail?

8 PROSPECTIVE JUROR NO. 11-0834: Oh, yes.

9 Badge No. 11-0834. It's been a while.

10 MR. CHRISTIANSEN: It has been a minute.

11 Mr. Dail, I wanted to circle back with you on
12 some of the things that I was talking to these ladies
13 about in the second row relative to lawsuit reform and
14 frivolous lawsuits and go back to some of your answers.

15 I remember you and I discussing this a bit
16 last week, how you had some answers in the written
17 questionnaire that had maybe evolved by the time you'd
18 sat through a few days of jury -- the actual jury
19 selection. Do you remember you and I kind of bouncing
20 those ideas around?

21 PROSPECTIVE JUROR NO. 11-0854: Yes.

22 MR. CHRISTIANSEN: As you sit here today, do
23 you still think half of all lawsuits are frivolous?

24 PROSPECTIVE JUROR NO. 11-0854: No, I don't
25 think half the lawsuits are frivolous.

1 MR. CHRISTIANSEN: And as you sit here today,
2 if you -- if you were able to vote, would you vote for
3 caps on damages?

4 PROSPECTIVE JUROR NO. 11-0854: Not
5 necessarily. I think it's kind of the same situation.
6 It would be a high percentage so you don't cripple a
7 company.

8 MR. CHRISTIANSEN: Okay. So like -- like I
9 talked to Ms. Graf about -- about, you're -- I'll ask
10 you rather than tell you.

11 Are you open to listening, if we get to a
12 punitive damage phase, to economists testify about what
13 a company, specifically MCI, could be punished with
14 financially at the same time not annihilating the
15 company?

16 PROSPECTIVE JUROR NO. 11-0854: Yes, I can.

17 MR. CHRISTIANSEN: On compensatory awards,
18 are you able to return a verdict that's supported by
19 the evidence?

20 PROSPECTIVE JUROR NO. 11-0854: Yes.

21 MR. CHRISTIANSEN: And does the -- my burden
22 of proving that to you change the more I intend to ask
23 for for the boys?

24 PROSPECTIVE JUROR NO. 11-0854: No,
25 51 percent.

1 MR. CHRISTIANSEN: Perfect.

2 In looking at your stuff -- actually, this
3 morning, kind of a good example of real-life stuff came
4 up. You guys all remember answering questions about
5 bumper stickers, what bumper stickers you did or didn't
6 have?

7 You have a bumper sticker that's -- according
8 to my little summary, that -- the "Vegas Strong" bumper
9 sticker?

10 PROSPECTIVE JUROR NO. 11-0854: That's
11 correct.

12 MR. CHRISTIANSEN: Here recent -- in the
13 media you've seen that after the October, you know,
14 shooting at the country music concert, there have been
15 a whole bunch of a lawsuits that have come out of that.

16 You've seen that?

17 PROSPECTIVE JUROR NO. 11-0854: Yes.

18 MR. CHRISTIANSEN: Including, I think, some
19 products cases against the bump stocks or whatever. I
20 might be calling them bumper stocks, bump stocks,
21 things that make the gun shoot faster.

22 PROSPECTIVE JUROR NO. 11-0854: Yes, sir.

23 MR. CHRISTIANSEN: Any -- what are your
24 feelings about that?

25 PROSPECTIVE JUROR NO. 11-0854: Well, I think

1 the bump stock should be illegal. In fact, I think
2 automatic rifles should be illegal. I don't --

3 MR. CHRISTIANSEN: All right. That's
4 probably a debate for a different day. I did ask the
5 question.

6 Any -- I guess a better question to you
7 should be anything about the fact that you feel
8 strongly and have a bumper sticker about that horrible
9 shooting that happened just last year that would cause
10 you to lean one way or another in this particular case?

11 PROSPECTIVE JUROR NO. 11-0854: No.

12 MR. CHRISTIANSEN: Will you be fair and
13 impartial across the board?

14 PROSPECTIVE JUROR NO. 11-0854: Yes, sir.

15 MR. CHRISTIANSEN: Will you hand that mic
16 down to Mr. Lennon, a guy who hasn't seen me for a long
17 time.

18 PROSPECTIVE JUROR NO. 11-0798: Badge
19 No. 11-0798.

20 MR. CHRISTIANSEN: Mr. Lennon, I know it's
21 been a minute. Last week you had issues -- expressed
22 to us issues relative to financial hardships. Remember
23 those answers and questions?

24 PROSPECTIVE JUROR NO. 11-0798: Yes.

25 MR. CHRISTIANSEN: If selected as a juror on

1 this case, can you unequivocally promise us you're
2 going to base your decision on what happens in this
3 courtroom as opposed to anything else?

4 PROSPECTIVE JUROR NO. 11-0798: What do you
5 mean by that? I don't really ...

6 MR. CHRISTIANSEN: Sure. I just want you to
7 promise that -- I don't -- what I want is irrelevant.

8 What we're looking for, what the judge is
9 looking for, are persons that can, without any
10 hesitation, say that their deliberations, if they're
11 picked, would be based on what happens in here as
12 opposed to what they're worried about outside.

13 Can you tell Her Honor you will do that if
14 you're chosen?

15 PROSPECTIVE JUROR NO. 11-0798: Yes, I think
16 so.

17 MR. CHRISTIANSEN: Okay. Thank you,
18 Mr. Lennon. Hand that down to -- I'm going to butcher
19 your name, Ms. Getaneh.

20 PROSPECTIVE JUROR NO. 11-0860: Getaneh,
21 Badge No. 11-0860.

22 MR. CHRISTIANSEN: Ms. Getaneh. Closer?

23 PROSPECTIVE JUROR NO. 11-0860: Yes.

24 MR. CHRISTIANSEN: Okay. So same -- you
25 expressed similar concerns last week to Mr. Lennon

1 about worried about finances and paying bills and
2 whether you could get stuff covered at work. Do you
3 remember that?

4 PROSPECTIVE JUROR NO. 11-0860: (No audible
5 response.)

6 MR. CHRISTIANSEN: Do you remember saying you
7 were worried about being able to go to work?

8 PROSPECTIVE JUROR NO. 11-0860: Yes, sir.

9 MR. CHRISTIANSEN: Okay. If you're picked as
10 a juror, if you get selected, can you focus on what
11 happens in here and follow the rules?

12 PROSPECTIVE JUROR NO. 11-0860: I guess, but
13 I don't understand.

14 MR. CHRISTIANSEN: Okay. You don't know the
15 rules yet. Judge Escobar's going to tell you what
16 those are. And you'll listen -- will you listen to her
17 and do what Judge Escobar tells you?

18 PROSPECTIVE JUROR NO. 11-0860: Yes.

19 MR. CHRISTIANSEN: Okay. Thank you. Will
20 you pass it down to -- right in front of you to your
21 left, Mr. Tuquero.

22 Mr. Tuquero?

23 PROSPECTIVE JUROR NO. 11-0936: 11-0926.

24 MR. CHRISTIANSEN: You've got the drill down,
25 Mr. Tuquero.

1 Similar to Mr. Lennon, last week you told all
2 of us that you had some financial hardship concerns.
3 Remember that?

4 PROSPECTIVE JUROR NO. 11-0936: That's
5 correct.

6 MR. CHRISTIANSEN: And if you're selected to
7 be a juror in this case, can you tell all of us that
8 you will be fair and impartial?

9 PROSPECTIVE JUROR NO. 11-0936: Yes, I would
10 be, but my mindset would not be correct because I --
11 what I would be thinking how I'm going to pay my
12 financials.

13 MR. CHRISTIANSEN: I understand you have
14 financial issues; I just want to know if you can make
15 your decision based on what's here in court?

16 PROSPECTIVE JUROR NO. 11-0936: Oh, yes, I
17 can.

18 MR. CHRISTIANSEN: Not what -- you're not
19 going to base your decision on your financial issues if
20 you're chosen as a juror; right? You're agoing to base
21 it on what happens in court?

22 PROSPECTIVE JUROR NO. 11-0936: Yes.

23 MR. CHRISTIANSEN: All right. And if you'll
24 pass that to Ms. Vandevanter, who's in front of you and
25 to -- to your right a little bit.

1 Ms. Vandevanter, I want to just circle back
2 with you about the volunteer information you gave today
3 about your friend's accident.

4 PROSPECTIVE JUROR NO. 11-1186: Yes.
5 11-1186.

6 MR. CHRISTIANSEN: Thank you.

7 Can you assure all of us that whatever you've
8 gone through with your friend isn't what you'll base a
9 decision on if selected as a juror in this case?
10 You'll base it on what happens here in court?

11 PROSPECTIVE JUROR NO. 11-1186: Yes.

12 MR. CHRISTIANSEN: And you'll follow the law
13 as Judge Escobar gives it to you?

14 PROSPECTIVE JUROR NO. 11-1186: Absolutely.

15 MR. CHRISTIANSEN: All right. Now I'm going
16 to ask some group questions, and then I'm going to sit
17 down.

18 MR. BARGER: Sorry, Pete.

19 MR. CHRISTIANSEN: You guys ever heard of the
20 peanut gallery?

21 All right. Can -- is there any person here
22 who can't tell me -- who can't tell me unequivocally
23 that they'll put their own opinions aside and decide
24 this case based on the evidence that comes in -- out
25 here in court?

1 Anybody that can't do that?

2 Ms. Vandevanter, can you do it?

3 PROSPECTIVE JUROR NO. 11-1186: Absolutely.

4 MR. CHRISTIANSEN: Ms. Phillips-Chong. I
5 always want to say Chong-Phillips.

6 PROSPECTIVE JUROR NO. 11-1186: Chong.

7 MR. CHRISTIANSEN: Ms. Phillips-Chong, can
8 you do that?

9 PROSPECTIVE JUROR NO. 11-1035: Uh-huh.

10 MR. CHRISTIANSEN: Yes?

11 PROSPECTIVE JUROR NO. 11-1035: Definitely.

12 MR. CHRISTIANSEN: Ms. Wooters?

13 PROSPECTIVE JUROR NO. 11-1255: Yes.

14 MR. CHRISTIANSEN: Ms. Reeves?

15 PROSPECTIVE JUROR NO. 11-0999: Absolutely.

16 MR. CHRISTIANSEN: Ms. Graf?

17 PROSPECTIVE JUROR NO. 11-0940: Yes.

18 MR. CHRISTIANSEN: Mr. Stephens, you've been
19 quiet. Can you do that?

20 PROSPECTIVE JUROR NO. 11-1127: Yes.

21 MR. CHRISTIANSEN: Mr. Krieger?

22 PROSPECTIVE JUROR NO. 11-1047: Yes.

23 MR. CHRISTIANSEN: Ms. Mosqueda?

24 PROSPECTIVE JUROR NO. 11-1155: Can you
25 repeat the question? I'm sorry.

1 MR. CHRISTIANSEN: Sure.

2 Can you unequivocally commit to put your own
3 opinions aside and decide this case based on the facts
4 that come out here in court?

5 PROSPECTIVE JUROR NO. 11-1155: Yes.

6 MR. CHRISTIANSEN: Great.

7 Can everybody unequivocally commit that one
8 side isn't ahead as we stand here today, that
9 everybody's equal?

10 Anybody feel differently?

11 You got the mic.

12 Ms. Vandevanter, pass that mic back to some
13 other unwitting victims, Ms. Johnson in the corner.

14 Ms. Johnson, can you -- you unequivocally
15 commit that nobody's starting out ahead of anybody else
16 in this courtroom?

17 PROSPECTIVE JUROR NO. 11-1229: Yes, sir.

18 MR. CHRISTIANSEN: That includes -- doesn't
19 matter if my clients are Middle Eastern and MCI's a
20 corporation?

21 PROSPECTIVE JUROR NO. 11-1229: That doesn't
22 matter.

23 MR. CHRISTIANSEN: Everybody's equal in this
24 courtroom?

25 PROSPECTIVE JUROR NO. 11-1229: Yes, sir.

1 MR. CHRISTIANSEN: Lady Justice in here for
2 the next four weeks will be blind?

3 PROSPECTIVE JUROR NO. 11-1229: Absolutely.

4 MR. CHRISTIANSEN: Can everybody
5 unequivocally promise that no sympathy or bias or
6 prejudice will weigh into their deliberations in this
7 case?

8 Ms. Vandevanter -- or, Ms. Johnson, you can
9 hand that down. I saw her out of the corner of my eye.
10 You will hand that to Ms. Gagliano.

11 PROSPECTIVE JUROR NO. 11-0867: 11-0867.

12 MR. CHRISTIANSEN: Ms. Gagliano, can you
13 unequivocally commit that no bias or prejudice to
14 either party will infect your deliberations?

15 PROSPECTIVE JUROR NO. 11-0867: Yes.

16 MR. CHRISTIANSEN: Anybody unable to make
17 that commitment?

18 And does everybody understand how important
19 that commitment is, that bias or prejudice or sympathy
20 isn't what's going to decide this case, that facts and
21 the law will decide it?

22 Ms. Gagliano, do you understand?

23 PROSPECTIVE JUROR NO. 11-0867: Yes. That's
24 part of my job, actually.

25 MR. CHRISTIANSEN: Perfect. You sound like

1 you're well suited for where you're seated then. Will
2 you pass that down to Ms. Flores.

3 Ms. Flores, can you unequivocally commit that
4 no bias, prejudice, or sympathy will infect your
5 deliberations?

6 PROSPECTIVE JUROR NO. 11-1164: I can do
7 that.

8 MR. CHRISTIANSEN: Mr. Domingo?

9 PROSPECTIVE JUROR NO. 11-0853: Yes.

10 MR. CHRISTIANSEN: Mr. Javier?

11 PROSPECTIVE JUROR NO. 11-0844: Absolutely.

12 MR. CHRISTIANSEN: Ms. Peligro?

13 I'll skip you, Mr. Dail. You got talked to
14 already.

15 PROSPECTIVE JUROR NO. 11-0830: Yes.

16 MR. CHRISTIANSEN: Mr. Toston.

17 PROSPECTIVE JUROR NO. 11-0802: Yes.

18 MR. CHRISTIANSEN: Mr. Toston, you want to
19 hand that down to Ms. Rodriguez right in front of you,
20 please.

21 Ms. Rodriguez, can you commit to treat both
22 sides fairly?

23 PROSPECTIVE JUROR NO. 11-0879: 11-0879.

24 Yes.

25 MR. CHRISTIANSEN: Mr. Noshi?

1 PROSPECTIVE JUROR NO. 11-1207: Yes.

2 MR. CHRISTIANSEN: Mr. Noshi, can you agree
3 to unequivocally -- can you unequivocally commit in
4 this case -- not a phantom case, not a mystery case,
5 not a theoretical case -- Khiabani v. MCI -- that
6 you'll be fair and impartial?

7 PROSPECTIVE JUROR NO. 11-1207: Yes.

8 MR. CHRISTIANSEN: You won't lean one way or
9 another?

10 PROSPECTIVE JUROR NO. 11-1207: No.

11 MR. CHRISTIANSEN: Ms. Brown?

12 PROSPECTIVE JUROR NO. 11-0885: Badge
13 11-0885.

14 Yes.

15 MR. CHRISTIANSEN: Ms. Brown, can you
16 unequivocally commit that a corporation will be treated
17 just like an individual in this case?

18 PROSPECTIVE JUROR NO. 11-0885: Yes.

19 MR. CHRISTIANSEN: Similar question I posed
20 to Mr. Noshi and to others -- and by "this case," I
21 mean Aria and Kayvan Khiabani v. Motor Coach
22 Industries, not some theoretical case.

23 In this case for the next four weeks, can you
24 treat the company like the boys?

25 PROSPECTIVE JUROR NO. 11-0885: Yes.

1 MR. CHRISTIANSEN: No better, no worse?

2 PROSPECTIVE JUROR NO. 11-0885: No better, no
3 worse.

4 MR. CHRISTIANSEN: Ms. Beswick, can you
5 commit to the same?

6 PROSPECTIVE JUROR NO. 11-1268: Yes.

7 MR. CHRISTIANSEN: Ms. Hannewald, can you
8 commit to the same?

9 PROSPECTIVE JUROR NO. 11-1200: Again, yes.

10 MR. CHRISTIANSEN: Ms. Hall, it's been a
11 while since I talked to you.

12 PROSPECTIVE JUROR NO. 11-0902: Do you have a
13 question for me, or do you want me to just say yes?

14 MR. CHRISTIANSEN: The questions I've asked
15 others to unequivocally commit to, are you able to make
16 those same commitments?

17 PROSPECTIVE JUROR NO. 11-0902: Yes.

18 MR. CHRISTIANSEN: Do you understand why
19 notions of impartiality and no bias or sympathy are
20 important in a courtroom?

21 PROSPECTIVE JUROR NO. 11-0902: Yes.

22 MR. CHRISTIANSEN: You think you'd make a
23 fair and good juror if chosen?

24 PROSPECTIVE JUROR NO. 11-0902: Yes.

25 MR. CHRISTIANSEN: Hand that to Ms. McLain,

1 please.

2 PROSPECTIVE JUROR NO. 11-0915: 11-0915.

3 MR. CHRISTIANSEN: Can you unequivocally
4 commit to those same ideas, Ms. McLain?

5 PROSPECTIVE JUROR NO. 11-0915: Yes.

6 MR. CHRISTIANSEN: Hand it to your left, if
7 you would.

8 I'm coming back to you, Ms. Peligro.

9 Mr. Kaba?

10 PROSPECTIVE JUROR NO. 11-1125: Yes, I can.

11 MR. CHRISTIANSEN: Want to hand that past
12 Mr. Tuquero to Ms. Romero, who's been hiding in the
13 corner over there.

14 Ms. Romero, can you make those commitments to
15 try this case based on what happens in here?

16 PROSPECTIVE JUROR NO. 11-0937: Yes.

17 MR. CHRISTIANSEN: And give us your full time
18 and attention?

19 PROSPECTIVE JUROR NO. 11-0937: Yes.

20 MR. CHRISTIANSEN: All right. One over your
21 shoulder and all the way down to Ms. Peligro.

22 PROSPECTIVE JUROR NO. 11-0830: Badge
23 No. 110830.

24 MR. CHRISTIANSEN: Ms. Peligro, can you
25 commit to both parties that you will be fair and

1 impartial?

2 PROSPECTIVE JUROR NO. 11-0830: Of course.

3 MR. CHRISTIANSEN: That justice will be
4 blind?

5 PROSPECTIVE JUROR NO. 11-0830: Of course.

6 MR. CHRISTIANSEN: And that a corporation
7 won't be ahead of or behind the young boys I represent,
8 just equal?

9 PROSPECTIVE JUROR NO. 11-0830: Yes. That
10 will be easy to me.

11 MR. CHRISTIANSEN: Fair enough.

12 Your Honor, on behalf of the estate of Katy
13 Barin and Aria Khiabani, I pass this panel for cause.

14 THE COURT: Okay. Thank you.

15 MR. KEMP: Your Honor, we would pass the
16 panel for cause too.

17 THE COURT: Thank you.

18 Okay. So at this point, the next step is
19 going to be for the defense -- I'm not sure if it's
20 going to be Mr. Roberts or one of his colleagues that
21 will be asking the questions, but I think today has
22 been a sufficiently long day. Even though we've only
23 gone halfway, we've spent some days, which were
24 important days. So we're going to start tomorrow
25 morning. Okay?

1 We start at 9:30, so I'd like you to meet
2 Marshal Padilla outside the courtroom at 9:20, please.
3 And I'm going to admonish you for the evening. And
4 thank you very much for everyone respectfully to all be
5 back tomorrow at that time. I thank you for your
6 patience and for your willingness to serve.

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

14 You are not to conduct any research on your
15 own relating to this case, such as consulting
16 dictionaries, using the internet, or using any
17 reference materials.

18 You are not to conduct any investigation,
19 test any theory of the case, re-create any aspect of
20 the case, or in any other way investigate or learn
21 about the case on your own.

22 You are not to talk with others, text others,
23 tweet others, google issues, or conduct any other kind
24 of book or computer research with regard to any issue,
25 party, witness, or attorney involved in this case.

1 You're not to form or express any opinion on
2 any subject connected with this trial until the case is
3 finally submitted to you.

4 So that means that this evening, when you're
5 having dinner or meeting with friends, you may not be
6 the most exciting people to discuss anything with about
7 your day. So you can talk about the weather or
8 anything else that you like but only that you're in a
9 civil trial in Department 14.

10 Okay. Have a great evening everyone. Thank
11 you.

12 THE MARSHAL: All rise for the jury.

13 (The following proceedings were held
14 outside the presence of the jury.)

15 THE COURT: Tomorrow, Mr. Roberts, we'll
16 start with your voir dire.

17 MR. ROBERTS: What's that?

18 THE COURT: Voir dire.

19 MR. ROBERTS: Yes. I'm ready to start voir
20 dire in the morning. I will be doing it for the
21 defense.

22 And we did have one issue, if the Court has
23 five or ten minutes.

24 THE COURT: I do, yes.

25 MR. ROBERTS: We don't go after 5:00 but...

1 THE COURT: That's okay. What? What do you
2 have? You may be seated, please.

3 MR. ROBERTS: Do you want me to frame it or
4 would you like to?

5 MR. CHRISTIANSEN: Judge, so in complying
6 with the Court's directive of sharing what we
7 demonstratively will use in opening statements,
8 Mr. Roberts and I met this morning. The defense takes
9 the position that plaintiff is unable to describe Katy
10 Barin's cancer treatment and care, her course of
11 treatment and care because the Court dismissed the
12 wrongful death claim.

13 Within my opening presentation, I have
14 nothing more than some slides that I identify dates of
15 service the doctors that she -- two doctors that she
16 was seeing and no substance of what happened. And I'm
17 simply going to explain, for example, she was, in
18 January 27th, diagnosed at the Comprehensive Cancer
19 Centers of Nevada with multiorgan colon cancer. That's
20 a date I just know off the top of my head. She next is
21 back February, I think, 2nd or 3rd for her first round
22 of chemotherapy. Things of that nature through when
23 she passes in October 12th of this year.

24 I believe Mr. Roberts said they thought that
25 was objectionable. From plaintiffs' perspective, I

1 can't try this case in a vacuum. She had cancer. She
2 underwent a course of cancer that affected her grief
3 and sorrow and affected her boys' grief and sorrow as
4 they had lost one parent and had to plan for losing the
5 next. That's a fact of this case that can't be dodged,
6 as much as defense would like to dodge it.

7 So I think it's entirely appropriate.
8 Mr. Roberts, I believe, wants to make an objection to
9 it.

10 MR. ROBERTS: Yes. Your Honor, actually it
11 was a very informal meeting. I happened to be in the
12 cafeteria before court.

13 MR. CHRISTIANSEN: That's true.

14 MR. ROBERTS: And Pete caught me. I didn't
15 have my cocounsel, who's going to be doing opening and
16 would be entitled to object. But I'm -- this issue was
17 something, just right off the top of my head, I knew we
18 talked about.

19 And the slide that Mr. Christiansen said he
20 wanted to use, I believe, were head shots of the
21 doctors who treated Dr. Barin and, as he's expressed
22 here, that they want to talk about some of the course
23 of treatment.

24 While the fact that her husband was not with
25 her is part of her loss of consortium, companionship,

1 et cetera, that I think they are entitled to go into,
2 we believe it would be more appropriate for lay
3 witnesses who knew her to testify about that. The --
4 there really is no reason to put on the doctors who
5 treated her to talk about when she was diagnosed and
6 the course of treatment. And, of course, these are all
7 doctors that they intended to use to demonstrate that
8 her cancer was progressed and maybe even tipped to the
9 scale of nonsurvivable due to this accident.

10 Since the Court has excluded the wrongful
11 death claim, we just believe that the prejudice from
12 having her doctors come in and talk about this creates
13 a danger the jury will be confused about what damages
14 they're entitled to award and what the proper measure
15 is. And there's really no probative value of having
16 her doctors testify when lay witnesses, I believe,
17 they're already going to have testify.

18 So I would add that I think that if lay
19 witnesses are going to talk about it, the video of
20 Dr. Barin is going to talk about it, it would also be
21 cumulative to have her doctors come in and talk about
22 it.

23 Thank you, Your Honor.

24 MR. CHRISTIANSEN: Judge, from my
25 perspective -- and I represent the estate of Katy Barin

1 and, while she was alive, I represented Katy, who would
2 have been able to come in here and say, you know,
3 "Here's how I felt on the day I learned my husband
4 died. I was doing this well, and then I didn't do as
5 well" or "I did as well" or what have you. And the
6 fact that she passed shouldn't preclude me from having
7 doctors, who have personal knowledge of this woman and
8 her course of care, talk about what they observed and
9 what she was going through at the time, because it goes
10 to her grief, sorrow, anguish of the loss of her
11 husband.

12 I understand the Court's rulings relative to
13 her own wrongful death claim, but it is squarely
14 relevant within our wrongful death statute to describe
15 for this jury what Katy would describe were she here.
16 And I absolutely am entitled to do it through her
17 doctors. They experienced it firsthand with her. And
18 I don't -- I frankly thought I was being really -- not
19 trying to -- not overinclusive by just pulling out -- I
20 mean, essentially, I've got a picture of Dr. Nguyen,
21 who was her first cancer doctor; the title of their
22 letterhead, Comprehensive Cancer Centers of Nevada.
23 And then I fly out dates of treatment.

24 No substance, like I didn't try to get any
25 medical records in, none of that. I just simply say --

1 I intend to say this is the course this lady went
2 through during this difficult time in her life, which
3 is squarely on relevance as to her grief and sorrow she
4 suffered pursuant to the loss of her husband.

5 So it's absolutely relevant, it's not
6 cumulative, and I think it's proper in an opening
7 statement. I have reason to believe that I'm going to
8 get the medical records into evidence. They're not
9 objectionable.

10 THE COURT: I'm going to look at this this
11 evening.

12 MR. ROBERTS: Thank you, Your Honor.

13 MR. CHRISTIANSEN: Thank you, Your Honor.

14 THE COURT: So I really hope, if it's
15 possible, that we have a jury tomorrow.

16 MR. ROBERTS: That's what I am hoping too,
17 Your Honor, if we don't get a lot of turnover in the
18 box. It's my goal to get it done by the end of the
19 day.

20 THE COURT: Hopefully, the plaintiffs can
21 start opening statements on --

22 MR. ROBERTS: Thursday afternoon?

23 THE COURT: -- Thursday afternoon.

24 MR. CHRISTIANSEN: What time do we start on
25 Thursday, Your Honor? I don't know how your calendar

1 looks.

2 THE COURT: I'm going to be thorough, but
3 very quick, with my calendar, but it wouldn't be any
4 earlier than --

5 MR. CHRISTIANSEN: Noon?

6 THE COURT: What time did we start today?
7 11:30?

8 MR. CHRISTIANSEN: 11:30.

9 THE COURT: So possibly 11:30, perhaps a
10 little bit later.

11 MR. CHRISTIANSEN: Yes, Your Honor.

12 MR. KEMP: Your Honor, there is one minor
13 issue on motion in limine No. 6. I've already told the
14 defense that I'm going to use many of the same slides I
15 used for the motion in limine hearings and the motion
16 for summary judgment hearings. One of those slides is
17 an S-1 Gard piece of literature, and it says -- the
18 Court remembers it says OEMs that use the S-1 Gard, and
19 then it lists a series of companies. The first is New
20 Flyer; the second is Gillig; and then it goes down and
21 there's probably about 14 more. And that was the one,
22 if the Court remembers, where we put in red "Where is
23 MCI"?

24 THE COURT: Yes.

25 MR. KEMP: Well, in any event, motion in

1 limine No. 6 was directed at us saying to the jury that
2 New Flyer owns MCI. So since they did this, and then
3 to talk -- and it was also directed at us talking about
4 the financials of New Flyer during the compensatory
5 phase.

6 I don't think it was directed at us not being
7 able to say New Flyer is a bus company and what New
8 Flyer did or didn't do on its own. And that's the way,
9 out of abundance of caution, I brought it to the
10 Court's attention and I brought it to Mr. Roberts'
11 attention this morning. I think he understands the
12 same way I understand it, that we can refer to New
13 Flyer; we just can't say that they're owned by MCI and,
14 because they do something -- they own MCI -- that MCI
15 should have done something.

16 And I just bring that to the Court's
17 attention because that slide is in our slide set.

18 MR. ROBERTS: And, Your Honor, I think that,
19 as long as there is no evidence or argument that New
20 Flyer owns MCI, that there's no reason for New Flyers'
21 transit division to be treated different than any other
22 company.

23 Based on my understanding, I believe that the
24 exhibit Mr. Kemp wants to use, the prejudice outweighs
25 the probative because I don't think that's a list of

1 original equipment manufacturers who used the S-1 Gard
2 in the 2008 model year. I think that's a later
3 compilation of people that have gone to the S-1 Gard
4 after this accident. And, therefore, it's prejudicial
5 and misleading to discuss a list of those companies
6 today.

7 And it's also hearsay. I don't think there's
8 going to be any evidence to support it. But, as far as
9 New Flyer being treated differently, as long as they're
10 agreeing not to blurt out that New Flyer owns MCI, then
11 I think they should be treated as any other bus
12 manufacturer.

13 MR. KEMP: Yeah. We are agreeing not to do
14 that, Your Honor. That's the way we understood it.

15 THE COURT: Okay. We'll review this tomorrow
16 morning as well. It sounds correct, but I'd like to
17 take a look at it.

18 And, also, with respect to the slides used in
19 opening, there was a video -- did you get my order on
20 that?

21 MR. CHRISTIANSEN: Yes, Your Honor.

22 MR. KEMP: The funeral video?

23 MR. CHRISTIANSEN: You granted us
24 preadmitting the Aria speech of the --

25 THE COURT: Yes.

1 MR. CHRISTIANSEN: I offered four. You said
2 yes to that one and no to the other three.

3 THE COURT: I -- but I would -- I did say in
4 my order that I would consider individual shots, some
5 of the -- of the boys with their father.

6 MR. CHRISTIANSEN: Oh, okay.

7 THE COURT: Just not the entire thing.

8 MR. CHRISTIANSEN: The whole slide show as --
9 you're right.

10 THE COURT: But I haven't -- I haven't seen
11 any of those.

12 MR. CHRISTIANSEN: I will take a look
13 tonight, Your Honor.

14 THE COURT: Well, it's only if you want to,
15 but ...

16 MR. CHRISTIANSEN: Thank you for reminding
17 me.

18 MR. KEMP: Your Honor, the one other issue,
19 if you recall --

20 THE COURT: Yes.

21 MR. KEMP: -- we still had the motion in
22 limine on the PMK and the managing speaking agent, and
23 we had wanted that ruled upon before the opening
24 because, if Mr. Hoogestraat really was a PMK on those
25 points, we should be allowed to play that version of

1 his testimony during the opening if we desire to do so.

2 MR. ROBERTS: And our position is the PMK
3 goes to individual topics and not everything that the
4 witness said. Therefore, it has to be within the scope
5 of the notice to be a PMK. And, therefore, in order to
6 rule, it would be appropriate for Mr. Kemp to tell you
7 which portions he wants you to -- he wants to play
8 because it's the substance that's going to determine
9 whether or not he's a PMK on that issue.

10 MR. KEMP: Judge, I don't know if you
11 remember the argument I gave you, I think, with
12 Hoogestraat at 26, and I went to the reply and I showed
13 how they were directly related to the PMK designations.

14 So that's -- that's -- and they didn't
15 object. They didn't object to one single one of them.
16 I believe it was 26 for Mr. Hoogestraat. I get him and
17 Mr. Couch confused. But they didn't object to one
18 single one as being outside the scope of the PMK or
19 outside the scope of their authority as the head
20 designer.

21 MR. BARGER: Let me also point out, there are
22 filed objections to some of these. So I would assume
23 counsel can't play deposition cuts in an opening where
24 there are objections.

25 MR. KEMP: I can play a deposition cut in the

1 opening if it's a PMK deposition, Your Honor.

2 MR. BARGER: There are still other
3 substantive objections to the testimony of whether he
4 is a PMK or not. That's my point. I don't know what
5 he's going to play.

6 MR. KEMP: Your Honor, number one, I don't
7 have to tell him. I can use it any time. The only
8 thing I have to tell him about is the demonstrative
9 exhibit, not my PMK depositions. I don't have to give
10 them my opening, and I don't intend to.

11 But, number two, this was raised four weeks
12 ago. I filed a motion in limine. I designated 26 for
13 Couch and 28 for Hoogestraat. And they didn't raise
14 one single specific objection. If you go back and you
15 look at their opposition, all they say is "Well, he
16 should have to designate specific ones."

17 I did that. I gave them the page and line
18 from the deposition of each and every one of them.
19 They didn't object to one single one, Your Honor. And,
20 you know, they can't just say now, "Oh, we want to
21 object to them now."

22 You know, the time for doing that was when
23 they filed the opposition in the motion in limine. Or
24 at a minimum they should have brought that up at the
25 motion in limine hearing. They didn't, Your Honor.

1 MR. ROBERTS: Your Honor, Mr. Kemp takes this
2 position over and over, and it's just wrong. And to
3 highlight that, assume that Mr. Couch was a PMK to talk
4 about insurance and that he testified as to the amount
5 of insurance that MCI had and whether it would cover
6 this verdict.

7 Obviously, he wouldn't be able to read that
8 and use it at any time for any purpose just because a
9 PMK said it. There are still substantive objections,
10 including prejudice outweighing the probative,
11 relevance, all the regular objections to any witness's
12 testimony applied to a PMK just like they do to anyone
13 else. And we have filed objections to specific
14 proposed testimony, and we do take the position that
15 the Court needs to rule on those objections before they
16 can be played to the jury.

17 MR. KEMP: Judge, they didn't seek but one
18 single objection in their opposition. Go back and look
19 at it. They say they filed objections. There's not
20 one single objection to any of these things. And,
21 first of all, I didn't designate anything about
22 insurance or improper area. But I gave them the exact
23 deposition page, the exact lines from the deposition.
24 They know all the subjects. They're covered by the
25 PMK. And they didn't raise any objections, Your Honor.

1 MR. ROBERTS: Your Honor, Mr. Kemp's
2 conflating objections raised in the motion in limine
3 where he said he needed to -- where we took one
4 position versus objections to the proposed designated
5 deposition transcripts for which we did file objections
6 by the deadline raised by the Court.

7 MR. KEMP: That motion in limine was a motion
8 specifically to designate this part of the testimony
9 under the rubric of the 30(b)(6) witness or the
10 managing PMK agent. And that's why I identified them
11 one at a time. That was the time they should have made
12 some objections.

13 THE COURT: Okay.

14 MR. ROBERTS: And, Your Honor, do you know if
15 the PowerPoint used by Mr. Kemp that he's just referred
16 to was marked and made a court's exhibit?

17 MR. KEMP: I don't think it was, Your Honor.

18 THE COURT: I don't believe so.

19 MR. KEMP: But I'm happy to bring another
20 copy tomorrow.

21 MR. ROBERTS: Thank you. I believe under the
22 rules we're allowed to request that. So we would
23 request that.

24 THE COURT: Sure.

25 MR. ROBERTS: Thank you, Your Honor.

1 THE MARSHAL: Your Honor, I have one more
2 thing.

3 THE COURT: Yes.

4 THE MARSHAL: You have a juror, 12-0056,
5 Victor Hospina, said he can't be here. He will not
6 come tomorrow. He said he has documentation to prove
7 that he just can't. So I told him to wait outside. So
8 I don't know if you guys want to address that.

9 THE COURT: Thank you. I believe Mr. Hospina
10 is the gentleman who has a financial hardship or has
11 indicated a financial hardship. He's somewhere.

12 MR. CHRISTIANSEN: I think he's the gentleman
13 in the back corner, Your Honor, that this afternoon
14 that said --

15 THE COURT: He's 12-0056. He's part -- he's
16 a part-time employee at a casino, on call for all three
17 shifts. He works at the ARIA resort, no regular
18 schedule. He's a bar -- I think bartender.

19 MR. BARGER: He was way back here.

20 THE COURT: Yes. We have orders to show
21 cause on these jurors, but I don't know exactly when
22 right now.

23 MR. CHRISTIANSEN: Judge, plaintiff would be
24 willing to let him go. Just so the Court knows, he's
25 sitting right in that little room that's outside the

1 Court. I think -- he must have been listening to us
2 talk for the last 15 minutes. I can look through the
3 window and see him.

4 THE COURT: Is he right there?

5 MR. CHRISTIANSEN: Yeah, he's right there.
6 So I think we probably should just let him go.

7 THE COURT: For now, we need to keep him
8 outside of the door.

9 MR. ROBERTS: He takes his son to school
10 every day. His wife doesn't drive. So we stip.

11 MR. CHRISTIANSEN: We'll stipulate, Judge.

12 THE COURT: Will you just bring him in very
13 quickly.

14 THE MARSHAL: Yes, Your Honor.

15 THE COURT: Mr. Hospina.

16 PROSPECTIVE JUROR NO. 12-0056: Your Honor,
17 how are you?

18 THE COURT: You're Badge 12-0056; correct?

19 PROSPECTIVE JUROR NO. 12-0056: Yes, correct.

20 THE COURT: The parties have stipulated, and
21 I'm going to excuse you. Okay.

22 PROSPECTIVE JUROR NO. 12-0056: Oh, thank you
23 so much. I appreciate that. Thank you.

24 THE COURT: And I don't -- I think they're
25 closed, but you may want to contact jury services, and

1 we'll also send a text message -- or an e-mail, letting
2 them know you are excused. Okay?

3 PROSPECTIVE JUROR NO. 12-0056: I appreciate
4 that. Thank you, Your Honor. Thank you.

5 THE COURT: Is there anything else, Counsel,
6 you have to discuss so I can follow through to see if
7 we can take a look at everything? Anything else you
8 would like to discuss so that I can research in the
9 evening and go over everything?

10 MR. ROBERTS: I can't think of anything else
11 right off, Your Honor.

12 THE COURT: All right. Very good. Something
13 comes up, we'll do it. All right. Have a great
14 evening.

15 MR. ROBERTS: I know that what?

16 THE COURT: No, go ahead.

17 MR. ROBERTS: With regard to the jury
18 selection, if I don't get done tomorrow, are we still
19 going to play -- we'll just plan to open as soon as we
20 can? But --

21 THE COURT: Yes, as long as both openings are
22 on the same day.

23 MR. ROBERTS: That was what I was going to
24 ask, Your Honor, if we could plan on that, because we
25 always like to make sure we go the same day and the

1 jurors don't --

2 THE COURT: I always just like it --

3 MR. ROBERTS: -- sleep on the plaintiff.

4 THE COURT: -- when it doesn't split it. So
5 yeah.

6 MR. ROBERTS: Okay. Thank you, Your Honor.

7 THE COURT: All right. Have a great evening,
8 everyone.

9 MR. CHRISTIANSEN: Thank you, Judge. Have a
10 nice evening.

11 (Thereupon, the proceedings
12 concluded at 5:05 p.m.)

13

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18 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF

19 PROCEEDINGS.

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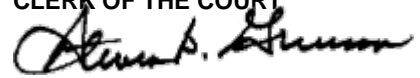
KRISTY L. CLARK, CCR #708

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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)
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
DEPARTMENT XIV

23 DATED WEDNESDAY, FEBRUARY 21, 2018

24 RECORDED BY: SANDY ANDERSON, COURT RECORDER

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

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* * * * *

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 21, 2018;

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

4 * * * * *

5
6 THE COURT: Good morning, Counsel.

7 MR. CHRISTIANSEN: Good morning, Your Honor.

8 THE COURT: Please be seated.

9 Okay. Let's see. The marshal has gone to
10 bring -- we're going to bring 29 in. We have that many
11 seats.

12 MR. ROBERTS: Do we have that many seats,
13 Your Honor?

14 THE COURT: That's what he just indicated. I
15 see others in the courtroom that he may not have
16 counted yesterday. It's not a closed courtroom, but
17 I'm just trying to get as many jurors in as possible.

18 MR. ROBERTS: What --

19 THE COURT: Counting the people that were
20 here yesterday, we had 29 open seats here. And we're
21 also missing one -- Ms. Raquel -- I'm sorry -- one from
22 the box right now.

23 MR. ROBERTS: Okay. I -- now that the
24 plaintiffs have passed for cause --

25 THE COURT: Yes.

1 MR. ROBERTS: -- perhaps I'm -- I'm being
2 Pollyannish, but I think that we've got enough. And I
3 don't know if -- maybe we could just wait and bring the
4 jurors up at -- after noon so that we don't have to
5 take the time running them through --

6 MR. KEMP: That's fine with me, Your Honor.

7 THE COURT: All right. Let me tell them to
8 contact him because I just gave him the other
9 instruction.

10 MR. ROBERTS: I'm sorry, Your Honor.

11 THE COURT: That's okay. That's okay.
12 Whatever works best.

13 Okay. That's something -- I just received
14 information that badge number --

15 THE COURT RECORDER: I'm sorry, Your Honor.

16 THE COURT: Forgive me. Let's go back on the
17 record.

18 So, Marshal Padilla, what we're going to do
19 is leave all of the jurors down in -- is it 3C or 3F?

20 THE MARSHAL: 3E, I believe.

21 THE COURT: Okay. -- until -- and possibly
22 until this afternoon. But they're on a break right
23 now. Okay?

24 So is the -- is the last juror here?

25 THE MARSHAL: Yes, Your Honor.

1 THE COURT: Has she arrived?

2 THE MARSHAL: Yes, Your Honor.

3 THE COURT: Let's bring them in in just a
4 moment. I just wanted, for the record, to let you know
5 we've just received -- or I just received -- we did --
6 from jury services that badge No. 11-1296, Mr. Alan
7 Castle, it says he just phoned chambers. His wife has
8 been in the hospital with a problem -- a possible heart
9 attack. He is 17th on hold with jury services. So
10 just so you -- for the record, you know. Okay?

11 All right.

12 MR. KEMP: Judge, I had one minor point.

13 THE COURT: Yes?

14 MR. KEMP: I texted Mr. Pepperman again
15 yesterday about the Venetian situation. And he said
16 that, based on his rereading the e-mail from the
17 Venetian attorney again, he thinks that they have
18 agreed to pay the additional two weeks if we provide
19 funding for it, which was --

20 THE COURT: If we provide?

21 MR. KEMP: Yeah, if we -- if -- "we" being
22 the parties -- provide the additional two weeks for the
23 two jurors. And I thought it might be a good idea to
24 alleviate their anxiety by telling them that, but I
25 didn't want to do it in front of all the other

1 jurors --

2 THE COURT: Of course not.

3 MR. KEMP: -- because otherwise they would
4 all ask us to.

5 THE COURT: Correct.

6 MR. BARGER: And I just --

7 THE COURT: Is that a stipulation?

8 MR. BARGER: I -- I -- I would assume, when
9 they're told, that they're not told the lawyers are
10 doing it, but --

11 MR. KEMP: No, I think they can just be told
12 that the court system has figured out a way that
13 they'll --

14 THE COURT: I don't want to misspeak because
15 I'm not supposed to figure out a way, but I understand
16 that they will be paid two --

17 MR. KEMP: Rather than their regular two
18 weeks, they will be paid four.

19 THE COURT: Four weeks? Okay.

20 MR. KEMP: Assuming we go four weeks.

21 THE COURT: We can keep both of them back
22 on -- on a break. That's -- that's number --

23 MR. KEMP: Well, I think there's only two
24 now; right? We got rid of one. There's two now?

25 THE COURT: It's --

1 MR. KEMP: It's Mr. Lennon, who is in No. 1,
2 and it's Mr. Tuquero.

3 THE COURT: In number?

4 MR. KEMP: Yeah, it might be better while
5 we're just waiting to bring them in real quick.

6 THE CLERK: Who is the second one?

7 MR. KEMP: The first one is Lennon.

8 THE CLERK: Tuquero. Okay. Seat 19.

9 THE COURT: 19.

10 MR. ROBERTS: 19.

11 MR. KEMP: And the second one is Tuquero, who
12 is 926.

13 THE COURT: I'm also going to ask them to not
14 discuss this with the other jurors.

15 MR. KEMP: I think that's a really good idea.

16 THE COURT: All right.

17 MR. ROBERTS: And the money would come from
18 the Venetian; right? We would just reimburse the
19 Venetian.

20 MR. KEMP: Well, we can -- you know, whatever
21 way you want to do it. I mean, I don't think cash is a
22 good idea.

23 THE COURT: No. I'm not even going to get
24 involved in that. I've already made a record that I
25 absolutely can't ask for money. It's like ...

1 MR. BARGER: Are we paying vouchers to --

2 THE COURT: That is entirely up to you. I --

3 I -- I celebrate that you've been able to do that, but

4 I just can't --

5 MR. KEMP: It might be easier to get the net
6 amount and just do a cashier's check.

7 MR. BARGER: Let's do that.

8 THE COURT: Okay.

9 MR. KEMP: That would keep The Venetian out
10 of it too.

11 THE COURT: Marshal Padilla, would you please
12 ask Mr. -- I can't believe I don't have his name
13 written down -- No. 1.

14 MR. CHRISTIANSEN: Lennon.

15 THE COURT: Oh, here it is, Mr. Lennon, and
16 also --

17 MR. ROBERTS: Mr. Tuquero, Seat 19.

18 THE COURT: 19. Yes. He's in Seat No. 1,
19 and Mr. Tuquero in Seat No. 19. Ask them to come in.

20 THE MARSHAL: Okay. All right.

21 THE COURT: Kristy, can you provide a little
22 Post-it.

23 (Discussion was held off the record.)

24 THE MARSHAL: Bring them in together?

25 THE COURT: Yeah, I think so.

1 Good morning. Please be seated.

2 Good morning, Mr. Lennon, Mr. Tuquero. How
3 are you today?

4 PROSPECTIVE JUROR NO. 11-0798: All right.

5 THE COURT: It's come to my attention that
6 your employer, The Venetian hotel, is -- you normally
7 have ten days --

8 PROSPECTIVE JUROR NO. 11-0798: Yes.

9 THE COURT: -- of jury duty paid for --

10 PROSPECTIVE JUROR NO. 11-0798: Yes.

11 THE COURT: -- and they're extending it to
12 four weeks, so that would be ten more days.

13 PROSPECTIVE JUROR NO. 11-0798: They
14 extending it?

15 THE COURT: That is my understanding, yes.

16 So because that's been a concern for both of
17 you, I wanted you to know about that as we go through
18 the day.

19 PROSPECTIVE JUROR NO. 11-0798: Okay.

20 THE COURT: Okay?

21 And it's very important that you do not
22 discuss this with the other jurors.

23 PROSPECTIVE JUROR NO. 11-0798: Okay.

24 THE COURT: Okay?

25 Do I have a confirmation from both of you

1 that you will not discuss this with the other jurors?

2 PROSPECTIVE JUROR NO. 11-0798: Yes.

3 PROSPECTIVE JUROR NO. 11-0926: Yes.

4 THE COURT: Okay. Very good. Thank you.
5 Yes? Do you have ...

6 PROSPECTIVE JUROR NO. 11-0798: Okay. So --

7 THE COURT: Mr. Lennon?

8 PROSPECTIVE JUROR NO. 11-0798: So I can be
9 assured that -- because they haven't sent it to me, but
10 you're saying that they are going to extend it for us
11 for four weeks.

12 THE COURT: Yes. Well, the two weeks,
13 they're augmenting it or extending it two weeks
14 further. So if you have ten working days, it's going
15 to be 20 working days of paid -- with your regular pay.

16 PROSPECTIVE JUROR NO. 11-0798: Okay.

17 THE COURT: Okay? Do you understand that?

18 PROSPECTIVE JUROR NO. 11-0798: Yes.

19 THE COURT: Okay. Very good. That perhaps
20 may help you with the concerns you've had.

21 PROSPECTIVE JUROR NO. 11-0798: Yes. If
22 that's the case, yes. I don't want it to be like, no,
23 we don't know what you're talking about when I get
24 there, you know --

25 THE COURT: Understood. Okay?

1 Yes, Mr. Tuquero? And your badge number?

2 PROSPECTIVE JUROR NO. 11-0926: 11-0926.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 11-0926: Does my
5 department know about this?

6 THE COURT: Yes. I -- I am -- it's my
7 understanding that they do.

8 PROSPECTIVE JUROR NO. 11-0926: All right.
9 Just to make sure.

10 THE COURT: Yes. And -- and yours as well,
11 Mr. Lennon. And your badge number, please.

12 PROSPECTIVE JUROR NO. 11-0798: Badge
13 No. 11-0798.

14 THE COURT: Okay. All right. That's it.
15 I'm going to -- to ask you to go back and come in
16 together. And, again, please don't discuss this.

17 PROSPECTIVE JUROR NO. 11-0798: Okay.

18 THE COURT: All right? Thank you.

19 PROSPECTIVE JUROR NO. 11-0926: Thank you.

20 THE COURT: Okay. Are we ready?

21 MR. ROBERTS: I had one other concern that we
22 might want to take out of the presence while we're
23 doing this.

24 THE COURT: Yes.

25 MR. ROBERTS: When I came in this morning a

1 little early, I noticed that Ms. Mosqueda, Juror
2 11-1155, was napping on the bench.

3 THE COURT: What seat number is she?

4 MR. CHRISTIANSEN: 28, Your Honor.

5 MR. ROBERTS: She is Seat 28, the very last
6 one right here. She -- she was the one who works
7 security at the Wynn on the night shift, and we had
8 told her to ask about being paid.

9 THE COURT: And --

10 MR. ROBERTS: And I don't know if she
11 understood that she doesn't have to work while she's
12 being paid for jury service.

13 THE COURT: And you're -- you're positive
14 that's the -- I'm really unfamiliar with the policies,
15 so --

16 MR. KEMP: I think the Wynn is a two-week
17 place.

18 MR. ROBERTS: Yes. So at least she shouldn't
19 be doing it now. But --

20 THE COURT: The Wynn is two weeks?

21 MR. KEMP: Maybe she's saving it for the last
22 two weeks, though.

23 MR. ROBERTS: Maybe.

24 I'd just like to ask her about it, because I
25 know that, before, we asked her to inquire with the

1 Wynn about being paid to take off.

2 THE COURT: I think we haven't heard back
3 from her yet.

4 MR. ROBERTS: I think she fell asleep once
5 during jury selection, and -- and I just want to see if
6 this is still a concern before we finalize the panel.

7 THE COURT: Absolutely.

8 Marshal Padilla, will you please bring in a
9 juror. She's seated in 28.

10 THE MARSHAL: Emilie Mosqueda.

11 MR. KEMP: Just for the record, Your Honor, I
12 don't think she fell asleep, but I do agree she looks
13 drowsy.

14 THE COURT: She looks exhausted.

15 MR. KEMP: That's a better way to put it,
16 exhausted.

17 THE MARSHAL: Have a seat here.

18 THE COURT: Good morning.

19 PROSPECTIVE JUROR NO. 11-1155: Good morning.

20 THE COURT: Please be seated. Please state
21 your name and your badge number.

22 PROSPECTIVE JUROR NO. 11-1155: Okay. Emilie
23 Mosqueda, 11-1155.

24 THE COURT: Okay. Ms. Mosqueda, we had a --
25 a previous conversation about your checking with HR.

1 PROSPECTIVE JUROR NO. 11-1155: Right.

2 THE COURT: And have you done so?

3 PROSPECTIVE JUROR NO. 11-1155: I haven't
4 done it. Since it's -- I work graveyard, I'm not able
5 to go since the department's closed.

6 THE COURT: Okay. Do you have any
7 understanding of what the policy is?

8 PROSPECTIVE JUROR NO. 11-1155: No.

9 THE COURT: No? With respect to -- to
10 serving as a juror and how much time you are paid?

11 PROSPECTIVE JUROR NO. 11-1155: No. I'm not
12 sure.

13 THE COURT: Have you talked to anyone in your
14 department, one of your supervisors?

15 PROSPECTIVE JUROR NO. 11-1155: I have told
16 them about -- last time, when I came on January 17th,
17 but that's the only day I told them that I was going to
18 attend. But they don't know that I'm coming here. I
19 haven't told them yet.

20 THE COURT: Okay. I -- I've been informed --
21 and I haven't verified this, but I have been informed
22 that the -- that your employer provides two weeks of
23 paid jury duty.

24 PROSPECTIVE JUROR NO. 11-1155: Right.

25 THE COURT: Are you familiar with -- does

1 that sound correct to you or are you familiar with
2 that?

3 PROSPECTIVE JUROR NO. 11-1155: I'm not quite
4 familiar with that.

5 THE COURT: Okay. Well, I -- I really
6 recommend that you follow through and speak to someone
7 as soon as possible. It's hard if you're working
8 graveyard and --

9 PROSPECTIVE JUROR NO. 11-1155: It is hard.
10 It's just -- I hardly -- honestly, I hardly pay
11 attention here. And, like, I just can't focus. And I
12 live on my own, so I -- I just choose to work.

13 THE COURT: Okay. I'd like you to contact,
14 at some point -- maybe even during the lunch break
15 today -- the HR department and explain to them what --
16 what's happening in your -- in your -- in this trial
17 and that we still have about four weeks left.

18 PROSPECTIVE JUROR NO. 11-1155: Right.

19 THE COURT: Okay? And ask them what the
20 policy is.

21 You might be able to -- my understanding is
22 that they'll pay you and you don't have to go to work
23 for two weeks. So you wouldn't have to be, you know,
24 so -- so tired.

25 PROSPECTIVE JUROR NO. 11-1155: Right. But

1 also, I just -- I like going to work, so I just -- I --
2 I don't want to, like, miss work.

3 THE COURT: You what?

4 PROSPECTIVE JUROR NO. 11-1155: I don't want
5 to miss work. That's why I, like --

6 THE COURT: Understood. But that's not a
7 good reason to -- to not serve as a juror.

8 PROSPECTIVE JUROR NO. 11-1155: Right.
9 Right. I understand. It's just --

10 THE COURT: But I'm glad you're being very
11 candid.

12 PROSPECTIVE JUROR NO. 11-1155: Right.
13 Right. It's just -- I'm not -- I'm pretty sure you
14 guys want someone who is 100 percent here. And I -- I
15 feel like I won't be the best juror for this case.

16 THE COURT: Okay. Thank you.
17 Counsel, do you have any questions?

18 MR. KEMP: No, Your Honor.

19 MR. ROBERTS: No, Your Honor.

20 THE COURT: Okay. Thank you.

21 MR. ROBERTS: And, Your Honor, I was
22 proposing to plaintiffs' counsel that we stipulate to
23 excuse her. She has -- she says she hasn't been paying
24 attention. She's fallen asleep during jury selection.
25 She was sleeping on the bench outside. Despite the

1 Court's urging, it doesn't appear that she's going to
2 ask her employer for time off and she's going to
3 continue working night shift.

4 If she's going to be excused, it would seem
5 to be more efficient to allow the plaintiffs to qualify
6 the next juror and pass for cause before I get started.
7 That makes sense to me. I -- I don't think they're
8 inclined to agree, but it seems to me that she should
9 be excused.

10 MR. KEMP: Yeah, Judge, she's the last
11 alternate. So I'm not really concerned about her. I
12 mean, she's the very last alternate.

13 But I disagree that she -- she hasn't been
14 sleeping in here. If she sleeps on a bench, that's her
15 prerogative. I would like if she called the Wynn and
16 exercised that option, but I can't make her do it.

17 MR. ROBERTS: If we -- if we -- if we don't
18 need a sixth alternate, then let's just eliminate the
19 seat. But if we think that we need six and she might
20 end up in the box, then it's just as important that she
21 pay attention and be fully invested in evaluating the
22 testimony and evidence as it is for any other juror.

23 THE COURT: Well, look, yesterday we had how
24 many no-shows?

25 MR. CHRISTIANSEN: 25 out of 50.

1 THE COURT: Right. So I am concerned -- I
2 think -- we're going to continue with six alternates
3 because what if something happens in these next three
4 weeks, any type of flu? This gentleman, his wife
5 apparently has had a heart attack. And we -- I get --
6 I think we may not need them, but I think it's a good
7 policy to have them.

8 I would like her to -- I would like to
9 discuss with her after lunch -- you know, make sure
10 that she's followed through. Okay?

11 So I'm going to give her another opportunity
12 to do that. And I'll probably talk to her again before
13 the end of the day just to make sure she -- earlier
14 than later, while they're open.

15 MR. KEMP: You know, Judge, she is security.
16 We can -- if you get the name of the head of security,
17 we can talk to them -- you can talk to them. We can't
18 talk to them, but you can talk to them directly.

19 THE COURT: Okay. All right. If -- if you
20 stipulate to -- again, I'm not going to ask them to
21 extend or pay her extra. I -- I -- I -- ad nauseam I'm
22 saying this, but I can't do that. But I can --

23 MR. KEMP: I wasn't suggesting that, Your
24 Honor.

25 THE COURT: No, no, I know. But what are you

1 suggesting?

2 MR. KEMP: Well, for a juror to skip jury
3 service because she prefers to be at work, that's not a
4 reason to skip jury service.

5 THE COURT: I agree with that. I agree with
6 that. So -- but we're talking about two weeks, and
7 then we're talking about possible sleep deprivation for
8 the last two weeks.

9 MR. KEMP: Well, we're talking -- hopefully,
10 we're talking about doing the opening statements
11 tomorrow.

12 THE COURT RECORDER: I'm sorry. You --

13 THE COURT: You need to speak louder.

14 MR. KEMP: Hopefully, we're talking about
15 doing the opening statements tomorrow, so starting the
16 trial. So she'll miss a week of work.

17 THE COURT: Okay. I'll chat with her and
18 then ask her about it. I'd like to make sure she
19 follows through, though.

20 All right. Okay. Is it time -- is everyone
21 ready for the jury?

22 MR. ROBERTS: Yes, Your Honor.

23 THE COURT: All right.

24 Marshal Padilla, would you please bring the
25 jury in.

1 THE MARSHAL: All rise. Jury entering.

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

4 THE MARSHAL: Department 14 is now in session
5 with the Honorable Adriana Escobar presiding.

6 THE COURT: Please be seated.

7 Good morning, ladies and gentlemen. Welcome
8 back.

9 IN UNISON: Good morning.

10 THE COURT: Welcome back, and thank you very
11 much for being here today and following through on your
12 civic duty and your service. I'm going to ask madam
13 clerk to please take roll call.

14 THE CLERK: Yes, Your Honor.

15 Badge 11-0798, Byron Lennon.

16 PROSPECTIVE JUROR NO. 11-0798: Here.

17 THE CLERK: 11-0802, John Toston.

18 PROSPECTIVE JUROR NO. 11-0802: Here.

19 THE CLERK: 11-0830, Michelle Peligro.

20 PROSPECTIVE JUROR NO. 11-0830: Here.

21 THE CLERK: 11-0834, Joseph Dail.

22 PROSPECTIVE JUROR NO. 11-0834: Here.

23 THE CLERK: 11-0844, Raphael Javier.

24 PROSPECTIVE JUROR NO. 11-0844: Here.

25 THE CLERK: 11-0853, Dylan Domingo.

1 PROSPECTIVE JUROR NO. 11-0853: Here.
2 THE CLERK: 11-0860, Aberash Getaneh.
3 PROSPECTIVE JUROR NO. 11-0860: Here.
4 THE CLERK: 11-0867, Jenny Gagliano.
5 PROSPECTIVE JUROR NO. 11-0867: Here.
6 THE CLERK: 11-0879, Vanessa Rodriguez.
7 PROSPECTIVE JUROR NO. 11-0879: Here.
8 THE CLERK: 11-0885, Constance Brown.
9 PROSPECTIVE JUROR NO. 11-0885: Here.
10 THE CLERK: 11-0902, Sherry Hall.
11 PROSPECTIVE JUROR NO. 11-0902: Here.
12 THE CLERK: 11-0915, Ruth McLain.
13 PROSPECTIVE JUROR NO. 11-0915: Here.
14 THE CLERK: 11-0926, Enrique Tuquero.
15 PROSPECTIVE JUROR NO. 11-0926: Here.
16 THE CLERK: 11-0937, Raquel Romero.
17 PROSPECTIVE JUROR NO. 11-0937: Here.
18 THE CLERK: 11-0940, Caroline Graf.
19 PROSPECTIVE JUROR NO. 11-0940: Here.
20 THE CLERK: 11-0999, Janelle Reeves.
21 PROSPECTIVE JUROR NO. 11-0999: Here.
22 THE CLERK: 11-1035, Pamela Phillips-Chong.
23 PROSPECTIVE JUROR NO. 11-1035: Here.
24 THE CLERK: 11-1047, Glenn Krieger.
25 PROSPECTIVE JUROR NO. 11-1047: Here.

1 THE CLERK: 11-1125, Michael Kaba.
2 PROSPECTIVE JUROR NO. 11-1125: Here.
3 THE CLERK: 11-1127, Gregg Stephens.
4 PROSPECTIVE JUROR NO. 11-1127: Here.
5 THE CLERK: 11-1155, Emilie Mosqueda.
6 PROSPECTIVE JUROR NO. 11-1155: Here.
7 THE CLERK: 11-1164, Kimberly Flores.
8 PROSPECTIVE JUROR NO. 11-1164: Here.
9 THE CLERK: 11-1186, Ashley Vandevanter.
10 PROSPECTIVE JUROR NO. 11-1186: Here.
11 THE CLERK: 11-1200, April Hannewald.
12 PROSPECTIVE JUROR NO. 11-1200: Here.
13 THE CLERK: 11-1207, Hani Noshi.
14 PROSPECTIVE JUROR NO. 11-1207: Here.
15 THE CLERK: 11-1229, Jaymi Johnson.
16 PROSPECTIVE JUROR NO. 11-1229: Here.
17 THE CLERK: 11-1255, Heidi Wooters.
18 PROSPECTIVE JUROR NO. 11-1255: Here.
19 THE CLERK: 11-1268, Katherine Beswick.
20 PROSPECTIVE JUROR NO. 11-1268: Here.
21 THE CLERK: 11-1278, Elizabeth Mundo.
22 PROSPECTIVE JUROR NO. 11-1278: Here.
23 THE CLERK: 11-1293, Kim Schell.
24 PROSPECTIVE JUROR NO. 11-1293: Here.
25 THE CLERK: 11-1297, Anna Campbell.

1 PROSPECTIVE JUROR NO. 11-1297: Here.
2 THE CLERK: 11-1314, Pragnit Thakor.
3 PROSPECTIVE JUROR NO. 11-1314: Here.
4 THE CLERK: 11-1328, Sarah Oelke.
5 PROSPECTIVE JUROR NO. 11-1328: Here.
6 THE CLERK: 11-1336, E. Lemons.
7 PROSPECTIVE JUROR NO. 11-1336: Here.
8 THE CLERK: 11-1351, Kenneth Prince.
9 PROSPECTIVE JUROR NO. 11-1351: Here.
10 THE CLERK: 11-1358, Adam Elliott.
11 PROSPECTIVE JUROR NO. 11-1358: Here.
12 THE CLERK: 11-1373, Chante Webb.
13 PROSPECTIVE JUROR NO. 11-1373: Here.
14 THE CLERK: 11-1385, Stephanie Swann.
15 PROSPECTIVE JUROR NO. 11-1385: Here.
16 THE CLERK: 11-1396, Nichole Bibilone.
17 PROSPECTIVE JUROR NO. 11-1396: Here.
18 THE CLERK: 11-1411, Priscilla Hatch.
19 PROSPECTIVE JUROR NO. 11-1411: Here.
20 THE CLERK: 11-1416, Randall Nitta.
21 PROSPECTIVE JUROR NO. 11-1416: Here.
22 THE CLERK: 11-1430, Sara Smith.
23 PROSPECTIVE JUROR NO. 11-1430: Here.
24 THE CLERK: 11-1431, Analie Lacuesta.
25 PROSPECTIVE JUROR NO. 11-1431: Here.

1 THE CLERK: 11-1457, Edward Nespo.
2 PROSPECTIVE JUROR NO. 11-1457: Here.
3 THE CLERK: 11-1468, Cynthia Burdg.
4 PROSPECTIVE JUROR NO. 11-1468: Here.
5 THE CLERK: 11-1474, Monica Flores-Woods.
6 PROSPECTIVE JUROR NO. 11-1474: Here.
7 THE CLERK: 11-1477, Maria Dungca.
8 PROSPECTIVE JUROR NO. 11-1477: Here.
9 THE CLERK: 11-1498, Craig Soucy.
10 PROSPECTIVE JUROR NO. 11-1498: Here.
11 THE CLERK: 11 -- I mean -- I'm sorry.
12 12-0006, Nancy McLouth.
13 PROSPECTIVE JUROR NO. 12-0006: Here.
14 THE CLERK: 12-0013, Arthur Gil.
15 PROSPECTIVE JUROR NO. 12-0013: Here.
16 THE CLERK: 12-0017, Kelly McCarthy.
17 PROSPECTIVE JUROR NO. 12-0017: Here.
18 THE CLERK: 12-0038, Ed Hall.
19 PROSPECTIVE JUROR NO. 12-0038: Here.
20 THE CLERK: 12-0040, Pamela Obeslo.
21 PROSPECTIVE JUROR NO. 12-0040: Here.
22 THE CLERK: 12-0054, Cynthia Blank.
23 PROSPECTIVE JUROR NO. 12-0054: Here.
24 THE CLERK: 12-0096, Terry Ormond.
25 PROSPECTIVE JUROR NO. 12-0096: Here.

1 THE CLERK: And 12-0106, Wendy LaCrosse.

2 PROSPECTIVE JUROR NO. 12-0106: Here.

3 THE COURT: Is there anyone who is present
4 whose name has not been called?

5 Yes, sir.

6 PROSPECTIVE JUROR NO. 11-1314: 11-1314.

7 THE COURT: Your name?

8 PROSPECTIVE JUROR NO. 11-1314: Pragnit
9 Thakor.

10 THE CLERK: Oh, I thought I did, and I
11 thought you said okay. I'm sorry. 11-1314, Pragnit
12 Thakor.

13 PROSPECTIVE JUROR NO. 11-1314: Here.

14 THE CLERK: I thought I heard you answer.
15 Sorry.

16 THE COURT: Do the parties stipulate to the
17 presence of the jury?

18 MR. CHRISTIANSEN: Yes, Your Honor.

19 MR. ROBERTS: Yes, Your Honor.

20 THE COURT: Very good. Just to give you a
21 general background, ladies and gentlemen. We are still
22 in the very important first stage of a jury trial,
23 which is voir dire. And, as I have indicated many
24 times, this is when the parties, both parties and/or
25 all of the parties, and the Court are trying to make

1 sure that we have a fair and impartial jury that will
2 hear the case for both sides and start on an even
3 playing field. That's critical. Okay?

4 And so you've been asked questions by
5 Mr. Christiansen for the plaintiffs, and now it's time
6 for the defense to state the questions.

7 And, Mr. Roberts, I believe you're going to
8 conduct voir dire?

9 MR. ROBERTS: Yes, Your Honor.

10 THE COURT: If you'd like to proceed, please
11 go ahead.

12 MR. ROBERTS: Thank you.

13

14 VOIR DIRE EXAMINATION

15 MR. ROBERTS: Good morning.

16 IN UNISON: Good morning.

17 MR. ROBERTS: So we've been going at this
18 since the 12th, over a week. Is everyone ready for me
19 to have my week?

20 I have been doing my best to pay attention
21 and listen to everything that you've all said in
22 response to Mr. Christiansen's questions. In
23 seriousness, I will do my best not to repeat his
24 questions and only inquire about areas that -- that
25 have not been gone into or where I need further

1 clarification.

2 I shouldn't take a week. But I know that
3 this process can be tiring, especially when you're not
4 the one speaking for extended periods of time. So I
5 hope everyone can be patient with me. Let me do my
6 duty to my client to ask my questions.

7 Everyone okay with that?

8 IN UNISON: Yes.

9 MR. ROBERTS: Thank you.

10 I know some of you, I have introduced myself
11 and our team three times; some of you have heard it
12 once. It's customary for me to do it again when I
13 stand back up, but I'll go quickly. I'm Lee, and this
14 is Audra, Darrell, Trent, Tim, and Mike.

15 And also over here, I may have left Brian
16 Clark out, this gentleman over here in the corner.
17 He's not with one of the law firms. He handles all the
18 audiovisual presentations when the TVs need to work and
19 we need to display things for the jury.

20 I'll share with you something a little bit
21 silly. My first jury trial was in 1986, so I have been
22 doing this almost 32 years. And I still get really
23 nervous when I first have to stand up in front of a new
24 jury. It's a formal setting and when there are
25 somewhere between 50 and 100 people in the room that

1 you don't know. So I have to write myself a note.

2 Audra has been trying every case with me for
3 the last 13 years, and I still write her name down on
4 the piece of paper just 'cause I'm afraid I'm going to
5 forget it. And sure enough, even though it was on the
6 piece of paper, the second time I introduced our team,
7 I left out Audra and Trent.

8 It is hard to talk in this setting. It can
9 be a little intimidating even for someone who's been
10 here so many times, and I understand it's hard for you
11 to share things in this setting.

12 The process, though, is really intended to
13 help us understand, you know, your feelings, you know,
14 your life experiences and beliefs. And a lot of that
15 is very personal. But the process can only work if you
16 can open up. And just as it's easier for me the fourth
17 time I stand up, I notice that some of you in the
18 panel, it's getting easier for you to speak and express
19 your -- your thoughts and feelings in front of everyone
20 else. And I appreciate that.

21 The judge has told you the process is
22 intended to impanel a fair and unbiased jury. And
23 we've been talking a lot about bias and prejudice. And
24 now that Mr. Christiansen has done his job, I think it
25 fair to say everyone in the box has committed that they

1 can be fair and they can set aside any bias or
2 prejudice that they have and decide the case on the
3 evidence and the law that the Court is going to give
4 you.

5 Right? Everyone feels that way.

6 IN UNISON: Yes.

7 MR. ROBERTS: Or you wouldn't still be here.

8 So there's another part of the case that we
9 haven't really talked about, and that's the lawyers,
10 after everyone's done, can exercise what's called a
11 peremptory strike. And we can take jurors that, even
12 though they've committed to be fair and impartial and
13 set aside any beliefs that they might have had from
14 their own life experiences, we can decide who's not a
15 good fit for the case based on the beliefs they have.
16 Even if they can set them aside, we have to try to
17 figure out who might not be a good fit for this case.

18 So I'm going to try to talk a little less
19 about bias and prejudice and your ability to set it
20 aside and focus more on understanding your beliefs,
21 your opinions, your emotions. The instructions from
22 the Court are going to require you to decide the case
23 based on your calm and reasonable judgment to use your
24 reason and to be calm about it.

25 But there are facts in this case that you've

1 all started to hear that are going to cause emotion and
2 passions to be stirred as you hear the evidence. You
3 know, any good and decent person is going to feel
4 sympathy for these boys who lost their father in this
5 accident and then lost their mom to cancer shortly
6 after that.

7 Whether -- or the extent that we're going to
8 feel those emotions may be governed in part by our own
9 life experiences, things that you've had similarly
10 happen to you or your loved ones, people -- people
11 you've known. And that's what I sort of like you to
12 think about as you're answering the questions, you
13 know, to share with me, as hard as it may be, you know,
14 things in your own life experience that may cause your
15 emotions in this case to be stronger than maybe for
16 someone else, things that might make you not the right
17 person to decide this case.

18 And we all have life experiences. I've got
19 six daughters and three granddaughters, and I wouldn't
20 be a good juror on a case where a little girl got hurt.
21 I just wouldn't be. One of my daughters, 22 years ago,
22 fell on her bike and got her leg tangled in the frame
23 and had a compound fracture, you know, where the bone
24 is sticking out. And it's 22 years, and I can't look
25 at a picture of a compound fracture without a physical

1 reaction.

2 So I wouldn't be a good juror in a picture
3 where I had to look at -- a good juror in a case where
4 I had to look at a picture of a compound fracture. And
5 if you can share these things with me to help me do my
6 job for my client, I would really appreciate it.

7 Pete told you, you know, this process is voir
8 dire. You've heard that. He mentioned one of the
9 translations. It started out in Latin and evolved into
10 French and then English, and he mentioned it's a little
11 different depending on which language you go back to.
12 But if you go all the way back to the Latin, it comes
13 from the Latin for "to speak the truth." And it was
14 based on the fact that all the jurors took an oath to
15 tell the truth and to share honestly your feelings with
16 the Court and with the lawyers so that we can do our
17 job for the client.

18 And this is, you know, America right here,
19 and one of the rights that you have in this country is
20 the freedom of speech. But if we're out in society,
21 sometimes we don't want to exercise that right because
22 maybe our opinions are not politically correct, maybe
23 we're afraid that we're going to be judged by our peers
24 if we express certain things. But here, you have the
25 freedom to speak your mind and the duty to speak your

1 mind even if you think it may not be the politically
2 correct thing to say.

3 Everyone wants to believe that they can be
4 fair and set aside their biases. You're good citizens.
5 You wouldn't still be in the box if you weren't. But
6 I'd ask you to search your hearts and make sure that
7 this is the right case for you based on your own
8 opinions and beliefs and life experiences and to share
9 all those things with me honestly.

10 So I'm going to start out by asking a very
11 general question. Every now and then someone raises
12 their hand even after a week. You've heard bits and
13 pieces of what the lawyers say the case is about and
14 what the lawyers say the evidence is going to show.

15 Is there anyone here in the box who's already
16 leaning one way or another? Not already made a
17 decision but is leaning one way or another on this
18 case? If so, raise your hand and I'll talk to you.
19 That's great.

20 I'm going second now, and the defense always
21 goes second because the plaintiff has the burden of
22 proof. So the plaintiff goes, when it comes to
23 evidence, and then the defense goes. Opening
24 statements, closing argument -- plaintiff, then
25 defense.

1 One of the things the Court is going to tell
2 you, probably repeatedly, is that you are not to form
3 or express any opinions as to what you think the
4 outcome of this case should be until it's finally
5 submitted to you. After you've been instructed on the
6 law, after counsel have made their closing arguments,
7 after you've heard all the evidence, that's when you're
8 supposed to form opinions. And you're supposed to be
9 open until then.

10 It's easy not to express things. Who thinks
11 they might have a problem not forming opinions during
12 the plaintiffs' case before we had a chance to put on
13 our evidence? Anyone?

14 This is a tragic case. And we're sorry for
15 the loss that these boys have suffered.

16 Ms. Hannewald?

17 PROSPECTIVE JUROR NO. 11-1200: Yes.

18 MR. ROBERTS: Do you think there's any
19 inconsistency --

20 THE COURT: Your badge number, please.

21 MR. ROBERTS: Oh, wait. Just wait for the
22 microphone, ma'am.

23 PROSPECTIVE JUROR NO. 11-1200: Oh, sorry.

24 MR. ROBERTS: I was jumping the gun.

25 PROSPECTIVE JUROR NO. 11-1200: So it --

1 MR. ROBERTS: Ms. Hannewald, badge number?

2 PROSPECTIVE JUROR NO. 11-1200: -- is
3 11-1200.

4 MR. ROBERTS: Thank you, ma'am.

5 Do you think there's any inconsistency with
6 expressing sympathy for the plaintiffs while still
7 disagreeing with their case?

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

9 MR. ROBERTS: Okay. And have you formed any
10 leanings one way or another as to whether the plaintiff
11 should recover money -- compensatory damages, punitive
12 damages -- in this case?

13 PROSPECTIVE JUROR NO. 11-1200: Not at all.
14 Not at all.

15 MR. ROBERTS: Thank you.

16 Anyone disagree with Ms. Hannewald? Anyone
17 think that it's -- you know, there's some inconsistency
18 between defending a case and arguing for zero damages
19 with still feeling some sympathy for what happened?

20 Could you pass the mic right next to you to
21 Ms. Beswick.

22 PROSPECTIVE JUROR NO. 11-1268: 11-1268,
23 Katherine Beswick.

24 MR. ROBERTS: Okay. Mr. Christiansen talked
25 about the damages he's going to ask for in this case.

1 Are you open to sending the plaintiffs home
2 with no money and no award if the evidence supports
3 that?

4 PROSPECTIVE JUROR NO. 11-1268: Yes.

5 MR. ROBERTS: Okay. You feel sympathy for
6 the boys?

7 PROSPECTIVE JUROR NO. 11-1268: No. I mean
8 yes because I'm a mother, but I need to hear the
9 reasoning behind it.

10 MR. ROBERTS: Okay.

11 PROSPECTIVE JUROR NO. 11-1268: If that makes
12 sense.

13 MR. ROBERTS: It does.

14 Anyone else feel differently than
15 Ms. Beswick?

16 One of my jobs is just to get you talking,
17 even if it's about things that aren't directly related
18 to this case. In fact, it's against the rules for me
19 to ask you what your verdict would be in this case
20 directly.

21 So, Ms. Hannewald.

22 PROSPECTIVE JUROR NO. 11-1200: Well, I do
23 feel different because I do feel sympathy without
24 hearing the facts. I don't care what the facts are.
25 It doesn't matter. It's still really sad. That

1 doesn't mean that I -- I'll say really, probably
2 unpopular, I feel sympathy for the Florida shooter.
3 I'm going to probably cry talking about it. But I feel
4 sympathy for all of the victims, like you can't
5 imagine, but I also feel sympathy for the shooter who
6 seems to be, you know, a messed-up person, and now he
7 has to live with that. And I feel sympathy for -- I
8 guess he doesn't have much family. But, I mean, I
9 don't think -- yeah, I don't think that sympathy has
10 anything to do, in my mind, with who's right or who's
11 wrong. It's -- it's a tragic case, and I do feel
12 sympathy. But that doesn't have anything to do, in my
13 mind, with whether that means they get money just
14 because I feel sympathy.

15 MR. ROBERTS: Do you agree that sometimes,
16 when your emotions are really strong, it makes it
17 difficult to evaluate things intellectually?

18 PROSPECTIVE JUROR NO. 11-1200: I suppose. I
19 don't feel like it would be hard for me to evaluate
20 because I don't -- even if it was deemed that it was
21 100 percent the father's fault for his own bicycle
22 accident -- it was no one else's fault, it was
23 100 percent his fault -- I would still have sympathy
24 for his kids. I mean, they're his kids, lost their
25 father. But it wouldn't be hard for me to say, oh,

1 probably wasn't his fault because this is horrific and
2 this horrific thing that happened to his kids. So I
3 don't feel like it would influence how I evaluated the
4 case.

5 MR. ROBERTS: Okay. Thank you.

6 Anyone else share Ms. Hannewald's opinion
7 that they are feeling some sympathy already for these
8 boys based on their situation?

9 Yes. And Ms. Hall.

10 PROSPECTIVE JUROR NO. 11-0902: 11-0902,
11 Sherry Hall. It is a very sad thing for the boys to
12 lose their father the way that they did and then turn
13 around and lose their mother after that. So I do feel
14 sympathy and empathy for them.

15 MR. ROBERTS: But, as you've expressed
16 before, you think you could put that aside when
17 deciding whether or not the bus manufacturer -- bus
18 seller is liable in this case?

19 PROSPECTIVE JUROR NO. 11-0902: I don't think
20 one has anything to do with the other.

21 MR. ROBERTS: Okay. Mr. Noshi.

22 If you can pass the mic down to Mr. Noshi.

23 How are you feeling about these boys based on
24 what you have heard so far during voir dire?

25 THE COURT: Your badge number.

1 PROSPECTIVE JUROR NO. 11-1207: Hani Noshi,
2 11-1207.

3 I'm definitely -- like, I have my kids. My
4 two kids are in a similar age. They're a little bit
5 older, but I -- especially with the picture that I've
6 seen, I can definitely -- like, it kind of hit me hard.
7 But I'm always going to try to be fair but to be also
8 honest. Like right now, in my mind, I'm still leaning
9 like, that, because of my sympathy to the kids, that,
10 you know, no matter what, these kids should at least
11 get something, even if the bus is not, you know,
12 necessarily 100 percent at fault, but at least -- and
13 that's like, I should get over this. Should I
14 continue?

15 But that's -- to be honest, that's, like, in
16 my mind, you know, that I will always be fighting like,
17 these kids, you know, I don't care what happened. This
18 is an accident, you know, even if it's not the bus's
19 fault, you know, it's just still some compensation to
20 them. That's what I'm leaning toward. But --

21 MR. ROBERTS: Simply because of the magnitude
22 of their loss --

23 PROSPECTIVE JUROR NO. 11-1207: Their loss.

24 MR. ROBERTS: -- you'll want to take care of
25 them in some way?

1 PROSPECTIVE JUROR NO. 11-1207: Yes. And
2 just connecting to two kids, just like my own kids.

3 MR. ROBERTS: Right. And your kids are --
4 what age are your children?

5 PROSPECTIVE JUROR NO. 11-1207: Like now
6 they're 21 and 24.

7 MR. ROBERTS: Okay. So it wasn't so long ago
8 when they were --

9 PROSPECTIVE JUROR NO. 11-1207: Yeah. When
10 this -- I mean, the last time we were hanging together,
11 they were that age. Now they're older.

12 MR. ROBERTS: I understand. And rather than
13 talk about whether you're able to do something, is it
14 going to be difficult for you to make a decision
15 without thinking about that?

16 PROSPECTIVE JUROR NO. 11-1207: It's really
17 hard to tell. Like it's, like, in the back of my head.
18 But I know, like, I'll have to be fair too. But to me,
19 like, that's -- that's a big part of my head now,
20 thinking, is these kids -- and I've mentioned this
21 before, like, I have mixed feelings about punitive
22 damages and all that stuff. But -- but compensation,
23 whatever, like to me, I'll always have this, like, it
24 will be -- I don't know if it's going to be hard or
25 not. You know, it's hard to tell, but I'll be -- it

1 would be something that I really have to work on to try
2 to avoid my judgment.

3 MR. ROBERTS: And I know it's really hard to
4 think about this and tell me what you think is going to
5 happen during the case when you hear the evidence and
6 when you see these boys on the stand talking about
7 their loss. But do you feel like you can be absolutely
8 certain that these feelings and leanings that you are
9 experiencing won't affect your verdict on compensation,
10 on compensatory damages?

11 PROSPECTIVE JUROR NO. 11-1207: It's a tough
12 question.

13 MR. ROBERTS: It is. And there's no wrong
14 answer to it, only -- only what you really feel.

15 PROSPECTIVE JUROR NO. 11-1207: I know I'll
16 be trying. Like, I know I'll be trying to do the right
17 thing. But I just can't -- like, I always have to
18 relate and --

19 MR. ROBERTS: So even though you're trying,
20 these thoughts are going to be in the back of your
21 head?

22 PROSPECTIVE JUROR NO. 11-1207: I assume so.

23 MR. ROBERTS: You'll want to take care of
24 these boys in some way?

25 PROSPECTIVE JUROR NO. 11-1207: In my mind.

1 MR. ROBERTS: Anyone else feel like
2 Mr. Noshi, that, simply due to the magnitude of these
3 boys' tragedy, they should get something?

4 What about you, Ms. Wooters?

5 Pass the mic up.

6 What do you think about that?

7 PROSPECTIVE JUROR NO. 11-1255: Heidi
8 Wooters, 11-1255.

9 I think that, hopefully, the boys are getting
10 something through life insurance or something that
11 maybe their father and mother carried. But aside from
12 that, it would depend on the evidence presented as to
13 whether they're due anything else from the bus company
14 or not. So I have no feelings about compensation
15 outside of life insurance, hopefully, that their
16 parents carried.

17 MR. ROBERTS: Okay. And the Court's
18 instructed you that -- and will instruct you again
19 that, when it comes to making your decision, you're not
20 supposed to consider insurance that any party may have
21 had.

22 PROSPECTIVE JUROR NO. 11-1255: Correct.

23 MR. ROBERTS: You okay with that? Are you
24 going to be able to put that sort of thought out of
25 your mind?

1 PROSPECTIVE JUROR NO. 11-1255: Absolutely.

2 MR. ROBERTS: Okay. Thank you.

3 What about you, Ms. Phillips-Chong? Do you
4 prefer Phillips-Chong or Phillips-Chong?

5 PROSPECTIVE JUROR NO. 11-1035: Phillips is
6 fine.

7 MR. ROBERTS: Very good.

8 PROSPECTIVE JUROR NO. 11-1035: Pamela
9 Phillips-Chong, 11-1035.

10 MR. ROBERTS: What are you feeling right now
11 about what -- any urges to take care of the plaintiffs
12 in this case due to the magnitude of their loss?

13 PROSPECTIVE JUROR NO. 11-1035: Well, I feel
14 that they should be compensated for their loss, but
15 without hearing the case, you can't make a snap
16 judgment like that. You have to hear all evidence and
17 listen to the witnesses. Everything is taken into
18 consideration. It's just not, oh, one-sided.
19 Everybody starts neutral. You -- you hear the case,
20 and then you determine. That should not be a
21 determination for your verdict.

22 MR. ROBERTS: Okay. And you're okay with the
23 fact that the jury, if it follows the Court's
24 instructions and determines that the bus company is not
25 liable, that you never get to damages? You okay with

1 that?

2 PROSPECTIVE JUROR NO. 11-1035: Yes.

3 MR. ROBERTS: Is there anyone in here who is
4 already leaning toward thinking that this trial is
5 going to go to a damages phase?

6 I'll talk to you a little bit more about
7 damages in a minute. One of the tough jobs that a
8 lawyer has to do is I have a duty to address -- and my
9 cocounsel, Darrell and Mike, have a duty to address all
10 the elements of the claim. So we're going to have to
11 put on evidence of damages. We're going to have to
12 talk about what that should be if the jury finds
13 liability.

14 Anyone going to have a problem with us
15 talking about damages but yet at the same time saying
16 that we don't think you should ever get there?

17 Everyone's okay and understands we have a
18 duty to do that?

19 And one of the things -- I guess an example
20 is, you know, I got an old car. I got a new truck. I
21 couldn't sell my old car. It's sort of a classic,
22 about 20 years old. And I've been offered -- people
23 have offered to buy it. And I'll say -- if I said,
24 "Well, I'm not interested in selling, but if I was
25 going to sell, I'd want 10,000 for it."

1 Who thinks that, if I said that, maybe I
2 really want them to pay 10,000 for my car? I mean, in
3 life, you don't tell someone what you'd take if you
4 don't want to do it. But in the court, we have to do
5 that. So it's a little counterintuitive.

6 Is everyone okay and understands, if we talk
7 about damages, that doesn't mean we think you should
8 get the damages?

9 So, as I said, you know, one of the things
10 that -- that I -- I need to do to do my job is
11 to -- to -- to get talking and to talk to some of you
12 who haven't spoken as much as others yet on the panel.

13 To do that, I want to talk about something
14 that has nothing to do with the case. Let's think to
15 the last time you bought a product that was potentially
16 hazardous. Maybe it was a drug, maybe it was a weed
17 whacker, maybe a food processer with sharp blades that
18 spin around.

19 Did you open the box, pull out the pamphlet
20 with the instructions? Did you read every word of them
21 carefully before you used the product? Did you skim
22 them? Or did you throw the pamphlet to the side like I
23 do?

24 I'm a man. I know how things work.

25 Okay. What about you, Ms. Johnson, 11-1229?

1 All the way up in the back row. Tell me what you do
2 when you open -- open that box.

3 PROSPECTIVE JUROR NO. 11-1229: Depends on
4 the product. Sometimes I'll read it, probably not
5 thoroughly; sometimes just toss it aside.

6 MR. ROBERTS: Okay. And -- and that's the --
7 that's true regardless of how dangerous you think that
8 product might be?

9 PROSPECTIVE JUROR NO. 11-1229: Well, I'm a
10 little more inclined to read it if it's a more
11 dangerous product. If it's something maybe I've used
12 before that I'm replacing, I might not read it
13 thoroughly.

14 MR. CHRISTIANSEN: Excuse me. Objection,
15 Your Honor. May we approach real quickly?

16 THE COURT: Yes.

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

19 MR. ROBERTS: Okay. And, Ms. Johnson, did
20 you finish your response?

21 PROSPECTIVE JUROR NO. 11-1229: Yes, sir.

22 MR. ROBERTS: Okay. Could you pass the mic
23 next to you to Ms. Gagliano.

24 PROSPECTIVE JUROR NO. 11-1229: Yes, sir.

25 MR. ROBERTS: What about you, Ms. Gagliano?

1 PROSPECTIVE JUROR NO. 11-0867: 11-0867,
2 Jenny Gagliano.

3 Just like her, I would, you know, depending
4 on the product also. If it is a more dangerous one, I
5 would definitely read it. If it's something I've used
6 before, I just toss it.

7 MR. ROBERTS: Okay. And you understand that
8 this has nothing to do with the facts of this case; I'm
9 just trying to discover your personal attitudes.
10 Right?

11 PROSPECTIVE JUROR NO. 11-0867: Right.

12 MR. ROBERTS: Okay. Thank you, ma'am. Could
13 you pass next to Ms. Flores.

14 PROSPECTIVE JUROR NO. 11-1164: Kimberly
15 Flores, 11-1164.

16 MR. ROBERTS: What do you do, ma'am?

17 PROSPECTIVE JUROR NO. 11-1164: Basically the
18 same thing. It depends on the product. If I've used
19 it before, then I might just skim through it, but
20 usually just toss it.

21 MR. ROBERTS: Any other factors that might
22 enter into your personal decision-making other than
23 whether or not you've used that product before?

24 PROSPECTIVE JUROR NO. 11-1164: No. I mean,
25 it just depends on the product, honestly.

1 MR. ROBERTS: Could you pass it up to
2 Ms. Beswick.

3 What about you, Ms. Beswick?

4 PROSPECTIVE JUROR NO. 11-1268: When I buy
5 certain things, I usually do my research first. So
6 there's really no specific product that I'm really
7 thinking right now that, okay, if there's a warning
8 sign, I might not get it. But I usually do my research
9 first, compare stuff, and then I make a decision.

10 MR. ROBERTS: Okay.

11 PROSPECTIVE JUROR NO. 11-1268: If that makes
12 sense.

13 MR. ROBERTS: And maybe it would be easier in
14 going through this instead of just generalizing it as
15 to any product, just think about the last potentially
16 dangerous thing that you bought.

17 PROSPECTIVE JUROR NO. 11-1268: Well, I guess
18 my bike. So, for instance, I bought a bike.

19 MR. ROBERTS: Okay. Let's not talk about
20 bikes since this case -- this case involves a bike, so
21 we don't want to know about bikes. Go back to the one
22 before that.

23 PROSPECTIVE JUROR NO. 11-1268: I'm still
24 thinking about a product. Okay. Baby toys.

25 MR. ROBERTS: Okay.

1 PROSPECTIVE JUROR NO. 11-1268: Okay. I have
2 a baby. So before I'd buy stuff for my baby, which I
3 feel like, okay -- like, for instance, crib. So I do
4 my research. I go for design. I'm a girl. I go for
5 design first. And then I go through the process of
6 what the products can do, what are the stuff that it
7 can harm my kid. And that's how I make my decision.

8 So when I bought a crib, I need to make sure
9 that it has all the necessary tools that will help me
10 decide if it's going to be safer for my kid. I'm not
11 saying it's going to be 100 percent safe, but it will
12 be safer for my kid. But I still need to be
13 responsible as well. I cannot just leave her in there.
14 I need to be responsible as well to see if -- to find
15 out that she's going to be safe, if that makes sense.

16 MR. ROBERTS: Yes, it does. It's amazing all
17 my girls survived with all the changes that have been
18 made to cribs over the last 34 years.

19 Let's see. Could you pass to Ms. Brown.

20 THE COURT: That's badge 11-dash?

21 PROSPECTIVE JUROR NO. 11-1268: Sorry.
22 11-1268, Katherine Beswick.

23 MR. ROBERTS: Thank you, Your Honor.

24 PROSPECTIVE JUROR NO. 11-0885: Badge
25 11-0885, Constance Brown.

1 MR. ROBERTS: Tell me what you did when you
2 opened your last product.

3 PROSPECTIVE JUROR NO. 11-0885: I kind of
4 looked at the pamphlet a little bit, never had it
5 before, so it was something new to me. But I just kind
6 of skimmed through it a little bit. "Oh, I'll figure
7 this out." So I kind of put it to the side, but then,
8 of course, I had to go back and then really kind of
9 look through it to see oh, okay, that's how it's
10 supposed to work.

11 So it just depends on the product. For me,
12 if I feel like I know a little bit about it, then,
13 yeah, I'll just set it to the side. I might look at it
14 a little bit, kind of look at the pictures, and go
15 okay.

16 MR. ROBERTS: Got it. Thank you, Ms. Brown.
17 Could you hand it over to Mr. Noshi.

18 What about you, sir?

19 THE COURT: Badge number?

20 PROSPECTIVE JUROR NO. 11-1207: Hani Noshi,
21 11-1207.

22 Same like her, like, I -- I'm thinking of,
23 like, a weed whacker. You know, I've used one before,
24 so I would -- I would just kind of look and see if
25 there's any -- excuse me -- if there's any -- like, any

1 big warning labels, you know, in red or something.
2 That's probably going to get my attention. But I'm not
3 going to go read through, like, the -- you know, small
4 letter details.

5 MR. ROBERTS: Thank you, sir.

6 Ms. Rodriguez?

7 PROSPECTIVE JUROR NO. 11-0879: Vanessa
8 Rodriguez.

9 MR. ROBERTS: Are you cold? It was cold this
10 morning, wasn't it?

11 PROSPECTIVE JUROR NO. 11-0879: Yes.
12 11-0879.

13 Just like Ms. Brown, if I used it, I think I
14 know how to use it, so I don't read it. But, honestly,
15 I never really even read anything. I think I could
16 just figure things out and it's fine.

17 MR. ROBERTS: Let's -- let's change the
18 subject. Still talking about safety, how many times a
19 day do you think about or have concerns about your
20 personal safety?

21 PROSPECTIVE JUROR NO. 11-0879: Can we do it
22 by, like, percentage --

23 MR. ROBERTS: Sure.

24 PROSPECTIVE JUROR NO. 11-0879: -- instead of
25 how many times?

1 I would say, honestly, about 80 percent.
2 Half of my time is at work; the other time is in a car.
3 So I'm always worried about making sure I get home.
4 But even when you're home, you have to worry about your
5 safety.

6 MR. ROBERTS: How often do you worry about
7 your safety when you're at home? Percentage.

8 PROSPECTIVE JUROR NO. 11-0879: Like
9 10 percent.

10 MR. ROBERTS: Thank you.

11 Show of hands, who -- who else thinks about
12 their safety as much as Ms. Rodriguez, maybe 80 percent
13 of the day or more?

14 Mr. Stephens, tell me about that.

15 PROSPECTIVE JUROR NO. 11-1127: Well, for
16 what I do, my -- my -- for my job, it's all about
17 safety.

18 MR. ROBERTS: Here's -- so Mr. Stephens,
19 Badge No. 11-1127.

20 PROSPECTIVE JUROR NO. 11-1127: 11-1127.

21 MR. ROBERTS: Okay.

22 PROSPECTIVE JUROR NO. 11-1127: Yeah, so,
23 for -- for my job, it's -- it's all about safety all
24 day, every day. I'm on a ladder. I'm in my vehicle
25 driving from job to job. So on my mind is safety

1 100 percent of the time.

2 When I'm at home, I'm relaxing, watching some
3 TV. You know, that's what I do all day, every day.
4 But, you know, my safety level drops down probably
5 about 15, 10 percent, because you're at home and you're
6 still thinking about what's going on outside of your
7 house. You know, what's -- you know, somebody's
8 lurking around your -- your place. You know, and
9 you're thinking about crime and stuff around in your
10 neighborhood.

11 So, yeah, your -- your safety level is still
12 there; it's just not as much as if you're at work.

13 MR. ROBERTS: Understand.

14 Anyone else raise their hand on the front
15 row? I don't think so.

16 Let's go to the next row. If you could pass
17 the mic back. I think Ms. Wooters raised her hand.
18 And Wooters?

19 PROSPECTIVE JUROR NO. 11-1255: Badge
20 No. 11-1255.

21 MR. ROBERTS: Thank you.

22 PROSPECTIVE JUROR NO. 11-1255: I'm at school
23 with the kids a lot. So I think about it a lot then,
24 especially in light of things that have been going
25 around the country lately.

1 I don't know. Driving around town, walking
2 from the parking garage to the courthouse, all of the
3 time, I am always aware of who's around, what they're
4 doing, what they're saying, because you get some prime
5 commentary as you walk. Just in general, but at home I
6 generally don't think about it as much until night
7 falls. And then you know what happens in the dark.

8 MR. ROBERTS: Right. People lurking?

9 PROSPECTIVE JUROR NO. 11-1255: Right.

10 MR. ROBERTS: Like Mr. Stephens said.

11 PROSPECTIVE JUROR NO. 11-1255: Right.

12 Right.

13 MR. ROBERTS: Thank you, ma'am.

14 Anyone else on this row right in front of the
15 box raise their hand?

16 Okay. Ms. Reeves.

17 PROSPECTIVE JUROR NO. 11-1186: Oh.

18 MR. ROBERTS: We'll go that way, then we'll
19 come back to Ms. Vandevanter.

20 PROSPECTIVE JUROR NO. 11-0999:

21 Janelle Reeves, 11-0999.

22 I'm along the same lines as Heidi. When
23 you're out driving, walking, more crazy people. When
24 I'm at home, a lot less, more comfortable, lock the
25 door. But then I have children, stepping on Legos

1 around my house.

2 MR. ROBERTS: Did you buy your 80-pound pit
3 bull for safety?

4 PROSPECTIVE JUROR NO. 11-0999: No, she's a
5 rescue.

6 MR. ROBERTS: Okay.

7 PROSPECTIVE JUROR NO. 11-0999: No, she's a
8 big baby.

9 So the same thing. I mean, people should
10 constantly be aware of what's going on around you. 15
11 years in security, I always watch what's going on.

12 MR. ROBERTS: Very good. Thank you. Could
13 you pass down to Ms. Vandevanter.

14 Did I say that right, Vandevanter?

15 PROSPECTIVE JUROR NO. 11-1186: Yes.

16 MR. ROBERTS: Okay. Thank you.

17 PROSPECTIVE JUROR NO. 11-1186: Ashley
18 Vandevanter, 11-1186.

19 MR. ROBERTS: I said it wrong and you didn't
20 correct me.

21 PROSPECTIVE JUROR NO. 11-1186: It's close --
22 it's closest.

23 MR. ROBERTS: Thank you. Vandevanter.

24 PROSPECTIVE JUROR NO. 11-1186: Yes.

25 Okay. I would think all the time, for me,

1 it's different levels. At work, my students have a lot
2 of needs, and we have aggressive students, so there's
3 protecting them and also keeping them from harm and so
4 forth.

5 My own children, I have a 16-month-old who
6 likes to climb. So that's always keeping them safe,
7 keeping them aware of their surroundings.

8 And then, personally, I have a head injury.
9 So I'm always -- I have difficulty hearing on my left
10 side and with my peripheral vision. So I'm always
11 extremely aware of -- try to be extremely aware of
12 what's going on and knowing my surroundings and being
13 able to see and so forth.

14 MR. ROBERTS: Okay. And that's your left
15 side?

16 PROSPECTIVE JUROR NO. 11-1186: Correct.

17 MR. ROBERTS: Okay. So if you had any
18 trouble hearing.

19 PROSPECTIVE JUROR NO. 11-1186: That's why I
20 have to lean.

21 MR. ROBERTS: Thank you. Now, you are a
22 special ed teacher, and your students are emotionally
23 disturbed; right?

24 PROSPECTIVE JUROR NO. 11-1186: No. My
25 students are life skills, and they -- I think it was

1 described before. There's -- welcome to Nevada.

2 There's different levels of life skills.

3 There's functional life skills, which would typically

4 be students -- wheelchair is such a broad term.

5 Students that have extremely limited mobility.

6 That's not the group that I teach. I teach

7 life skills, intermediate -- well, I teach primary life

8 skills. So those students are typically

9 developmentally delayed, intellectual disabilities.

10 So, like, if you were to look at my class, most of my

11 kids have Down's syndrome. I have some with

12 microcephaly, two with hearing impairments, not that

13 that's -- but in addition to the other disabilities.

14 So my students typically are unaware of

15 danger but have more of a quality of life and are more

16 active than some other disabilities.

17 MR. ROBERTS: Okay. Do you think that --

18 that most people who go into special ed have more

19 empathy for children?

20 PROSPECTIVE JUROR NO. 11-1186: And patience,

21 yes.

22 MR. ROBERTS: And so you have a lot of

23 patience?

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

25 absolutely do.

1 MR. ROBERTS: Is it still tested
2 occasionally?

3 PROSPECTIVE JUROR NO. 11-1186: Every single
4 day.

5 MR. ROBERTS: What -- what about you? Are
6 you an emotional thinker or a logical thinker?

7 PROSPECTIVE JUROR NO. 11-1186: I am a very
8 logical and analytical thinker, but I'm a very
9 emotional being. I internalize most of it and -- till
10 I can't anymore.

11 MR. ROBERTS: Okay. So you feel a lot of
12 emotion, but you -- you compartmentalize that and try
13 to make decisions intellectually?

14 PROSPECTIVE JUROR NO. 11-1186: Yes.

15 MR. ROBERTS: And can you usually do that?

16 PROSPECTIVE JUROR NO. 11-1186: Absolutely.

17 MR. ROBERTS: What -- what happens when you
18 can't do it anymore? What do you do?

19 PROSPECTIVE JUROR NO. 11-1186: I usually --
20 I have -- I just have to take a break. I have to, you
21 know -- you know, at an appropriate time, remove myself
22 from the situation, talk it through and handle it.

23 MR. ROBERTS: Right. Thanks for sharing.

24 As long as you've got the mic, there's one
25 thing I wanted to follow up on. Did you mention that

1 you biked at -- in the Red Rock area?

2 PROSPECTIVE JUROR NO. 11-1186: No. I've
3 never been to Red Rock.

4 MR. ROBERTS: Okay. Okay. Thank you.
5 Sometimes when you're sitting down here, faces are
6 blocked. It's hard to -- hard to hear.

7 Okay. If you could pass the mic up to the
8 next row, who had their hand up going back to the
9 safety issue?

10 Anyone?

11 Okay. Thank you. Mr. Kaba.

12 MR. CHRISTIANSEN: Judge, may we approach?

13 THE COURT: Yes.

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

16 THE COURT: All right. I'm going to give you
17 a 20-minute break. And stay on this floor, please.

18 You're instructed not to talk with each other
19 or with anyone else about any subject or issue
20 connected with this trial. You are not to read, watch,
21 or listen to any report of or commentary on the trial
22 by any person connected with this case or by any medium
23 of information, including, without limitation,
24 newspapers, television, the Internet, or radio.

25 You are not to conduct any research on your

1 own relating to this case, such as consulting
2 dictionaries, using the Internet, or using reference
3 materials.

4 You are not to conduct any investigation,
5 test any theory of the case, re-create any aspect of
6 the case, or in any other way investigate or learn
7 about the case on your own.

8 You are not to talk with others, text others,
9 tweet others, google issues, or conduct any other kind
10 of book or computer research with regard to any issue,
11 party, witness, or attorney involved in this case.

12 You're not to form or express any opinion on
13 any subject connected with this trial until the case is
14 finally submitted to you.

15 It's a 20-minute break, but I'd like you
16 outside of the courtroom in 15 minutes from now. Thank
17 you.

18 THE MARSHAL: All rise for the jury.

19 (The following proceedings were held
20 outside the presence of the jury.)

21 THE COURT: Counsel, I'm ready for a quick
22 break, so excuse me.

23 MR. ROBERTS: Thank you, Your Honor.

24 (Whereupon a short recess was taken.)

25 THE COURT: Let's put that on the record,

1 your objection.

2 MR. KEMP: Yeah, Judge.

3 THE COURT: I would like you to speak a
4 little bit louder, please, Mr. Kemp.

5 MR. KEMP: Our objection is that the
6 defendants are trying to subvert the Court's ruling on
7 motion in limine No. 3, where the Court ruled,
8 "Therefore, defendant is precluded from arguing to the
9 jury that Dr. Khiabani's negligence can absolve
10 defendant of liability even if the product is to be --
11 is found to be defective."

12 That's the Court's ruling. When we argued
13 that motion, I -- I informed the Court that, in my
14 view, they were going to try to violate that over and
15 over again during the case.

16 If you recall, when Mr. Roberts made his
17 first presentation to the jury, we objected that he did
18 indeed violate that rule because he said that -- that
19 the accident was caused by Dr. Khiabani or something
20 to -- to that effect.

21 They filed a brief just a day or two ago
22 trying to wiggle out of that rule by saying, oh, well,
23 if you're smart enough to call this causation instead
24 of contributory negligence, we can get around the
25 Court's entire order. They filed that brief just two

1 days ago, Your Honor.

2 And now they are asking the jury about their
3 personal safety, which Mr. Roberts characterized just a
4 minute -- which was what triggered the objection -- as,
5 quote, the safety issue.

6 Well, what safety issue is there about
7 contributory negligence? There is none. And that
8 is -- and -- and they've implied it to the jury at
9 least four different times. And this is far and away
10 the worst. But what he's done is he's gone to three or
11 four jurors, and he gets them talking about their
12 consciousness of safety walking back and forth to the
13 parking structure, at school.

14 And two of them -- two of them figured out
15 where we're going because two of them already
16 volunteered, "oh, on my bike," and he appropriately cut
17 them off.

18 But that shows you what they're trying to do,
19 Your Honor. They're trying to imply to the jury that
20 there's some sort of issue in this case about personal
21 responsibility on Dr. Khiabani's part, some sort of
22 contributory negligence issue in the case.

23 And, you know, the intent is to either
24 violate directly or to undercut the Court's ruling
25 in -- in No. 3.

1 And that's why I have asked the Court
2 repeatedly now -- I think this is the fourth time --
3 that at some point the jury needs to be instructed that
4 contributory negligence is not a defense, especially
5 when they keep suggesting or implying to the jury that
6 it is a defense.

7 But we think these questions are totally
8 inappropriate. And Mr. Roberts is -- is a very skilled
9 trial lawyer. It's not his first rodeo. I've seen him
10 attempt to violate this exact same order before. If
11 you remember, in the HMO case, we had the comparable
12 order from Judge Williams that we cited.

13 He did the same thing in that case that he's
14 doing in this case. He tried to sneak around and
15 circumvent it and undercut it. And they're very
16 skilled at this, Your Honor. And that's why we object
17 to this line of questioning.

18 And your response at the bench was that two
19 wrongs don't make a right, implying that maybe they
20 should have objected to some of Mr. Christiansen's
21 questioning. Well, they didn't. They didn't object to
22 his questioning.

23 So whether, the Court's view,
24 Mr. Christiansen went beyond what the Court would have
25 allowed if they had made a timely objection is really

1 irrelevant. They are wrong. What they're doing is
2 wrong. We are objecting. We are objecting vehemently.
3 And they shouldn't be allowed to ask those questions,
4 Your Honor.

5 THE COURT: Thank you.

6 MR. ROBERTS: Thank you, Your Honor.

7 I think the record will be clear this is not
8 what I'm doing, what Mr. Kemp is trying to
9 characterize. It is a very standard practice in a
10 products liability case and, in fact, almost every
11 defense case, that it's relevant to the exercise of
12 your peremptory strikes, how often people think about
13 their personal safety.

14 And when I asked the last juror "What's your
15 response to the safety issue?" the only safety issue
16 that's been presented to the jury was "How often you
17 think about your personal safety on a day-to-day
18 basis?"

19 One juror volunteered that he thought about
20 it 80 percent. I took hands. "Who thinks about their
21 personal safety more than 80 percent of the time during
22 the day?" I'm going back and following up with people
23 who raised their hands.

24 I believe Mr. Kaba knows exactly what I was
25 talking about. But, as I said at the bench, I'd be

1 happy to clarify before Mr. Kaba answers that, when I
2 referred to safety issue, I wasn't referring to any
3 issue in the case. I was referring to my question
4 about people who thought about their own personal
5 safety more than 80 percent of the time. And I would
6 be happy to clarify that.

7 With regard to Mr. Christiansen, I didn't
8 mean to imply that Mr. Christiansen's questioning about
9 who had proximity sensors on their car was improper.
10 The jury questionnaire asks that question. We all
11 agreed to it. Mr. Christiansen said, "What type of
12 proximity sensors do you have?" And they all gave that
13 information.

14 My point is, when Mr. Christiansen asked me
15 about you should follow up specifically with what their
16 thought is about proximity sensors, I said, "Well,
17 that's even closer to the facts of the case than what
18 I'm doing." I'm trying to stay away from the facts of
19 the case.

20 The person who started talking about bicycles
21 that I stopped, Mr. Kemp's recollection is incorrect.
22 That was in response to the "What did you do the last
23 product you opened? How thoroughly did you read the
24 brochure?"

25 And the last product she opened was a

1 bicycle. And I said, "I don't want to know about what
2 you did with bicycles." That's too close to the facts
3 of the case. The bicycle had nothing to do with the
4 safety issue.

5 And then finally with regard to causation, I
6 could pull out at least two, and I think I'm recalling
7 three times, where Mr. Christiansen told the jury this
8 case is about whether it's defective and whether the
9 defect caused the accident. And that's in our pattern
10 instruction, what causation is an issue. And we have
11 to be able to talk about causation.

12 And I don't think the words "negligence" or
13 "fault" have come out of my mouth since I've been in
14 front of this jury. But I am allowed to talk about
15 causation. And they have the burden of proving
16 causation. And, therefore, I have to be able to
17 question these jurors about their safety attitudes.
18 It's highly relevant to our exercise of our peremptory
19 strikes.

20 Thank you, Your Honor.

21 MR. KEMP: Judge, he just proved my whole
22 point. He told you that, as long as he's clever enough
23 to use the word "causation," he can argue to the jury
24 that Dr. Khiabani was contributory negligence and that
25 was the cause of the accident and that's a defense in

1 this case.

2 It is not a defense in this case. You can't
3 circumvent a court order by calling something causation
4 when what you're really trying to do is suggest that
5 contributory negligence is a defense.

6 In getting back to the questions he's posing
7 to the jury, the jury questionnaire asked about
8 proximity sensors. That was approved. That was
9 approved by both parties. There was no debate about
10 it. The jury questionnaire did not ask about
11 contributory negligence because we all know that's not
12 a defense in a products liability case under Young
13 versus -- Young Machinery -- something machinery --
14 machinery company versus Young.

15 Your Honor, it's not a defense. So he's
16 sitting there, implying to this jury -- by asking them
17 about their personal safety habits and what they did to
18 be safe, he's implying to the jury and he said that
19 this was a safety issue, a safety issue in this case.
20 That's what he just got done telling the jury, that
21 this is going to be a safety issue in this case.

22 And this was all in the context of asking the
23 jury to describe their own habits about personal safety
24 and personal responsibility. This is nothing more than
25 an effort to imply, suggest -- and it's pretty overt, I

1 think -- to the jury that contributory negligence is a
2 defense and they're going to hear evidence that the
3 doctor was contributory negligent. And that's why it
4 should be stopped right now, Your Honor.

5 MR. ROBERTS: Your Honor, Mr. Kemp is --

6 MR. KEMP: Your Honor, we're -- we're done,
7 Your Honor. One, two, three. You know, we can go back
8 and forth.

9 THE COURT: Mr. Kemp, I'm going to hear from
10 Mr. Roberts, and I'd like to hear from you again if you
11 wish.

12 MR. ROBERTS: Thank you. Your Honor, I think
13 this doesn't need to be discussed now. We can at some
14 point have a little hearing to discuss the bench briefs
15 that both parties have filed. But Mr. Kemp is trying
16 to prevent us from challenging causation. He doesn't
17 have causation, so he's trying to prevent us from
18 arguing causation. He wants to prove there's a defect
19 and then instruct the jury that they have to find
20 causation because we can't defend against it. And
21 that's entirely inappropriate.

22 And the questions on personal safety, Judge
23 Williams allowed them over Robert Eglet's objection in
24 the HMO trial and then allowed me to go into how often
25 people wore their seat belts because -- and whether or

1 not they wore their seat belts 20 years ago to get into
2 hindsight. And I have eliminated that part from my
3 standard safety questions because we moved to exclude
4 seat belt use in this case and I just didn't want to
5 open the door.

6 But this is standard stuff that even some of
7 the most plaintiff-oriented judges in this jurisdiction
8 always allow.

9 MR. KEMP: Judge, I was a party to that trial
10 too. I was a party to that HMO trial, and
11 Judge Williams did not allow Mr. Roberts to imply to
12 the jury that he could sneak in something that was
13 precluded.

14 If you remember, we attached the court order
15 from the HMO trial to our briefing. And, in fact, I
16 think I even have a copy of it here today, if you want
17 to look at it again.

18 In any event, in that case, Judge Williams
19 did not allow Mr. Roberts to imply to the jury that
20 contributory negligence was a defense. And I think
21 what he is forgetting is we won the motion for summary
22 judgment on foreseeability.

23 The Court has already ruled that it's
24 foreseeable, as a matter of law, that there could be a
25 bicycle accident here. The only issue in this case is

1 whether or not these are reasonable safety measures and
2 whether they would have prevented the accident. That's
3 the only issue left in this case. It's already
4 foreseeable, as a matter of law, that there was -- the
5 bike could be involved in an accident with a bus.

6 But, you know, to argue the causation issue
7 again during jury selection, they should -- if they
8 didn't like the ruling on motion in limine No. 3, the
9 appropriate remedy was for them, in a timely fashion,
10 to file a motion for reconsideration on that ruling.
11 They didn't do it. The Court's ruling came out on
12 February 5th. The time for doing that is long gone,
13 Your Honor. The time for asking for reconsideration on
14 motion in limine No. 3 is long gone.

15 And the Court has held that this is not a
16 defense, that Dr. Khiabani's negligence, if any, cannot
17 absolve defendants of liability if the product is found
18 to be defective. That's the law. That is the law.
19 That is Young's Machinery.

20 So for them to say, "Hey, we can -- doesn't
21 matter, Judge. We're going to be smart and clever
22 attorneys" -- which is what Mr. Roberts just said --
23 "and we're going to call it causation and we're going
24 to violate your court order; and then on top of that,
25 we're going to ask jury questions and insinuate to the

1 jury that contributory negligence is defense," which is
2 exactly what they're doing, Your Honor, that's just
3 inappropriate, and that should be stopped.

4 THE COURT: Okay. I will be back in about
5 five minutes.

6 MR. ROBERTS: Thank you, Your Honor.

7 (Whereupon a short recess was taken.)

8 THE MARSHAL: All rise.

9 THE COURT: Please remain seated or be
10 seated.

11 So let me make sure I make a clear record. I
12 heard your arguments and your -- the objection,
13 Mr. Kemp.

14 All right. Starting -- starting again.
15 Here, the two theories that plaintiff has in this case
16 are failure to warn and defective design. Defective
17 product design. Correct?

18 MR. KEMP: Yes, Your Honor.

19 THE COURT: Okay. So those are the two
20 theories. Contributory negligence is certainly
21 absolutely not a defense in this case. Okay?

22 Now, there's -- when you were asked -- when
23 Mr. Roberts was asking the questions about did the
24 jurors -- did the jurors, concerning their reading of
25 the instructions and warnings in -- excuse me --

1 possibly hazard -- hazardous products that they're
2 purchasing, I think that goes directly to the failure
3 to warn that you must prove in this case.

4 And I am a little bit concerned, thinking
5 about it a little bit more thoroughly, about the next
6 question with respect to the safety of the jurors
7 because it doesn't go to the design defect and it's not
8 going to the failure to warn.

9 So those are the two theories, and I -- and I
10 don't see that they're going anywhere there.

11 Mr. Roberts did mention something that --
12 that I think we should discuss, because I need to make
13 a good record, and I need to understand that we're on
14 the same page on this.

15 There will be an instruction about
16 contributory negligence and how that's not a part of
17 this case, but I think that's very important. But with
18 respect to causation, not -- not contributory -- not
19 contributory negligence but causation, I -- I still
20 don't understand how -- and I want to make sure I
21 understand what you were saying, Mr. Kemp, you know,
22 because, if -- if the product defect is not found to
23 have caused Dr. Khiabani's death, I -- I think that
24 that -- that's an issue here. I think that the -- in
25 my view, the defense has to be able to defend

1 themselves because causation is what's at the heart of
2 this case, even though it's limited to the theories of
3 failure to warn and design defect.

4 MR. KEMP: Yes, Your Honor.

5 THE COURT: Will you please distinguish that
6 for me so that I --

7 MR. KEMP: Your Honor, I brought with me the
8 replies that we filed to motion in limine 1 and motion
9 in limine 3 that discuss this and specifically the case
10 that we discussed before that was most appropriate, I
11 thought, was Price v. Blaine. That's the Nevada
12 Supreme Court case where they were aware of the large
13 George Bush caricature mask and someone pushed him from
14 behind, committed an intentional tort. And the Court
15 held that that was foreseeable, that it was foreseeable
16 that someone would do that.

17 But the language of the court, I think, is
18 particularly instructive. And this is the court.
19 "Whether an intervening cause" -- and, again, they're
20 arguing that Dr. Khiabani's contributory negligence was
21 an intervening cause in this case. "Whether" -- this
22 is the Court. "Whether an intervening cause is also a
23 superseding cause in a strict products liability action
24 must be determined in light of the nature and extent of
25 the injury attributable to the product defect, thus

1 focusing on whether the harm is of a kind and agree
2 that it's so far beyond the risk foreseeable to the
3 manufacturer that the law would deem it unfair to hold
4 the manufacturer of the product responsible." That's
5 893 P.2d at 371.

6 So what they are arguing is that it's a
7 superseding cause, that his negligence, the fact that
8 the bike -- his alleged negligence, the fact that the
9 bike went into the bike lane, we contend it was because
10 of a wobble. If you recall, they say they don't have
11 any idea. That's direct quote from their briefs. They
12 don't have any idea what caused the bike to go into the
13 other lane.

14 But they contend that that is a superseding
15 cause, that that can excuse them of liability even if
16 the product -- the defect in their product causes the
17 accident.

18 This is what the Court says: "In that
19 regard, an intentional intervening act by a third party
20 which is both unforeseeable and the proximate cause of
21 the injury may insulate the manufacturer of the
22 defective product from liability."

23 An intentional intervening act which is both
24 unforeseeable and the proximate cause. So it's got to
25 be unforeseeable and it's got to be a proximate cause.

1 The Court's already found -- granted the
2 motion for summary judgment -- that the interaction
3 between the bike and the bus is foreseeable as a matter
4 of law.

5 So they fail. They fail this test, Your
6 Honor. They can't come in and say, "Hey, we can still
7 prove it was the proximate cause," because, in order to
8 do that, they have to be a superseding -- superseding
9 cause in the words of Price v. Blaine.

10 Now, when -- when they tried this exact same
11 stunt in the Meyer-Williams case -- and they did, Your
12 Honor. They tried the exact same thing with
13 Judge Williams, despite the fact, as Mr. Roberts says,
14 he's very experienced product liability judge --
15 Judge Williams would have nothing of it. He said the
16 issue of whether or not the negligence of a subsequent
17 tortfeasor constitute -- and in that case, the alleged
18 negligence was Dr. Desai's negligence. So they were
19 trying to say in that case, "Hey, you know, forget our
20 negligence. Dr. Desai was negligent too and that's the
21 proximate cause."

22 So he said it was foreseeable to the HMO in
23 this case as a matter of law that some of the doctors
24 would commit malpractice, and so that -- they can't
25 argue that as a defense.

1 And he said, "Given that it was foreseeable,
2 any negligence malpractice by the professionals was not
3 a superseding cause."

4 That's the point, Your Honor. They can't
5 just say cause, cause, cause, cause, cause. It's got
6 to be a superseding cause to insulate them from
7 liability. And they can't, as I've said, prove that
8 it's a superseding cause because it was foreseeable.

9 So he said the same as you said, defendants
10 are not permitted to argue that such negligence was a
11 superseding cause of the injuries. That's what Judge
12 Williams says. He said, to quote him again -- and I'm
13 just reading from the brief that we filed with the
14 Court on the reply where we attached his pending
15 exhibit.

16 "Because this Court has already ruled that
17 malpractice was a foreseeable consequence of any breach
18 of the duty of defendant" -- and, again, in this case
19 Court's already ruled that the bus-bike interaction was
20 foreseeable, and that was based both upon unrebutted
21 testimony and the finding of the Court -- "defendants
22 cannot argue that ECSN" -- that's the Endoscopy Center
23 of Southern Nevada -- "or any other nonparty was a
24 superseding cause of plaintiff's injuries."

25 So that's what they want to argue here. They

1 want to argue that Dr. Khiabani's actions -- they -- in
2 fact, they don't even have any argument on his actions
3 because they already say they have no idea -- that's a
4 direct quote -- no idea why the bike went over there.
5 But then they want to imply that somehow he did
6 something wrong and that justifies excusing them.

7 And this is all the same thing, Your Honor.
8 You can't separate contributory negligence from
9 proximate cause. And to establish that, I will read --
10 this is word for word -- their affirmative defense on
11 contributory negligence.

12 "Plaintiff decedent failed to exercise
13 ordinary care, caution, or prudence for his own safety,
14 thereby proximately causing or contributing to the
15 cause of plaintiffs' damages, if any, through plaintiff
16 decedent's own negligence."

17 They -- they -- recognize that, you know,
18 it's not two separate things that they're trying to do
19 here. Let me read that again, Your Honor. I think
20 that's important. And I'm reading -- we quoted it in
21 motion in limine No. 3. Again, that's the motion in
22 limine on contributory negligence.

23 "Plaintiff decedent failed to exercise
24 ordinary care, caution, or prudence for his own safety,
25 thereby proximately causing or contributing to the

1 cause of plaintiffs' damages, if any, through plaintiff
2 decedent's own negligence."

3 That's out, Your Honor. You can't throw it
4 out and then throw it back in by saying, "Oh, we're
5 clever. We're just going to use the word 'cause.'"
6 And that's what Young's Machine Company v. Long -- I
7 have the cite now, Your Honor. Ordinary contributory
8 negligence was not to be considered.

9 That's it. The only defenses are assumption
10 of the risk, which we -- has already also been
11 eliminated by the same motion in limine -- and misuse
12 of the product. And they're not arguing that, Your
13 Honor.

14 So because of this, you can't sneak in
15 contributory negligence by saying causation, because if
16 you are trying to prove causation, you have to prove a
17 superseding cause. You know, there could be more than
18 one cause of an accident, but what they're trying to do
19 is argue that it's a superseding cause so it eliminates
20 liability. That's what they're trying to do, Your
21 Honor.

22 That's why the Court should simply go with
23 its ruling already. I thought it was pretty clear.
24 Obviously, this is their only defense to the case.
25 And, as I predicted weeks ago, they're trying to come

1 back in here and get the Court to revisit its rulings,
2 Your Honor.

3 And I -- you know -- you know, I hesitate to
4 think what's going to happen during opening statement.
5 Hopefully -- hopefully, what I think is going to happen
6 doesn't happen, but we will find out.

7 But anyway, at this point, we should not be
8 exploring the jurors' concepts of their own
9 contributory negligence in the guise of their own
10 personal safety. That shouldn't be explored at this
11 point.

12 THE COURT: Thank you.

13 MR. ROBERTS: Your Honor, Mr. Kemp has set up
14 a straw man to knock down. A superseding cause is an
15 affirmative defense that only comes into play after
16 they establish that a defect in the product was a
17 cause. Once they establish a defect in the product was
18 a cause, then that would be an affirmative defense.
19 That's not what we're talking about. The standard
20 pattern instruction Nevada law over and over has
21 confirmed that causation is an element of their prima
22 facie case. We don't think they can meet that.

23 To give an example, let's suppose that the
24 bus had defective headlights but this accident happened
25 in the daytime. Well, the headlight -- the fact the

1 headlights weren't working wouldn't have anything to do
2 with the case. Using the proximity sensor as an
3 example, their own hearsay articles, which they've been
4 parading around in court, say that the purpose of the
5 side proximity sensor is so a driver can be alerted to
6 someone in the next lane before they move into that
7 lane.

8 The evidence in this case is the bus
9 maintained its lane and, in fact, started moving the
10 opposite direction; therefore, the proximity sensor
11 didn't make a difference. The bus driver didn't change
12 lanes into the bike; the bike turned into the bus's
13 lane. Therefore, the lack of a proximity sensor did
14 not cause the accident.

15 And that's what we need to be able to point
16 out to the jury because it shows that they can't meet
17 their prima facie burden of showing that the defects in
18 the bus are a substantial factor or a cause of this
19 accident.

20 And if we're going to make rulings on this
21 before opening, I would -- I would ask -- and I can
22 call them over -- I'd have Mr. Polsenberg here, since
23 we delegated the briefing on this subject to Joel
24 Henriod and Dan Polsenberg. And I would like to have
25 them here before any final decisions are made with

1 regard to the scope of argument.

2 With regard to -- I would like to briefly
3 address Court's comment that the jurors' concerns about
4 their own personal safety and how often they think
5 about their own personal safety, I understand that
6 doesn't go directly to an issue in the case, but I need
7 that in order to exercise my peremptory strikes. And
8 under 16.030 subsection 6, I cannot be unreasonably
9 limited in my follow-up voir dire.

10 And I don't want to share all of my research
11 and all of my reasons, but I would point out to the
12 Court at least one article, Bloomberg Law Litigation
13 guide, an article dated April 27th, 2016, entitled
14 "Millennial Jurors Will Affect Product Liability
15 Trials."

16 "Members of the safety-conscious millennial
17 generation are serving on juries now, and that affects
18 methods of trial presentation as well as more
19 substantive issues." And what the article goes on to
20 say is that there's a correlation between how safety
21 conscience you are of your own personal safety with
22 your inclination to impose higher safety standards on a
23 corporate entity.

24 And we know that the Court is not going to
25 instruct the jury what's unreasonably dangerous and

1 what's not unreasonably dangerous. That's in the -- in
2 the enlightened conscience of the jury.

3 They've already bantered about during voir
4 dire the terms designed to elicit the community
5 protection of the jury. Do you think it's -- anyone
6 here think it's okay to unreasonably endanger the
7 community? Straight out of the reptile book.

8 We are entitled to explore safety attitudes
9 to try to identify jurors who are going to be receptive
10 to that message that they're going to send, asking
11 jurors not to think about the facts of this case and
12 the instructions of the Court, but only let's prevent
13 this from happening again and let's not needlessly
14 endanger the community and all of the other things out
15 of the reptile method.

16 That's why I need to go into this even though
17 it's not directly an issue in the case. And the fact
18 that it's not directly an issue in the case is even
19 more reason why it's allowable because I'm not entitled
20 to ask hypotheticals or ask people's opinions about
21 their verdict in this case. But I am entitled to talk
22 about safety attitudes in order to effectively and
23 rationally exercise my peremptories.

24 Thank you, Your Honor.

25 MR. KEMP: Judge, just briefly.

1 I mean, bringing Mr. Polsenberg in here to
2 argue a motion for reconsideration that's never been
3 filed. I mean, as I already pointed out, the ruling
4 came out February 5th. They can't, the day before
5 opening statement, argue that that should be
6 reconsidered. So -- so what we're really left with is
7 their contention that contributory negligence and
8 proximate cause are two different things.

9 This is their affirmative defense, Your
10 Honor. They lumped it together because they know it's
11 together. Plaintiffs' decedent failed to exercise
12 ordinary care for his own safety, thereby proximately
13 causing or contributing to the cause of plaintiffs'
14 damage, if any, to the plaintiffs' decedent's own
15 negligence.

16 It's the same thing, Your Honor. They can't
17 say, "Oh, we're not going to talk about his negligence,
18 but we're going to talk about how his negligence caused
19 the accident." They just can't do that, Your Honor.
20 And that's what they're trying to do in this case.

21 And, true, we do have to prove causation. We
22 have to prove that, if there'd been a proximity sensor,
23 that it would have been heeded by Mr. Hubbard and he
24 would have pulled over. We have to prove that. I've
25 admitted that, but that doesn't have to do anything

1 with Dr. Khiabani.

2 We -- we have to prove on the -- the second
3 point, the S-1 Gard, we have to prove that if the S-1
4 Gard had been in place, it would have prevented the
5 accident. We have to prove that. They're arguing
6 there's an inch differential there, that it wouldn't
7 have worked because, you know, it's an inch away from
8 his head at the appropriate part, where, if it had been
9 an inch closer, they admit it would have worked.

10 But that's an issue for the jury. That's a
11 causation issue for the jury. I admit we have to prove
12 that, Your Honor.

13 On the aerodynamic issue, it's our burden of
14 proving that the air wobble caused the bike
15 disturbance. Okay? They don't have any alternative
16 cause. They say they have no idea. I went through all
17 their experts. Each one of them said he had no opinion
18 as to what caused the wobble.

19 We think there's substantial evidence that
20 the wobble was caused by the bus -- by the bus as it
21 passed the doctor. We think we can prevail on that.

22 But those are the causation issues in the
23 case. The causation issue in the case is not whether
24 or not the doctor was contributorily negligent in the
25 case, and, if so, whether that was also a cause of the

1 accident, which it just can't be as a matter of law,
2 Your Honor. Because, like I said before, they have to
3 prove both unforeseeable and proximate cause.

4 They can't prove unforeseeable because we
5 have the summary judgment, which they haven't filed any
6 motion to reconsider. And contributory negligence is
7 out of the case. And that's why these questions are
8 not appropriate.

9 And, you know, I don't care if they're
10 millennials or they're 70 years old. You can't sit
11 there and imply to the jury that contributory
12 negligence is some kind of defense in the case by
13 asking them about what they do so they don't consider
14 themselves contributorily negligent. And that's
15 exactly what he's doing, Your Honor.

16 MR. ROBERTS: Your Honor, I'm not going to
17 continue arguing, but I would like to clarify.

18 We're not seeking reconsideration of your
19 order on the motion in limine. We agree Young's
20 Machine is good law. It's undisputable that we can't
21 allocate contributory fault to Dr. Khiabani. We only
22 asked for Mr. Polsenberg to come if the Court's going
23 to expand the ruling to go into limitations on arguing
24 causation.

25 Thank you, Your Honor.

1 MR. KEMP: There's no expansion of the
2 ruling. I put the whole affirmative defense in the
3 initial motion, including what I've just read to the
4 Court at least three times on proximate causation.
5 There's no expansion whatsoever.

6 THE COURT: Okay. I know the jurors have
7 been out for a while, but I don't know if they've had a
8 chance to have lunch. And --

9 MR. ROBERTS: I'm fine, Your Honor.

10 THE COURT: I don't want hungry and low blood
11 sugar possibly jurors when they return.

12 MR. CHRISTIANSEN: They probably did, Your
13 Honor, because you told them earlier to stay on the
14 floor. So they probably did stay on the floor.

15 THE COURT: That's right.

16 So I think we should take our recess for
17 lunch at this point. There are another 50 jurors down
18 in there that I set free to go to lunch for the moment.

19 Do we need those 50 jurors?

20 MR. KEMP: I think we can let them go at this
21 point.

22 MR. ROBERTS: I agree, Your Honor.

23 MR. KEMP: Maybe tell them to come back
24 tomorrow at this point, but to tell --

25 MR. ROBERTS: To check the -- to check their

1 messages.

2 MR. KEMP: Right. Tell them they'll
3 probably --

4 THE COURT: You sure?

5 MR. ROBERTS: We're not going to need them
6 today. I know that, Your Honor.

7 THE COURT: Okay. All right.

8 MR. ROBERTS: My only question is whether we
9 can safely let them go altogether.

10 THE COURT: Right. So I'll make sure they
11 check in tomorrow. And I will double-check what my
12 schedule looks like in the morning and start earlier if
13 possible, make sure they call in. Let's take an hour
14 and a half.

15 MR. CHRISTIANSEN: 1:30, Judge?

16 THE COURT: 1:30. Yeah, 1:30, 1:35.

17 MR. CHRISTIANSEN: Thank you.

18 THE COURT: And, Marshal, will you please
19 instruct the jury to be here at 1:30 sharp.

20 MR. BARGER: Do you have to read them that
21 admonition?

22 THE COURT: No.

23 MR. CHRISTIANSEN: Because you read it.

24 THE COURT: No, because I already did. And
25 they didn't come back in.

1 Thank you, though.

2 MR. KEMP: Your Honor, just one thing for the
3 record. Mr. Roberts asked me yesterday for copies of
4 all the slides of our PowerPoint --

5 THE COURT: Yes.

6 MR. KEMP: -- during the motion in limine,
7 summary judgment. So the record should reflect I'm
8 handing them to him at this point.

9 And I have another set of copies for the
10 Court. It was my intention that, after the opening
11 statement, I would put these three in the opening
12 statement presentation all in one package for the Court
13 if that's okay.

14 THE COURT: Okay.

15 MR. ROBERTS: That's fine, Your Honor.

16 THE COURT: Okay.

17 MR. ROBERTS: As long as we can segregate it,
18 because I think the record is going to be different for
19 the record on summary judgment versus opening.

20 So as long as it's segregated and separate,
21 that's fine, Your Honor.

22 MR. KEMP: It will be segregated, Your Honor.

23 THE COURT: I would welcome the package so
24 that, during my breaks, I can -- can take a look at
25 them in chambers.

1 MR. KEMP: Okay. Do you want to give this
2 back to me, or should I have some more printed?

3 THE COURT: I'm sorry?

4 MR. KEMP: Do you want me to print another
5 set to file with the Court? I can do that. They won't
6 like it at the print --

7 THE COURT: I know. I have to abstain from
8 writing on things. Very hard.

9 Okay. I will see you back here at 1:30; is
10 that right?

11 MR. CHRISTIANSEN: Thank you, Your Honor.

12 THE COURT: All right. Thank you.

13 (Whereupon a short recess was taken.)

14 THE COURT: We would like to discuss this. I
15 don't know what her badge number is. Are we back on?

16 THE COURT RECORDER: No, we are not.

17 THE COURT: Let's go back.

18 Her name is Wendy Lacrosse.

19 MR. KEMP: What was her last name, Your
20 Honor?

21 THE COURT: Lacrosse, like Lacrosse.

22 MR. KEMP: Lacrosse.

23 THE COURT: Like the game.

24 I'm not sure what her -- this is a Desert
25 Radiologist Medical Imaging report. It's report status

1 final. It's dated -- it was signed on 9/22/17. We
2 received this, I guess -- well, I don't really know. I
3 think she received it -- it shows here -- maybe
4 10/30/2017.

5 In any case, before any of our dates -- our
6 pertinent dates. It talks about examining XRT spine
7 3BW72072. It is to the thoracic spine. She had a
8 thoracic spine series, lumbar spine series. "History,
9 mid back and the" -- it says "lack pain," but I think
10 it means back pain. "Comparison: None."

11 It doesn't really state that she cannot -- as
12 far as I see this, it says she has degenerative disk
13 disease in the -- moderate in L4-L5, with mild L3-L4
14 and L5-S1 degenerative disk disease.

15 Marshal, is she trying to tell us that she
16 can't serve? Is that --

17 THE MARSHAL: That's what I gathered, Your
18 Honor. So I had her stand outside and wait just in
19 case you wanted to talk to her.

20 MR. KEMP: Judge, we might as well knock it
21 out.

22 THE COURT: Okay. All right.

23 (The following proceedings were held in
24 the presence of the jury.)

25 THE MARSHAL: Have a seat right here.

1 THE COURT: Good afternoon. How are you?

2 PROSPECTIVE JUROR NO. 12-0106: Hi.

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

5 PROSPECTIVE JUROR NO. 12-0106: My badge
6 number is 12-0106. My name is Wendy Lacrosse.

7 THE COURT: Okay. Ms. Lacrosse, the marshal
8 has handed me a medical imaging report, report status
9 final, from Desert Radiology.

10 PROSPECTIVE JUROR NO. 12-0106: Yes.

11 THE COURT: And it apparently looks like it
12 was prepared -- recorded electronically by Dr. -- or
13 David Plunkett, M.D. I show the finalized date to be
14 September 22nd, 2017.

15 PROSPECTIVE JUROR NO. 12-0106: Yes.

16 THE COURT: Okay. What is your concern,
17 please?

18 PROSPECTIVE JUROR NO. 12-0106: That I have a
19 herniated disk in my back and that I'm getting the --
20 the reason I have pain on the other side is from
21 arthritis beginning. And it hurts me to sit for long
22 periods of time like I have been in here. I was in a
23 lot of pain last night. And I knew that saying
24 anything yesterday wouldn't have done me any good
25 because it doesn't prove anything, but that report

1 shows that I have those conditions. They're not going
2 away. It doesn't -- it hurts to be here.

3 THE COURT: Okay.

4 MR. BARGER: Can we approach, Judge?

5 THE COURT: Yes.

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

8 THE COURT: Ms. Lacrosse, you are excused.

9 Please go to jury services on the third floor --

10 PROSPECTIVE JUROR NO. 12-0106: Thank you.

11 THE COURT: -- and let them know. Why don't

12 I --

13 PROSPECTIVE JUROR NO. 12-0106: Can I have
14 that back?

15 THE COURT: Do I need a copy of this?

16 PROSPECTIVE JUROR NO. 12-0106: It's the only
17 copy I have of it.

18 THE COURT: Pardon me?

19 PROSPECTIVE JUROR NO. 12-0106: It's the only
20 copy I have of it.

21 THE COURT: I need a copy of it. I'm going
22 to take a copy.

23 PROSPECTIVE JUROR NO. 12-0106: Thank you.

24 MR. BARGER: Can we be excused?

25 THE COURT: Yes.

1 Ms. Lacrosse, you can take a seat outside
2 and -- and Marshal Padilla will -- will bring you a
3 copy. Thank you.

4 (Whereupon a lunch recess was taken.)

5 THE MARSHAL: All rise. Court is now in
6 session.

7 THE COURT: We're still off the --

8 THE COURT RECORDER: You want off?

9 THE COURT: Back on.

10 THE COURT RECORDER: We're back on, Your
11 Honor.

12 THE COURT: All right. I have taken a -- a
13 bit of time to review some things. Sorry for the
14 delay.

15 MR. CHRISTIANSEN: Judge, one second. You
16 were -- I don't know where Mr. Kemp.

17 MS. WORKS: He went to the restroom.

18 MR. CHRISTIANSEN: Sorry, Your Honor.

19 THE COURT: So sorry for the long break.

20 All right. While I've been reviewing
21 everything in -- this trial's been going on and
22 reviewing things again. Based on the party's trial
23 briefs and what's happened today in court concerning
24 the motion for partial summary judgment on
25 foreseeability concerning bus interaction with

1 pedestrians or bicyclists, it appears that we may
2 need -- the parties may need a clear order, which I
3 have just confirmed has not been given by the Court in
4 writing.

5 It's not yet been entered. It was an oral
6 pronouncement of the order, but it -- it hasn't been --
7 it's not effective until it's an order in writing. So
8 I'm going to prepare that written order so it's very
9 clear. I have the motion in limine -- the motion for
10 summary judgment -- or the partial motion -- the
11 opposition, the reply to the motion for summary
12 judgment, and both trial briefs. I don't know that I
13 need anything else.

14 So we can continue -- this may or may not
15 affect the defense's voir dire. We can continue now
16 with the voir dire, or we can start again in the
17 morning after I -- after the Court issues the order.
18 It's up to you.

19 MR. BARGER: Can we have a minute, Judge?

20 THE COURT: Yes. And I realize that I
21 have -- I put us behind, but I'm trying to make sure I
22 get everything right here.

23 MR. BARGER: We understand. If we can just
24 have --

25 THE COURT: Yes, absolutely.

1 MR. POLSENBURG: What time tomorrow, Your
2 Honor?

3 THE COURT: Regrettably -- well, not
4 regrettably. I have a calendar in the morning, but we
5 should be out by 11:30 at the latest. So 12:30. Is
6 that -- I need to give everyone an hour off. I'm ready
7 to go at 12:30. I can bring the jury in at 1:00 if we
8 want to have some discussion on this or if you want to
9 make records and review everything.

10 MR. POLSENBURG: Thank you, Your Honor. We
11 need just a second to talk outside.

12 THE COURT: Sure. Sure.

13 MR. ROBERTS: Thank you, Your Honor.

14 (Whereupon a short recess was taken.)

15 MR. ROBERTS: Your Honor, after conferring --

16 THE COURT RECORDER: One moment, please.

17 MR. ROBERTS: I'm sorry.

18 THE COURT: Yes, Mr. Roberts?

19 MR. ROBERTS: Thank you, Your Honor.

20 After conferring with my cocounsel, if it's
21 equally convenient for the Court, we would prefer not
22 to proceed. We'd like to get the Court's ruling so we
23 know what the ground rules are going forward before we
24 continue. I think that would be the safest thing for
25 us to do and -- if that's okay with the Court. That

1 will also give the Court some time this afternoon to
2 draft the written order.

3 And I do have one issue, which -- this would
4 give me a chance to vet it with the Court so that
5 they -- we don't get stopped again and have to sidebar
6 in the middle of voir dire. I can inform the Court of
7 a question I want to ask which they may object to, and
8 this will give me some guidance also going forward.

9 THE COURT: All right.

10 MR. KEMP: You want to do that now?

11 MR. ROBERTS: Well, we can dismiss the jury
12 first if they're going home.

13 MR. KEMP: Of course, yeah.

14 THE COURT: Okay. Marshal.

15 MR. KEMP: Not dismiss the jury.

16 THE COURT: Would you please ask -- I should
17 probably bring them in and give them another
18 admonishment because they have been gone for a while.

19 So we're starting at 12:30. I'll have them
20 back at -- I don't know how long our conversation will
21 take -- maybe 12:45, they're here?

22 MR. KEMP: That's fine, Your Honor.

23 THE COURT: Very good.

24 (Discussion was held off the record.)

25 MR. CHRISTIANSEN: Judge, can Mr. Roberts and

1 I approach real quick? It's just housekeeping, nothing
2 important at all.

3 THE COURT RECORDER: We are not on the
4 record.

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

7 THE MARSHAL: All rise for the jury.

8 (The following proceedings were held in
9 the presence of the jury.)

10 THE MARSHAL: All the jurors are accounted
11 for.

12 THE COURT: Thank you.

13 Do the parties stipulate to the presence of
14 the jury?

15 MR. ROBERTS: Yes, Your Honor.

16 MR. KEMP: Yes, Your Honor.

17 THE COURT: Okay.

18 Please sit down, ladies and gentlemen.

19 First, I want to thank you for your patience.
20 You perhaps spent more time waiting today outside than
21 actually in the courtroom. So I'm not certain if
22 that's good or bad. Obviously, I would like to proceed
23 with this on a serious note.

24 We are going to take a break until tomorrow
25 at 12:45 sharp, so you're in front of the courtroom,

1 please, all -- everyone that's here. And I will --
2 this is -- by the way, I want to say it has -- it's no
3 fault of any -- of either party or any of the parties.
4 Okay?

5 And so I want -- I want you to be clear on
6 that. I don't want you to be upset with them for our
7 schedule today or having had to wait. Okay?

8 I'm going to admonish you. I need to do this
9 again. And I hope you have a great evening --
10 afternoon. Okay?

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

18 You are not to conduct any research on your
19 own relating to this case, such as consulting
20 dictionaries, using the Internet, or using reference
21 materials.

22 You are not to conduct any investigation,
23 test any theory of the case, re-create any aspect of
24 the case, or in any other way investigate or learn
25 about the case on your own.

1 You are not to talk with others, text others,
2 tweet others, google issues, or conduct any other kind
3 of book or computer research with regard to any issue,
4 party, witness, or attorney involved in this case.

5 You're not to form or express any opinion on
6 any subject connected with this trial until the case is
7 finally submitted to you.

8 See you tomorrow at 12:45, maybe a few
9 minutes later, but I would like you to be here at that
10 time. Thank you very much for your patience and for
11 your service.

12 Marshal, will you just hold them -- have her
13 sit down and then bring the other jurors back in after.

14 (The following proceedings were held
15 outside the presence of the jury.)

16 THE COURT: Okay. We're still on the record.
17 Okay. Your name -- I don't know where the microphone
18 is.

19 MR. CHRISTIANSEN: Want me to look over here,
20 Your Honor?

21 THE COURT: Yes, please.

22 MR. CHRISTIANSEN: It's over here, Judge.
23 May I have permission to hand it --

24 THE COURT: Please.

25 Okay. Your name and badge number for the

1 record, please.

2 PROSPECTIVE JUROR NO. 11-1155: Emilie
3 Mosqueda, 11-1155.

4 THE COURT: Okay. Very good. Have you had a
5 chance to contact your supervisor or anyone at HR in
6 this -- during the day?

7 PROSPECTIVE JUROR NO. 11-1155: No. They
8 didn't answer me.

9 THE COURT: Okay. I would like the name of
10 the supervisor that you would go to.

11 PROSPECTIVE JUROR NO. 11-1155: Yes.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 11-1155: It's -- it's
14 two of them. It's Cepeda.

15 THE COURT: The full name, please.

16 PROSPECTIVE JUROR NO. 11-1155: I don't know
17 his first name.

18 THE COURT: Mr. Cepeda?

19 PROSPECTIVE JUROR NO. 11-1155: You can just
20 say Mr. Cepeda.

21 THE COURT: How do you spell his last name?

22 PROSPECTIVE JUROR NO. 11-1155: C-e-p-e-d-a.

23 THE COURT: C-e-p-e-d-a?

24 PROSPECTIVE JUROR NO. 11-1155: Yes.

25 THE COURT: And what is his title?

1 PROSPECTIVE JUROR NO. 11-1155: He's a
2 supervisor.

3 THE COURT: Supervisor --

4 PROSPECTIVE JUROR NO. 11-1155: Yes.

5 THE COURT: -- of?

6 PROSPECTIVE JUROR NO. 11-1155: Security.

7 THE COURT: Of security?

8 PROSPECTIVE JUROR NO. 11-1155: Yeah.

9 THE COURT: Okay. And the other supervisor?

10 PROSPECTIVE JUROR NO. 11-1155: The other one
11 is Carjuna. It's spelled --

12 THE COURT: Is that Mr. or Ms.?

13 PROSPECTIVE JUROR NO. 11-1155: Mr.

14 THE COURT: Mr.

15 PROSPECTIVE JUROR NO. 11-1155: Yes.

16 THE COURT: How do you spell it?

17 PROSPECTIVE JUROR NO. 11-1155:

18 C-a-r-j-u-n-a, I believe.

19 THE COURT: C-a-r-j-u-n --

20 PROSPECTIVE JUROR NO. 11-1155: A.

21 THE COURT: A.

22 PROSPECTIVE JUROR NO. 11-1155: Yes.

23 THE COURT: Okay. I would like you to -- do
24 you have a number that you call and where -- where
25 you -- if you need to reach one of them, let's say

1 you're sick or --

2 PROSPECTIVE JUROR NO. 11-1155: Right.

3 Right.

4 THE COURT: -- where -- what number would we
5 call -- or would you call?

6 PROSPECTIVE JUROR NO. 11-1155: I have --

7 it's on my phone, actually.

8 THE COURT: You can bring it up.

9 PROSPECTIVE JUROR NO. 11-1155: I can turn it
10 on?

11 THE COURT: Yes, please.

12 PROSPECTIVE JUROR NO. 11-1155: Okay. It's
13 1-855.

14 THE COURT: 1-855.

15 PROSPECTIVE JUROR NO. 11-1155: 55-5.

16 THE COURT: 5.

17 PROSPECTIVE JUROR NO. 11-1155: 62.

18 THE COURT: 62.

19 PROSPECTIVE JUROR NO. 11-1155: 99.

20 THE COURT: 99.

21 PROSPECTIVE JUROR NO. 11-1155: 66.

22 THE COURT: 66.

23 Let me just verify that with you.

24 1-855-562-9966?

25 PROSPECTIVE JUROR NO. 11-1155: Yes.

1 Correct.

2 THE COURT: Is that for both?

3 PROSPECTIVE JUROR NO. 11-1155: Yes.

4 THE COURT: Is that a hotel number?

5 PROSPECTIVE JUROR NO. 11-1155: Yeah, that's
6 for -- well, that's the number to call off, actually.

7 Or you want the hotel number?

8 THE COURT: That's the number to call out?

9 PROSPECTIVE JUROR NO. 11-1155: Yeah, to call
10 out -- to call off if I'm, like, sick or anything.

11 THE COURT: And who usually answers that
12 number?

13 PROSPECTIVE JUROR NO. 11-1155: It's just an
14 answering machine.

15 THE COURT: Oh, it's an answering machine?

16 PROSPECTIVE JUROR NO. 11-1155: They ask me
17 for my badge number and stuff.

18 THE COURT: Okay. What if I wanted to speak
19 to someone, one of them in person? What number would I
20 call?

21 PROSPECTIVE JUROR NO. 11-1155: It will be
22 770.

23 THE COURT: 770.

24 PROSPECTIVE JUROR NO. 11-1155: 2820.

25 THE COURT: 2820? And is that an 800 number,

1 or is that a 702 number?

2 PROSPECTIVE JUROR NO. 11-1155: 702.

3 THE COURT: Okay. Thank you.

4 Okay. And -- and that's how I should be
5 able -- they can be reached personally?

6 PROSPECTIVE JUROR NO. 11-1155: Yes.

7 THE COURT: Okay. It's my understanding --
8 but I -- I haven't confirmed this -- that the -- that
9 your employer does not have a limit on the time that
10 you can serve on a jury.

11 PROSPECTIVE JUROR NO. 11-1155: Right.

12 THE COURT: And the jury -- the courts -- or
13 the state provides you \$40 a day for service. And what
14 they do is they offset that against your pay, and they
15 pay you the difference so that you wouldn't have a
16 financial hardship.

17 PROSPECTIVE JUROR NO. 11-1155: Right.

18 THE COURT: And apparently my understanding
19 is that there's not a limit in weeks, but that's
20 something that I need to confirm.

21 PROSPECTIVE JUROR NO. 11-1155: Right. Okay.

22 THE COURT: All right? One thing that would
23 be great is if you were able to speak with them too.
24 Are you working this evening?

25 PROSPECTIVE JUROR NO. 11-1155: No, not

1 today, actually.

2 THE COURT: You're not?

3 PROSPECTIVE JUROR NO. 11-1155: Until, I
4 believe, Saturday.

5 THE COURT: Until Saturday. But will one of
6 these gentlemen be there this evening?

7 PROSPECTIVE JUROR NO. 11-1155: This evening?
8 Yes.

9 THE COURT: Which one?

10 PROSPECTIVE JUROR NO. 11-1155: Both of them,
11 actually.

12 THE COURT: Both? What are their hours
13 approximately?

14 PROSPECTIVE JUROR NO. 11-1155: 10:00 to
15 6:00.

16 THE COURT: 10:00 to 6:00 p.m.?

17 PROSPECTIVE JUROR NO. 11-1155: Yes.

18 THE COURT: Okay. Very good. All right.

19 Thank you. We'll see you tomorrow.

20 PROSPECTIVE JUROR NO. 11-1155: All right.

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

23 THE COURT: And, Marshal, you can bring both
24 gentlemen in. Thank you.

25 MR. ROBERTS: Can we approach, Your Honor?

1 THE COURT: Certainly.

2 MR. ROBERTS: Sorry, sir, you come in first.

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

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

7 THE COURT: All right. Your name, please,
8 and badge number.

9 PROSPECTIVE JUROR NO. 11-0926: Enrique
10 Tuquero, 11-0926.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 11-0798: Byron Lennon,
13 11-0798.

14 THE COURT: Okay. Very good. It's my
15 understanding that it's very possible that the
16 information has not trickled down yet to your immediate
17 managers. So that should be occurring.

18 However -- and one other thing I would like
19 to discuss with you is, when we discussed earlier
20 the -- the ability for you to have two more weeks paid,
21 the check, I believe you could pick up here so that you
22 don't go through The Venetian, but you would pick it up
23 at the jury services. Just so you know. We can talk
24 more about that later.

25 But, in the meantime, I would like your

1 direct supervisor's numbers just in case it's not
2 trickling down quickly enough.

3 So -- okay. You have the microphone. Your
4 name and badge number.

5 PROSPECTIVE JUROR NO. 11-0798: Byron Lennon,
6 Badge No. 11-0798.

7 THE COURT: Okay. Mr. Lennon, what is your
8 supervisor's name. Several?

9 PROSPECTIVE JUROR NO. 11-0798: I am getting
10 it off my phone.

11 THE COURT: Oh, go ahead. I'm sorry. Okay.

12 PROSPECTIVE JUROR NO. 11-0798: First one is
13 Kyle, K-y-l-e.

14 THE COURT: K-y-l-e.

15 PROSPECTIVE JUROR NO. 11-0798: Donaldson.

16 THE COURT: Donaldson.

17 PROSPECTIVE JUROR NO. 11-0798: Donaldson.

18 He's the one I have been --

19 THE COURT: What is his title?

20 PROSPECTIVE JUROR NO. 11-0798: Security
21 manager or assistant. He's one of the security
22 managers. And his phone number is 702.

23 THE COURT: 702.

24 PROSPECTIVE JUROR NO. 11-0798: 378.

25 THE COURT: 378.

1 PROSPECTIVE JUROR NO. 11-0798: 58.

2 THE COURT: 58.

3 PROSPECTIVE JUROR NO. 11-0798: 52.

4 THE COURT: 52. Is that his direct number?

5 PROSPECTIVE JUROR NO. 11-0798: Yes,
6 that's -- that's the company.

7 THE COURT: It won't go to a recording -- it
8 won't go to, like, just a call-in --

9 PROSPECTIVE JUROR NO. 11-0798: No, that's --
10 that's the cell phone they use while they at work to
11 get in touch with --

12 THE COURT: Is -- Mr. Donaldson, do you know
13 what a good time to reach him is?

14 PROSPECTIVE JUROR NO. 11-0798: Between --

15 THE COURT: What hours?

16 PROSPECTIVE JUROR NO. 11-0798: Between 7:00
17 and, like, 3:15.

18 THE COURT: In the morning, 7:00 p.m.?

19 PROSPECTIVE JUROR NO. 11-0798: A.m., day
20 shift managers.

21 THE COURT: Okay. 3:15 p.m.

22 All right. And the other -- you have another
23 one?

24 PROSPECTIVE JUROR NO. 11-0798: I have one
25 more 'cause they alternate days off.

1 First name is -- the last name is Coronado
2 C-o-r-o-n-a-d-o.

3 THE COURT: I'm sorry. C-o-r-o?

4 PROSPECTIVE JUROR NO. 11-0798: N-a-d-o.

5 THE COURT: A-n-e-o.

6 PROSPECTIVE JUROR NO. 11-0798: D-o, as in
7 David, Coronado.

8 THE COURT: D-o?

9 PROSPECTIVE JUROR NO. 11-0798: D-o.

10 THE COURT: D-i-o?

11 PROSPECTIVE JUROR NO. 11-0798: D-o.

12 C-o-r-o-n-a-d-o.

13 THE COURT: Okay. I see.

14 PROSPECTIVE JUROR NO. 11-0798: And the first
15 name is Nicholas.

16 THE COURT: Nicholas.

17 PROSPECTIVE JUROR NO. 11-0798: Coronado.

18 THE COURT: And his phone number?

19 PROSPECTIVE JUROR NO. 11-0798: 702-271-1325.

20 THE COURT: All right. And what -- what are
21 his hours?

22 PROSPECTIVE JUROR NO. 11-0798: Same hours.

23 They both -- they just alternate days off, day shift
24 managers.

25 THE COURT: Same hours. And then is he also

1 an assistant security manager?

2 PROSPECTIVE JUROR NO. 11-0798: Yes.

3 THE COURT: Okay. Thank you. All right. If
4 you'd pass the mic, please.

5 PROSPECTIVE JUROR NO. 11-0926: Enrique
6 Tuquero, 11-0926.

7 THE COURT: Okay. Mr. Tuquero, who is your
8 direct supervisor, please?

9 PROSPECTIVE JUROR NO. 11-0926: His name is
10 Richard Ramirez.

11 THE COURT: One moment. Richard Ramirez.
12 Okay. And what is his number where you can reach him?

13 PROSPECTIVE JUROR NO. 11-0926: It's 702.

14 THE COURT: 702.

15 PROSPECTIVE JUROR NO. 11-0926: 449.

16 THE COURT: 449.

17 PROSPECTIVE JUROR NO. 11-0926: 84.

18 THE COURT: 84.

19 PROSPECTIVE JUROR NO. 11-0926: 42.

20 THE COURT: 42. And is -- do you have a
21 second supervisor?

22 PROSPECTIVE JUROR NO. 11-0926: That's --
23 that's all I have.

24 THE COURT: What is his title?

25 PROSPECTIVE JUROR NO. 11-0926: His title is

1 supervisor, crew leader.

2 THE COURT: Supervisor, crew leader. And
3 this is -- remind me, please -- of casino?

4 PROSPECTIVE JUROR NO. 11-0926: The
5 facilities department.

6 THE COURT: Of the facilities department.
7 And you don't have a second person?

8 PROSPECTIVE JUROR NO. 11-0926: No. He's the
9 direct contact.

10 THE COURT: Okay. And what -- what is a
11 better -- a best -- a better time to -- when is the
12 best time to reach him?

13 PROSPECTIVE JUROR NO. 11-0926: He's on 24
14 hours. You know, 7:00 to 3:00 is our regular working
15 hours.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 11-0926: And he can
18 be -- if you text him, he will -- he'll -- he'll
19 respond back.

20 THE COURT: Okay. Very good. Thank you.
21 Thank you for that. And see you tomorrow at 12:45.
22 Okay? Have a great evening.

23 PROSPECTIVE JUROR NO. 11-0798: You too.

24 (The following proceedings were held
25 outside the presence of the jury.)

1 THE COURT: All right. Mr. Roberts, you had
2 something you wanted to review before I wrap up.

3 MR. ROBERTS: Yes, Your Honor. Thank you.

4 To set the stage for why I want to ask this,
5 I refer back to Mr. Christiansen's voir dire. And one
6 of the questions he asked Mr. Noshi was, "As an
7 engineer, when you're faced with two design choices" --
8 and I'm paraphrasing somewhat -- "do you pick the safer
9 one or the less safe one?" And he said, "I pick the
10 safe one." And then he asked if everyone was --
11 thought it was okay to needlessly endanger the
12 community. And we've talked about that before.

13 In products liability case, I have read a lot
14 of research, and at least among younger
15 safety-conscious individuals, about 84 percent strongly
16 believe that corporations should take every precaution
17 for safety, no matter how impractical or costly, and
18 with more than half strongly agreeing with that
19 statement.

20 I would analogize this to Mr. Christiansen
21 asking about the burden of proof. "The Court's going
22 to instruct you it's more likely than not, a tissue on
23 the scale. Who disagrees with that? Who would require
24 more?"

25 Well, the -- the problem with this safer or

1 less safe, needlessly endanger, "If you have a choice
2 to make it safer, should you?" argument is it's
3 inconsistent with Nevada law and the standard the Court
4 is going to give the jury.

5 Product liability instruction 7PL.7 defines
6 unreasonably dangerous. "A product is unreasonably
7 dangerous if it failed to perform in the manner
8 reasonably to be expected in light of its nature and
9 intended function and was more dangerous than would be
10 contemplated by the ordinary user having the ordinary
11 knowledge available in the community."

12 So it's a reasonableness standard. It could
13 be dangerous; it just can't be unreasonably dangerous
14 in light of the Court's instructions.

15 So what I would like to inquire into is
16 whether any of the jurors believe that corporations
17 should take every precaution to ensure safety,
18 regardless of practicality or cost or whatever
19 instructions the Court may give you. I need to know if
20 there's anyone on the jury who's going to hold my
21 client to a higher standard than the unreasonably
22 dangerous standard that the Court is going to instruct
23 the jury on.

24 But I understand that that's getting close to
25 the case, but I don't think it's any closer than asking

1 them if they can follow burden of proof instructions,
2 if they would -- because Pete said, you know, if I'm
3 seeking hundreds of millions of dollars, you going to
4 hold me to a higher standard than if I wasn't asking
5 for so much?

6 And it's really the same type of thing
7 because, especially when you get to corporations, some
8 people believe that corporations should be held to a
9 higher standard than individuals because their actions
10 can have a potential to affect many more people. It's
11 sort of the same argument about lots more money, so
12 should there be a higher standard? Large corporations
13 can affect more people, so should they be held to a
14 higher safety standard than the individual?

15 So I'd like to inquire on those areas and,
16 given our disagreements, I just thought, if we had some
17 time, I'd vet that now with the Court.

18 Thank you, Your Honor.

19 MR. KEMP: Judge, the problem --

20 THE COURT: Mr. Kemp, a little bit louder,
21 please.

22 MR. KEMP: The problem I have with his
23 proposed question, which I wrote down, whether any
24 jurors believe a corporation should take every
25 precaution, regardless of practicality or cost -- is

1 the last five words, "regardless of practicality or
2 cost" -- they have not raised a cost defense. In fact,
3 if you recall, they filed a motion in limine to keep us
4 from telling the jury that they could have gotten the
5 S-1 Gard for free and that the proximity sensor costs
6 \$300, which the Court denied.

7 So they have not raised a cost defense. So
8 to suggest to the jury that there's some sort of cost
9 reason why they didn't adopt these alternatives is not
10 going to be supported by the evidence.

11 The second argument is practicality. They
12 have not raised a practicality argument. They have not
13 said they could not put the safer alternative front on
14 or the aerodynamics. I mean, they designed and tested.
15 They just didn't use it, Your Honor.

16 MR. ROBERTS: Well, well --

17 THE COURT: I'll --

18 MR. ROBERTS: I'm only interrupting because,
19 if that's his issue -- the only reason I put that in
20 there is that was the language in the survey which
21 resulted in some data I'm using. But I have no problem
22 not saying "regardless of practicality or cost." I can
23 eliminate that and maybe substitute in "regardless of
24 the instructions of the Court." And if that would
25 eliminate Mr. Kemp's concerns, I'd be happy to

1 short-circuit the argument and agree to it.

2 MR. KEMP: I don't think we should imply that
3 the instructions are inconsistent with the question
4 because I don't know that it really is. But if he just
5 wants to say whether any juror -- whether you believe
6 that a corporation should take every precaution to make
7 a product safe, I think that's fair game.

8 MR. ROBERTS: I think I should be able to ask
9 "and if the standard the Court gives you is different
10 than that, you will apply the Court's standard despite
11 that belief?" Because I believe that the instructions
12 in Nevada on product liability are completely
13 inconsistent with if there's a safer way to do it, you
14 have to do it, regardless of anything else. It's
15 unreasonably dangerous. It's not could the product
16 have been possibly been made safer in any way? That's
17 not the standard in Nevada.

18 MR. KEMP: Well, Judge, how can you ask them
19 if it's going to be inconsistent with the instruction
20 if you haven't given them the instruction? I mean,
21 that's -- you know, that's a question that they can't
22 answer.

23 MR. ROBERTS: Well, we've given them a lot of
24 instruction. Mr. Christiansen did. I'd be happy to
25 read them the instruction that asks them if they can

1 apply it.

2 MR. KEMP: But then he's implying that the
3 law in Nevada is not that they should take every
4 precaution to make the product safety. We contend that
5 is the law in Nevada. His reading of the law in Nevada
6 is a little bit different than mine, I think, Your
7 Honor. He wants to just ask whether any jurors believe
8 that a corporation should take every precaution to make
9 a product safe. I'm not objecting to that.

10 MR. ROBERTS: And ask, if the instructions
11 from the Court are different than that, if they can
12 follow the Court's instruction rather than their
13 belief. I don't have to opine as to whether it is
14 different or not. I just --

15 MR. KEMP: Well, he's implying it is
16 different by asking the question in the first place.

17 THE COURT: Well, I think this is relevant.
18 And so I just want to make sure that the question's
19 asked correctly and that we definitely don't refer to
20 Dr. Khiabani being negligent in any way.

21 MR. ROBERTS: Of course, Your Honor.

22 THE COURT: But I do think it's relevant. I
23 read the millennial article, but also I -- I think
24 it's -- it's relevant to your case. So I suppose it's
25 been a question of how do you sculpt the question.

1 MR. ROBERTS: I'll try to be careful and
2 phrase it about as close as I just did to what I just
3 said, Your Honor. If the Court wants to think about it
4 and give me more detailed guidelines before we start
5 tomorrow, I would be happy to stay within the
6 guidelines of the Court. Or if you think what I just
7 said was okay, I'll try to get the transcript and ask
8 it as close to that as I can.

9 THE COURT: So you're essentially going to
10 ask them if they can follow the law --

11 MR. ROBERTS: Yes.

12 THE COURT: -- or they would ask for a higher
13 burden?

14 MR. ROBERTS: Absolutely. That's it, Your
15 Honor.

16 THE COURT: I think -- I think that's --
17 that's reasonable.

18 MR. KEMP: That's fine with me, Your Honor.

19 MR. ROBERTS: Okay.

20 MR. KEMP: I mean, I don't -- let me restate
21 that. I object, but I don't vehemently object.

22 THE COURT: Okay.

23 MR. ROBERTS: Great movie.

24 THE COURT: Okay. We'll allow it.

25 Okay. I'll see you -- we should be ready to

1 go at 12:30 tomorrow.

2 MR. ROBERTS: Thank you, Your Honor.

3 THE COURT: Have a good evening, everyone.

4 MR. ROBERTS: You too, Your Honor.

5 THE COURT: Is there anything else we need to
6 review?

7 Oh, wait. Before we go, I just want to make
8 sure I'm on the same page with you. With respect to
9 The Venetian, prospective jurors from The Venetian,
10 Mr. Kemp, is it correct, do you now have their direct
11 supervisors?

12 MR. KEMP: I do, Your Honor. And I can do
13 whatever the Court desires or doesn't desire. I can
14 have house counsel talk to the supervisors directly.
15 And I think that kind of gets us too in the process
16 personally. Or I can have house counsel inform the
17 supervisors that the two weeks' compensation will be
18 taken care of.

19 MR. ROBERTS: I'm fine with that.

20 THE COURT: Does that sound good? I think
21 that's a good idea.

22 And then with respect to the young woman who
23 works at the Wynn.

24 MR. KEMP: Ms. Mosqueda.

25 THE COURT: Yes. It appears that her

1 supervisors are there from 10:00 to 6:00 p.m. Do you
2 want me to call her supervisors? I don't know what
3 their policy is.

4 MR. ROBERTS: We would stipulate to that,
5 Your Honor, because it -- she's expressed that she
6 likes working, but, as you know, a lot of people have a
7 fear that, if they take the paid time off, that they'll
8 be retaliation or laid off, which is illegal, but
9 there's a fear out there that many people feel they
10 have to keep working or they might lose their jobs,
11 and...

12 THE COURT: Right.

13 MR. ROBERTS: So --

14 THE COURT: Okay. It's just that, you know,
15 this is a new thing for me, calling employers. So I'm
16 just going to ask them what their -- explain to them
17 what my understanding of their policy is, let them know
18 that she would actually prefer to be at work but that's
19 not an excuse to be excused from serving on a jury.

20 MR. KEMP: Judge, if you'd rather talk to
21 Wynn house counsel, I can get that e-mail for you
22 tomorrow.

23 THE COURT: Why don't we do that? That might
24 be more expedient.

25 MR. ROBERTS: I think so, Your Honor.

1 THE COURT: Thank you. Have a great evening.

2 MR. ROBERTS: Thank you, Your Honor.

3 (Thereupon, the proceedings

4 concluded at 2:47 p.m.)

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

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KRISTY L. CLARK, CCR #708

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1 CASE NO. A-17-755977-C

2 DEPT. NO. 14

3 DOCKET U

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 * * * * *

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

20 REPORTER'S TRANSCRIPTION OF PROCEEDINGS

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

24 RECORDED BY: SANDY ANDERSON, COURT RECORDER

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

005160

005160

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3 Kayvan Khiabani, M.D.:

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005161

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 22, 2018;

2 12:39 P.M.

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

4 * * * * *

5 THE MARSHAL: All rise. Department 14
6 is now in session. Honorable Adriana Escobar
7 presiding.

8 THE COURT: Please be seated.

9 MR. KEMP: Judge, one housekeeping
10 matter. I sent an email to the general counsel of
11 Wynn. I got the name of who the Wynn associate is
12 going to be and a phone number here. Remember you
13 wanted the contact?

14 THE COURT: Yes.

15 MR. KEMP: I gave a copy of this to
16 Mr. Roberts already.

17 THE COURT: Thank you. All right. I
18 think you've had sufficient time to review my
19 written order on the motion for summary judgment
20 that also encompasses motions in limine 3, I
21 believe.

22 Now we need to move forward with voir
23 dire.

24 MR. ROBERTS: Yes, Your Honor. I'm
25 ready.

005162

1 THE COURT: Is there anything else we
2 need to discuss?

3 MR. ROBERTS: Not with respect to that,
4 Your Honor. If you remember yesterday, I was
5 questioning Mr. Noshi, who I believe was in
6 Seat 12. He indicated that he would feel a lot of
7 sympathy for the children and that might be hard
8 for him to put that aside.

9 At some point today, I'd like to take
10 him out of the presence to explore that further,
11 without affecting the rest of the panel, if he
12 does indicate that he can't be fair. We can
13 either start with that now or, if the Court rather
14 get the jury in the box, we can do it at the next
15 break.

16 THE COURT: I want to get the jury in
17 the box right now because they waited a great --
18 none of your fault, but they waited a great deal
19 of time yesterday, if that's all right.

20 MR. ROBERTS: That's fine.

21 THE COURT: Will you please bring the
22 jury in.

23 THE MARSHAL: Yes, Your Honor.

24 THE COURT: Thank you.

25 (Discussion off the record.)

005163

1 THE COURT: I guess we should go on the
2 record for this.

3 Mr. Aldrian, who is an assistant counsel
4 at Wynn Resorts, returned my phone call yesterday.
5 Actually, he called me before I called him. He
6 said that the policy is that they will pay salary
7 and compensate them. Usually they deduct the \$40
8 a day that's paid by the state but that sometimes
9 they even just pay them the entire check.

10 And he's going to reach out to our
11 juror, our prospective juror, that works at the
12 Wynn and make sure that she understands that too.
13 Okay? That's what he indicated.

14 (Discussion off the record.)

15 (Whereupon, a recess was taken.)

16 (The following proceedings were held
17 in the presence of the jury.)

18 THE MARSHAL: All rise for the jury.
19 All jurors accounted for, Your Honor.

20 THE COURT: Thank you.

21 Please be seated. Please take roll
22 call.

23 THE CLERK: 11-0798, Byron Lennon.

24 PROSPECTIVE JUROR NO. 11-0798: Here.

25 THE CLERK: 11-0830, Michelle Peligro.

005164

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. 11-0854: 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.

005165

005165

1 THE CLERK: 11-0999, Janelle Reeves.

2 PROSPECTIVE JUROR NO. 11-0999: Here.

3 THE CLERK: 11-1035, Pamela

4 Phillips-Chong.

5 PROSPECTIVE JUROR NO. 11-1035: Here.

6 THE CLERK: 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: 11-1255, Heidi Wooters.

25 PROSPECTIVE JUROR NO. 11-1255: Here.

1 THE CLERK: 11-1268, Katherine Beswick.
2 PROSPECTIVE JUROR NO. 11-1268: Here.
3 THE CLERK: 11-1278, Elizabeth Mundo.
4 PROSPECTIVE JUROR NO. 11-1278: Here.
5 THE CLERK: 11-1293, Kim Schell.
6 PROSPECTIVE JUROR NO. 11-1293: Here.
7 THE CLERK: 11-1296, Alan Castle.
8 PROSPECTIVE JUROR NO. 11-1296: Here.
9 THE CLERK: 11-1297, Anna Campbell.
10 PROSPECTIVE JUROR NO. 11-1297: Here.
11 THE CLERK: 11-1314, Pragnit Thakor.
12 PROSPECTIVE JUROR NO. 11-1314: Here.
13 THE CLERK: 11-1328, Sarah Oelke.
14 PROSPECTIVE JUROR NO. 11-1328: Here.
15 THE CLERK: 11-1336, E. Lemons.
16 PROSPECTIVE JUROR NO. 11-1336: Here.
17 THE CLERK: 11-1351, Kenneth Prince.
18 PROSPECTIVE JUROR NO. 11-1351: Here.
19 THE CLERK: 11-1358, Adam Elliott.
20 PROSPECTIVE JUROR NO. 11-1358: Here.
21 THE CLERK: 11-1373, Chante Webb.
22 PROSPECTIVE JUROR NO. 11-1373: Here.
23 THE CLERK: 11-1385, Stephanie Swann.
24 PROSPECTIVE JUROR NO. 11-1385: Here.
25 THE CLERK: 11-1396, Nichole Bibilone.

005167

1 PROSPECTIVE JUROR NO. 11-1396: Here.
2 THE CLERK: 11-1411, Priscilla Hatch.
3 PROSPECTIVE JUROR NO. 11-1411: Here.
4 THE CLERK: 11-1416, Randall Nitta.
5 PROSPECTIVE JUROR NO. 11-1416: Here.
6 THE CLERK: 11-1430, Sara Smith.
7 PROSPECTIVE JUROR NO. 11-1430: Here.
8 THE CLERK: 11-1431, Analie Lacuesta.
9 PROSPECTIVE JUROR NO. 11-1431: Here.
10 THE CLERK: 11-1457, Edward Nespo.
11 PROSPECTIVE JUROR NO. 11-1457: Here.
12 THE CLERK: 11-1468, Cynthia Burdg.
13 PROSPECTIVE JUROR NO. 11-1468: Here.
14 THE CLERK: 11-1474, Monica
15 Flores-Woods.
16 PROSPECTIVE JUROR NO. 11-1474: Here.
17 THE CLERK: 11-1477, Maria Dungca.
18 PROSPECTIVE JUROR NO. 11-1477: Here.
19 THE CLERK: 11-1498, Craig Soucy.
20 PROSPECTIVE JUROR NO. 11-1498: Here.
21 THE CLERK: 12-0006, Nancy McLouth.
22 PROSPECTIVE JUROR NO. 12-0006: Here.
23 THE CLERK: 12-0013, Arthur Gil.
24 PROSPECTIVE JUROR NO. 12-0013: Here.
25 THE CLERK: 12-0017, Kelly McCarthy.

005168

1 PROSPECTIVE JUROR NO. 12-0017: Here.

2 THE CLERK: 12-0038, Ed Hall.

3 PROSPECTIVE JUROR NO. 12-0038: Here.

4 THE CLERK: 12-0040, Pamela Obeslo.

5 PROSPECTIVE JUROR NO. 12-0040: Here.

6 THE CLERK: 12-0054, Cynthia Blank.

7 PROSPECTIVE JUROR NO. 12-0054: Here.

8 THE CLERK: 12-0096, Terry Ormond.

9 PROSPECTIVE JUROR NO. 12-0096: Here.

10 THE COURT: Is there anyone here whose
11 name has not been called?

12 Seat 2. Go ahead.

13 THE CLERK: I've got to find it first.
14 11-0802, John Toston.

15 PROSPECTIVE JUROR NO. 11-0802: Here.

16 THE CLERK: Sorry.

17 THE COURT: Is there anyone else whose
18 name has not been called that is present?

19 Okay. Do the parties stipulate to the
20 presence of the jury?

21 MR. KEMP: Yes, Your Honor.

22 MR. ROBERTS: Yes, Your Honor.

23 THE COURT: Thank you.

24 Ladies and gentlemen, I want to welcome
25 you back and thank you very much for being here

1 and for your service. We're going to continue the
2 voir dire, the jury selection. And, as we ended
3 yesterday, the defense is now going to ask you --
4 they're going through with their voir dire. Okay?

5 Mr. Roberts.

6 MR. ROBERTS: Thank you, Your Honor.

7 Good afternoon, everyone.

8 IN UNISON: Good afternoon.

9 MR. ROBERTS: Sorry to make everyone
10 wait so long yesterday. One thing I'm sure you've
11 noticed when we go up to the bench, they put on
12 the white noise. And one juror told me, after a
13 trial a few years ago, that they didn't like that
14 because they thought maybe the lawyers or the
15 court were trying to hide something from the jury.

16 Anyone felt that way when the white
17 noise was up and we were talking at the bench?
18 No? Good. Good.

19 And when we're arguing about the law, as
20 Pete told you and the judge rules on it, sometimes
21 it can be confusing for the jury to hear what the
22 lawyers contend the law is and then the judge
23 rules, and maybe she just rules to us and sets the
24 rules for court or maybe she instructs the jury
25 after that. And the Court thinks it's best for

1 the jurors just to hear what the law is and hear
2 the right thing rather than be confused by the
3 arguments on each side that may or may not be
4 correct in the Court's view.

5 So everyone is okay with that process?
6 Thank you.

7 And during trial, that type of thing
8 will continue. And, unfortunately, part of our
9 jury system that requires us to get these legal
10 issues right as we proceed is going to require
11 jurors to spend some time in the hallways. I hope
12 everyone is okay with that and won't be too
13 frustrated by it if you're selected.

14 So let's go back to what we were
15 discussing yesterday. And I believe, Mr. Kaba, I
16 just started to ask you a question; correct?

17 PROSPECTIVE JUROR NO. 11-1125: Correct.

18 MR. ROBERTS: And I think I was using
19 shorthand because we were in the middle of
20 something, and I just was asking you about your
21 response to the safety issue.

22 I want to clarify now that, since it's
23 been a while, the safety issue I was speaking
24 about was your own safety consciousness, how often
25 or what percentage of the day you thought about or

1 questioned your own personal safety.

2 One of our jurors mentioned 80 percent,
3 and I'd asked for hands who thinks about their own
4 personal safety or questions that 80 percent of
5 the day or more. And I had some hands up. We
6 started here, and I was just about to get to
7 Mr. Kaba.

8 When I was discussing this, anyone think
9 that, when I refer to a safety issue, I meant a
10 safety issue in our case, something related to the
11 dispute between the parties?

12 No? Okay.

13 The record should reflect that there are
14 no hands.

15 THE COURT: Thank you.

16 MR. ROBERTS: Thank you, Your Honor.

17 THE COURT: Before you go on, I really
18 do need badge numbers.

19 MR. ROBERTS: Mr. Kaba, badge number.

20 PROSPECTIVE JUROR NO. 11-1125: 11-1125,
21 Mike Kaba.

22 Yes. In answer to your question, I was
23 thinking mostly I babysit my grandchildren, and
24 I'm always aware of safety stuff around the house
25 because there's always little accidents that could

1 be prevented. That was what was on my mind.

2 MR. ROBERTS: How often are your
3 grandchildren with you during the day?

4 PROSPECTIVE JUROR NO. 11-1125: About
5 three days a week all day.

6 MR. ROBERTS: Okay. What about when
7 your grandchildren are not there? Are you just as
8 conscious of your own safety?

9 PROSPECTIVE JUROR NO. 11-1125: Since
10 I've been doing this for about five years, I've
11 probably been more conscious now than I was before
12 that.

13 MR. ROBERTS: Simply caring for your
14 grandchildren and you've developed those habits?

15 PROSPECTIVE JUROR NO. 11-1125: Exactly.

16 MR. ROBERTS: Okay. Thank you,
17 Mr. Kaba.

18 MR. KEMP: Judge, can we approach?

19 THE COURT: Yes.

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

22 MR. ROBERTS: Okay. Mr. Kaba, you still
23 have the microphone, Badge Number 11-1125?

24 PROSPECTIVE JUROR NO. 11-1125: Yes.

25 MR. ROBERTS: I want to continue to talk

1 to you about safety.

2 Mr. Christiansen, when he was talking
3 about the burden of proof, he mentioned that does
4 anyone think that his burden should be higher
5 because he's asking for so much money? Do you
6 recall that?

7 PROSPECTIVE JUROR NO. 11-1125: Yes, do.

8 MR. ROBERTS: And that some people might
9 think, if you're asking for a lot of money, you
10 just have to prove more than just -- more likely
11 than not. You recall that?

12 PROSPECTIVE JUROR NO. 11-1125: Yes.

13 MR. ROBERTS: Some folks think that,
14 because a large corporation, their actions have
15 the potential to affect a lot more people, they
16 expect that corporations are going to take every
17 precaution for safety and the corporation should
18 be held to a higher standard than individuals.

19 What do you think about that?

20 PROSPECTIVE JUROR NO. 11-1125: No. I
21 believe everybody should be hold to the same
22 standards regardless.

23 MR. ROBERTS: Is there anybody here who
24 believes that, because the potential of a large
25 corporation impacts so many individuals, they

1 should be held to a higher safety standard than an
2 individual would be held to?

3 Yes?

4 Okay. Could you pass the microphone
5 down to Ms. Graf?

6 PROSPECTIVE JUROR NO. 11-0940: Caroline
7 Graf, 11-0940.

8 MR. ROBERTS: Tell me about your
9 thoughts on that issue.

10 PROSPECTIVE JUROR NO. 11-0940: Well, I
11 mean, what a corporation does affects more people
12 than one individual. I think everybody should do
13 their best to be safe and not harm someone else;
14 but, sure, if something you do is going to affect
15 hundreds or thousands of people, yeah, I think
16 your standard should have to be a little bit
17 higher.

18 MR. ROBERTS: So you've heard everyone
19 talk about treating individuals and corporations
20 the same under the law.

21 PROSPECTIVE JUROR NO. 11-0940: Yes.

22 MR. ROBERTS: Would those personal
23 feelings affect the standard you held MCI to in
24 this case, do you think?

25 PROSPECTIVE JUROR NO. 11-0940: No. I

1 think I'll just -- you know, if he proves his case
2 51 percent, so be it.

3 MR. ROBERTS: But you were writing the
4 law on caps; right?

5 PROSPECTIVE JUROR NO. 11-0940: Yeah.
6 I'm writing the law on a lot of things.

7 MR. ROBERTS: So if you wrote the law on
8 this, you might write it differently, but you'll
9 apply the law as the judge instructs you?

10 PROSPECTIVE JUROR NO. 11-0940: No, I'll
11 do what Your Honor tells me to do.

12 MR. ROBERTS: Pass it back to Mr. Noshi.
13 I believe you raised your hand also, sir. Badge
14 Number 11-1207.

15 PROSPECTIVE JUROR NO. 11-1207: Yeah.
16 Like, I'd expected a big corporation to -- because
17 they deal and impact a lot more people, that
18 they'll pay more to safety of their own employees
19 and customers. I'd say so. And I'd also expect
20 them to have their resources and the means and the
21 research departments and whatever to be -- you
22 know, be a big part of their design or --

23 MR. ROBERTS: And I believe this ties
24 into a response you gave to Mr. Christiansen about
25 how you apply that in your own personal business

1 practice; correct?

2 PROSPECTIVE JUROR NO. 11-1207: Yes.

3 And I believe I mentioned, like, I don't expect it
4 to be flawless because, you know, there's always
5 room for improvement, but it will be to the best
6 of the knowledge within standards of today.

7 MR. ROBERTS: If the Court instructs
8 you, as it will, that the standard you apply to
9 corporations is the same that the law applies to
10 an individual, are you going to be able to set
11 aside your own personal views that corporations
12 should be held to a higher standard?

13 PROSPECTIVE JUROR NO. 11-1207: I
14 believe so.

15 MR. ROBERTS: Okay. Very good. Thank
16 you, sir.

17 Did you have your hand up,
18 Ms. Rodriguez?

19 PROSPECTIVE JUROR NO. 11-0879: No.

20 MR. ROBERTS: Who else in the second row
21 had their hand up?

22 Okay. Mr. Lennon in the back.

23 PROSPECTIVE JUROR NO. 11-0798: Badge
24 Number 11-0798. I just think if a corporation --
25 like I work in a casino, security, so we're always

005177

005177

1 training for safety. Anything might happen if you
2 go inside a casino. So we would know how -- we
3 would be held at a higher standard for the safety
4 of the guests. So we should have proper training
5 to prevent that.

6 And also, as far as, like -- I used to
7 drive a bus. So if you have a bus full of people,
8 I feel like the bus should be able -- you know,
9 should be regulated where there's a lot of safety
10 precautions because you do have lives because
11 you're driving a bus, especially if it's
12 jam-packed with people. And you feel that, yeah,
13 they should be held a little higher, you know,
14 because you have lives at stake. If the bus is
15 not safety or if it's not like it's supposed to be
16 for the people inside the bus and for the people
17 outside as well.

18 MR. ROBERTS: Thank you. I appreciate
19 that, Mr. Lennon.

20 Anyone else I missed that feels like
21 Ms. Graf, Mr. Noshi, Mr. Lennon?

22 On the front row, Ms. Vandevanter.

23 PROSPECTIVE JUROR NO. 11-1186: Ashley
24 Vandevanter, 11-1186.

25 I feel that larger companies and

1 corporations also have a social obligation -- they
2 have the means and they reach more people -- to
3 improve things in their field and the community as
4 a whole.

5 MR. ROBERTS: As a whole, do you think
6 that most people believe that corporations fulfill
7 whatever social obligation they have? Just
8 generally.

9 PROSPECTIVE JUROR NO. 11-1186:
10 Generally, yes.

11 MR. ROBERTS: What about you?

12 PROSPECTIVE JUROR NO. 11-1186: I do. I
13 can't say that all corporations do. Of course not
14 all companies don't do that. But as a whole, yes.

15 MR. ROBERTS: More do than fail to meet
16 them?

17 PROSPECTIVE JUROR NO. 11-1186:
18 Absolutely.

19 MR. ROBERTS: Thank you,
20 Ms. Vandevanter.

21 Anyone else?

22 The judge is going to give you an
23 instruction which will describe when the law finds
24 that a product is unreasonably dangerous.

25 Do you already have a standard in your

1 mind as to when a product is unreasonably
2 dangerous?

3 PROSPECTIVE JUROR NO. 11-1186: Yes.

4 MR. ROBERTS: You think you can set that
5 aside and follow the standard the judge gives you?

6 PROSPECTIVE JUROR NO. 11-1186:

7 Absolutely.

8 MR. ROBERTS: Absolutely. Okay.

9 Anyone else have strong feelings about
10 when a product is unreasonably dangerous?

11 Ms. Hannewald, do you?

12 PROSPECTIVE JUROR NO. 11-1200: I'm not
13 sure I understand the question.

14 Badge Number 11-1200, April Hannewald.

15 MR. ROBERTS: So we just talked to a few
16 people who felt that, if they were writing the
17 law, corporations would be held to a higher
18 standard. And I think they have expressed the
19 standard they think that corporations should be
20 held to and why.

21 What about when it comes to corporations
22 who make products? Do you have in your mind some
23 feeling about when a product would be unreasonably
24 dangerous?

25 PROSPECTIVE JUROR NO. 11-1200: Like, if

1 you were selling bump stocks? That might be
2 unreasonably dangerous.

3 MR. ROBERTS: Sure. And why would that
4 be unreasonably dangerous?

5 PROSPECTIVE JUROR NO. 11-1200: Because
6 it allows you to kill 58 people in a couple
7 minutes, including my friends. But, no, I mean, I
8 don't -- I don't think it's a standard towards
9 corporations. If you were a person driving a car
10 and you drive -- ran through a red light going
11 100 miles an hour, I would think that that was an
12 unreasonable safety thing too. So I don't feel
13 like I'm looking at it any different from if it's
14 a corporation or a person. I think that
15 everybody, every person, needs to take the safety
16 of the community and other people that might be
17 impacted. I don't have any other ideas about
18 safety.

19 MR. ROBERTS: Thank you.

20 Okay. Anyone who hasn't spoken have any
21 personal feelings about corporations versus
22 individuals when it comes to the standard they
23 should be held to on safety issues?

24 PROSPECTIVE JUROR NO. 11-1047: I do.

25 MR. ROBERTS: Mr. Krieger.

1 PROSPECTIVE JUROR NO. 11-1047: Yes.

2 MR. ROBERTS: Just a second, sir. The
3 mic is coming up to you. That's part of making
4 the record. Badge Number 11-1047. Right, sir?

5 PROSPECTIVE JUROR NO. 11-1047: Yes,
6 that's correct.

7 I just kind of want to go back a little
8 bit when you said about different standards for
9 corporations and make sure I understand what
10 you're asking.

11 For example, to me, when I get on an
12 airplane, I know that it is built and held to a
13 different standard than other modes of
14 transportation. So there are different standards.
15 Like, Boeing does have to use different materials,
16 different -- they can't just use a standard bolt
17 or rivet off the shelf. It has to be certified
18 aircraft.

19 So there is a different standard they
20 have. So we do expect that, when we get on the
21 airplane, that there is a different standard for
22 them.

23 Is that --

24 MR. ROBERTS: Let me try and go back and
25 draw an analogy and see if you understand what I'm

1 asking.

2 Now, Pete's question is, if you're
3 asking for a lot of money, should you have to
4 prove more than more likely than not, more than
5 51 percent you're more right than wrong?

6 So if my claim is that someone burnt
7 down my house and it was \$100,000, the burden of
8 proof that I'd have to prove that they did that
9 would be the same as someone claiming they burnt
10 down a 50-story skyscraper in New York and it was
11 \$100 million. It's the same burden regardless of
12 how much money you're asking for.

13 So, in your case, although there
14 probably aren't any, an individual making an
15 airplane would be held to the same standards as a
16 Boeing that makes 100,000 airplanes. Is that
17 okay?

18 PROSPECTIVE JUROR NO. 11-1047: That's
19 correct. They do have to have -- you're right.

20 MR. ROBERTS: Right. So just the fact
21 you're making a whole lot doesn't change the
22 standard. Are you okay with that?

23 PROSPECTIVE JUROR NO. 11-1047: Yes.
24 Yes. Thank you.

25 MR. ROBERTS: Okay.

1 Anyone else? Did that raise any
2 additional comments from anyone else? Does
3 everyone understand the point that I was getting
4 at? Yes.

5 And everyone is still okay holding a
6 corporation to the same standard as an individual
7 as the Court will instruct?

8 We're speaking of the burden of proof,
9 and one of the analogies that Mr. Christiansen
10 gave was sort of at the 50-yard line and just
11 moving it to the 51-yard line. Does anyone think
12 from that analogy that means they don't have to
13 prove every element of their case?

14 So I like to think of it not you only
15 have to move it to the 50-yard line, but scoring a
16 touchdown is convincing you that it's more likely
17 right than wrong, that it's more likely true than
18 not true. And that's scoring a touchdown, not
19 clear and convincing, not beyond a reasonable
20 doubt, just more likely true than not true.

21 Everyone is okay with that standard;
22 correct?

23 Ms. Vandevanter, did you shake your head
24 no?

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

1 When I would think of scoring a
2 touchdown in your analogy versus the 51-yard line,
3 a touchdown is clear and convincing. There's no
4 replay. We're not checking the line. You scored
5 a touchdown. So I don't think that that would be
6 the same thing.

7 MR. ROBERTS: Okay. Do you watch
8 football on TV?

9 PROSPECTIVE JUROR NO. 11-1186: A little
10 bit.

11 MR. ROBERTS: You've seen where someone
12 is wide open at the end of the end zone and
13 catches it without being touched?

14 PROSPECTIVE JUROR NO. 11-1186: Clear
15 and concise, yes.

16 MR. ROBERTS: Have you seen where they
17 run it up the middle and it's so close they have
18 to do review to see if they just barely crossed
19 the goal line?

20 PROSPECTIVE JUROR NO. 11-1186: But it's
21 not a touchdown until it's there.

22 MR. ROBERTS: Whether they barely
23 crossed the line and convinced you that they did
24 or whether or not it's clear and convincing and no
25 one could question it, you still have to prove

1 more likely true than not true. And that's all
2 I'm saying.

3 PROSPECTIVE JUROR NO. 11-1186: I just
4 had a problem with the touchdown. It's either a
5 touchdown or it's not. With the 51-yard line,
6 you're 51, you're 40 -- you know, you're 52,
7 you're there.

8 MR. ROBERTS: Would you agree that the
9 only thing a jury can decide with regard to the
10 elements of the case that they're going to be
11 given is whether it's true or not true, only two
12 answers?

13 PROSPECTIVE JUROR NO. 11-1186: Yes.

14 MR. ROBERTS: Okay. And if it's more
15 likely true than not true, it wouldn't be fair to
16 say it's not true; right?

17 PROSPECTIVE JUROR NO. 11-1186: Correct.

18 If it's more likely untrue than true, it
19 wouldn't be fair to say it's true.

20 PROSPECTIVE JUROR NO. 11-1186: Correct.

21 MR. ROBERTS: So are you okay if I
22 describe it that way?

23 PROSPECTIVE JUROR NO. 11-1186: That's
24 better.

25 MR. ROBERTS: Okay. Everyone else still

005186

005186

1 okay with the burden of proof? Everyone okay with
2 the fact that the plaintiffs have the burden of
3 proving their case?

4 Lawyers being cautious don't often do
5 this, but if they didn't prove their case, we
6 could sit down and not put on any evidence. Would
7 anyone think that we weren't meeting our
8 obligations if we did that, if we didn't put on
9 evidence of either anything or even just on one or
10 two points? Everyone okay with that?

11 In this case, there's no doubt that
12 someone was killed. So there's damage. Does
13 everyone understand -- and we talked about this a
14 little yesterday -- we never get to the damage
15 issues unless they meet their burden of proof on
16 liability?

17 And everyone is open to that despite the
18 fact that this is tragic?

19 One case that often comes up -- who's
20 heard of the McDonald's coffee case?

21 Okay. It used to be about 85 percent.
22 I think it's a little bit further back. Sometimes
23 people talk about the amounts. I don't want to
24 talk about the amounts because I think the injury
25 was probably more severe than a lot of people

1 know.

2 Who here believes that McDonald's had a
3 duty to warn that the coffee was too hot?

4 Okay. Ms. Hall, tell me what you think
5 about that.

6 PROSPECTIVE JUROR NO. 11-0902: Sherry
7 Hall, 11-0902.

8 I drink a lot of McDonald's coffee, and
9 I can tell from the -- by holding the cup whether
10 or not that coffee is freshly brewed or if it's
11 been sitting there for a while. So when I have a
12 freshly brewed cup of coffee, I can't hold it in
13 my hand. So I believe if I can't hold it in my
14 hand for very long, if it spills on me, it will
15 burn me. And, yes, they should tell us that.

16 MR. ROBERTS: Have you ever burnt your
17 tongue on McDonald's coffee?

18 PROSPECTIVE JUROR NO. 11-0902: Yes.

19 MR. ROBERTS: Anyone else agree with
20 Ms. Hall?

21 Mr. Noshi?

22 Could you pass the mic down to
23 Mr. Noshi, Badge No. 11-1207.

24 PROSPECTIVE JUROR NO. 11-1207: Yeah, I
25 just feel like it's a good practice to -- you

1 know, because they deal with it and they probably
2 know how hot it could be, and just -- out of
3 hundreds of customers, I'm sure one of them will
4 be spacing out and not thinking how hot it could
5 be.

6 So, yeah, I believe it should be part of
7 their commitment to remind people.

8 MR. ROBERTS: Very good. Thank you,
9 sir.

10 Anyone else feel the way Ms. Hall and
11 Mr. Noshi do? I've got to call you out now. Does
12 that mean everyone else thinks they didn't have a
13 duty to warn?

14 So, Mr. Dail, you're nodding your head.
15 How do you feel about that?

16 PROSPECTIVE JUROR NO. 11-0834: Well,
17 coffee has been around for a long time, and when
18 you order -- sorry. Badge No. 11-0834.

19 I think it falls in the realm of common
20 sense. If you order hot coffee, you should know
21 that it's hot. I'm sorry. That's just my
22 opinion.

23 MR. ROBERTS: Okay. And I seem to have
24 a lot of nods. Could you raise your hand if you
25 agree with Mr. Dail.

1 Okay. Thank you. Could you pass it
2 right up in front of you to Ms. Beswick.

3 Tell me what you think about this issue.

4 PROSPECTIVE JUROR NO. 11-1268: Badge
5 No. 11-1268, Katherine Beswick.

6 I agree because, like, what he said is
7 common sense. I mean, for instance, if I'm making
8 dinner and I have, like, hot soup, then I need to
9 make sure that everyone know I'm making hot soup.
10 So it's common sense.

11 MR. ROBERTS: Okay. Thank you, ma'am.
12 Could you pass it back to Mr. Domingo.

13 Mr. Domingo, I don't think we've talked
14 yet. What do you think about this issue, sir?

15 PROSPECTIVE JUROR NO. 11-0853: Badge
16 No. 11-0853.

17 As you were talking about it, I'm kind
18 of torn both ways. I can see -- I can see going
19 either way, really, where -- and also just with
20 the little bit of reading I've done on that case
21 in particular, I read that, at the time,
22 McDonald's was brewing their coffee, you know, a
23 certain amount hotter because they figured people
24 weren't drinking it in the car.

25 But, on the other hand, coffee is hot.

1 It can burn you. I think we all know that. So,
2 you know, without knowing specifically -- without
3 sitting on that case, I'm not really sure which
4 way I'd go. I could see either way.

5 MR. ROBERTS: And the jury heard a lot
6 more evidence than you did. And they, under an
7 obligation, decided the case based on what they
8 heard in the courtroom; right?

9 PROSPECTIVE JUROR NO. 11-0853: Right.

10 MR. ROBERTS: I'm curious. What caused
11 you to research the McDonald's verdict?

12 PROSPECTIVE JUROR NO. 11-0853: Not
13 research -- on the website I use a lot, Reddit,
14 it's kind of, like, news stuff but just topics in
15 general. I think that came up semi-recently. And
16 just reading in the comments, people were -- I
17 don't necessarily read the articles, but in the
18 comments people were going both ways. And I
19 agreed with both sides.

20 MR. ROBERTS: Both sides had persuasive
21 arguments?

22 PROSPECTIVE JUROR NO. 11-0853: Yes.

23 MR. ROBERTS: If you had to choose,
24 which way would you come down based on what you've
25 read and thought about?

1 PROSPECTIVE JUROR NO. 11-0853: Just
2 based on the little I've read, I'd say I'm glad
3 the warnings are there. Yeah, they do have an
4 obligation to warn people. I guess common sense
5 isn't that common anymore.

6 MR. ROBERTS: Could you pass the
7 microphone to Ms. Flores. So what did you mean by
8 this? The record will reflect that Ms. Flores
9 threw her arms up in the air.

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

11 He's right. I guess common sense isn't
12 really that common nowadays. But, I mean, it's
13 coffee. It's kind of obvious that it's going to
14 be hot. I mean, in my break room at work, we brew
15 coffee every morning. And all of us run to our
16 desk while we're holding our cups because it's
17 kind of hot, but we don't drink it right away
18 because, again, we know it's hot. Whether it was
19 brewed at 6:00 in the morning by the time I come
20 in, or I go get it at around 8:00 or 9:00 a.m.,
21 and it's still hot, it's coffee.

22 MR. ROBERTS: So you would disagree with
23 Mr. Domingo?

24 PROSPECTIVE JUROR NO. 11-1164: No. I
25 agree with what he said. I mean, I can understand

1 where, you know, yeah, McDonald's kind of has an
2 obligation to let their customers know it's hot
3 coffee, just be careful. But, again, common
4 sense, it's coffee. It's supposed to be hot. So
5 I'm a little in between as well.

6 MR. ROBERTS: Thank you for that. Could
7 you pass it down to Ms. Gagliano.

8 PROSPECTIVE JUROR NO. 11-0867: Badge
9 11-0867.

10 MR. ROBERTS: Thank you. Which way
11 would you go on this question?

12 PROSPECTIVE JUROR NO. 11-0867: It's
13 common sense. I mean, you know, coffee is hot.
14 If you order hot coffee, it's going to be hot. If
15 you order iced coffee, it will be cold. So common
16 sense.

17 I mean, would you -- that's like telling
18 the smoothie place to put a warning sign,
19 "Caution: Brain freeze." It's common sense.

20 MR. ROBERTS: Thank you so much, ma'am.

21 What about you, Ms. Johnson? Badge
22 No. 11-1229.

23 PROSPECTIVE JUROR NO. 11-1229: I think
24 it's nice that they warn their customers that it's
25 hot, but I do believe it's also common sense. If

1 you order hot coffee, you'd expect to get hot
2 coffee. If you order iced coffee, you'd expect to
3 get iced coffee.

4 MR. ROBERTS: Thank you. Pass it down
5 to the front row, if you could.

6 Anyone else want to tell me what they
7 think about this issue on the second row before it
8 goes to the front row. You're holding the
9 microphone and smiling, so, Ms. Romero, I'm going
10 to ask you.

11 PROSPECTIVE JUROR NO. 11-0937: Badge
12 No. 11-0937.

13 MR. ROBERTS: Do you agree with the
14 verdict? Should McDonald's have had a duty to
15 warn that the coffee was too hot?

16 PROSPECTIVE JUROR NO. 11-0937: I don't.
17 Like they said, a lot of times they ask you, is it
18 iced or is it hot? So you know right off the bat,
19 your coffee when you're ordering it, it's going to
20 be hot. So I don't see that they have to warn.

21 At Starbucks, they give you the little
22 holders. That's the only obligation that I would
23 see to give somebody hot coffee, but not a
24 warning.

25 MR. ROBERTS: That little sleeve so you

1 don't have to run to your desk? Yes.

2 Thank you. Could you pass it up to the
3 row right in front of the box here. I thought I
4 saw some reactions on this row.

5 A little bit, Ms. Wooters.

6 PROSPECTIVE JUROR NO. 11-1255: 11-1255,
7 Heidi Wooters.

8 I don't want to say how stupid do you
9 have to be, but I said it. If you can't hold the
10 cup because the coffee is so hot -- if you can
11 feel the coffee through the cup and the
12 temperature of the coffee, what would make you
13 think that putting it in your crotch and then
14 trying to drive with it is going to be a good
15 idea? Common sense.

16 MR. ROBERTS: So you have some of the
17 facts, yes. Thank you, ma'am.

18 What about you, Ms. Phillips?

19 PROSPECTIVE JUROR NO. 11-1035: In total
20 agreeance [sic] with that; common sense is not so
21 common.

22 MR. ROBERTS: Okay. So where do you
23 come down? How does that translate to whether or
24 not you agree with finding McDonald's liable for
25 not warning about how hot their coffee was?

1 PROSPECTIVE JUROR NO. 11-1035: Like
2 everybody has been saying, if you order hot
3 coffee, you're going to get hot coffee. If you
4 order hot coffee and get iced coffee, then lack of
5 common sense is there.

6 MR. ROBERTS: Thank you.

7 Ms. Reeves, did you have anything to
8 share with me? No?

9 Before I move on to my next subject, I'm
10 going to give you a heads-up, something to think
11 about.

12 One of the questions I like to ask --
13 because it tells you a little bit about someone's
14 personality and who they are as a person -- is who
15 their most admired public figure is, living or
16 dead. And it's got to be a public figure, not
17 your mom or your grandfather or someone in your
18 life, but who do you admire most who's a public
19 figure, living or dead, and why?

20 I'm going to come back to this toward
21 the end of my voir dire, but I wanted you to start
22 thinking about it because sometimes that's a
23 really hard question to ask just like that because
24 there are so many different reasons why we would
25 admire people and what they've done and what

005196

1 they've stood for in their lives.

2 So one word that stuck out to me when
3 Mr. Christiansen was talking to you is he said
4 their allegation is that MCI was guilty of acting
5 despicably, of despicable conduct. Did everyone
6 hear that? Yes?

7 We haven't heard any evidence yet, but
8 has anyone been thinking about MCI must have done
9 something really bad for Mr. Christiansen to say
10 that?

11 Okay. Good. Still open to the
12 evidence.

13 And even though that's a word that's not
14 used very often -- we all have ideas in our
15 head -- but despicable is actually going to be
16 defined to you by the Court in the context of
17 punitive damages. So everyone is willing to pay
18 attention and read that instruction carefully?

19 Here's a quote for you. See if anyone
20 can identify this.

21 "The real difficulty is with the vast
22 wealth and power in the hands of the few and the
23 unscrupulous who represent or control capital.
24 This is a government of the people, by the people,
25 and for the people no longer; it is a government

1 of corporations, by corporations, and for
2 corporations."

3 Anyone ever heard that quote? No?

4 Do you think you have, Ms. Wooters,
5 Badge No. 11-1255?

6 PROSPECTIVE JUROR NO. 11-1255: Yes, I
7 think I have. I can't tell you who said it, but I
8 think I've heard it.

9 MR. ROBERTS: It was Rutherford B. Hayes
10 in the 1890s, over 100 years ago.

11 PROSPECTIVE JUROR NO. 11-1255: I didn't
12 say I heard it from his lips.

13 MR. ROBERTS: I understood that. Do you
14 agree with that?

15 And this is called forced choice. If
16 you had to say yes or no, which would you say?

17 PROSPECTIVE JUROR NO. 11-1255: I lean
18 towards yes.

19 MR. ROBERTS: Towards yes? You think
20 things are worse than they were 100 years ago when
21 Rutherford B. Hayes said that or better when it
22 comes to the corporate power?

23 PROSPECTIVE JUROR NO. 11-1255: I
24 honestly can't answer that because I'm not aware
25 of what the corporate power was at that time. And

005198

005198

1 I'm sure, you know, with technology and things
2 advancing, it may seem more so today than then,
3 but it might be equivalent. I don't know.

4 MR. ROBERTS: Today, do you think the
5 government should police large corporations
6 somewhat more or much more than it does? Yes or
7 no?

8 PROSPECTIVE JUROR NO. 11-1255: Somewhat
9 more.

10 MR. ROBERTS: Somewhat more.

11 And we talked about responsibility. Do
12 you think that corporations should be held to
13 higher standards than individuals somewhat more or
14 much more or no?

15 PROSPECTIVE JUROR NO. 11-1255: No.

16 MR. ROBERTS: To what extent does the
17 government favor large corporations over ordinary
18 Americans? Mostly, very much, or no?

19 PROSPECTIVE JUROR NO. 11-1255: Depends
20 on which government at which time of history. I
21 would say right now much more. Previously, not
22 more.

23 MR. ROBERTS: For about a year now?

24 PROSPECTIVE JUROR NO. 11-1255: Yes,
25 about a year, 14 months.

1 MR. ROBERTS: But more than a year ago,
2 you would say just somewhat more?

3 PROSPECTIVE JUROR NO. 11-1255: Correct.

4 MR. ROBERTS: Okay. How often do you
5 think, just in general, a corporation would lie if
6 that would benefit it financially? Often or
7 almost always or no, you disagree with that?

8 PROSPECTIVE JUROR NO. 11-1255: I won't
9 say no, I disagree with that, but I don't think
10 often.

11 MR. ROBERTS: Sometimes but not often?

12 PROSPECTIVE JUROR NO. 11-1255: I think
13 there are some unscrupulous individuals from time
14 to time that would do that, but not as a whole,
15 generally speaking.

16 MR. ROBERTS: Okay. How much
17 environmental harm do you believe is caused by
18 large corporations? Some or a lot or neither one
19 of those?

20 PROSPECTIVE JUROR NO. 11-1255: Depends
21 on the corporation, so I would have to go with
22 some.

23 MR. ROBERTS: Thank you. So if everyone
24 was listening to some of those questions about
25 their feelings about corporations, how they're

1 treated in the United States, how much damage they
2 do, how honest they are, what I'd like to know is
3 I'd like to raise your hand if you would have said
4 often or almost always to those questions.

5 Okay. Could you pass the microphone
6 back to Ms. Hall.

7 PROSPECTIVE JUROR NO. 11-0902: Sherry
8 Hall, 11-0902.

9 MR. ROBERTS: Which one of those
10 questions stood out the most to you? Which one
11 did you feel most strongly about?

12 PROSPECTIVE JUROR NO. 11-0902: The one
13 that you asked if they lie often. And, yes, I
14 believe that they do.

15 I can go back to Wells Fargo. They lie.
16 And not only do they lie, they sign people's name
17 to documents that they shouldn't have signed their
18 names to.

19 MR. ROBERTS: And that's the situation
20 Ms. Beswick was telling us about a couple days
21 ago; right?

22 PROSPECTIVE JUROR NO. 11-0902: Correct.

23 MR. ROBERTS: Yes. Have you read about
24 the facts of that case before Ms. Beswick
25 discussed it here in the courtroom?

1 PROSPECTIVE JUROR NO. 11-0902: I think
2 everyone heard about that case before she brought
3 it up in the courtroom.

4 MR. ROBERTS: And do you think that
5 conduct by Wells Fargo was typical of the way
6 corporations would act if they could get away with
7 it?

8 PROSPECTIVE JUROR NO. 11-0902: Yes.

9 MR. ROBERTS: Anyone else agree with
10 Ms. Hall on that issue?

11 Okay. Could you pass it up to
12 Ms. Vandevanter.

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

14 There's outright lying, and then there's
15 the manipulating of facts and kind of so it's not
16 necessarily lying but it's not necessarily the
17 most honest practices. And I think that more
18 often than not is what happens.

19 MR. ROBERTS: Okay. Do you think it's
20 more often than not that happens or it almost
21 always happens that large corporations would
22 manipulate the facts or lie if it benefited them
23 financially?

24 PROSPECTIVE JUROR NO. 11-1186: More
25 often than not.

1 MR. ROBERTS: Anyone agree with either
2 Ms. Hall or Ms. Vandevanter, more often than not
3 or almost always?

4 If you could pass it back to Mr. Noshi.

5 PROSPECTIVE JUROR NO. 11-1207: Hani
6 Noshi, 11-1207.

7 Yeah, I believe I share that opinion
8 with her, more often than not.

9 MR. ROBERTS: So you're more with
10 Ms. Vandevanter, more often than not that goes on
11 versus Ms. Hall almost always?

12 PROSPECTIVE JUROR NO. 11-1207: Yeah.

13 MR. ROBERTS: Thank you, sir.

14 Ms. Beswick, I'm going to call on you.
15 I didn't see your hand, but you're the one who
16 originally shared this story with the jury.

17 PROSPECTIVE JUROR 11-1268: Not only
18 with Wells Fargo -- sorry. Badge Number 11-1268.

19 All my career, I've always worked for a
20 corporation. And some of those companies that I
21 worked for, I'm part of disseminating the
22 information to the general public.

23 So I think that we have, like, certain
24 guidelines that we need to follow. And because we
25 feel like, as a corporation, you're not only

005203

1 thinking about the product that you sell, but it's
2 more of the brand image. You spend a lot of money
3 to build your brand. So you need to make sure
4 that you cover all your, like -- sorry -- you
5 cover everything to make sure that you don't
6 tarnish for anything scandalous as what happened
7 to Wells Fargo.

8 So I feel like -- because I was the one
9 in charge of advertising before for Mercedes Benz,
10 for Honda, and we make sure that we also follow
11 our corporate responsibility because we spend a
12 lot of money in advertising. And we just don't
13 want any scandal to just erase everything that we
14 have done good, if that makes sense.

15 MR. ROBERTS: It does. So what you're
16 saying is that, while corporations might tend to
17 lie if they could get away with it, that's
18 counterbalanced because, if they're caught in that
19 conduct, it's going to hurt their brand image? Is
20 that what you're saying?

21 PROSPECTIVE JUROR NO. 11-1268: Yes. So
22 I think they're very cautious in a way that we're
23 not only thinking about, like, oh, we just need to
24 sell. We need to make sure that we're going to be
25 here for the longest run. Like, Wells Fargo has

1 been around for all the years, and we have done a
2 lot for the community as well. That really hurt
3 me because, in a way -- I wasn't part of that, but
4 it hurt me, but I think it was necessary.

5 MR. ROBERTS: And you told us a little
6 bit about it. And that was Wells Fargo would open
7 accounts and charge people money --

8 PROSPECTIVE JUROR 11-1268: This was in
9 California -- yes.

10 MR. ROBERTS: -- and fees without even
11 telling them; right?

12 PROSPECTIVE JUROR 11-1268: What
13 happened is that, when you opened an account,
14 there's monthly service fees. And then if you
15 don't -- people just opening accounts and then you
16 get charged a fee even though you did not really
17 open the account. So yes.

18 MR. ROBERTS: Do you think that that
19 conduct, like Wells Fargo did, bad -- that's awful
20 bad conduct. Do you think that happens seldom,
21 often, or almost always among other corporations
22 in America?

23 THE WITNESS: Seldom, I guess. You need
24 to have -- if you want to be in the business, you
25 need to follow certain rules. That's how I feel.

1 MR. ROBERTS: Let me ask you a question.
2 I actually had a clarification question on this
3 point for you. I'm going to cheat by looking back
4 at what you said.

5 When you were talking about this, it was
6 your understanding that there was a punitive
7 damage award?

8 PROSPECTIVE JUROR NO. 11-1268: In Wells
9 Fargo?

10 MR. ROBERTS: Yes.

11 PROSPECTIVE JUROR NO. 11-1268: I
12 believe so.

13 MR. ROBERTS: Do you have an
14 understanding whether it's from a jury or from a
15 regulatory agency that you were talking about?

16 PROSPECTIVE JUROR NO. 11-1268: I think
17 it was Wells Fargo that -- I'm not just clear, but
18 I know that we also did our own investigation.
19 And I think it was imposed, but I believe --
20 because I remember during that -- when that thing
21 happened, we do have all the men in black, because
22 they just came into our branch and asked us
23 questions because they're investigating the
24 higher-ups as well. And during that process, a
25 lot of people, especially the main bosses, were

005206

1 asked to resign.

2 So it was more of, like, an internal
3 process because we want to make sure that -- we
4 want to correct what was wrong.

5 MR. ROBERTS: Here's my question. You
6 were talking about they got hit with a big penalty
7 or a punitive damage sum. And what you said was
8 that you thought it was necessary but not to that
9 extent.

10 What did you mean when you said "but not
11 to that extent"?

12 PROSPECTIVE JUROR NO. 11-1268: I'm a
13 rational person. I just always wanted to know
14 what's the max. So I think, if I remembered it
15 right, I did put, like, there should be a cap. I
16 think that's what I wrote. Because I need to
17 know, like, where do you come up with that certain
18 amount?

19 But I don't really know whether Wells
20 Fargo paid punitive money because it was imposed
21 to them or possibly it was my company that
22 decided, You know what? We found out we did
23 something wrong. We need to correct it, and
24 that's how we can correct it.

25 MR. ROBERTS: And you don't really know,

1 so you weren't referring to any specific --

2 PROSPECTIVE JUROR 11-1268: Correct,
3 yes.

4 MR. ROBERTS: -- situation.

5 Could you pass the mic back to
6 Mr. Javier.

7 Did I pronounce that correctly?

8 PROSPECTIVE JUROR 11-0844: Yes.

9 MR. ROBERTS: Mr. Javier, where do you
10 come down on these questions? Do you feel like
11 this bad conduct on the part of corporations
12 happens often or all the time?

13 PROSPECTIVE JUROR NO. 11-0844: Badge
14 Number 11-0844.

15 I would say somewhat.

16 MR. ROBERTS: Somewhat? So seldom, not
17 more often than not?

18 PROSPECTIVE JUROR NO. 11-0844: Yeah,
19 somewhat. Yeah.

20 THE COURT: I'm sorry. You need to
21 speak up.

22 PROSPECTIVE JUROR 11-0844: I'm sorry.
23 Yeah, just somewhat.

24 MR. ROBERTS: What about you,
25 Mr. Domingo? Badge Number 11-0853.

005208

1 PROSPECTIVE JUROR NO. 11-0853: Correct.
2 Without knowing much about specific cases, it
3 seems like, when companies get hit with a big --
4 when they have to pay out damages in an extreme
5 amount like that, it seems like, especially from
6 an outsider's perspective, that they deserved it,
7 at least to me.

8 MR. ROBERTS: And do you think that bad
9 conduct happens often, all the time, or seldom?

10 PROSPECTIVE JUROR NO. 11-0853: Seldom,
11 but -- yeah, seldom. It's not usually -- I was
12 thinking about the Wells Fargo thing as they were
13 talking about it. I don't think it's usually as
14 obvious. It's usually more sly conduct. It's not
15 something on the customer end that they could
16 necessarily see. But yeah.

17 MR. ROBERTS: Thank you. Could you pass
18 the microphone down to Ms. Peligro.

19 PROSPECTIVE JUROR NO. 11-0830: 11-0830.

20 MR. ROBERTS: I only know a little
21 Spanish. Does your name mean danger?

22 PROSPECTIVE JUROR NO. 11-0830: Yes.

23 MR. ROBERTS: How do you feel about my
24 question? Which side do you come down on?

25 PROSPECTIVE JUROR NO. 11-0830: Can you

005209

1 repeat the question?

2 MR. ROBERTS: Yes. Do you think bad
3 conduct, the way I was discussing with the
4 specifics with Ms. Wooters, corporations who lie
5 for financial benefit, corporations who pollute
6 the environment, corporations getting special
7 treatment from the government, do you think that
8 happens all the time, often, or seldom?

9 PROSPECTIVE JUROR NO. 11-0830: It
10 probably happens often. Since they have a lot of
11 money, they probably have power.

12 MR. ROBERTS: You think corporations in
13 general have too much power?

14 PROSPECTIVE JUROR NO. 11-0830:
15 Probably.

16 MR. ROBERTS: Probably.

17 Could you pass the mic to Mr. Toston.

18 Mr. Toston, where do you come down on
19 this question?

20 PROSPECTIVE JUROR NO. 11-0802: Badge
21 Number 11-0802, John Toston.

22 I think it happens seldom. I don't
23 think that it's something that happens on a
24 regular basis because, if they get caught, they
25 wouldn't survive. Can't keep doing bad things and

1 keep your company profitable.

2 MR. ROBERTS: So it sounds like you
3 agree with what Ms. Beswick said about that?

4 PROSPECTIVE JUROR NO. 11-0802: Yes.

5 MR. ROBERTS: Could you pass it to
6 Mr. Lennon.

7 How about you, sir?

8 PROSPECTIVE JUROR NO. 11-0798: Badge
9 Number 11-0798.

10 I think more seldom than not. I mean, I
11 believe some companies will kind of bend the truth
12 a little bit, but not so obvious. But, yeah, I
13 think it's seldom.

14 MR. ROBERTS: Thank you, sir.

15 Anyone else feel strongly about that
16 that I may have missed? Anyone think that this
17 bad conduct and favoritism happens all the time?
18 No?

19 I want to ask you about a different
20 subject, something that's pretty controversial. I
21 want to get your feelings about national
22 healthcare, either the program that people refer
23 to as Obamacare, give President Obama credit for
24 it, or even like a system where Canada or England
25 might have where all healthcare is free.

1 Who here strongly supports a national
2 healthcare program that would spread the cost of
3 medical care across all society?

4 Okay. As long as the mic is back there,
5 could we have Mr. Dail.

6 Tell me why you would support national
7 healthcare, sir.

8 PROSPECTIVE JUROR NO. 11-0834: I think
9 the healthcare industry has just gotten out of
10 control. The cost of healthcare and the cost of
11 medicine has gone crazy. In my opinion, I think
12 that the drug manufacturers and the doctors are in
13 cahoots to cause all of this.

14 MR. ROBERTS: So would you say that your
15 feelings are more grounded in the fact that
16 someone needs to get control over the system
17 versus, say, everyone has a responsibility to take
18 care of everyone's medical needs generally?

19 PROSPECTIVE JUROR NO. 11-0834: Yes.

20 MR. ROBERTS: So if the system wasn't
21 out of control, you're okay with people being
22 responsible for their own healthcare?

23 PROSPECTIVE JUROR NO. 11-0834: That's
24 correct, yes.

25 MR. ROBERTS: Could you pass it down to

005212

1 Mr. Domingo.

2 Badge number?

3 PROSPECTIVE JUROR NO. 11-0853: 11-0853.

4 MR. ROBERTS: Thank you, sir.

5 You raised your hand. Tell me why
6 you're in favor of a national healthcare program.

7 PROSPECTIVE JUROR NO. 11-0853: I pretty
8 much agree with him, if the system weren't so out
9 of control. I think the hardest thing for most
10 people is to grapple with paying for other people
11 when you're not sick, especially most of us feel
12 like we're not sick most of the time, that the
13 older people and stuff, people that need their
14 healthcare more, it should be more expensive. But

15 I think it can be done. I think there's a better
16 way. And a lot of places do it that way. I think
17 we should hold ourselves to that standard.
18 MR. ROBERTS: So even if the system
19 wasn't totally out of control, it's always going
20 to be expensive, and you would still support a
21 national healthcare program with this?

22 PROSPECTIVE JUROR 11-0853: Right. I
23 wish it -- I mean, it would have been nice if it
24 could have worked this way and not have to change
25 everything that's going to be a difficult process,

005213

1 but it's necessary.

2 MR. ROBERTS: In fact, young, healthy
3 people are bearing an inordinate burden under that
4 system; correct?

5 PROSPECTIVE JUROR NO. 11-0853: Right.

6 MR. ROBERTS: You're okay with that?

7 PROSPECTIVE JUROR NO. 11-0853: Right.
8 I've heard a lot of discussion, even not
9 necessarily younger people, but just regular
10 people that don't feel they're sickly. I mean,
11 that's the hardest thing, feeling like you're
12 paying for people when you're not sick. But, like
13 I said, it's necessary. Eventually, we'll think
14 that these times were backward, that we were --
15 you know, that we were wrong to think this way for
16 so long and it was a no-brainer once we've finally
17 changed over.

18 MR. ROBERTS: Thank you, sir.

19 Who else had their hand up?

20 Could you pass it right straight in
21 front of you. That's a good place to go.

22 Ms. Hannewald.

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

25 Well, I'm almost 62, and I'm really,

1 really healthy. I don't take any prescription
2 medications, so I have a little bit of, like, I
3 don't know why I should have to pay more than a
4 35-year-old smoker. But when I retired, I
5 couldn't get health insurance. For no reason,
6 really, because I have no medical condition. My
7 husband and I were both denied. And I think it
8 was just age-related.

9 So I think that's really wrong. And I
10 think there needs to be healthcare reform.
11 Whether it's free or not? I mean, I would support
12 Medicare for all, but I would also just support a
13 reform to the system. Like, I think not having
14 health insurance is really irresponsible, and if
15 something happened to me, I saved all of my life
16 to be able to retire. So if I didn't have
17 insurance, if I didn't get insurance, if I wasn't
18 allowed to get insurance and something happened,
19 it would surely bankrupt me because it's so
20 expensive.

21 And then you go to the doctor or the
22 hospital and you pay way more than what an
23 insurance company pays for someone who has
24 insurance because they've negotiated prices. It's
25 just -- in my mind, it is outrageous and something

1 needs to be done.

2 I do support Medicare for all, but I
3 would also support just -- I don't care if I have
4 to pay for it, but everybody should be able to get
5 insurance. And this idea of subsidizing other
6 people, that's what insurance is.

7 I don't have any children. I'm
8 subsidizing other people who have five children.
9 I'm subsidizing their income taxes. I'm helping
10 pay for their children because I don't get the
11 same tax breaks you get. We take care of everyone
12 else. We live in a society, and we do take care
13 of members of society.

14 So I feel really strongly about
15 healthcare, if you didn't know.

16 MR. ROBERTS: I can tell. Thank you for
17 sharing so much. I appreciate it.

18 Was there anyone else on Ms. Hannewald's
19 row before I move to the front?

20 If you could pass it up.

21 PROSPECTIVE JUROR NO. 11-1255: 11-1255,
22 Heidi Wooters.

23 This is an issue about which I feel very
24 strongly. My significant other is currently
25 battling illnesses. We finally got him covered

1 under Obamacare, but they're not covering some
2 stuff because now they're allowed to say that it's
3 a preexisting condition. So we're currently --
4 I'm currently putting out -- because he's
5 unemployed due to medical issues, I'm currently
6 putting out hundreds of thousands of dollars from
7 my retirement money to save his life.

8 And this is a man -- everybody says, oh,
9 no, I don't want to pay for somebody else because
10 I'm young and healthy. Well, yeah, that's great,
11 until you're not. And then what you're saying is
12 so you're committing people who, through no fault
13 of their own, cannot pay for their healthcare,
14 you're committing them to death simply because
15 they are in a position where they're unable to
16 fight for themselves. And I think that's just
17 wrong, and there needs to be a revamping of the
18 whole healthcare system.

19 MR. ROBERTS: Thank you.

20 Anyone else on Ms. Wooters' row? In the
21 front.

22 So just to confirm we've got it right,
23 everyone raised their hand who opposes at some
24 level a national healthcare system where everyone
25 subsidizes healthcare costs.

1 You oppose it? Anyone oppose it? No?

2 MR. BARGER: The lawyers are just saying
3 is it possible to take a break? Your Honor, the
4 two oldest lawyers want to take a break.

5 THE COURT: How can I say no to that?
6 Did you have something?

7 PROSPECTIVE JUROR NO. 11-0940: No. I'm
8 agreeing with him.

9 THE COURT: As you are all aware, I'm
10 going to admonish you now.

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

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

1 own.

2 You're not to talk with others, text
3 others, tweet others, message others, google
4 issues, or conduct any other kind of book or
5 computer research with regard to any issue, party,
6 witness, or attorney involved in this case.

7 You are not to form or express any
8 opinion on any subject connected with this trial
9 until the case is finally submitted to you.

10 I'd like you back here in -- we'll give
11 you a 20-minute break, but I'd like you to stay on
12 the same floor and start getting in line in front
13 of the courtroom in 15 minutes.

14 Thank you.

15 THE MARSHAL: All rise for the jury.

16 (The following proceedings were held
17 outside the presence of the jury.)

18 THE COURT: Before we take a break, I
19 just wanted you to know that Mr. Castle, Badge
20 Number 11-1296, who was under the impression that
21 his wife was suffering a heart attack yesterday,
22 his wife did apparently suffer a heart attack.
23 This is the physician letter. And I do believe
24 he's here.

25 MR. KEMP: Your Honor, I think we ought

1 to excuse him under those circumstances.

2 THE COURT: Mr. Roberts?

3 MR. ROBERTS: I'm fine with excusing
4 him, Your Honor.

5 THE COURT: Will you please call --
6 Marshal, is he anywhere around? Or when we
7 resume, let's have him come straight in before the
8 others.

9 THE MARSHAL: Okay.

10 THE COURT: Go off the record.

11 (Whereupon, a recess was taken.)

12 THE COURT: Good afternoon, sir. How
13 are you? Nice to see you.

14 PROSPECTIVE JUROR NO. 11-1296: Ma'am,
15 Your Honor.

16 THE COURT: Please state your name and
17 your badge number for the record.

18 PROSPECTIVE JUROR NO. 11-1296: 11-1296,
19 Alan Castle.

20 THE COURT: Thank you for being here. I
21 understand your wife just suffered a heart attack.

22 PROSPECTIVE JUROR NO. 11-1296: It
23 wasn't a heart attack. I called 911, and the fire
24 department came out and took her to the hospital.
25 And they released her yesterday and said it wasn't

1 a heart attack.

2 THE COURT: She did not have a heart
3 attack?

4 PROSPECTIVE JUROR NO. 11-1296: They
5 weren't sure, but they said, no, didn't appear to.
6 But they stabilized her and sent her home with
7 some kind of medications. So she's at home now
8 resting.

9 THE COURT: Okay. I misunderstood that.
10 It was my understanding that she did suffer a
11 heart attack.

12 PROSPECTIVE JUROR NO. 11-1296: Like I
13 said, I called 911. The fire department came out,
14 and they worked on her for a few minutes before
15 they transported her. And they said that they had
16 stabilized her.

17 THE COURT: How is she doing?

18 PROSPECTIVE JUROR NO. 11-1296: She's
19 doing better. The symptoms went away.

20 THE COURT: Is there anyone caring for
21 her right now?

22 PROSPECTIVE JUROR NO. 11-1296: No. We
23 have a service dog, and I have a home phone. So
24 she's basically -- she's disabled, so she stays at
25 home anyways.

1 THE COURT: Okay.

2 MR. ROBERTS: Mr. Castle, as best as you
3 can, would you say that you are the primary
4 caretaker for someone who needs someone to care
5 for her due to her medical condition? Is it a
6 hardship for you to be here because you need to be
7 home caring for your wife?

8 PROSPECTIVE JUROR NO. 11-1296: No.

9 MR. ROBERTS: Thank you, sir.

10 THE COURT: Thank you. You're excused
11 for the moment.

12 I'm being very honest. It was my
13 understanding she suffered a heart attack.

14 MR. ROBERTS: I understand. I tried to
15 lob up the statute as best I could, and he didn't
16 take it.

17 THE COURT: Anything we need to discuss?

18 MR. KEMP: No, Your Honor.

19 MR. ROBERTS: Back to Mr. Noshi, to
20 refresh the Court's recollection, he said:

21 "I'm definitely, like, I had my kids.
22 My two kids are a similar age. They're a little
23 bit older. But I -- especially with the picture
24 that I've seen, I can definitely -- like, it hit
25 me kind of hard. But I'm always going to try to

005222

1 be fair but also to be honest. Like, right now in
2 my mind I'm still leaning like that because of my
3 sympathy to the kids, that, you know, no matter
4 what, these kids should at least get something,
5 even if the bus is not, you know, necessarily a
6 hundred percent at fault, but at least -- and
7 that's, like, I should get over this. Should I
8 continue? But that's -- to be honest, that's,
9 like, in my mind, you know, I will always be
10 fighting, like, these kids, you know, I don't care
11 what happened. It's an accident, you know. Even
12 if it's not the bus's fault, you know, it's just
13 still some compensation to them. That's what I'm
14 leaning toward."

15 To me, I think, under Nevada case law, I
16 think that's enough that he can't come back from.
17 And I would move to excuse him. If that record is
18 not sufficient for the Court, then I'd ask to
19 bring him in and question him outside the panel.

20 MR. KEMP: Judge, if you remember, when
21 Mr. Christiansen questioned him, he said he could
22 be fair to both parties; that he wouldn't let
23 sympathy affect his verdict; that even though he
24 felt for the kids, that he wouldn't let that feel
25 his verdict; that he could return a defense

005223

1 verdict. He said that to Mr. Christiansen.

2 And then the quotation he just read you,
3 it's a back-of-the-mind thing. He said it's going
4 to be in the back of his mind that the kids should
5 get some sort of compensation.

6 So I don't think he's met any sort of
7 standard, much less met a standard to throw him
8 out. And I just think they just don't like this
9 juror, they don't want to spend one of the
10 peremptories on him, that he shouldn't be
11 disqualified for cause at this point, Your Honor.

12 MR. ROBERTS: Your Honor, the fact that
13 he's inconsistent, giving two different answers,
14 really doesn't make him a valid juror.

15 And, yes, since he says he's leaning
16 toward the kids and even if we're not at fault,
17 he'll want to give them some compensation, then we
18 would like to get rid of him. And I think that's
19 a pretty rational reaction to what he's said on
20 the record under oath.

21 THE COURT: Frankly, his discussing that
22 he would like to give them compensation even if
23 there's no fault is something that is concerning
24 because I don't consider that to be on a level
25 playing field or a fair and impartial juror.

1 And, also, he has -- he has covered both
2 sides. And so, under Jitnan, I think that that's
3 one of the issues that would -- that a challenge
4 for cause would be sufficient.

5 So for those reasons, I am going to
6 excuse him.

7 MR. ROBERTS: So would Mr. Christiansen
8 start with the next juror in the box that's passed
9 for cause before I continue?

10 THE COURT: Yes.

11 MR. ROBERTS: Okay. Thank you, Your
12 Honor.

13 THE COURT: Okay. Madam Clerk, who will
14 be in ...

15 THE CLERK: Elizabeth Mundo, Badge
16 11-1278.

17 THE COURT: 11-1278. Ms. what?

18 THE CLERK: Elizabeth Mundo, M-u-n-d-o.

19 THE COURT: All right. Marshal, will
20 you please ask Mr. Noshi to come in. Thank you.

21 Good afternoon, Mr. Noshi.

22 PROSPECTIVE JUROR NO. 11-1207: Good
23 afternoon.

24 THE COURT: Mr. Noshi, you're badge
25 11-1207; correct?

005225

005225

1 PROSPECTIVE JUROR NO. 11-1207: Yes.

2 THE COURT: Okay. I wanted to thank you
3 very much for your service.

4 PROSPECTIVE JUROR NO. 11-1207: Thank
5 you.

6 THE COURT: And I'm going to excuse you.

7 PROSPECTIVE JUROR NO. 11-1207: Thank
8 you.

9 THE COURT: And I'd like you to report,
10 please, to jury services on the third floor.

11 PROSPECTIVE JUROR NO. 11-1207: Thank
12 you.

13 THE COURT: Okay? Have a great day.

14 PROSPECTIVE JUROR NO. 11-1207: Thank
15 you.

16 THE COURT: Okay. Mr. Christiansen,
17 you're going to start with the next juror;
18 correct?

19 MR. CHRISTIANSEN: Yes, Your Honor.

20 MR. ROBERTS: If we can keep this one in
21 the box, Your Honor, I'm hoping to finish today.
22 And I was wondering if the Court would allow us to
23 exercise our strikes outside the presence of the
24 jury?

25 THE COURT: Sure.

1 MR. KEMP: Well, wait a second, Judge.
2 I'm totally against that, and I told Mr. Roberts
3 that.

4 And the reason I'm totally against that
5 is, first of all, the traditional way is to do it
6 in front of the jury. And the reason it's the
7 traditional way is because there's a possibility
8 for mistakes. Unless we're actually looking at
9 the juror, there is a high probability or
10 possibility of mistakes. And I see it --

11 THE COURT: I see. We'll do it while
12 I'm reading other instructions?

13 MR. KEMP: No. What will happen is
14 there will be a piece of paper. We'll just --

15 THE COURT: I know. I have it right
16 here. I know.

17 MR. KEMP: Right.

18 And what I've suggested to Mr.
19 Roberts -- his concern is that the jury will see
20 him huddling up and discussing them between
21 strikes. What I've suggested is we can sit back
22 here -- excuse the other jurors, and just sit back
23 here -- and distance ourselves.

24 But I've seen so many times where you've
25 tried this -- I can't remember what they call it.

1 There's a special term for it, ghost procedure,
2 blind procedure, blind strike. There's a term in
3 trial practice class for it.

4 I have seen so many times where people
5 have thought that they were striking A and they
6 struck B, and then they come back in. A lot of
7 times, both parties make a mistake and we screw
8 the whole thing up. And so I'm totally against
9 departing from the traditional method.

10 MR. ROBERTS: And perhaps I've been
11 misinformed. I was told this department normally
12 did not have the jurors in the box. I think the
13 idea that, when we're striking jurors by name,
14 someone could accidentally strike the wrong juror
15 by putting the wrong name on the sheet is
16 preposterous.

17 And with the jury in the box, Your
18 Honor, if one of us has a Batson challenge to
19 another strike, we're going to have to send them
20 all out of the room anyway.

21 THE COURT: All right. I do want you to
22 know that I don't believe that they're usually out
23 of the box. What happens is the counsel has the
24 paper and they pass it back and forth. Usually,
25 they're here. They don't even go to the back.

005228

1 They're where you're located.

2 So perhaps bringing in that other
3 element may complicate things more. And if there
4 is a Batson challenge, then we'll have to move
5 forward with it that way.

6 MR. ROBERTS: That's fine, Your Honor.

7 THE COURT: If you would like to sit
8 towards the back --

9 MR. KEMP: I have no problem. I told
10 him --

11 MR. ROBERTS: It doesn't matter to me if
12 we're here or in the back of the room.

13 THE COURT: Yes. Usually, when I'm in
14 trial in this position, they usually -- they're
15 there.

16 MR. ROBERTS: And I understand there's
17 no rule here, Your Honor. And I'm not taking
18 exception to your ruling. That's just my
19 preference.

20 THE COURT: I don't know who told you
21 that. I don't think that's what --

22 MR. ROBERTS: If I can manage to finish
23 before 5:00 o'clock, if I can, say, finish by
24 4:30, would it be possible to have 15 minutes to
25 confer before we exercise our strikes?

1 THE COURT: Yes.

2 MR. KEMP: I'm fine with that, Your
3 Honor.

4 And the only other point, Your Honor, I
5 just want to make -- I think I understand, and I
6 talked to Mr. Christiansen, and I want to make
7 sure everybody understands, we're going to
8 exercise four each on the first 16; right?

9 MR. BARGER: Right.

10 MR. ROBERTS: Correct.

11 MR. KEMP: And if, after I exercise my
12 first one -- or we exercise our first one,
13 technically, Ms. McLain becomes 16, she's still an
14 alternate strike; right? If the alternate moves
15 into the box, you are not considering those a
16 peremptory strike?

17 THE COURT: Okay. One moment. You're
18 first going to --

19 MR. ROBERTS: An alternate cannot move
20 into the box.

21 MR. KEMP: That's all we're trying to
22 make sure -- I just want to make sure we're all --

23 THE COURT: No alternates are moving
24 from Chairs 17 through 28.

25 MR. CHRISTIANSEN: From Ms. McLain to

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1 Ms. Mosqueda, they're alternates, period, end of
2 the story?

3 THE COURT: They're alternates, period.
4 I was very clear at the beginning of the trial.
5 Okay?

6 All right. So, first, you move through
7 your peremptory challenges of the nonalternates of
8 the potential jurors. And then you each have
9 three alternates -- excuse me -- peremptory
10 challenges, that's two each, because you have 16
11 alternates -- excuse me -- six alternates. Okay?

12 So four each for jurors, peremptory
13 challenges. Those, we go through first. And
14 three each for alternate jurors that will remain
15 in the boxes -- in their seats. They're not going
16 to be moving around. Okay?

17 That's how this is going to work.

18 MR. BARGER: So 17 through 28, we each
19 get three strikes?

20 THE COURT: Correct.

21 MR. KEMP: Right. Okay. That's the way
22 I understood it.

23 MR. BARGER: And they'll always be
24 alternates?

25 THE COURT: And they always stay in the

1 same seats. If they're replaced, or anything like
2 that happens, they go to the alternate seats, not
3 anywhere else.

4 MR. BARGER: And I assume -- let's make
5 this hypothetical. Let's say one of the chosen
6 jurors gets the flu and can't be here. So it's
7 the first available alternate that moves into that
8 box?

9 THE COURT: Yes.

10 MR. BARGER: Okay. Thank you.

11 THE COURT: And we'll take them in
12 chronological order. If we lose a second juror in
13 the box -- so it would be number -- 17 is the
14 first alternate. They would move into the jury
15 box. Okay?

16 If we lose another juror, then the next
17 in order, 18, would move into -- so we're going to
18 take it chronologically. Okay?

19 Honestly, I was told she had a heart
20 attack.

21 MR. ROBERTS: Well, I think you did
22 think she had a heart attack, the first sentence.
23 So --

24 MR. BARGER: I still wouldn't type up
25 the transcript and give it to his wife, though.

1 THE COURT: Yes. Good idea.

2 MR. ROBERTS: Who is going to be in Seat
3 12, Your Honor?

4 THE CLERK: Elizabeth Mundo.

5 THE COURT: Badge number?

6 THE CLERK: 11-1278.

7 THE COURT: Ms. Mundo, 11-1278.

8 MR. BARGER: May I be excused for one
9 minute?

10 THE COURT: Yes, you may.

11 (Discussion off the record.)

12 THE MARSHAL: All rise for the jury.

13 All jurors are accounted for, Your
14 Honor.

15 THE COURT: Thank you. Do the
16 parties --

17 MR. KEMP: Yes, Your Honor.

18 MR. ROBERTS: Yes, Your Honor.

19 THE COURT: -- stipulate to the presence
20 of the jury?

21 THE CLERK: Badge 11-1278, Elizabeth
22 Mundo, in Seat 12.

23 THE COURT: Just so you know what we're
24 doing, Mr. Christiansen will start, and then
25 Mr. Roberts will follow with any questions he has.

005233

1 MR. ROBERTS: Did the Court have any
2 questions first?

3 THE COURT: Oh, yes. Thank you. I
4 have. All right. Thank you.

5 Ms. Mundo, there you are. Okay. How
6 long have you lived in the Las Vegas area?

7 Oh, thank you.

8 PROSPECTIVE JUROR NO. 11-1278:

9 Elizabeth Mundo, 11-1278.

10 I've lived -- born and raised here.

11 THE COURT: Okay. Very good.

12 In what area of work -- or what is your
13 profession?

14 PROSPECTIVE JUROR NO. 11-1278: I'm a
15 homemaker.

16 THE COURT: Okay. And have you worked
17 in anything outside of the home before you became
18 a homemaker?

19 PROSPECTIVE JUROR NO. 11-1278: Yes. I
20 was in commercial real estate for 15 years.

21 THE COURT: Okay. And what area of real
22 estate?

23 PROSPECTIVE JUROR NO. 11-1278:

24 Commercial, industrial properties.

25 THE COURT: What were your duties? Were

005234

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1 you selling?

2 PROSPECTIVE JUROR NO. 11-1278: I was
3 selling and leasing towards the end.

4 THE COURT: All right. Did you work in
5 any other area before that?

6 PROSPECTIVE JUROR NO. 11-1278: High
7 school jobs. I started there in high school.

8 THE COURT: Okay. All right. And are
9 you married, or do you have a significant other?

10 PROSPECTIVE JUROR NO. 11-1278: I'm
11 married.

12 THE COURT: Okay. And what does your
13 spouse do?

14 PROSPECTIVE JUROR NO. 11-1278: He is in
15 information technologies, IT. He owns his own
16 company.

17 THE COURT: Okay. How long has he
18 worked in the IT business in general?

19 PROSPECTIVE JUROR NO. 11-1278: Since
20 college.

21 THE COURT: Since college? Okay. And
22 how long has he owned his business?

23 PROSPECTIVE JUROR NO. 11-1278: 17
24 years.

25 THE COURT: And do you have children?

1 PROSPECTIVE JUROR NO. 11-1278: Yes,
2 two.

3 THE COURT: What ages?

4 PROSPECTIVE JUROR NO. 11-1278: 16 and
5 12.

6 THE COURT: Okay. Have you ever served
7 as a juror before?

8 PROSPECTIVE JUROR NO. 11-1278: No.

9 THE COURT: Thank you very much.

10 MR. CHRISTIANSEN: May I proceed, Your
11 Honor?

12 Good morning -- good afternoon,
13 Ms. Mundo. Ms. Mundo, you've been here for days
14 listening to us; right?

15 PROSPECTIVE JUROR NO. 11-1278: Yes.

16 MR. CHRISTIANSEN: And you heard me talk
17 to others, even though you were in the back, about
18 the procedure us lawyers sort of go about trying
19 cases, where if Mr. Roberts doesn't like my
20 question, so he stands up and yells, "Objection,"
21 and the judge decides if it's a good question or
22 not a good question.

23 Are you okay with that procedure?

24 PROSPECTIVE JUROR NO. 11-1278: Yes.

25 MR. CHRISTIANSEN: Anything about my

1 explanation or Mr. Roberts' explanation of the
2 procedure, where sometimes we have those white
3 noise sidebars, sometimes we make you poor folks
4 wait in the hallways while we argue?

5 Anything about that that would cause you
6 an inability to be fair and impartial?

7 PROSPECTIVE JUROR NO. 11-1278: No.

8 MR. CHRISTIANSEN: You heard Mr. Roberts
9 say -- and it's not uncommon for defense to talk
10 about the McDonald's case. You heard that talk
11 about the McDonald's case?

12 PROSPECTIVE JUROR NO. 11-1278: Yes.

13 MR. CHRISTIANSEN: Do you have any
14 feelings about the McDonald's case or do you know
15 anything about the McDonald's case?

16 PROSPECTIVE JUROR NO. 11-1278: Just
17 reading the headlines and not really going into
18 much detail on it.

19 MR. CHRISTIANSEN: All right. So let me
20 circle back to one of the areas you've heard me
21 talk a bunch about.

22 Do you think what you read in the media
23 is a hundred percent accurate?

24 PROSPECTIVE JUROR NO. 11-1278: No.

25 MR. CHRISTIANSEN: Actually, Mr. Domingo

1 behind you gave Mr. Roberts perhaps the best
2 answer I've heard relative to the McDonald's case.
3 And he said he would have liked to have been a
4 juror because then he could tell you was it a good
5 outcome, was it a fair outcome one way or another,
6 because he would have sat in a courtroom and heard
7 the evidence.

8 Does that seem like kind of a -- in
9 light of the last two weeks, does that seem like a
10 pretty rational answer?

11 PROSPECTIVE JUROR NO. 11-1278: Yes.

12 MR. CHRISTIANSEN: Did you know in the
13 McDonald's case that this particular McDonald's in
14 New Mexico had been fined for keeping their coffee
15 too hot?

16 PROSPECTIVE JUROR NO. 11-1278: No, I
17 didn't know that.

18 MR. CHRISTIANSEN: Did you know that
19 they kept it too hot because it stayed -- "fresh"
20 might be the wrong word -- but it stayed good
21 longer and it increased their profits? There was
22 actually a memo they wrote that said, "Keep the
23 coffee hotter. We make more money." I'm
24 summarizing.

25 Did you know that?

1 PROSPECTIVE JUROR NO. 11-1278: No, I
2 didn't know that.

3 MR. CHRISTIANSEN: Did anyone else know
4 that?

5 I've got a couple. Ms. Graf,
6 Ms. Reeves-Adams [sic] did.

7 They actually made more money because,
8 in spite of being fined, they kept their coffee
9 hot, like 12 degrees hotter than what the
10 regulations said you're supposed to keep it.

11 Did you know any of those facts?

12 PROSPECTIVE JUROR NO. 11-1278: No.

13 MR. CHRISTIANSEN: Media didn't report
14 any of that; right?

15 PROSPECTIVE JUROR NO. 11-1278: Right.

16 MR. CHRISTIANSEN: Anybody seen the
17 McDonald's documentary?

18 UNIDENTIFIED SPEAKER: Which one? Super
19 size?

20 MR. CHRISTIANSEN: Not the super size
21 one -- that was a good one, though -- the one on
22 the coffee case.

23 PROSPECTIVE JUROR NO. 11-1278: No.

24 MR. CHRISTIANSEN: Anybody else?

25 MR. ROBERTS: Objection, Your Honor.

005239

005239

1 THE COURT: Sustained.

2 MR. CHRISTIANSEN: All right. Did you
3 know that the lady that was burnt had
4 second-degree burns all over her genitals?

5 PROSPECTIVE JUROR NO. 11-1278: Yes, I
6 did know that.

7 MR. CHRISTIANSEN: Had to have
8 several -- several surgeries to repair, and she
9 was an older woman.

10 PROSPECTIVE JUROR NO. 11-1278: I didn't
11 know that part. Just the burn, the second-degree
12 burn.

13 MR. CHRISTIANSEN: All right. You've
14 heard -- and you can see there's a camera in the
15 courtroom and this case is going to have some
16 media attention.

17 Can you refrain from watching Channel 8
18 or the internet or Google or AP or whoever covers
19 it and, if chosen, base your verdict on what
20 happens in here and not what a headline says?

21 PROSPECTIVE JUROR NO. 11-1278:
22 Absolutely.

23 MR. CHRISTIANSEN: Where did you
24 graduate from high school? You're from here;
25 right?

1 PROSPECTIVE JUROR NO. 11-1278: Basic.

2 MR. CHRISTIANSEN: What year did you
3 graduate?

4 PROSPECTIVE JUROR NO. 11-1278: '88.

5 MR. CHRISTIANSEN: Do you remember my
6 questions to all the folks about the burden in a
7 civil case?

8 PROSPECTIVE JUROR NO. 11-1278: Yes.

9 MR. CHRISTIANSEN: Sorry. You know I'm
10 going to wait for you to answer audibly because
11 this lady is taking everything down.

12 PROSPECTIVE JUROR NO. 11-1278: Yes.

13 MR. CHRISTIANSEN: More likely than not,
14 preponderance of the evidence, 51 percent, I used
15 lots of analogies. Any problem with those?

16 PROSPECTIVE JUROR NO. 11-1278: No.

17 MR. CHRISTIANSEN: Help me understand
18 what you did at Colliers. I understand you did
19 commercial, but were you a real estate agent?
20 Were you in admin at the office?

21 PROSPECTIVE JUROR NO. 11-1278: I went
22 through different positions. I started off at CB
23 Richard Ellis for 11 years. So high school,
24 research, went into property management, then went
25 into marketing for the real estate agents, and

005241

005241

1 then became an agent on my own for selling and
2 leasing warehouses.

3 MR. CHRISTIANSEN: And how long did you
4 become -- did you do the second part of that
5 career? How long were you doing as an agent
6 selling and leasing?

7 PROSPECTIVE JUROR NO. 11-1278: On my
8 very own with no help would be maybe two years,
9 maybe a year and a half, two years. But I was
10 always part of a team and doing the deals as part
11 of a team. So that would probably be four years.

12 MR. CHRISTIANSEN: Okay.

13 PROSPECTIVE JUROR NO. 11-1278: There's
14 a big difference being on your own versus a team.

15 MR. CHRISTIANSEN: Which is better?

16 PROSPECTIVE JUROR NO. 11-1278: I'm a
17 team player, so --

18 MR. CHRISTIANSEN: Okay. So a jury is
19 sort of like a team; right?

20 PROSPECTIVE JUROR NO. 11-1278: Yes.

21 MR. CHRISTIANSEN: The judge has told
22 you all and will again that there will be eight
23 jurors that independently and sort of on your own
24 have to consider the evidence, but then, as a
25 team, have to discuss it with each other.

1 Could you do that?

2 PROSPECTIVE JUROR NO. 11-1278: Yes.

3 MR. CHRISTIANSEN: On your team, were
4 you a leader or a follower or both sometimes?

5 PROSPECTIVE JUROR NO. 11-1278: As part
6 of the team, I had to be a follower.

7 MR. CHRISTIANSEN: Just because I'm not
8 familiar with commercial real estate, who is the
9 leader on a commercial real estate team?

10 PROSPECTIVE JUROR NO. 11-1278: Usually
11 who was the longest agent in the group. And they
12 bring in understudies to learn from them.

13 MR. CHRISTIANSEN: Okay. I noted from
14 my summary of the long questionnaire you completed
15 a month ago that you ride bikes?

16 PROSPECTIVE JUROR NO. 11-1278: Yes, our
17 whole family.

18 MR. CHRISTIANSEN: You've heard
19 different people over the course of days describe
20 different types of bike riding. Tell me what your
21 experience is. What kind of bike do you ride and
22 where do you ride?

23 PROSPECTIVE JUROR NO. 11-1278: Me
24 personally, I ride a mountain bike. And usually
25 it's done on the weekends. And we live in a rural

005243

1 area, so we ride through there. I do.

2 MR. CHRISTIANSEN: What part of town do
3 you reside? Still in, like, the Basic area?

4 PROSPECTIVE JUROR NO. 11-1278: No.

5 MR. CHRISTIANSEN: You got out of there?

6 PROSPECTIVE JUROR NO. 11-1278: I got
7 out of there. I left them behind. Oh, no, just
8 joking. Silverado Ranch area.

9 MR. CHRISTIANSEN: That's south?

10 PROSPECTIVE JUROR NO. 11-1278: South.
11 Yeah, Las Vegas Boulevard area. There's lots of
12 rural horse properties. So when I go out with my
13 family, we ride there. But when they go off by
14 themselves, they ride elsewhere.

15 MR. CHRISTIANSEN: Am I to understand
16 from that answer that maybe others in their family
17 right different types of bikes than yourself?

18 PROSPECTIVE JUROR NO. 11-1278: Yes. My
19 husband does mountain biking, along with my
20 16-year-old. And my 16-year-old also is in
21 triathlons. So when he gets close to a race, he
22 does his road bike.

23 MR. CHRISTIANSEN: Road bikes are -- I
24 call them the new 10-speeds?

25 PROSPECTIVE JUROR NO. 11-1278: Yes.

1 With skinny tires, flat tires.

2 MR. CHRISTIANSEN: For distance that he
3 rides, your triathlete son, on the road?

4 PROSPECTIVE JUROR NO. 11-1278: Yes.

5 MR. CHRISTIANSEN: In your experience,
6 have you had occasion to have cars pass you on
7 your bike or vehicles pass you?

8 PROSPECTIVE JUROR NO. 11-1278: Sure.

9 MR. CHRISTIANSEN: Have you felt any air
10 disturbance when that occurs?

11 PROSPECTIVE JUROR NO. 11-1278: Yes.

12 MR. CHRISTIANSEN: Explain what you
13 felt, if you would.

14 PROSPECTIVE JUROR NO. 11-1278: Just the
15 basic swish of the winds that come by us.

16 MR. CHRISTIANSEN: Depending on the size
17 of the vehicle, does the swish, to use your words,
18 change?

19 THE WITNESS: It could, but I'm in a
20 rural area. We don't ride on the main roads. So
21 it would be of a small vehicle.

22 MR. CHRISTIANSEN: I take from your
23 answer that, even with a small vehicle, you felt
24 air displacement as it passed you in your area of
25 town?

005245

1 PROSPECTIVE JUROR NO. 11-1278: Yes.

2 MR. CHRISTIANSEN: You wrote that you
3 may know a lawyer, so we have to check. There's a
4 lawyer -- she was a law clerk in a firm that I
5 worked at and now she works for Mr. Kim. Madison
6 Levine?

7 PROSPECTIVE JUROR NO. 11-1278: I don't
8 know her. I believe I know the family from
9 working in the commercial real estate. I don't
10 know her. I just -- I don't know if it is her.
11 Being it's a very common name, I know the family.

12 MR. CHRISTIANSEN: Just learned a new
13 fact about Mr. Kemp. Mr. Kemp went to Basic and
14 has brothers and sisters that went to Basic.

15 Do you know Mr. Kemp or any of his
16 family?

17 PROSPECTIVE JUROR NO. 11-1278: I know
18 of the name.

19 MR. CHRISTIANSEN: In that part of
20 southeast Las Vegas, you've heard of the name?

21 PROSPECTIVE JUROR NO. 11-1278: Yes. I
22 think it's a large family.

23 MR. CHRISTIANSEN: I think so too.

24 PROSPECTIVE JUROR NO. 11-1278: Everyone
25 back then knew everybody.

005246

005246

1 MR. CHRISTIANSEN: Sure. The fact that
2 you knew of Mr. Kemp or may know of a lawyer
3 that's worked for both of us -- she's a younger
4 female attorney -- is that going to cause you to
5 be partial one way or another?

6 PROSPECTIVE JUROR NO. 11-1278: No,
7 because I haven't spoken to that family in 20-plus
8 years.

9 MR. CHRISTIANSEN: I started talking to
10 you about the burden and whether you thought you
11 could follow that burden or whether you understood
12 it. I forgot to ask you, could you follow it if
13 instructed and seated as a juror in this case?

14 PROSPECTIVE JUROR NO. 11-1278:
15 Absolutely.

16 MR. CHRISTIANSEN: Would you have that
17 sort of natural gut instinct to think, well, if he
18 wants to get this big -- these lawyers are going
19 to ask for this big award, I better bring my game
20 a little better?

21 PROSPECTIVE JUROR NO. 11-1278: I love
22 that analogy. No.

23 MR. CHRISTIANSEN: And could you follow
24 Her Honor's instructions -- let me ask it to you a
25 different way.

1 You put in your questionnaire that some
2 percentage of lawsuits, you thought, were
3 frivolous. You said, like, 30 or something.

4 PROSPECTIVE JUROR NO. 11-1278: Yeah, it
5 was a very small amount.

6 MR. CHRISTIANSEN: And you answered that
7 you thought there were some awards that were too
8 large.

9 PROSPECTIVE JUROR NO. 11-1278: What I
10 meant by that is, in general, you think that
11 they're large, but you don't know -- I have to see
12 both sides. And I teach my children that as well,
13 that it sounds large, but until you actually see
14 and hear the facts, you can't make that
15 determination.

16 It sounds large. How can it not sound
17 large to anybody? But when you know what the
18 details are, then things come back into
19 perspective. Just like with the coffee.
20 Everybody thought that was ridiculous. I kind of
21 ignored it, because, really, you don't know what
22 each side says, what the details are, what the
23 facts are. So everything I read, I just kind of
24 go, there has to be another side to this.

25 MR. CHRISTIANSEN: And are you willing

1 to listen to the facts in this case and see
2 whether -- what the evidence supports?

3 PROSPECTIVE JUROR NO. 11-1278:

4 Absolutely.

5 MR. CHRISTIANSEN: If the evidence, by a
6 preponderance standard, supported a tens of
7 millions of dollar verdict against MCI, could you
8 return it?

9 PROSPECTIVE JUROR NO. 11-1278: Sure.

10 MR. CHRISTIANSEN: If, by a clear and
11 convincing standard -- and the judge will tell you
12 what that means -- we were able to demonstrate
13 that the defendant should be punished by punitive
14 damages and the evidence supported that, could you
15 consider an award for hundreds of millions of
16 dollars?

17 PROSPECTIVE JUROR NO. 11-1278: I can
18 consider anything that she would give us the
19 guidelines about, absolutely.

20 MR. CHRISTIANSEN: You have two boys?

21 PROSPECTIVE JUROR NO. 11-1278: I have
22 two boys.

23 MR. CHRISTIANSEN: 12 and 16?

24 PROSPECTIVE JUROR NO. 11-1278: Yes.

25 MR. CHRISTIANSEN: Like others before

1 you, I imagine you have some empathy, just
2 generically or generally, for kids.

3 PROSPECTIVE JUROR NO. 11-1278: Sure.
4 Anybody would.

5 MR. CHRISTIANSEN: Can you unequivocally
6 set your sympathy aside and decide this case on
7 the facts?

8 PROSPECTIVE JUROR NO. 11-1278: Yes.

9 MR. CHRISTIANSEN: Nobody wants jurors
10 deciding on bias or prejudice. That whole Lady
11 Justice talk I gave, are you fine with that?

12 PROSPECTIVE JUROR NO. 11-1278:
13 Absolutely.

14 MR. CHRISTIANSEN: Nothing about you
15 having children is going to cause you to lean one
16 way or another in this case?

17 PROSPECTIVE JUROR NO. 11-1278: No.

18 MR. CHRISTIANSEN: You're still going to
19 hold me to my burden?

20 PROSPECTIVE JUROR NO. 11-1278: Yes.

21 MR. CHRISTIANSEN: Sort of a similar
22 area, and that is there are some pictures and
23 likely a video of the aftermath of the bus running
24 over the doctor. Most people say they don't want
25 to look at stuff like that.