

**Case No. 79424**

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DESIRE EVANS-WAIAU,  
individually; GUADALUPE PARRA-  
MENDEZ, individually,

Appellants,

vs.

BABYLYN TATE, individually,

Respondent.

Electronically Filed  
Apr 23 2020 02:26 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

From the Eighth Judicial District Court, Clark County  
The Honorable Mary Kay Holthus, District Judge  
District Court Case No. A-16-736457-C

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**APPELLANTS' APPENDIX  
VOLUME 1  
PAGES 1 – 250**

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DENNIS M. PRINCE  
Nevada Bar No. 5092  
KEVIN T. STRONG  
Nevada Bar No. 12107  
**PRINCE LAW GROUP**  
10801 W. Charleston Boulevard, Suite 560  
Las Vegas, Nevada 89135  
Attorneys for Appellants

## **CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX**

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|    |                                                                                                                                                                             |            |         |                        |
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| 18 | Trial Brief to Strike Defense Medical<br>Expert Witness, Joseph Schifini,<br>M.D.'s Testimony                                                                               | 05/30/2019 | 8       | 1976-1984              |

1

## DISTRICT COURT CIVIL COVER SHEET A- 16 - 736457 - C

County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

XVII

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Desire Evans-Waiiau, Guadalupe Parra-Mendez,

Jorge Parra-Meza, as guardian for Mayra Parra

Jorge Parra-Meza, as guardian for Aaliyah Parra

Jorge Parra-Meza, as guardian for Sienna Parra

Defendant(s) (name/address/phone):

Babylyn Tate

Attorney (name/address/phone):

Paul Powell, Esq. - The Powell Law Firm

6785 W. Russell Road, Suite 210

Las Vegas, Nevada 89118

(702) 728-5500

Attorney (name/address/phone):

N/A

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

| Real Property                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Torts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Landlord/Tenant</b><br><input type="checkbox"/> Unlawful Detainer<br><input type="checkbox"/> Other Landlord/Tenant<br><b>Title to Property</b><br><input type="checkbox"/> Judicial Foreclosure<br><input type="checkbox"/> Other Title to Property<br><b>Other Real Property</b><br><input type="checkbox"/> Condemnation/Eminent Domain<br><input type="checkbox"/> Other Real Property                                                                                                                                                                                                  | <b>Negligence</b><br><input checked="" type="checkbox"/> Auto<br><input type="checkbox"/> Premises Liability<br><input type="checkbox"/> Other Negligence<br><b>Malpractice</b><br><input type="checkbox"/> Medical/Dental<br><input type="checkbox"/> Legal<br><input type="checkbox"/> Accounting<br><input type="checkbox"/> Other Malpractice                                                                                                                                                                                                          |
| <b>Probate</b><br><b>Probate</b> (select case type and estate value)<br><input type="checkbox"/> Summary Administration<br><input type="checkbox"/> General Administration<br><input type="checkbox"/> Special Administration<br><input type="checkbox"/> Set Aside<br><input type="checkbox"/> Trust/Conservatorship<br><input type="checkbox"/> Other Probate<br><b>Estate Value</b><br><input type="checkbox"/> Over \$200,000<br><input type="checkbox"/> Between \$100,000 and \$200,000<br><input type="checkbox"/> Under \$100,000 or Unknown<br><input type="checkbox"/> Under \$2,500 | <b>Construction Defect &amp; Contract</b><br><b>Construction Defect</b><br><input type="checkbox"/> Chapter 40<br><input type="checkbox"/> Other Construction Defect<br><b>Contract Case</b><br><input type="checkbox"/> Uniform Commercial Code<br><input type="checkbox"/> Building and Construction<br><input type="checkbox"/> Insurance Carrier<br><input type="checkbox"/> Commercial Instrument<br><input type="checkbox"/> Collection of Accounts<br><input type="checkbox"/> Employment Contract<br><input type="checkbox"/> Other Contract       |
| <b>Civil Writ</b><br><input type="checkbox"/> Writ of Habeas Corpus<br><input type="checkbox"/> Writ of Mandamus<br><input type="checkbox"/> Writ of Quo Warrant                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Judicial Review/Appeal</b><br><b>Judicial Review</b><br><input type="checkbox"/> Foreclosure Mediation Case<br><input type="checkbox"/> Petition to Seal Records<br><input type="checkbox"/> Mental Competency<br><b>Nevada State Agency Appeal</b><br><input type="checkbox"/> Department of Motor Vehicle<br><input type="checkbox"/> Worker's Compensation<br><input type="checkbox"/> Other Nevada State Agency<br><b>Appeal Other</b><br><input type="checkbox"/> Appeal from Lower Court<br><input type="checkbox"/> Other Judicial Review/Appeal |
| <b>Civil Writ</b><br><input type="checkbox"/> Writ of Prohibition<br><input type="checkbox"/> Other Civil Writ                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>Other Civil Filing</b><br><input type="checkbox"/> Compromise of Minor's Claim<br><input type="checkbox"/> Foreign Judgment<br><input type="checkbox"/> Other Civil Matters                                                                                                                                                                                                                                                                                                                                                                             |

Business Court filings should be filed using the Business Court civil coversheet.

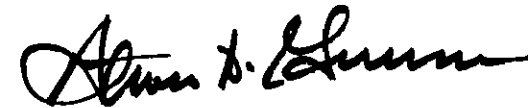
5/10/2016

Date

/s/ Paul Powell

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

**COMP**

Paul D. Powell, Esq.  
Nevada Bar No. 7488  
The Powell Law Firm  
6785 W. Russell Road, Suite 210  
Las Vegas, Nevada 89118  
paul@tplf.com  
Phone: (702) 728-5500  
Facsimile: (702) 728-5501

Attorney for Plaintiffs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ, individually;  
JORGE PARRA-MEZA, as guardian for MAYRA  
PARRA, a minor; JORGE PARRA-MEZA, as  
guardian for AALIYAH PARRA, a minor; and  
JORGE PARRA-MEZA, as guardian for SIENNA  
PARRA, a minor,

Plaintiffs,

vs.

BABYLYN TATE, individually, DOES I-X, and  
ROE CORPORATIONS I-X, inclusive,

Defendants.

CASE NO. A- 16 - 736457 - C  
DEPT. NO. XVI I

**COMPLAINT**

Plaintiffs DESIRE EVANS-WAIAU, GUADALUPE PARRA-MENDEZ and JORGE  
PARRA-MEZA, as guardian of minor children MAYRA PARRA, AALIYAH PARRA and  
SIENNA PARRA, by and through their attorney of record, PAUL D. POWELL, ESQ., of THE  
POWELL LAW FIRM, complain against Defendant as follows:

**GENERAL ALLEGATIONS**

1. Plaintiffs DESIRE EVANS-WAIAU, GUADALUPE PARRA-MENDEZ and  
JORGE PARRA-MEZA, as guardian of minor children MAYRA PARRA,



1 AALIYAH PARRA and SIENNA PARRA, ("Plaintiffs") are, and at all times  
2 mentioned herein, were, residents of the County of Clark, State of Nevada.

3  
4 2. Defendant BABYLYN TATE, m (hereinafter "Defendant") is, and at all times  
5 mentioned herein, was, a resident of the County of Clark, State of Nevada.

6 3. The true names and capacities of the Defendants designated herein as Doe or Roe  
7 Corporations are presently unknown to Plaintiffs at this time, who therefore sues said  
8 Defendants by such fictitious names. When the true names and capacities of these  
9 Defendants are ascertained, Plaintiff will amend this Complaint accordingly.

10  
11 4. At all times mentioned herein, Defendants were agents, servants, employees or joint  
12 venturers of every other Defendant herein, and at all times mentioned herein were  
13 acting within the scope and course of said agency, employment, or joint venture,  
14 with knowledge and permission and consent of all other named Defendants.

15  
16 5. Plaintiff DESIRE EVANS-WAIAU is, and at all times mentioned herein, was, the  
17 owner and operator of 1999 Honda Accord.

18 6. Plaintiffs GUADALUPE PARRA-MENDEZ, MAYRA PARRA, AALIYAH  
19 PARRA and SIENNA PARRA were passengers in the vehicle operated by DESIRE  
20 EVANS-WAIAU.

21  
22 7. On October 30, 2015 in Clark County, Defendant negligently caused a crash with  
23 Plaintiffs.

24 8. As a direct and proximate result of the negligence of Defendant, Plaintiffs sustained  
25 injuries to Plaintiffs' shoulders, back, bodily limbs, organs and systems, all or some  
26 of which conditions may be permanent and disabling, and all to Plaintiffs' damage in  
27 a sum in excess of \$10,000.00.  
28

9. As a direct and proximate result of the negligence of Defendant, Plaintiffs received medical and other treatment for the aforementioned injuries, and that said services, care and treatment are continuing and shall continue in the future, all to the damage of Plaintiffs.

10. As a direct and proximate result of the negligence of Defendants, Plaintiffs have been required to, and have limited occupational recreational activities, which have caused and shall continue to cause Plaintiffs loss of earning capacity, lost wages, physical impairment, mental anguish, and loss of enjoyment of life, in a presently unascertainable amount.

11. As a direct and proximate result of the negligence of Defendant, Plaintiffs' vehicle was damaged and Plaintiffs lost the use of that vehicle.

12. As a direct and proximate result of the aforementioned negligence of all Defendants, Plaintiffs have been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

**FIRST CAUSE OF ACTION**

13. Plaintiffs incorporate paragraphs 1 through 12 of the Complaint as though said paragraphs were fully set forth herein.

14. Defendant owed Plaintiffs a duty of care to operate the Vehicle in a reasonable and safe manner. Defendant breached that duty of care by striking Plaintiffs' vehicle on the roadway. As a direct and proximate result of the negligence of Defendant, Plaintiffs have been damaged in an amount in excess of \$10,000.00.

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16. The acts of Defendant as described herein violated the traffic laws of the State of Nevada and Clark County, constituting negligence per se, and Plaintiffs have been damaged as a direct and proximate result thereof in an amount in excess of \$10,000.00.

1. For general damages sustained by Plaintiffs in an amount in excess of \$10,000.00;
2. For special damages sustained by Plaintiffs in an amount in excess of \$10,000.00;
3. For property damages sustained by Plaintiffs;
4. For reasonable attorney's fees and costs;
5. For interest at the statutory rate; and
6. For such other further relief as the Court deems just and proper.

THE POWELL LAW FIRM

---

Paul D. Powell, Esq.  
Nevada Bar No. 7488  
6785 W. Russell Road, Suite 210  
Las Vegas, NV 89118

2

DISTRICT COURT  
CLARK COUNTY, NEVADA

Electronically Filed  
06/28/2016 10:00:54 AM

Desire Evans-Waiiau; et al.,  
Plaintiff,

CASE NO: A-16-736457-C  
DEPT NO: XVII

CLERK OF THE COURT

VS.

Babylyn Tate,  
Defendant,

AFFIDAVIT OF SERVICE

STATE OF NEVADA

COUNTY OF CLARK

ss.

Gerald R. Fitzsimmons, being duly sworn, states that at all times herein Affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. Affiant is a licensed process server whose license number is stated below. That Affiant received a copy of the Summons & Complaint; on June 22, 2016. That Affiant personally served Babylyn Tate with a copy of the above stated documents on June 24, 2016 at 11:00 AM.

By delivering and leaving a copy with Rodrick Tate - Husband who is a person of suitable age and discretion that lives with the above stated party at 928 Twilight Peak Ave, Henderson, NV 89012-5102.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated June 24, 2016.

Gerald R. Fitzsimmons

Signature of Affiant

State License# #R-003971

Clark County Process Service LLC dba CCPS LV

720 E Charleston Blvd, Suite 135

Las Vegas, NV 89104

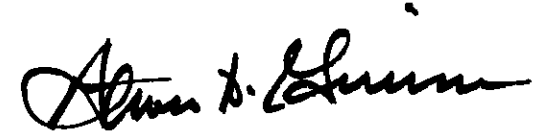
State License# 2031C



Order # CCI1367  
Their File Evans-Waiiau

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CLERK OF THE COURT

ANS  
NICKOLAS AMON, ESQ.  
Nevada Bar No.: 9361  
GEICO STAFF COUNSEL  
901 N. Green Valley Parkway, Suite 190  
Henderson, NV 89074  
Telephone: (702) 233-9303  
Facsimile: (702) 233-9343  
Attorney for Defendant  
BABYLYN TATE

DISTRICT COURT  
CLARK COUNTY, NEVADA

DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ,  
individually; JORGE PARRA-MEZA, as  
guardian for MAYRA PARRA, a minor;  
JORGE PARRA-MEZA, as guardian for  
AALIYAH PARRA, a minor; and JORGE  
PARRA-MEZA, as guardian for SIENNA  
PARRA, a minor,

Plaintiffs,

vs.

BABYLYN TATE, individually, DOES I-X,  
and ROE CORPORATIONS I-X, inclusive,

Defendants.

Case No.: A-16-736457-C  
Dept. No.:

Arbitration No.:

**ANSWER TO COMPLAINT**

Defendant Babylyn Tate, by and through his/her attorney, Nickolas Amon, Esq., of the GEICO Staff Counsel, and for his/her Answer to Plaintiff's Complaint on file herein, admits, denies and alleges as follows:

Defendant denies each and every paragraph contained within the Plaintiff's Complaint on file herein, except for those matters that are expressly addressed hereinafter.

I.

Answering Paragraphs 1, 3, 4, 5, 6, of Plaintiff's Complaint, Defendant is without sufficient knowledge to form a belief as to the truth or falsity of the allegations contained therein and, therefore, denies same.

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II.

Answering Paragraph 2, of Plaintiff's Complaint, Defendant admits the allegations contained therein.

IV.

Answering Paragraph 7, 8, 9, 10, 11, 12, 14, and 16 Plaintiff's Complaint, Defendant denies the allegations contained therein.

V.

Answering Paragraph of Plaintiff's Complaint, Defendant denies the allegations as they relate to him/her; Defendant is without sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained therein and, therefore, denies same.

VI.

Answering Paragraph 13 and 15, Defendant repeats and realleges his/her answers to Prior Paragraphs as though fully set forth herein and incorporates the same herein by reference.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint on file herein fails to state a claim against Defendant upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate his/her damages, if any.

**THIRD AFFIRMATIVE DEFENSE**

The incident alleged in the Complaint and the resulting damage, if any, to the Plaintiff was proximately caused or contributed to by the Plaintiff's own negligence and such negligence was greater than the negligence, which is specifically denied, of this answering Defendant.

**FOURTH AFFIRMATIVE DEFENSE**

The damages, if any, suffered by Plaintiff(s) were caused by new, independent, intervening and superseding causes, and not by this Answering Defendant's alleged



1 negligence or other actionable conduct, the existence of which is specifically denied.

2  
3 **FIFTH AFFIRMATIVE DEFENSE**

4 Defendant alleges that the occurrence referred to in the Complaint, and all  
5 injuries and damages, if any, resulting therefrom, were caused by the acts or  
6 omissions of a third party over whom Defendant had no control.

7  
8 **SIXTH AFFIRMATIVE DEFENSE**

9 Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not  
10 have been alleged insofar as sufficient facts were not available after reasonable inquiry  
11 upon filing of Defendant's Answer and therefore, Defendant reserves the right to amend  
12 this Answer to allege additional affirmative defenses, if subsequent investigation so  
13 warrants.

14  
15 **SEVENTH AFFIRMATIVE DEFENSE**

16 Defendant asserts the defenses of insufficiency of process and insufficiency of  
17 service of process.

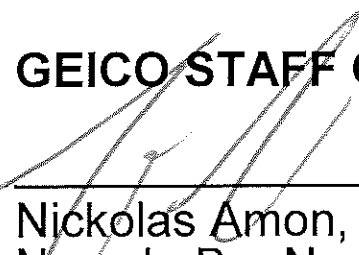
18 WHEREFORE, Defendant Babylyn Tate prays for judgment as follows:

- 19 1. That Plaintiff take nothing by way of his/her Complaint on file herein;  
20 2. For reasonable attorney's fees and costs incurred herein; and

21 For such other and further relief as this Court deems just and proper in the premises.

22 DATED this 8 day of August, 2016

23 **GEICO STAFF COUNSEL**

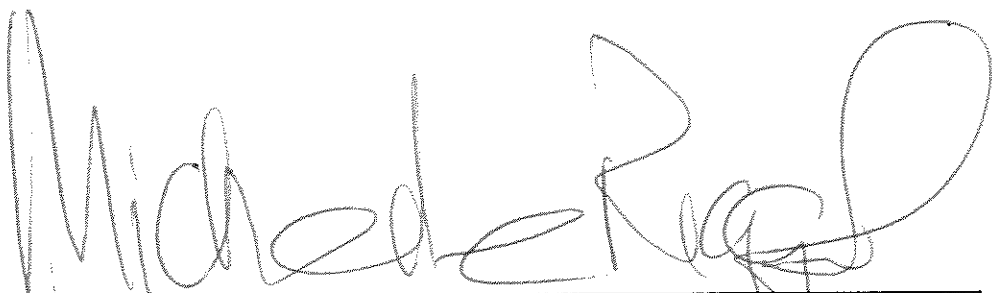
24   
25 Nickolas Amon, Esq.  
26 Nevada Bar No. 9361  
27 901 N. Green Valley Parkway, Suite 190  
28 Henderson, NV 89074  
Telephone: (702) 233-9303  
Facsimile: (702) 233-9343  
Attorneys for Defendant  
Babylyn Tate

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), NEFR 9 and EDCR 8.05, I hereby certify that I submitted the foregoing **ANSWER TO COMPLAINT** to the Clark County Court's Electronic E-Filing System to be served on all parties registered to this case, and by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed as follows

Joseph F. Schmitt, Esq.  
Glen Lerner Injury Attorneys  
4795 South Durango Drive  
Las Vegas, NV 89147

  
EMPLOYEE OF GEICO STAFF COUNSEL  
DATED: 8-8-16

4



1 **RTRAN**

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5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7  
8 **DESIRE EVANS-WAIAU, et al,**  
9 **Plaintiffs,**

**CASE: A-16-736457-C**  
**DEPT. XVII**

10 **vs.**

11 **TATE BABYLYN, et al,**  
12 **Defendants.**

13  
14 **BEFORE THE HONORABLE NANCY BECKER, SENIOR DISTRICT COURT JUDGE**  
15 **WEDNESDAY, OCTOBER 3, 2018**

16 ***RECORDER'S TRANSCRIPT OF HEARING:***  
17 ***ALL PENDING MOTIONS***

18  
19 **APPEARANCES:**

20 **For the Plaintiffs:**

**DENNIS M. PRINCE, ESQ.**  
**JAMES A. TRUMELL, ESQ.**

21  
22 **For the Defendants:**

**THOMAS E. WINNER, ESQ.**

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25 **RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER**

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Las Vegas, Nevada, Wednesday, October 3, 2018

[Hearing begins at 10:10 a.m.]

MR. PRINCE: Good morning, Your Honor.

THE COURT: Good morning. This is --

MR. PRINCE: Dennis Prince and James Trumell for the  
Plaintiff.

MR. TRUMELL: Good morning, Your Honor.

THE COURT: This is the matter of Evans Waiau --

MR. PRINCE: Yes.

THE COURT: -- and Babylyn Tate.

MR. PRINCE: Yes.

THE COURT: Appearances --

MR. WINNER: Tom Winner --

THE COURT: -- for the record.

MR. WINNER: -- for the Defendant.

MR. PRINCE: Yes; Dennis Prince and James Trumell for the  
Plaintiffs.

MR. WINNER: Tom Winner for the Defendant.

THE COURT: And --

MR. PRINCE: And we've had a discussion between ourselves  
that we're -- it's unlikely -- I have two firm trial settings to go in November  
and so we're not -- it's unlikely we're going to be able to go to trial  
anyway so we've talked to Dr. -- to Judge Villani about that previously,  
and so we'd like to continue the hearing and have the evidentiary rulings  
probably made by the trial judge closer in time to the trial date.

1 THE COURT: Well, you may wish to do that, but Judge Villani  
2 didn't. He specifically got a senior judge to decide these.

3 MR. PRINCE: Okay.

4 THE COURT: So, -- now, he can always change his mind.  
5 You know, they're motions in limine.

6 MR. PRINCE: Okay.

7 THE COURT: So my ruling is not you know bound in stone. If  
8 he doesn't like what I rule, then he can change that.

9 MR. PRINCE: Okay.

10 THE COURT: But I have to tell you that's what he  
11 contemplated. Now, maybe that's changed a bit if you're not going  
12 forward on the trial date, but that was the specific discussion that he had  
13 when he asked was --

14 MR. PRINCE: Okay.

15 THE COURT: -- I want a judge who will decide these  
16 motions, --

17 MR. PRINCE: No, no, no, and I certainly know you're likely --

18 THE COURT: -- so.

19 MR. PRINCE: -- very prepared today and I'm certain  
20 [indiscernible] --

21 THE COURT: No, I understand why you might want to have  
22 the trial judge hear it and there is one that he clearly will have to hear  
23 because that's *voir dire*, that's very much up to him.

24 MR. PRINCE: Right.

25 THE COURT: But I'll go ahead and sort of make the rulings

1 and then he can look at the minutes and look and see what I did, and if  
2 he wants to put it back on calendar because he disagrees with it and  
3 wants to hear more argument he can do that.

4 MR. PRINCE: Okay.

5 THE COURT: He could issue a supplemental minute order.  
6 That's entirely up to him. But he apparently contemplated that you might  
7 not want a senior judge hearing it and he was –

8 MR. WINNER: Okay.

9 THE COURT: -- perfectly fine with that, so.

10 MR. PRINCE: Okay. Okay, I don't know if you want to – go  
11 ahead.

12 MR. WINNER: We only have two sub parts and one motion  
13 being argued according to what my office told me.

14 THE COURT: Yeah, the arguments – because Judge Villani  
15 set argument on only a portion of –

16 MR. PRINCE: Right, I thought –

17 THE COURT: -- the –

18 MR. WINNER: Yeah.

19 MR. PRINCE: -- Plaintiff's 13 through 17.

20 THE COURT: Correct, and section C and D I believe of  
21 Defendant's number 1.

22 MR. WINNER: Well, that's news to me. I just knew it was  
23 section C and D of Defendant's number 1 and I didn't know the others  
24 were being argued.

25 MR. PRINCE: Yeah, I thought – okay.

1 THE COURT: Now honestly, some of them are duplicative.

2 MR. PRINCE: Some are duplicative.

3 THE COURT: Right, so – but –

4 MR. PRINCE: So, --

5 THE COURT: -- that's fine. We'll go ahead and -- yeah, it was  
6 13 through 17 --

7 MR. PRINCE: Correct.

8 THE COURT: -- and number 1 C and D is what my notes  
9 reflect.

10 MR. WINNER: Your Honor, I apologize. I was told by a memo  
11 here from my office we're arguing Defendant's C and D of number 1. I  
12 didn't even bring Plaintiff's 13 through 17 and I'm not prepared to argue  
13 those today.

14 THE COURT: Okay. I'll make a decision on number 1 without  
15 argument. I'll tell you tentatively what I think the ruling should be on 13  
16 through 17 but I'll continue those for Judge Villani –

17 MR. WINNER: Okay.

18 MR. PRINCE: Okay.

19 THE COURT: -- since he's the one who set it for argument  
20 because he contemplated having some argument to look at. And then I'll  
21 take care of 2 through 11, although some of 2 through 11 overlaps with  
22 13 through 17, so –

23 MR. PRINCE: Okay.

24 THE COURT: -- I'll sort of work through them.

25 But, do we have page 4 here? That's –



1 UNKNOWN SPEAKER: Yes, Your Honor.

2 THE COURT: And that's Crofton versus Venetian? Let me  
3 take them and get them away quickly because --

4 MR. PRINCE: Okay.

5 THE COURT: And I appreciate you getting together and  
6 talking and stipulating and --

7 MR. WINNER: And I apologize. I really didn't know we were  
8 arguing the other motions. I was told it was just two.

9 THE COURT: That's all right.

10 MR. WINNER: Okay.

11 THE COURT: I'll go ahead and continue those.

12 [Matter trailed at 10:14 a.m.]

13 [Matter recalled at 10:36 a.m.]

14 THE COURT: All right, so gentlemen, the law clerk has  
15 advised that she did double check. She concurs that there may have  
16 been confusion as to what was set for oral argument today. So, we will  
17 continue for oral argument Defendant's motion in limine number 1  
18 section C and D, Plaintiff's motions in limine 13, 14, 15, 16, and 17, and  
19 I'm going to make the ruling today without oral argument, because that's  
20 what Judge Villani intended, on anything else in Defendant's motion  
21 number 1. The remain -- unless there's overlap, you know it's the same  
22 as 13 through -- 2 through 11 in Plaintiff's omnibus motion, Plaintiff's  
23 motion number 12, and Defendant's motions 2, 3, 4, and 5 to the extent  
24 they're not duplicative of 13, 14, 15, 16, or 17.

25 MR. PRINCE: Okay.

1 THE COURT: All right?

2 MR. WINNER: Okay.

3 THE COURT: Okay, so let me grab my notes and if they're  
4 duplicative tell me. I think I caught them all.

5 MR. PRINCE: Are you going to actually rule now or you going  
6 to do it by way of minute order or –

7 THE COURT: No, I'm going to do it right now.

8 MR. PRINCE: Very good. Let me get my [inaudible].

9 THE COURT: And that way Judge Villani will have a record  
10 that he could look at if he decides that he doesn't like how I decided it.

11 So, just some preliminary comments that I had. I did review –  
12 so, my first preliminary comment is you're all experienced professionals  
13 and these are fairly standard motions for you, I know from having  
14 reviewed them in other cases. I realize that everyone wants to get a  
15 judge to give them some idea of how that judge feels about some of  
16 these areas of law that the Nevada Supreme Court believes they have  
17 clarified, but counsel are not necessarily in agreement that they've been  
18 clarified, and therefore a number of these motions in limine are vague  
19 and they don't really deal with a specific piece of evidence to be  
20 admitted or excluded which in point of fact is what a motion in limine is  
21 for, so -- but lots of counsel do that. They file their motions and they file  
22 them arguing for, Judge, admit all of this evidence or admit all of this or  
23 exclude all of this category of evidence. Well, that really isn't a proper  
24 motion in limine. And quite frankly, the Nevada Supreme Court may not  
25 consider it a preservation of the issue on the record because you're not

1 asking for a specific ruling on a specific piece of evidence. And just  
2 stating a very broad category of evidence means that if you sit back at  
3 trial and you do not object, thinking that, oh I already have my motion in  
4 limine granted, the Nevada Supreme Court might not find that to be  
5 properly preserved because you didn't give the trial judge notice that you  
6 thought that the motion in limine was being violated. And that's one of the  
7 reasons why such motions, at least from an appellate perspective, are  
8 not looked upon with favor from an issue preservation point of view.

9 It also doesn't save the need for the trial judge to have  
10 hearings outside when the issue comes up because there's always  
11 going to be a dispute about did we violate the motion in limine or not. So,  
12 that's just a general comment in terms of how I look at motions in limine.

13 I did read, since they're the crux, Dr. Schifini's and Dr. Wang's  
14 reports and the rebuttal reports and the supplemental reports that were  
15 attached to the various motions so that I could get a better feel for what  
16 they actually say in the context of what they say, and those are more  
17 specific where you're asking for certain things out of those reports not to  
18 be used or paraphrased. But other than that, there was a great deal of  
19 generalization, so.

20 All right, so Plaintiff's motion number 1, the sections C and D,  
21 if I remember correctly, dealt with the secondary gain argument and the  
22 issues relating to whether or not treating physicians can testify on issues  
23 such as causation and so forth. I did not notice anything else in C and D  
24 but correct me if I'm wrong.

25 MR. PRINCE: I think that you've correctly summarized C and

1 D of Plaintiff's 1 -- omnibus motion 1 through 11; correct.

2 THE COURT: Right. So, the other sections, one was on the  
3 concept of the differential diagnosis, and that I believe is also a part of --  
4 one of Plaintiff's other motions -- or Defendant's -- actually, its  
5 Defendant's and that would be Defendant's motion -- let's see. I think  
6 that's part of D as well. Is it not in Defendant's motion, number 1?

7 MR. WINNER: Well, yeah, our argument would be a diagnosis  
8 not made [indiscernible] a differential diagnosis, pardon me.

9 THE COURT: The -- hypo -- the whole --

10 MR. WINNER: It shouldn't be allowed.

11 THE COURT: -- hypothetical --

12 MR. WINNER: Yeah.

13 THE COURT: -- and how you use it, so that -- as I read them,  
14 that's something that Judge Villani was -- he didn't want oral argument  
15 on it to the extent that it was in Plaintiff's number 1, but it appears he --  
16 or Defendant's number 1, excuse me, -- but he may have wanted  
17 argument on it because it was part of one of Plaintiff's that he set for  
18 argument so that was a little harder to sort of piece out. So, let me start  
19 then with Defendant's number 1, and I'll do that --

20 MR. PRINCE: What --

21 THE COURT: -- first --

22 MR. PRINCE: Okay.

23 THE COURT: -- just because I think going through that  
24 eliminates and then I can look for the duplicates on Defenses others with  
25 some of Plaintiff's and then look at it from that standpoint.

1 MR. WINNER: All right.

2 MR. PRINCE: So, – just so we're clear, we're going to start  
3 with the Defense 1?

4 THE COURT: Yes.

5 MR. WINNER: Except for C and D.

6 THE COURT: Except for C and D.

7 MR. WINNER: Okay.

8 THE COURT: So, the issue of what can the Defendant  
9 herself, who was employed at the time as a St. Rose charge nurse at the  
10 time of the accident, state in terms of her observations. So, she  
11 obviously can talk about what she observed about the two Defendants  
12 post-accident. And no one disputes that, her own personal observations,  
13 how they walked, how they talked, etcetera. I don't think it's fair and I  
14 will grant – deny in part and grant in part the motion. So, she can testify  
15 as to her opinion that she did not believe that they had sustained any  
16 serious injury or any injury based upon her observations.

17 MR. PRINCE: Any serious injury?

18 THE COURT: Any injury.

19 MR. PRINCE: Any injury just --

20 THE COURT: Because she didn't say serious.

21 MR. PRINCE: Okay. You just said the word serious so I'm  
22 kind of like trying to make --

23 THE COURT: I know. No, no, no, it's okay. I'm -- that's why I  
24 stopped. So, her actual testimony was any injury. I don't think she --  
25 there wasn't a *caveat* in the deposition testimony that it was serious. It

1 was just any injury. She didn't think they were injured. So, she can testify  
2 to that and to her opinion based upon her own observations. And she's  
3 entitled to take her own background into effect. What she cannot testify  
4 to is that she was doing a triage or a medical procedure in that  
5 observation. Number one, I don't think that's what she meant in her  
6 deposition when you read it. And number two, this isn't an emergency  
7 room and she wasn't acting as a triage nurse. So, that word in fact really  
8 isn't her word. So, she can talk about: This is what I observed, you  
9 know, this is my background. I'm a nurse. This is what I observed based  
10 upon what I observed. I didn't think they were injured.

11 And so, it's granted to the extent that she can testify in that  
12 limited basis. It's denied to the extent that you want her to testify to  
13 something above and beyond that, using words like triage or other  
14 medical terminology under the circumstances.

15 MR. PRINCE: With regard to --

16 THE COURT: Yes, Mr. Eglet [sic]?

17 MR. PRINCE: -- that, I understand the Court's ruling and I  
18 guess I wanted to see if we can understand some parameters  
19 concerning it. Obviously, she can testify concerning her observations  
20 which obviously it's consistent with the law. She's now going to be  
21 allowed to give some opinion testimony that -- about an injury and I  
22 guess --

23 THE COURT: About her belief that she didn't believe them to  
24 be injured.

25 MR. PRINCE: Right. I guess I want to be careful about how

1 they can use the word that they weren't injured since there was no  
2 evaluation done at the scene and symptoms can arise after people leave  
3 a scene –

4 THE COURT: Counsel, we're not going to argue.

5 MR. PRINCE: Oh.

6 THE COURT: I did say she could give her opinion, not that  
7 she could say they weren't injured. It's an opinion and it has to be  
8 phrased as such.

9 MR. PRINCE: Right. Or I guess what my concern was they  
10 didn't appear to be injured to her at the time. I mean the – right, that's an  
11 appearance issue, not –

12 THE COURT: She made a statement that she did not believe,  
13 based upon what she observed, that they were injured at the time; okay?

14 MR. PRINCE: Okay.

15 THE COURT: That's her opinion. It's an admissible opinion  
16 and it's not – it is prejudicial. Everything that doesn't go –

17 MR. PRINCE: Oh, right.

18 THE COURT: -- your way is prejudicial –

19 MR. PRINCE: Right.

20 THE COURT: -- but it's not so prejudicial it would override the  
21 probative.

22 MR. PRINCE: Okay.

23 THE COURT: And so, -- but there's a big difference between  
24 that and saying I'm a nurse and they weren't -- you know giving a  
25 medical professional opinion which she cannot do, so -- and which I

1 don't believe they intended to do but I think that's what she wanted to  
2 make sure of and what they wanted to make sure of.

3 MR. PRINCE: Yeah, and I guess the concern is -- I don't know  
4 if you want to have any argument or statements on it or not. I don't know  
5 if you want me just to listen to what you're saying, but that's fine. I  
6 understand. I'll -- I guess we can deal with it as it comes up. My concern  
7 was -- is later how Counsel could argue that position.

8 THE COURT: It's evidence in the case. Counsel is perfectly  
9 free, if the testimony comes in, to argue like any other argument just as  
10 you are, that look, Ms. Tate's a nurse. Ms. Tate's you know seen people  
11 who are injured, seen things occur. She didn't think they were injured.  
12 Take it or leave it. That's it. Can they argue that? Sure, they can. So,  
13 that's -- I understand your concern about it but her background is  
14 something that a lay person can use in creating an opinion. She just  
15 can't -- it has to be clearly opinion, not a fact, so.

16 All right, with regard to the issue of the children's injuries and  
17 the -- how they come into play, so in this you've got the issue of -- the  
18 idea that if the Defense is going to argue that this is a low impact  
19 collision and could not have caused the injuries sustained by the two  
20 Plaintiffs in particular, and the greater of the two presumably is the one  
21 with the greater damages which would be the spinal fusion, so the fact  
22 that the children were not immediately treated can come in and the fact  
23 that they were seen for complaints can come in. It's not going to be  
24 excluded because the argument clearly is going to be people don't get  
25 injured in these kinds of things. And it's a two-edged sword. I mean the



1 kids didn't suffer from a great deal of injury. They went to a chiropractor  
2 and that was about it. But the settlement value of the case, the fact that  
3 the case is settled obviously cannot come in. So, the facts of what  
4 happened to them at the time of the incident and that they sought  
5 treatment subsequently and the actual records of that treatment, should  
6 Plaintiff choose to put them in -- I don't know how far Plaintiff wants to  
7 go, they, I don't believe, can be excluded. But anything else, settlement  
8 value, arguments with regard to the children were injured, will depend  
9 upon, frankly, how Defense does it. So, the more the Defense wants to  
10 argue people don't get injured, well the more you're opening the door for  
11 Plaintiff to argue, well the kids got injured, and that's the concern.

12 MR. WINNER: Well, this is letter C. You said -- do you want  
13 oral argument on this?

14 THE COURT: I did not have this as letter C, so --

15 MR. WINNER: Okay.

16 THE COURT: -- in that case, that's just my comments and  
17 Judge Villani can take them for whatever they're worth.

18 MR. WINNER: Okay.

19 THE COURT: Just interrupt me if I stray here; okay?

20 All right, the subsequent accident is letter --

21 MR. WINNER: D.

22 MR. PRINCE: D.

23 THE COURT: -- C and D. So, okay, so that's all we have for  
24 Defendant's number 1, I believe.

25 Defendant's number 2 is the issue of unfair trial tactics. They

1 want to prohibit Plaintiffs from using an avoiding responsibility argument,  
2 arguing that somehow or another Defendant's conduct presents a threat  
3 to third parties or presented a threat to third parties, the Defendant's  
4 conduct could have damaged other people, and using the word safety  
5 rules or conscience of the community; I don't believe any of those are in  
6 the motions that have been set for argument, so -- correct me if I'm  
7 wrong.

8 MR. PRINCE: True.

9 MR. WINNER: Correct.

10 THE COURT: So, let's talk about the case law developments  
11 in the 'send a message' argument realm. It is an abuse of discretion  
12 decision. So, a judge could say that argument is okay and a judge could  
13 say it's not okay and you could get two completely different rulings  
14 because they're very fact specific in the Court's mind. And when you  
15 look at the cases, whether it's the Gunderson case or it's the  
16 Pizzaro-Ortega case, what you're really looking at is the Court looking at  
17 a record after the fact and then trying to decide based upon that record  
18 whether or not any particular argument was an abuse of discretion. So,  
19 there's no hard fast rule here as each side wants to find because that's  
20 not really true.

21 In general, the send a message to the community argument is  
22 considered to be improper so you shouldn't be using it unless your  
23 argument is dealing with the -- based upon these facts 'send a message  
24 to the Defense that not paying attention and rear ending someone can  
25 cause harm. Well, now you're talking about the case. You're just

1 phrasing it in a 'send the message' context. Well, that clearly is  
2 permitted so its denied to that extent. But its granted that I believe that  
3 the case law is clear in Nevada that in general you may not just make a  
4 'send the message' argument, be the conscience of the community in  
5 general argument without tying it to the facts of the case and why, in this  
6 case, you should render a verdict that will send the message that  
7 whatever arguments you want to make in this case based upon the rules  
8 of the road following too closely, doing – going too fast for the  
9 conditions, whatever, is not appropriate and if you cause injuries as a  
10 result of that then you're required to pay compensation for those injuries.  
11 And so, it's when you just start using the words out of context that you  
12 run into it.

13           So, it's granted to the extent that the law is clear that if you're  
14 going to use those words you have to use them in the context of your  
15 fact-driven argument. And this is what I meant by you can't just file a  
16 general motion saying don't use these words because that's not what  
17 the case law says. The case law says you can't use them in this context.  
18 So, if Plaintiff's making an argument that you think violates the motion in  
19 limine, you better object because if you just rely upon the motion in  
20 limine ruling maybe the Court will find that preserved, maybe they won't.  
21 So, I'm letting you know and they can certainly go anyway they want on  
22 those preservations issues.

23           With regard to the avoiding responsibility argument, it's  
24 granted in part and denied in part. It's granted to the extent that you  
25 cannot argue that we're in trial because they're trying to avoid

1 responsibility. And that is an argument that people frequently make. You  
2 know, they haven't admitted liability. They haven't done this. And the  
3 whole purpose of those arguments is to frankly annoy the jury by making  
4 them think like the only reason we're here is because Defendant doesn't  
5 want to own up to their own responsibility. And I concur that that's not an  
6 appropriate argument and any arguments to that extent would be  
7 excluded.

8           What is an appropriate argument is simply to note that we  
9 believe that she is responsible. She violated statutes. She didn't use due  
10 care. And you need to make a determination that she is responsible, that  
11 she has to pay for the consequences of her action. And to the extent that  
12 you want to argue that, that is, technically she is trying to avoid  
13 responsibility, well, that's again, it's a fact based argument. It's not an  
14 inflammatory argument, so -- but the arguments that I have seen may  
15 not have gotten reversed because the Court may have decided it's not  
16 worth reversing for but that doesn't mean the that the Court endorsed  
17 them either. So, the use of that argument, as I've just said, I'm granting  
18 the motion in limine on that.

19           The use of the term 'safety rules' I'm denying the motion on  
20 that. That's what they are. That's -- they're intended to -- the rules of the  
21 road they're intended to be guidelines in order to hopefully cause safer  
22 driving. That's why we have traffic laws. So, the fact that Plaintiff wants  
23 to say safety rules is fine.

24           With regard to the argument about conscience of the  
25 community, I've already said you can't argue that the jury is the

1 conscience of the community. You can argue that safety laws should be  
2 upheld and that you know – but using the term conscience of  
3 community, again, it's never proper to use it. Many times the Court has  
4 not reserved – reversed on it either in a criminal case or in a civil case  
5 because they don't find it to be so egregious to warrant reversal, or the  
6 term was so tied to a fact-based argument that the Court really felt that  
7 the argument wasn't designed to use key words to inflame the jury. It  
8 was designed instead just it came out in a very intense fact argument  
9 based and therefore they didn't even find that it was a conscience of the  
10 community argument.

11           So, now we have the other two areas which is essentially this  
12 idea that the conduct threatened or could have harmed numerous  
13 people and that's why we have rules of the road and that's why when  
14 you violate them there are consequences to your violating because in  
15 this instance it didn't harm other people. But you know there are times  
16 when you might harm people who are not involved in the car. You might  
17 harm passengers. You might do other things. So, I'm going to deny the  
18 motion to exclude just the general argument that when you violate the  
19 rules of the road you're endangering people on the roadway in general.  
20 But, I'm granting it to the extent that you cannot make an argument that  
21 suggests that other people were threatened or harmed with – just by the  
22 conduct of the Defendant in this case unless you have facts to show  
23 that. So, that should be all of number 2.

24           Defendant's number 3, which is a motion to exclude  
25 information regarding certain damages; this is – deals with the treatment

1 of – on medical liens, per diem damage calculations, the timeliness of  
2 medical specials, and whether or not they would be excluded if they  
3 were not disclosed in a timely fashion, and then excluding in general  
4 speculative damages. Now, if I'm remembering correctly and if I go back,  
5 some of this overlaps into the oral argument group, so – all right, so –

6 MR. PRINCE: I think it relates to 17 --

7 THE COURT: I think it does but I'm just --

8 MR. PRINCE: -- Plaintiff's 17 for the record --

9 THE COURT: -- double checking.

10 MR. PRINCE: -- regarding liens.

11 THE COURT: All right, so Plaintiff's number 17 is also the  
12 medical liens issue but I don't believe that it incorporates any of the  
13 other items on Defendant's motion in limine number 3. So, part --  
14 number 1 in motion in limine number 3 dealing with treatment on medical  
15 liens is deferred and will be heard at the same time as Plaintiff's motion  
16 in limine number 17 because they all involve the same topic.

17 On the rest of the motion in limine number 3, I realize that  
18 there are jurisdictions that prohibit per diem damage arguments. Nevada  
19 is not one of them, nor do I believe if the Court ever were to rule on it  
20 that the Nevada Supreme Court or the Court of Appeals would find that  
21 not to be a valid argument and [indiscernible] prohibit it. So, that -- the  
22 motion to exclude the per diem argument is denied.

23 With regard to the continued medical specials, it is true that as  
24 long as you comply with 16.1 supplemental discovery, you can add  
25 medical specials up to really 30 days before trial and as long as the

1 documents have been timely produced. You can't just hide them and  
2 then suddenly pop them in when you've had them for months. But what  
3 I'm not being asked is to exclude any particular medical specials. I'm  
4 being asked to limit them to the disclosures as of May 4<sup>th</sup>, 2018. Well, if  
5 they've been in the disclosures at that time the Defense represents were  
6 for Ms. – excuse me, for Guadalupe, that for her were somewhere  
7 \$13,000.00 plus and for Ms. Tate was 1.2 million plus, the problem is  
8 that obviously if you haven't disclosed any other medical specials after  
9 that, then, yes, you couldn't admit them. But since I don't know what  
10 might be disclosed in the future I'm not going to rule that you're limited to  
11 that because that would be inappropriate.

12           So, the issue is that if there are no other disclosures after that,  
13 well, then yes, you would be limited to that. But what will happen then is  
14 if you haven't – if you don't believe that the disclosures have been made,  
15 then you'd have to still object because the motion – I can't rule on a  
16 motion in limine. I don't know what's going to happen in the future. All I  
17 can say is the rules clearly do indicate that you do have to disclose them  
18 in a timely fashion. There's some argument that you have up to 30 days  
19 before trial if you have continuing treatment and if treatment has  
20 occurred but you have to present that continuing medical as it comes up.  
21 You can't just sit on it all and then wait till 30 days before trial and say,  
22 oh, look, here's another million dollars' worth of damages. That might be  
23 untimely.

24           So, I don't think the motion is capable of being granted, and so  
25 I'm not going to limit the medical specials to the May 4<sup>th</sup>, 2018, except

1 that if there have been no disclosures thereafter it would be limited. But I  
2 won't know that. Judge Villani wouldn't know that until you try and admit  
3 them at trial. And if the trial is going to be continued, clearly there may  
4 be continuing treatment.

5 With regard to the speculative damages, I'm denying that  
6 because it's just too vague. And so, if you think that a particular exhibit is  
7 too speculative in nature or they're making an argument that for which  
8 there is no evidence your proper remedy is object at that time. I cannot  
9 make a general ruling that says no speculative damages. That's clearly  
10 the law. You have to have a factual basis for your damages but – so to  
11 that extent the motion to exclude is denied.

12 Defendant's motion in limine number 4; this all deals with jury  
13 *voir dire* and I'm going to pass that for Judge Villani because each judge  
14 has their own *voir dire* techniques and how they want to do it. And so, I  
15 don't think it's appropriate for me to be doing it based on how I would try  
16 a case. He can decide how he wants *voir dire* to go. Some judges don't  
17 allow a lot of psychological [indiscernible] case questions. Some judges  
18 let it go on for days. So, that just is something he'll have to make a  
19 decision on. It's really not a motion in limine subject either. We're not  
20 asking to exclude. We're trying to decide *voir dire*. But I understand why  
21 most people put it under motion in limine because they don't know what  
22 else to call it. So, that's usually how it comes in.

23 All right motion number 5 has to do with expert testimony and  
24 this does lap over because its – some parts of it at least. Number one is  
25 about, again, the whole issue of treating physicians and what they can



1 testify to and whether – and what’s meant by opinions formed in the  
2 ordinary treatment, so that part of the motion is deferred with -- and I  
3 believe it would be Plaintiff’s – part of C and D I think of – as well, but let  
4 me double check my notes on the other motions.

5 [Pause in proceedings]

6 All right, it’s not directly on point with any of Plaintiff’s other  
7 motions. The case law, and correct me if I’m wrong but I don’t think it is  
8 of the ones that were set for argument, so that one I will go ahead and  
9 decide. So, I agree that the rules have been changed but not in the  
10 same way that Plaintiff has argued. It’s not quite as clear cut as that. It’s  
11 clear that any opinion that a treating physician wishes to give at trial  
12 should be based on the treatment. I would disagree with Plaintiff and I’ll  
13 grant the motion in part and deny in part. I’ll grant it that – to the extent  
14 that a treating physician has now reviewed documents and wants to act  
15 as a rebuttal witness or done things outside of the scope of treatment,  
16 then, no, they can’t do that. That’s when they are coming not from being  
17 a treating physician but into a non-retained expert under the rules and  
18 there should have been a report. And so, if there’s no report, they can’t  
19 do that.

20 Now, some of the treating physicians in this case were  
21 retained as well, so obviously they’ve given reports. But the rule is  
22 designed and was designed, and it was the intent of the federal drafters  
23 and then of the court, I believe, in how it adopts and looks at the federal  
24 rules, that the whole point of not having treating physicians have to  
25 prepare separate reports is because their reports are their treatment

1 notes. And it doesn't matter as long as it's a contemporaneous treatment  
2 note. If the treatment note says I think this relates to the motor vehicle  
3 accident, it's still their opinion rendered in the course of treatment. It's  
4 contemporaneous with the treatment. That's a bit different than saying  
5 after treatment is concluded, based upon reviewing other reports that I  
6 never had and never reviewed during the time of my treatment, this is  
7 my opinion. The representation is that the reports that they had were all  
8 the same reports. In other words, they got the reports from -- if you were  
9 the pain management specialist you also were looking at the reports of  
10 the other specialists, either orthopedic or neuro surgeons. And the  
11 records will certainly reflect whether or not they got those reports and  
12 they saw them and if that's a part of their opinion as shown in the reports  
13 at the time or it could be reasonably inferred from the reports at the time.  
14 They can testify to them. They just can't be looking at reports generated  
15 after treatment and then forming opinions in part based upon that or  
16 acting as a rebuttal witness, so. So, it's granted in part and denied in  
17 part.

18 With regard to -- and you'll forgive because I've never heard  
19 his name pronounced, Dr. is it Kevikin [phonetic]?

20 MR. PRINCE: Khavkin.

21 THE COURT: Khavkin.

22 MR. PRINCE: Khavkin.

23 THE COURT: Dr. Khavkin is not cumulative. That's denied  
24 and will not be excluded as being cumulative. There is an issue that is  
25 going to be presumably litigated about whether or not the July 16

1 accident, -- the fusion occurred afterwards but Dr. Khavkin  
2 recommended doing actually 2 fusions prior to it. So, to -- it isn't  
3 cumulative when the argument is going to be that the fusion wasn't  
4 required or at least the suggestion that the fusion was really required by  
5 the 2016 accident rather than the 2015 accident, so the -- that will not be  
6 excluded.

7 And then the hypothetical questions I think is duplicative.  
8 That's the diagnostic -- differential diagnostic issue that we've already  
9 said is included in the matters that he wanted argued.

10 MR. PRINCE: Okay.

11 THE COURT: And I don't believe there was anything else in  
12 Defendant's number 5.

13 MR. WINNER: Okay.

14 MR. PRINCE: Okay.

15 THE COURT: Okay, so now let's get to 1 through 11.

16 MR. PRINCE: I'm sorry, Judge?

17 THE COURT: Plaintiff's 1 through 11 that --

18 MR. PRINCE: Okay, very well.

19 THE COURT: -- is still for me to -- and I have to put my notes  
20 back in order.

21 Okay, so the differential diagnostics it appeared to me that he  
22 might have wanted argument on that. That wasn't clear to me. And so,  
23 personally I think that they can do that and they can use that, the  
24 Defense experts, but I'm going to leave that to him because it wasn't  
25 clear to me whether he wanted argument on it or not. I -- part of it looked

1 like he didn't want argument and then part of it looked like he did, so.

2 All right, excluding medical records prior to the motor vehicle  
3 accident; I – to the extent that Plaintiffs want to prohibit Dr. Schifini or  
4 Dr. Wang from making statements that, I didn't – I wanted to look at  
5 these records but I didn't have them. I concur that they shouldn't be  
6 able to say that and I'll grant it in part on that basis because it is  
7 suggesting that somehow or another there were records out there that  
8 they weren't given and I don't think that's the issue. I do think, however,  
9 that Dr. Schifini can state, though not in the precise way that he does it  
10 in his report, simply that – so he – that portion of his report that  
11 discusses, look, just because there aren't any records doesn't mean that  
12 the complaint is valid -- the way that he says it in his report does suggest  
13 that there may be other records out there and I think that's – so, he  
14 shouldn't be testifying as he says in the report. What he can say is,  
15 based upon my experience, the fact that someone may not have gone  
16 for treatment doesn't mean they didn't have symptoms but there's no  
17 evidence of any symptoms in this case. I mean he can just say, I don't  
18 have – I don't think that this accident caused her – a need for a spinal  
19 fusion for all the reasons that he stated and the mere fact that she says  
20 it was asymptomatic doesn't change my opinion. That's different  
21 because he's – that's what he's saying. That he can say. What he can't  
22 say is, well, look, just because I didn't see any records doesn't mean  
23 that it didn't occur or that she didn't have pain. That's a big difference.  
24 So, it's granted in part and denied in part.

25 With regard to the secondary gain evidence and the issue that

1 it's a psychological [phonetic] diagnosis, that's denied. It's – I don't  
2 believe you have to have a psychiatrist and that that's a diagnosis. What  
3 I do believe, however, is that I didn't see anything in Wang's report that  
4 there was a, other than just the brief mention of going to see an attorney  
5 and then being referred to chiropractic, I don't see any statement of, I  
6 believe that the symptoms are feigned or that there's malingering or  
7 secondary gains. So, Dr. Wang, it's granted. Dr. Wang can't make those  
8 statements like he did in his report. Dr. Schifini can certainly testify that  
9 his review of the medical records don't support that symptomology  
10 coming from this accident. But again, the issue of malingering and  
11 secondary gain, there isn't an opinion in there where they're saying,  
12 look, we think she's faking the symptoms, as opposed to, we think the  
13 symptoms were caused by something not related to the motor vehicle  
14 accident. And that's really the issue.

15           So, I will grant it to the extent that they can't be saying  
16 malingering or secondary gain evidence. To the extent that Dr. Schifini  
17 or Dr. Wang want to simply say that the medical records don't support  
18 that she received an acute traumatic spinal injury as a result of this  
19 accident and at most she received a sprained strain, and they want to,  
20 from a time perspective, simply say that there were no complaints at the  
21 time, the complaints didn't come until after she went to see a  
22 chiropractor sometime later; those are facts that they can use for their  
23 opinions. But – so, that's granted to that extent and denied that  
24 somehow this is limited to a psychiatrist or psyche – other people with  
25 mental health or psychological background.

1           Number 4; that is the treating physicians and how they can  
2 testify, so I think that does overlap into the ones that he wanted some  
3 argument on.

4           Number 5 is denied. Whether the Defense says – you know  
5 saying that the Defense' experts tends to indicate that somehow they're  
6 not independent, just as saying they're Plaintiff's experts tends to  
7 suggest that they're not independent treating physicians, so I'm not  
8 going to indicate that you can't use the word independent versus  
9 defense. You can each talk about them any way you want and the jury  
10 can listen to whatever financial interest they may have in their opinions  
11 based upon the question. So, that's denied.

12           Number 6, excluded attorney driven or medical buildup; again,  
13 I can't just say it's denied because it's not really a motion in limine. If you  
14 think the argument is improper, because you're right that you can't just  
15 say this is all just – there's no basis for it, ladies and gentlemen, it's all  
16 attorney driven, it's all being inflated -- what they can argue is that,  
17 ladies and gentlemen, this is the impact. This is our doctors who believe  
18 that this would have only produced a sprain/strain. If she needed a  
19 spinal fusion it was because of pre-existing conditions or from some  
20 other cause, but it's not an acute injury sustained as a result of this  
21 accident and that's not why she has these problems and that it's all  
22 being attributed to this accident in order to build up the damages; that  
23 would be a proper argument. But the medical buildup, the attorney  
24 driven – and the reason I'm not going to grant it is because I'm going to  
25 force you to make the objection so that the judge can rule at the time is

1 this a fact driven argument or is this a attempt to inflame the passion of  
2 the jury argument, and until the argument is made – you know, that's  
3 why I said I – these motions in limine that want to just exclude a whole  
4 category of argument, you know the law clearly says that you cannot  
5 make arguments solely for the basis of inflaming the passion of the jury.  
6 Neither side can. So, you walk a very tight rope when you make an  
7 argument that isn't fact based as to why you think these damages are  
8 over inflated or not supported by the evidence or are driven by the  
9 litigation. And the more you do it then the more you run into that it could  
10 be reversible error and it shouldn't be done. But just to make a general  
11 statement that you can't make any argument to that effect, well, that's  
12 not the law either as long as it's tied to the facts under the  
13 circumstances. Just like the Plaintiff can talk about -- you know not be  
14 the conscience of the community and do jury nullification. But in this  
15 case, you as jurors represent the community and on the facts of this  
16 case the verdict should be X based upon the facts and you represent the  
17 community and your collective decision on the facts; different argument.

18           Number 7, excluding when they contacted and retained  
19 counsel; number one, the fact that they sought an attorney and retained  
20 them is not attorney/client privilege. The question is, well, whether or not  
21 it's relevant and the issue is that you can ask and establish that the  
22 name of a particular treatment provider was based upon an attorney  
23 referral but that's it. It's limited to just that very narrow concept. And  
24 anything else about when they were retained, how often they went to  
25 see their attorney; none of that comes in. And so, it's granted in part and

1 denied in part.

2           Number 8, Plaintiff's number 8, attorney advertising limited to  
3 *voir dire*; that's granted. It's okay to say, you know, have you ever heard  
4 the ads, because maybe they did and you want to find out what they  
5 may know about the attorney. But other than that, it should not be  
6 mentioned in the remainder of the trial or obsessed upon in *voir dire*.

7           Number 9, arguments in closing that Plaintiff is intentionally  
8 asking for more than they think they're going to get so that they can get  
9 a verdict that they can accept; I agree that would be an improper  
10 argument and I grant that. That's different than if you simply say, ladies  
11 and gentlemen, Plaintiffs have asked for a million dollars. We submit to  
12 you that the facts don't support that verdict and that a verdict of that  
13 amount would be excessive. That's a fact based argument.

14           Number 10, *voir dire* about employment; I'm going to – I'll go  
15 ahead and do that simply because it's sort of how you conduct *voir dire*.  
16 It's perfectly permissible to ask if someone has ever been employed in  
17 the insurance claims industry, have they ever acted as an adjuster or a  
18 claimant, or something of that nature, on *voir dire*. It's also perfectly  
19 permissible to ask if they have any financial interest other than a general  
20 mutual stockholder in insurance companies, and so that would be  
21 allowed. But it's narrowed to those kinds of questions with regard to their  
22 ability to be a fair or impartial juror as well as how to exercise your  
23 peremptory challenges in terms of knowing about the jurors'  
24 background: What did you do for a living? Well, I was a claims adjuster.  
25 Okay.



1           So, that's granted that you can ask limited questions in *voir*  
2 *dire*. Any further direction would have to be left to Judge Villani.

3           Number 11, Plaintiff's counsel – this is to exclude that you  
4 have a relationship in other cases with the doctors who were the treating  
5 physicians in this case; its granted in part and denied in part. To the  
6 extent that in cross-examination you want to talk about that you have a  
7 relationship in terms of doing cases on medical liens, that I think does go  
8 to bias and the Court's been very clear that there's a pretty broad basis  
9 for asking those kinds of questions and it should be allowed. But, trying  
10 to talk about other cases would not be allowed. You can't just say, isn't it  
11 true that you were the person in this case and in that case, and didn't  
12 you render this opinion in that case, and isn't it the same opinion that  
13 you – all of that type of questioning would not be allowed because the  
14 prejudicial value outweighs the probative value and we're not going to try  
15 all of those cases in this case. But a question that relates to the fact that  
16 your practice involves medical liens and the questions I think are  
17 appropriate, and so I wouldn't exclude any questions on that but the  
18 questions need to be about what the doctors' bias might be, not about  
19 the relationship with any group of attorneys, including these attorneys  
20 and that may overlap to some extent with the – some of the issues about  
21 the medical liens. So, to the extent that Judge Villani thinks it overlaps,  
22 he may not agree with me on that area. He may feel that's getting into  
23 that same issue and he may want to hear argument on that so I'll leave it  
24 up to him. But that's just my feeling with regard to it. I'd be inclined to  
25 grant it and exclude everything but that limited questioning that goes

1 towards medical liens in general rather than any relationship with the  
2 particular Plaintiffs' counsel in this case.

3 All right, and that leaves us with, I believe, Plaintiff's number  
4 18, judicial notice of life expectancy; that's denied. I can't take judicial  
5 notice of the life expectancy and instruct the jury, and I don't believe  
6 Judge Villani will wish to do so. But again, all of my rulings are – he  
7 wanted me to make them. If he doesn't like them he'll change them.  
8 That's taking judicial notice of the Census Life Expectancy Table. Well,  
9 for purposes of admitting the table into evidence, the Court might be  
10 able to take judicial notice and not require that you bring in somebody to  
11 say, this is a government document and this is how it was established  
12 and this is what it is. So, when you take judicial notice for purposes of  
13 admissibility that might be appropriate. You wouldn't – you could admit  
14 the table. But asking for an instruction to the jury that says taking judicial  
15 notice that this Plaintiff's life expectancy is X; no, that involves  
16 information that is not generally known and it is not capable of a ready  
17 determination by sources whose accuracy cannot be questioned. The  
18 table is just the table. To the extent that you want to admit it you can  
19 either admit it as a document as it relates to the Clauretie report.  
20 Arguably it is within judicial notice that the report itself exists and the  
21 report would be admissible, but you don't get a jury instruction that says  
22 that we take judicial notice that her life expectancy is X. So, it's denied  
23 on that basis.

24 And I believe that is all of the motions except that which was  
25 continued for him to make the decision. So, thank you very much,

1 gentlemen, for your patience.

2 MR. PRINCE: Thank you, Judge.

3 THE COURT: And I leave you to Judge Villani on the rest.

4 MR. PRINCE: Okay, so just so we're clear, with regard to  
5 Plaintiffs motions 2, 3, 4, 5, -- 2 through 17 I guess remain to be argued  
6 in front of Judge Villani. I thought 13 through 17 did, but some of them  
7 interlap -- overlap with --

8 THE COURT: No.

9 MR. PRINCE: -- some --

10 THE COURT: No, no, --

11 MR. PRINCE: -- of those issues.

12 THE COURT: -- no, no.

13 MR. WINNER: No, 2 through -- 2 through 11 were ruled on  
14 and 18 was ruled on I thought.

15 MR. PRINCE: Oh, right.

16 THE COURT: Right, 2 through 11 was ruled on except that  
17 there may be a little section --

18 MR. PRINCE: Okay. Okay, I had --

19 THE COURT: Yeah. Yeah.

20 MR. PRINCE: -- I have an error in my --

21 [Colloquy]

22 THE COURT: Did I rule on 12? Maybe I didn't. Thank you.

23 MR. PRINCE: No.

24 THE COURT: Let me go find my notes on 12 then. The law  
25 clerk has -- I have quite a number of pages and notes here, so.

1 MR. PRINCE: Say it one more time?

2 THE COURT: Number 12, the law clerk reminded me, as well  
3 as the court clerk, that I did not rule on 12 –

4 MR. PRINCE: Correct.

5 THE COURT: -- and I need to do that, and here's 12.

6 Okay, this is Plaintiff's motion in limine number 12. All right,  
7 this is another general motion which is having to do with trying to limit  
8 the Defendant's retained experts to the opinions and the basis set forth  
9 in their expert reports. There may be some overlap with some of the  
10 things that he set for argument. But I think the issue with regard to 12  
11 that's distinct is that any expert, Plaintiff or Defense, can give an opinion  
12 that is not in the reports if it is based on what occurs at trial. And I think  
13 the case law is clear about that. That's one of the reasons why the  
14 doctors can sit in at trial because they can then listen to the testimony  
15 and if the testimony at trial on Plaintiff's side is different or Defendant's  
16 when they do it on Plaintiff's rebuttal, so – but it has to be limited to the  
17 hearing. It has to be things that take place during the trial itself and it has  
18 to be new information that came out at trial. So, you're not allowed to  
19 change your opinion based upon information that you already had. That  
20 would be improper and that's not the point of discovery. But, -- so, the  
21 motion is denied to the extent that it says that they're limited only to what  
22 they said in their reports. They're limited to what they said in their reports  
23 and – but they're free to change their opinion based upon new  
24 information that was presented at trial or that was presented to them  
25 subsequent to the report. But they have a – well, no, let me back that up

1 because they're supposed to issue a supplemental report, so let me just  
2 leave it at trial.

3 MR. WINNER: It has to be new information.

4 THE COURT: It has to be new –

5 MR. WINNER: Got it.

6 THE COURT: -- information.

7 MR. PRINCE: At trial.

8 THE COURT: So, what that means, though, again, because  
9 this is a general motion in limine – so, I'm granting in part and denying in  
10 part. I'm granting it to the – that they're limited to the reports unless its  
11 new information that came out at trial and they can adapt their opinion  
12 accordingly, but you still need to make that objection.

13 MR. PRINCE: Understood.

14 THE COURT: Right?

15 MR. PRINCE: Yes.

16 THE COURT: In order to make sure you preserving it for the  
17 record.

18 MR. PRINCE: Understood.

19 THE COURT: Okay?

20 MR. WINNER: Yes, Understood.

21 THE COURT: So, that should be it.

22 MR. PRINCE: Thank you, Judge.

23 MR. WINNER: Thank you, Your Honor.

24 THE COURT: Again, thank you very much, gentlemen.

25 MR. PRINCE: Thank you for your time today, Judge.

1 THE COURT: I'm sure Judge Villani will listen to either the  
2 recording or look at the transcript before he starts ruling on the other  
3 motions. And as I said, if he doesn't like my ruling it's his courtroom.  
4 He's free to change it because a motion in limine is never set in stone.

5 MR. PRINCE: Very well, Judge.

6 MR. WINNER: I appreciate all the time you took.

7 THE COURT: All right. Take care.

8 MR. WINNER: Thank you

9 MR. PRINCE: Yeah, thank you for your time today.

10 [Colloquy between Court, law clerk, and clerk]

11 THE CLERK: So, it will be October 21<sup>st</sup> at 8:30.

12 [Colloquy between Court and law clerk]

13 MR. WINNER: Sorry, did you say October 21<sup>st</sup> at 8:30?

14 THE CLERK: Yes. Oh, I'm sorry.

15 MR. WINNER: That's a Sunday.

16 THE CLERK: November 21<sup>st</sup> at --


17 MR. WINNER: Okay.

18 THE CLERK: -- 8:30.

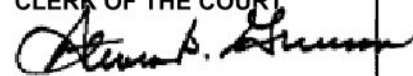
19 [Hearing concludes at 10:41 a.m.]

20 \* \* \* \* \*

21 **ATTEST:** I do hereby certify that I have truly and correctly transcribed the  
22 audio/video proceedings in the above-entitled case to the best of my ability.

23   
24 CYNTHIA GEORGILAS  
25 Court Recorder/Transcriber  
District Court Dept. XVII

5



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23 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 **DESIRE EVANS-WAIAU, individually,**  
26 **GUADALUPE PARRA-MENDEZ,**  
27 **individually; JORGE PARRA-MEZA as**  
28 **guardian for MAYRA PARRA, a minor;**  
**JORGE PARRA-MEZA, as guardian for**  
**AALIYAH PARRA, a minor; and JORGE**  
**PARRA-MEZA, as guardian for SIENNA**  
**PARRA, a minor,**

**Plaintiffs,**

**vs.**

**BABYLYN TATE, individually, DOES I-X,**  
**and ROE CORPORATIONS I-X, inclusive,**

**Defendants.**

**CASE NO.: A-16-737457-C**

**DEPT. NO.: XVII**

**NOTICE OF ENTRY OF ORDER  
REGARDING PLAINTIFFS' MOTIONS  
IN LIMINE**

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PLEASE TAKE NOTICE that an Order Regarding Plaintiffs' Motions In Limine was entered on April 22, 2019, a copy of which is attached hereto as Exhibit "1."

DATED this 22nd day of April, 2019.

**EGLET PRINCE**

/s/ Jack F. DeGree  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the EGLET PRINCE and that on April 22, 2019, I did cause a true and correct copy of **NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFFS' MOTIONS IN LIMINE** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules entered on the Court's docket in the above-referenced matter.

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An Employee of EGLET PRINCE

# **EXHIBIT 1**

# **EXHIBIT 1**

*Steven D. Grierson*

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 EVANS-WAIAU ET AL.

6 vs.

7 BABLYN TATE

Case No.

A-16-736457-C

Dept. No.

XVIII

10 **ORDER REGARDING PLAINTIFFS' MOTIONS IN LIMINE**

11 Plaintiffs DESIRE EVANS-WAIAU and GUADALUPE PARRA-MENDEZ's  
12 Motions in Limine were brought for hearing in front of Department 17 of the Eighth Judicial  
13 District Court, before The Honorable Senior Judge Nancy Becker, on the 3rd day of October,  
14 2018; and before The Honorable Judge Michael P. Villani, in chambers, on the 1st day of  
15 November, 2018; and for hearing on the 5th day of December 2018; and in chambers, on the  
16 18th day of January, 2019, with Dennis M. Prince, Esq., James A. Trummell, Esq., and  
17 Kevin T. Strong, Esq. of EGLET PRINCE, appearing on behalf of Plaintiffs DESIRE  
18 EVANS-WAIAU and GUADALUPE PARRA-MENDEZ; and Thomas E. Winner, Esq. of  
19 ATKIN WINNER & SHERROD, appearing on behalf of Defendant BABYLYN TATE.  
20 The Court having reviewed the pleadings and papers on file herein, having heard oral  
21 argument, and being duly advised in the premises, hereby orders:  
22  
23  
24

25 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
26 Motion in Limine No. 1: Exclude Hypothetical Medical Conditions that are Not Based in  
27 Evidence is **GRANTED**. All hypothetical questions must be based upon the evidence  
28

MARY KAY HOLTHUS  
DISTRICT JUDGE  
DEPARTMENT XVIII

1 adduced at trial. All experts are limited to the opinions articulated within their respective  
2 reports and deposition testimony.

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
4 Motion in Limine No. 2: Exclude Reference to Any Absence of Medical Records Before the  
5 Subject Collision is **GRANTED, IN PART** and **DENIED, IN PART**. Defendant, her  
6 counsel, and her witnesses are precluded from offering any statement, argument or reference  
7 that suggests other medical records of Plaintiffs exist and that they were not provided with  
8 those medical records. Defendant's retained medical experts may testify that their medical  
9 causation opinions and opinions regarding Plaintiffs' need for future medical treatment  
10 remain unchanged even in the absence of prior medical records.

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
12 Motion in Limine No. 3: Exclude Reference to Plaintiffs Being Malingerers, Magnifying  
13 Symptoms, or Manifesting Secondary Gain Motives Because There is No Competent  
14 Evidence to Support Such Reference is **GRANTED, IN PART** and **DENIED, IN PART**.  
15 Defendant's retained medical experts are precluded from offering any testimony, opinions or  
16 references that Plaintiffs are malingerers, symptom magnifiers, or manifest secondary gain  
17 motives because those opinions are not contained within their reports, not because they lack  
18 the qualifications as a psychiatrist or psychologist to offer the opinions. Defendant's  
19 retained medical experts are allowed to rely on the medical records and the timing of  
20 Plaintiffs' respective pain complaints to support their medical causation opinions so long as  
21 those opinions are contained within their respective reports or deposition testimony.

22 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'

1 Motion in Limine No. 4: Permit Treating Physicians to Testify as to Causation, Diagnosis,  
2 Prognosis, Future Treatment, and Extent of Disability Without a Formal Expert Report is  
3 **GRANTED**. Plaintiffs' treating physicians are allowed to testify as to causation, diagnosis,  
4 prognosis, future treatment, and extent of disability pursuant to *FCHI, LLC v. Rodriguez*,  
5 130 Nev. \_\_\_, 335 P.3d 183 (Nev. Oct. 2, 2014) and because they were properly disclosed  
6 pursuant to NRCP 16.1(a)(2)(B).  
7

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
9 Motion in Limine No. 5: Exclude Reference to Defense Medical Experts as "Independent"  
10 Because They are Not is **DENIED**.  
11

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
13 Motion in Limine No. 6: Exclude Argument that this Case is "Attorney Driven" or a  
14 "Medical Buildup" Case Because There is No Such Evidence to Support Such Argument is  
15 **DENIED**. Defendant, her counsel, and her witnesses cannot offer any statement, argument  
16 or reference that Plaintiffs' injury claims or damages are "attorney-driven" or that this is a  
17 "medical buildup case," without a supporting factual basis. However, Plaintiffs' counsel  
18 must make an objection to any statement, argument or reference that Plaintiffs' injury claims  
19 or damages are "attorney driven" or that this is a "medical buildup" case so that the Court  
20 can determine whether the statement, argument or reference is fact-based or an attempt to  
21 inflame the passions of the jury.  
22  
23  
24

25 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
26 Motion in Limine No. 7: Exclude Evidence of When the Parties Contacted and Retained  
27 Counsel is **GRANTED, IN PART** and **DENIED, IN PART**. Defendant, her counsel, and  
28

1 her witnesses are permitted to offer any statement, argument or reference about when  
2 Plaintiffs contacted and retained counsel only in relation to any referrals from Plaintiffs'  
3 counsel to their respective medical providers. Defendant, her counsel, and her witnesses are  
4 precluded from offering any statement, argument or reference about when Plaintiffs  
5 contacted and retained counsel for any other purpose, including, but not limited to, how  
6 often Plaintiffs went to see their counsel.  
7

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
9 Motion in Limine No. 8: Exclude Reference to Attorney Advertising (Except for Limited  
10 References During Voir Dire) is **GRANTED**. The parties, their respective counsel, and their  
11 respective witnesses shall be precluded from offering any references to attorney advertising  
12 during the trial. The parties and their counsel shall be permitted to explore the topic of  
13 attorney advertising with prospective jurors during voir dire only.  
14

15 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
16 Motion in Limine No. 9: Exclude Closing Argument that Plaintiffs are Requesting More  
17 Money than They Expect to Receive is **GRANTED**. Defendant and her counsel shall be  
18 precluded from making any closing argument or statement that Plaintiffs, during closing  
19 argument, requested more money in damages than they expect to receive from the jury.  
20 Defendant and her counsel are only permitted to make fact-based arguments against any  
21 requested damages award Plaintiffs' counsel makes in his closing argument.  
22

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
24 Motion in Limine No. 10: Allow Voir Dire Questioning About Employment with or  
25 Financial Interest in any Insurance Company is **GRANTED**. All parties and their respective  
26  
27  
28

1 counsel shall be permitted to ask good-faith questions to prospective jurors during voir dire  
2 about their employment in the insurance claims industry and if they have any financial  
3 interest, other than as a general mutual stockholder, in an insurance company pursuant to  
4 *Silver State Disposal Co. v. Shelley*, 105 Nev. 309 (1989).  
5

6 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
7 Motion in Limine No. 11: Exclude Reference to Plaintiffs' Counsel Working with Plaintiffs'  
8 Treating Physicians on Unrelated Cases is **GRANTED, IN PART** and **DENIED, IN**  
9 **PART**. Defendant and her counsel are permitted to ask questions of Plaintiffs' medical  
10 providers regarding the existence of any past working relationship with Plaintiffs' counsel  
11 involving medical liens only. Defendant and her counsel are precluded from offering any  
12 statement, argument or reference about Plaintiffs' medical providers involvement or  
13 treatment of other past clients of Plaintiffs' counsel for any other purpose.  
14  
15

16 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
17 Motion in Limine No. 12: To Limit Defendants' Retained Experts' Testimony to the  
18 Opinions and Bases Set Forth in Their Expert Reports is **GRANTED, IN PART** and  
19 **DENIED, IN PART**. The parties' retained experts' testimony at trial is solely limited to the  
20 opinions and bases set forth in their reports and deposition testimony, and reasonable  
21 inferences therefrom. The parties' retained experts may change the opinions outlined in their  
22 reports or deposition testimony only if new information, theories, arguments, or conclusions  
23 are presented during the trial that were not known or considered at the time the experts  
24 drafted any of their initial reports or supplemental reports thereto.  
25  
26

27 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
28



1 Motion in Limine No. 13: To Exclude Argument, Reference, or Expert Opinion that Plaintiff  
2 Desire Evans-Waiiau's Neck Pain was Symptomatic During the Immediate Years Prior to  
3 and Immediately Before the Subject Collision is **GRANTED**.

4 Plaintiff Desire Evans-Waiiau ("Evans-Waiiau") was involved in a prior motor vehicle  
5 accident in 2010. The evidence produced shows that Evans-Waiiau received two months of  
6 chiropractic treatment following the 2010 accident. The evidence shows that Evans-Waiiau  
7 underwent one medical examination with a physician who diagnosed her with a possible  
8 cervical radiculopathy following the 2010 accident. There is no evidence that Evans-Waiiau  
9 underwent any further treatment for neck pain between July 13, 2010 and October 30, 2015,  
10 the date of the subject motor vehicle collision that gives rise to this action.  
11

12 "In order for evidence of a prior injury or pre-existing condition to be admissible, a  
13 defendant must present by competent evidence a causal connection between the prior injury  
14 and the injury at issue." *FGA, Inc. v. Giglio*, 128 Nev. 271, 283 (2012). Once the plaintiff  
15 has met her burden of proof as to medical causation, the defendant can traverse the plaintiff's  
16 case in three ways. The defendant can: "(1) cross-examine the plaintiff's expert, (2)  
17 contradict the expert's testimony with his own expert, and/or (3) propose an independent  
18 alternative causation theory." *Williams v. Eighth Judicial Dist. Court*, 127 Nev. 518, 530  
19 (2011). If an expert proposes an independent alternative causation theory, then the expert  
20 must state that opinion to a reasonable degree of medical probability. *Id.*  
21

22 NRCP 16.1(a)(2)(B) requires retained experts to provide a complete statement of their  
23 opinions and the bases supporting those opinions in their expert reports. Defendant retained  
24 two medical experts in this case: Jeffrey Wang, M.D., and Joseph Schifini, M.D. Dr. Wang  
25  
26  
27  
28

1 and Dr. Schifini do not offer an independent alternative causation theory for Evans-Waiiau's  
2 present injuries to a reasonable degree of medical probability in their respective reports.  
3 Therefore, Defendant has not established a causal connection between Evans-Waiiau's prior  
4 cervical spine injury or prior 2010 motor vehicle accident and her current injuries and pain  
5 complaints allegedly caused by the subject motor vehicle collision.  
6

7 Alternatively, if expert testimony is offered to contradict the party opponent's medical  
8 causation theory, the expert's testimony must be competent and supported by relevant  
9 evidence or research. *FGA, Inc.*, 128 Nev. at 284. The defense expert must also include the  
10 plaintiff's causation theory in his analysis if his testimony is used to contradict the plaintiff's  
11 medical causation theory. *Id.* Otherwise, the testimony would be "incompetent not only  
12 because it lacks the degree of probability necessary for admissibility but also because it does  
13 nothing to controvert the evidence of [the plaintiff]." *Id.* Although both Dr. Wang and Dr.  
14 Schifini reviewed Evans-Waiiau's medical records, including those records for treatment  
15 following the 2010 motor vehicle accident, it does not appear that either of them considered  
16 Plaintiff's theory of medical causation in their reports. Rather, Defendant's experts opine  
17 that Plaintiff did not suffer an acute, traumatic injury to her cervical disc.  
18  
19  
20

21 Defendant's retained medical experts fail to establish that Evans-Waiiau's 2010 motor  
22 vehicle accident and the resulting cervical spine injury are medically relevant to her current  
23 injuries and pain complaints required by *FGA, Inc.* and *Williams*. Defendant also possesses  
24 no evidence that Evans-Waiiau's cervical spine was symptomatic between July 13, 2010 and  
25 October 30, 2015. Therefore, Defendant is precluded from arguing that Evans-Waiiau was  
26 symptomatic in the immediate years prior to the subject collision, unless disclosed witnesses  
27  
28

1 have testified to the contrary.

2 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
3 Motion in Limine No. 14: To Preclude Defendant from Characterizing Plaintiff Desire  
4 Evans-Waiiau's Neck Pain Following the Subsequent July 10, 2016 Motor Vehicle Accident  
5 as Anything Other than a Temporary Exacerbation is **GRANTED**. Defendant's retained  
6 medical experts are allowed to testify that Plaintiff Desire Evans-Waiiau ("Evans-Waiiau")  
7 experienced an increase in symptoms after the subsequent July 10, 2016 motor vehicle  
8 accident so long as that opinion is articulated in their respective reports. Defendant and her  
9 counsel are allowed to argue that neither the subject October 30, 2015 motor vehicle  
10 collision, nor the subsequent July 10, 2016 motor vehicle accident caused any need for  
11 Evans-Waiiau's cervical spine surgery.  
12

13  
14 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
15 Motion in Limine No. 15: To Exclude Irrelevant and/or Unduly Prejudicial Information is  
16 **GRANTED**.  
17

18 (1) Defendant, her counsel, and her witnesses are precluded from offering any  
19 statement, argument or reference that Plaintiff Guadalupe Parra-Mendez ("Parra-Mendez")  
20 was terminated from her employment at The Cromwell Hotel and Casino. The documentary  
21 evidence produced establishes that Parra-Mendez was not terminated from The Cromwell,  
22 but instead resigned.  
23

24 (2) Defendant, her counsel, and her witnesses are precluded from offering any  
25 statement, argument or reference that Plaintiff Desire Evans-Waiiau ("Evans-Waiiau") was  
26 terminated from her employment with Bed Bath & Beyond and Spacecraft Components  
27  
28

1 Corp. and the reasons for those terminations. This information is irrelevant because  
2 Defendant's experts fail to address these terminations in relation to Evans-Waiiau's earning  
3 capacity.

4 (3) Defendant, her counsel, and her witnesses are precluded from offering any  
5 statement, argument or reference regarding Evans-Waiiau's claims and/or lawsuits arising  
6 from the prior May 10, 2010 and subsequent July 10, 2016 motor vehicle accidents,  
7 respectively. The Court Finds that the A-777152 Complaint to be unverified. The fact that  
8 Evans-Waiiau made claims or filed lawsuits is irrelevant to the issues of fact that remain in  
9 this action, because Defendant's experts do not affirmatively opine that the 2010 or 2016  
10 accidents caused or contributed to any injury of a disc in the Plaintiff's cervical spine.  
11

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
13 Motion in Limine No. 16: To Limit Testimony and Opinions of Defendant's Retained  
14 Medical Expert, Joseph J. Schifini, M.D. is **GRANTED**. Dr. Schifini is precluded from  
15 offering any statement, opinion or reference regarding any alleged damage Plaintiffs' motor  
16 vehicle sustained prior to the subject October 30, 2015 motor vehicle collision. Dr. Schifini  
17 is allowed to rely on the photographs and property damage estimate of Plaintiffs' vehicle as  
18 a basis to support the opinions articulated in his reports.  
19

20 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
21 Motion in Limine No. 17: To Exclude Reference to and Evidence of Medical Liens is  
22 **GRANTED, IN PART** and **DENIED, IN PART**. Defendant, her counsel, and her  
23 witnesses shall be precluded from offering any evidence, statement, argument or reference  
24 related to any payment of Plaintiffs' medical bills and other expenses from the following  
25  
26  
27  
28

1 collateral sources: (1) Health insurance, (2) Medicare, (3) Medicaid, (4) Obamacare/The  
2 Affordable Healthcare Act, (5) Social Security disability, and (6) Self-funded employment  
3 health insurance. Defendant, her counsel, and her witnesses shall be precluded from offering  
4 any evidence, statement, argument or reference regarding any of Plaintiffs' medical provider  
5 write-downs or discounted sales of liens to third-parties pursuant to *Khoury v. Seastrand*,  
6 132 Nev.\_\_\_\_, 377 P.3d 81 (2016). Evidence that Plaintiffs' medical treatment was provided  
7 on a lien basis is admissible.  
8

9  
10 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
11 Motion in Limine No. 18: For Judicial Notice of Life Expectancy Table is **GRANTED, IN**  
12 **PART and DENIED, IN PART.** The Court shall take judicial notice of the admissibility of  
13 the life expectancy table itself as it relates to Plaintiffs' economic and non-economic  
14 damages. However, the Court shall not take judicial notice of Plaintiffs' respective life  
15 expectancy age as contained in the life expectancy table.  
16

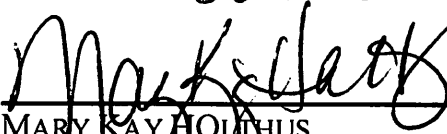
17 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Court's  
18 decision on Plaintiff's Motion in Limine No. 19: To Exclude Sub Rosa Surveillance Video  
19 of Plaintiff Desire Evans-Waiiau and Any Testimony or Reference to the Same is deferred  
20 until the time of trial, to permit the Court to review the video and consider it in light of the  
21 other evidence presented.  
22

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Plaintiff's  
24 Motion in Limine No. 20: To Exclude the Testimony and Opinions of Defendant's Retained  
25 Expert, Kevin Kirkendall, CPA, is withdrawn. The parties have agreed in open court that Mr.  
26 Kirkendall shall not offer any testimony or opinions regarding the legal standard for  
27  
28

admissible expert testimony pursuant to *Hallmark v. Eldridge*, 124 Nev. 492 (2008).

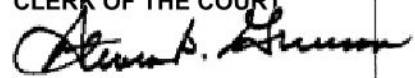
**IT IS SO ORDERED**

DATED this 22<sup>nd</sup> of April, 2019.

  
\_\_\_\_\_  
MARY KAY HOLTHUS  
DISTRICT COURT JUDGE

MARY KAY HOLTHUS  
DISTRICT JUDGE  
DEPARTMENT XVIII

6



1 NEOJ  
2 THOMAS E. WINNER  
3 Nevada Bar No. 5168  
4 CAITLIN J. LORELLI  
5 Nevada Bar No. 14571  
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13 Attorneys for Defendant  
14 Babylyn B. Tate

15 EIGHTH JUDICIAL DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 DESIRE EVANS-WAIAU, individually;  
18 GUADALUPE PARRA-MENDEZ,  
19 individually; JORGE PARRA-MEZA, as  
20 guardian for MAYRA PARRA, a minor;  
21 JORGE PARRA-MEZA, as guardian for  
22 AALIYAH PARRA, a minor; and JORGE  
23 PARRA, a minor,

24 Plaintiffs

25 vs.

26 BABYLYN TATE, individually, DOES I-  
27 X, and ROE CORPORATIONS I-X,  
28 inclusive,

Defendants

CASE NO.: A-16-736457-C  
DEPT. NO.: 18

**NOTICE OF ENTRY OF ORDER  
REGARDING DEFENDANT TATE'S  
MOTIONS IN LIMINE**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the attached Order Regarding Defendant

///

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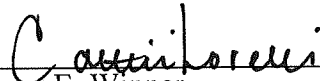
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1 Tate's Motions in Limine was entered by the Court on the 24<sup>th</sup> day of April, 2019.

2 DATED this 26 day of April, 2019.

4 ATKIN WINNER & SHERROD

6   
7 Thomas E. Winner  
8 Nevada Bar No. 5168  
9 Caitlin J. Lorelli  
10 Nevada Bar No. 14571  
11 1117 South Rancho Drive  
12 Las Vegas, Nevada 89102  
13 Attorneys for Babylyn B. Tate

CERTIFICATE OF SERVICE


I certify that on this 26 day of April, 2019, the foregoing **NOTICE OF ENTRY OF ORDER REGARDING DEFENDANT TATE'S MOTIONS IN LIMINE** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

Paul D. Powell  
Michael Kristof  
The Powell Law Firm  
6785 West Russell Road, Suite 210  
Las Vegas, NV 89118

And

Dennis Prince  
Jack Degree  
Eglet Prince  
400 South 7<sup>th</sup> Street, Suite 400  
Las Vegas, Nevada 89101  
Attorney for Plaintiffs

  
An employee of ATKIN WINNER & SHERROD



**ORDR**

THOMAS E. WINNER  
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*Attorneys for Babylyn B. Tate*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DESIRE EVANS-WAIAU, individually;  
GUADALUPE PARRA-MENDEZ,  
individually; JORGE PARRA-MEZA, as  
guardian for MAYRA PARRA, a minor;  
JORGE PARRA-MEZA, as guardian for  
AALIYAH PARRA, a minor; and JORGE  
PARRA-MEZA, as guaridan for SIENNA  
PARRA, a minor,

Plaintiff(s)

vs.

BABYLYN TATE, Individually; DOES I-  
X, and ROE CORPORATIONS I-X,  
inclusive,

Defendant(s)

CASE NO.: A-16-736457-C  
DEPT. NO.: IX

**ORDER REGARDING DEFENDANT  
TATE'S MOTIONS *IN LIMINE***

Defendant BABYLYN TATE's Motions *in Limine* were brought for hearing in front of Department 17 of the Eighth Judicial District Court, before the Honorable Senior Judge Nancy Becker, on the 3<sup>rd</sup> day of October 2018; and before the Honorable Judge Michael P. Villani, in chambers, on the 1<sup>st</sup> day November, 2018, and for hearing on the 5<sup>th</sup> day of December, 2018 and 18<sup>th</sup> day of January, 2019, before the Honorable Judge Michael P. Villani with Dennis M. Prince, Esq., James A. Trummell, Esq., and Kevin T. Strong, Esq. of EGLET PRINCE appearing on behalf of Plaintiffs DESIRE EVANS-WAIAU and GUADALUPE PARRA-MENDEZ, and

1 Thomas E. Winner, Esq. of ATKIN WINNER & SHERROD appearing on behalf of Defendant  
 2 BABYLYN TATE. The Court having reviewed the pleadings and papers on file herein, having  
 3 heard oral argument, and being duly advised in the premises, hereby orders:

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
 5 Motion *in Limine* No. 1: Regarding Specific Statements and Claims of the Parties is  
 6 **GRANTED, IN PART** and **DENIED, IN PART**. Part (B) – Defendant Tate's Observations and  
 7 Triage at Accident Scene - Defendant Tate is permitted to testify about what she observed after  
 8 the subject accident occurred, including the actions of the Plaintiffs post-accident. Meaning,  
 9 Defendant Tate is permitted to opine she does not believe Plaintiffs sustained any injury based  
 10 upon her observations. In rendering her observations post-accident, Defendant Tate is not  
 11 permitted to testify she performed a triage or a medical procedure.<sup>1</sup> Part (C) – Injuries of Minor  
 12 Children – Evidence of injury to minor children is permissible to establish severity of impact  
 13 only. Evidence of lack of injury to Defendant Tate is permissible to establish severity of impact.  
 14 Evidence of minor children's medical expenses is inadmissible; relevance outweighed by unfair  
 15 prejudice.<sup>2</sup> Part (D) – Plaintiff Evans-Waiiau's Subsequent Injuries – The defense may argue that  
 16 neither the subject accident nor the subsequent accident on July 10, 2016 is the cause of Plaintiff  
 17 Evans-Waiiau's surgery. The defense is permitted to have experts testify there was an increase in  
 18 symptoms as set forth by the reports.<sup>3</sup> However, Plaintiff Evans-Waiiau's 2018 Complaint,  
 19 relative to the July 10, 2016 subsequent accident, wherein she alleges injuries to her shoulders  
 20 and back, is not a verified complaint and the statements contained therein are deemed legal  
 21 conclusions made by counsel rather than party admissions. The Court finds Plaintiff Evans-  
 22 Waiiau's cervical recommendation was made prior to the 2016 accident and that Defendant  
 23 Tate's experts do not opine the 2016 caused or contributed to the alleged injuries sustained in the

24  
 25  
 26 <sup>1</sup> See Minute Order 10/3/2018.

27 <sup>2</sup> See Minute Order 11/1/2018.

28 <sup>3</sup> See Minute Order 12/5/2018.

Order Regarding Defendant Tate's Motions *in Limine*

subject collision and on these bases and to that extent, Part 1D is denied.<sup>4</sup>

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's Motion *in Limine* No. 2: To Prohibit the Use of Unfairly Prejudicial Trial Tactics is **GRANTED, IN PART and DENIED, IN PART**. Part (1) – Avoiding Responsibility – Counsel cannot argue this matter is in trial because Defendant Tate is trying to avoid her responsibility. Counsel may use the term "safety rule." However, to the extent counsel is going to use this specific terminology, counsel must use them in the context of their fact-driven argument.<sup>5</sup> Part (2) – Negligence Posing a Risk to Persons Other Than Plaintiffs – Counsel may make the general argument that when a person violates the rules of the road, it endangers people on the roadway in general. However, counsel cannot argue or make argument that suggests other people were threatened or harmed by Defendant Tate's conduct absent facts to support this contention.<sup>6</sup> Part (3) – "Send a Message" via Verdict – The Court did not specifically rule on this issue. Rather, the Court made a general ruling with regard to Motion *in Limine* No. 2 as a whole wherein the Court Granted Defendant Tate's motion *in limine* to the extent that if counsel is going to use specific words, counsel has to use them in the context of their fact-driven argument.<sup>7</sup> Part (4) – Conscience of the Community – Counsel cannot argue that the jury is the conscience of the community.<sup>8</sup>

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's Motion *in Limine* No. 3: To Admit and Exclude Certain Information Regarding the Plaintiffs' Claims for Damages is **GRANTED, IN PART and DENIED, IN PART**. Part (1) – Evidence of Medical Liens – Evidence of treatment on a litigation lien is admissible.<sup>9</sup> Part (2) – Per Diem

<sup>4</sup> See Minute Order on 1/18/2019.

<sup>5</sup> See Minute Order 10/3/2018.

<sup>6</sup> See Minute Order 10/3/2018.

<sup>7</sup> See Minute Order 10/3/2018.

<sup>8</sup> See Minute Order 10/3/2018.

<sup>9</sup> See Minute Order 11/1/2018.

Order Regarding Defendant Tate's Motions *in Limine*

1 Calculations – Per diem arguments are permitted.<sup>10</sup> Part (3) – Untimely Disclosures of Medical  
 2 Specials – Continued medical specials are not limited to May 4, 2018 unless there have been no  
 3 disclosures thereafter. Absent proper disclosure(s) continued medical specials are not  
 4 permitted.<sup>11</sup> Part (4) – Speculative Damages – Denied for vagueness.<sup>12</sup>

5 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
 6 Motion *in Limine* No. 4: To Prohibit Questions Regarding Verdict Amounts During *Voir Dire*,  
 7 and to Impose Reasonable Limitations on the Scope and Duration of *Voir Dire* is **DENIED, IN**  
 8 **PART** and **DEFERRED, IN PART** Part (1) – Potential Jurors Willingness to Award Certain  
 9 Verdicts or Ranges – inquiring about potential verdict amounts from a potential juror is  
 10 admissible but may not rise to the level of juror indoctrination. Mentioning range or specific  
 11 verdict amount Plaintiffs are seeking is permissible from outset of *voir dire*. The parties are free  
 12 to a juror's life experience to determine any bias.<sup>13</sup> Part (2) – Reasonable Limitations on Scope  
 13 and Duration of Voir Dire – the Court will address the extent and length of *voir dire* during  
 14 trial.<sup>14</sup>

15 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
 16 Motion *in Limine* No. 5: Regarding Expert Testimony is **GRANTED, IN PART** and **DENIED,**  
 17 **IN PART.** Part (1) – Non-Retained Experts Opinions Formed During Course and Scope of  
 18 Treatment, as Documented in their Records – A treating physician may not review documents  
 19 and act as a rebuttal witness. A treating physician cannot testify to things outside the scope of his  
 20 or her treatment.<sup>15</sup> Part (2) – Cumulative Medical Testimony – Dr. Khavkin will not be excluded  
 21 on the basis of cumulative medical testimony.<sup>16</sup> Part (3) – Expert Testimony Based on Reports  
 22

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23 <sup>10</sup> See Minute Order 10/3/2018.

24 <sup>11</sup> See Minute Order 10/3/2018.

25 <sup>12</sup> See Minute Order 10/3/2018.

26 <sup>13</sup> See Minute Order 11/1/2018.

27 <sup>14</sup> See Minute Order 11/1/2018.

28 <sup>15</sup> See Minute Order 10/3/2018.

<sup>16</sup> See Minute Order 10/3/2018.

Order Regarding Defendant Tate's Motions *in Limine*

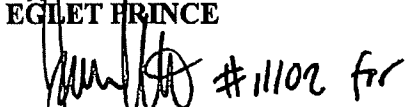
1 and Learned in Trial – All experts are limited to their expert reports and deposition testimony.  
2 However, the expert is not only allowed to parrot their reports. Experts do have latitude in  
3 explaining the foundation of their opinions. Each party has the right to object, at the time of trial,  
4 if he or she believes the other is seeking to elicit information or opinions that are outside the  
5 mandates of NRCP 16.1. Moreover, an expert may modify his or her opinion based on new  
6 information learned during the course of trial.<sup>17</sup> Part (4) – Experts and Relevant, Fact-Based  
7 Hypothetical Questions – all hypothetical questions must be based upon evidence adduced at  
8 trial. All experts are limited to their opinions contained within their reports and deposition  
9 testimony.<sup>18</sup>

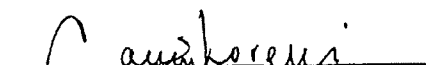
10  
11 **IT IS SO ORDERED.**  
12 DATED this 23 day of April, 2019.

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DISTRICT COURT JUDGE

DATED this 20 day of April, 2019.  
Approved as to Form and Content:  
EGLET PRINCE

DATED this 23 day of April, 2019.  
Respectfully Submitted By:  
ATKIN WINNER & SHERROD

 #11102 fr  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
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*Guadalupe Parra-Mendez*

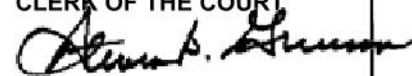
  
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*Babylun Tate*

<sup>17</sup> See Minute Order 11/1/2018.

<sup>18</sup> See Minute Order 11/1/2018, referencing ruling on Plaintiffs' Omnibus Motion *in Limine* No. 1.

7





**NEO**  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
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-and-  
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*Attorneys for Plaintiffs Desire Evans-Waiiau  
and Guadalupe Parra-Mendez*

**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DESIRE EVANS-WAIAU, individually,  
GUADALUPE PARRA-MENDEZ,  
individually; JORGE PARRA-MEZA as  
guardian for MAYRA PARRA, a minor;  
JORGE PARRA-MEZA, as guardian for  
AALIYAH PARRA, a minor; and JORGE  
PARRA-MEZA, as guardian for SIENNA  
PARRA, a minor,

Plaintiffs,

vs.

BABYLYN TATE, individually, DOES I-X,  
and ROE CORPORATIONS I-X, inclusive,

Defendants.

CASE NO.: A-16-736457-C

DEPT. NO.: XVII

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER REGARDING MOTIONS  
IN LIMINE**

...

...

...

1 PLEASE TAKE NOTICE that a Stipulation And Order Regarding Motions In Limine  
2 was entered on April 24, 2019, a copy of which is attached hereto as Exhibit "1."

3 DATED this 26th day of April, 2019.

4 **24RINCE**

5  
6 /s/ Jack F. DeGree  
7 DENNIS M. PRINCE, ESQ.  
8 Nevada Bar No. 5092  
9 JAMES A. TRUMMELL, ESQ.  
10 Nevada Bar No. 14127  
11 400 S. 7th Street, 4th Floor  
12 Las Vegas, Nevada 89101  
13 *Attorneys for Plaintiffs Desire Evans-Waiiau*  
14 *and Guadalupe Parra-Mendez*  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the EGLET PRINCE and that on April 26, 2019, I did cause a true and correct copy of **NOTICE OF ENTRY OF STIPULATION AND ORDER REGARDING MOTIONS IN LIMINE** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules entered on the Court's docket in the above-referenced matter.

Thomas E. Winner, Esq.  
Caitlin J. Lorelli, Esq.  
ATKIN WINNER & SHERROD  
1117 S. Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Defendant Babylyn Tate*

  
An Employee of EGLET PRINCE

# **EXHIBIT 1**

# **EXHIBIT 1**

*Steven D. Grierson*

1 **SAO**  
2 **DENNIS M. PRINCE**  
3 Nevada Bar No. 5092  
4 **TRACY A. EGLET, ESQ.**  
5 Nevada Bar No. 6419  
6 **KEVIN T. STRONG, ESQ.**  
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13 Email: [eservice@egletlaw.com](mailto:eservice@egletlaw.com)

14 *and*  
15 **PAUL D. POWELL, ESQ.**  
16 Nevada Bar No. 7488  
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18 6785 W. Russell Road, #210  
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22 [paul@tplf.com](mailto:paul@tplf.com)  
23 Attorneys for Plaintiffs  
24 *Desire Evans-Waiiau and Guadalupe Parra-Mendez*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

25 **DESIRE EVANS-WAIAU, individually,**  
26 **GUADALUPE PARRA-MENDEZ,**  
27 **individually; JORGE PARRA-MEZA as**  
28 **guardian for MAYRA PARRA, a minor; JORGE**  
**PARRA-MEZA, as guardian for AALIYAH**  
**PARRA, a minor; and JORGE PARRA-MEZA,**  
**as guardian for SIENNA PARRA, a minor,**

**Plaintiffs,**

**vs.**

**BABYLYN TATE, individually, DOES I-X, and**  
**ROE CORPORATIONS I-X, inclusive,**

**Defendants.**

**CASE NO. A-16-736457-C**  
**DEPT NO. XVIII**

**STIPULATION AND ORDER**  
**REGARDING MOTIONS IN LIMINE**

**STIPULATION AND ORDER REGARDING MOTIONS IN LIMINE**

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs DESIRE EVANS-WAIAU and GUADALUPE PARRA-MENDEZ, through their counsel of record, Dennis M. Prince, Esq., Tracy A. Eglet, Esq., and Kevin T. Strong, Esq. of EGLET PRINCE and Defendant BABYLYN TATE, through her counsel of record, Thomas E. Winner, Esq. and Andrew D. Smith, Esq. of ATKIN WINNER & SHERROD, that the following matters shall be excluded from being introduced into evidence or referenced at trial:

1. Statements, arguments, or references that Plaintiffs improperly used or abused prescription pain medications.
2. Statements, arguments, or references to the parties' specially retained, non-testifying consultants, if any.
3. Statements, arguments, or references suggesting that Plaintiffs' counsel or doctors were involved in any alleged federal grand jury investigation into doctors and lawyers in Las Vegas.
4. Statements, arguments, or references regarding the parties' offers of settlement or compromise.
5. Statements, arguments, or references regarding the taxation of a jury verdict.
6. Statements, arguments, or references regarding the parties filing pretrial motions.
7. Statements, arguments, or references regarding Plaintiff Guadalupe Parra-Mendez's subsequent September 3, 2016 motor vehicle accident.
8. Statements, arguments, or references regarding Plaintiff Guadalupe Parra-Mendez's prior CT scan of her brain on November 19, 2013.
9. Statements, arguments, or references regarding Plaintiff Guadalupe Parra-Mendez's prior medical treatment for an abscess in her right scapula that resulted from shingles on August 31, 2014.
10. Statements, arguments, or references regarding Plaintiff Guadalupe Parra-Mendez's pre-existing diabetes diagnosis and medical treatment related thereto.

...

11. Statements, arguments, or references regarding Plaintiff Desire Evans-Waiiau's prior gynecological treatment.

12. Statements, arguments, or references regarding Plaintiff Desire Evans-Waiiau's prior burn on her chest and medical treatment related thereto.

13. Statements, arguments, or references regarding Plaintiff Desire Evans-Waiiau's application for and denial of unemployment benefits stemming from her termination of employment with Spacecraft Component Parts.

14. Statements, arguments, or references regarding Plaintiff Desire Evans-Waiiau's April 13, 2015 traffic citation.

15. The parties further stipulate and agree to follow the law including, but not limited to, the limitations on attorney conduct during trial, as set forth in *Lioce v. Cohen*, 124 Nev. 1 (2008).

16. The parties further stipulate and agree that their respective witnesses shall be precluded from offering any statement, argument, opinion, reference, or inference or any other commentary regarding any other witness's credibility and veracity.

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The parties hereby stipulate and agree that all counsel will inform their respective clients and witnesses regarding this Stipulation and Order, and on the Court's rulings on any motions in limine and instruct them to stay within the parameters of all court orders.


DATED this 20<sup>th</sup> day of April, 2019.

DATED this 19<sup>th</sup> day of April, 2019.

EGLET PRINCE

ATKIN WINNER & SHERROD

  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
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Attorneys for Defendant  
Babylyn Tate

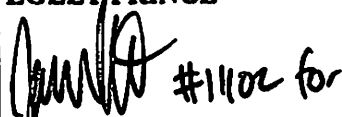
ORDER

IT IS SO ORDERED.

DATED this 22<sup>nd</sup> day of April, 2019.

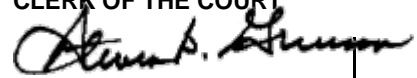
  
DISTRICT COURT JUDGE

Respectfully Submitted by:  
EGLET PRINCE

  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
KEVIN T. STRONG, ESQ.  
Nevada Bar No. 12107  
Attorneys for Plaintiffs  
Desire Evans-Walau and  
Guadalupe Parra-Mendez



8



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

|                             |   |                        |
|-----------------------------|---|------------------------|
| DESIRE EVANS-WAIAU, et al., | ) |                        |
|                             | ) |                        |
| Plaintiffs,                 | ) | CASE NO. A-16-736457-C |
|                             | ) |                        |
| vs.                         | ) | DEPT. NO. XVIII        |
|                             | ) |                        |
| BABYLYN TATE,               | ) |                        |
|                             | ) |                        |
| Defendant.                  | ) |                        |
|                             | ) |                        |

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

FRIDAY, APRIL 26, 2019

**RECORDER'S TRANSCRIPT OF HEARING:**  
**JURY TRIAL - DAY 5**

APPEARANCES:

|                     |                          |
|---------------------|--------------------------|
| FOR THE PLAINTIFFS: | DENNIS M. PRINCE, ESQ.   |
|                     | KEVIN T. STRONG, ESQ.    |
| FOR THE DEFENDANT:  | THOMAS E. WINNER, ESQ.   |
|                     | JOEL D. HENRIOD, ESQ.    |
|                     | CAITLIN J. LORELLI, ESQ. |
|                     | JOE RICE, ESQ.           |

RECORDED BY: YVETTE SISON, COURT RECORDER  
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1                   LAS VEGAS, NEVADA, FRIDAY, APRIL 26, 2019

2                   (Case called at 10:00 A.M.)

3                   (Outside the presence of the jury)

4                   THE COURT: All right. Guys, on the 2010 --

5                   MR. PRINCE: Yes. Ready.

6                   THE COURT: -- at this moment here's where we are.

7                   My understanding -- let me -- let me just be sure;  
8 is there an expert from the defense side that has said  
9 somewhere in all these reports that based upon the symptoms  
10 from the 2010 accident, including the radiculopathy and  
11 whatnot, that they would opine to a medical probability that  
12 that was the same injury as this and if they had just done the  
13 same there it would've been fine here --

14                  MR. WINNER: No.

15                  THE COURT: -- the conservative treatment. That's  
16 not an issue you all are bringing, right?

17                  MR. WINNER: I don't think those words were used,  
18 no.

19                  THE COURT: Okay.

20                  MR. PRINCE: Okay.

21                  THE COURT: So then really, I don't -- I don't see  
22 where it's particularly relevant to the expert's opinion. I  
23 don't think it's that -- to the extent it's probative at all,  
24 I think it's prejudicial in terms of them not having  
25 sufficient information.

1 I don't see anything where had they had from the  
2 very beginning the information from the 2010 accident from the  
3 plaintiff that it -- that it would've changed anything, at  
4 least there's --

5 MR. WINNER: Mr. --

6 MR. PRINCE: Two --

7 THE COURT: -- nothing that I'm saying.

8 MR. WINNER: Mr. Prince can correct me if I'm wrong,  
9 but what Wang and Schifini both said is hey, it looks like she  
10 had similar symptoms before and it's the same symptoms she has  
11 now, so that's -- that's, I guess, a relevant fact and looking  
12 at that they didn't say more than that.

13 THE COURT: Okay.

14 MR. PRINCE: Right. Yeah, they didn't --

15 THE COURT: Absent more than that, I just don't --

16 MR. PRINCE: They would need to like say that the  
17 2010 would be the explanation for the ongoing symptoms after  
18 2015 and they don't say that.

19 THE COURT: Or I think they could --

20 MR. PRINCE: They don't say she was surgical or in  
21 need of further care after the 2010 incident, that it was a  
22 soft tissue injury and that --

23 THE COURT: Right.

24 MR. PRINCE: -- it resolved.

25 THE COURT: Well, I --

1 MR. PRINCE: They -- they both say that.

2 MR. WINNER: Yeah, everybody agrees with that.

3 THE COURT: And I could -- what I'm saying is, I  
4 could foresee where you say this particular patient has these  
5 symptoms then, she has these symptoms now, that's how -- it's  
6 the same thing. If somebody could say that. And so then you  
7 could argue that she didn't need surgery then. If she'd have  
8 waited longer she probably didn't need surgery now.

9 MR. WINNER: That's --

10 THE COURT: I don't think you all are able to say  
11 that --

12 MR. PRINCE: No.

13 THE COURT: -- and therefore you can't.

14 MR. WINNER: I believe that's what their opinions  
15 are.

16 THE COURT: I didn't see it to a --

17 MR. WINNER: Yeah.

18 MR. PRINCE: So --

19 THE COURT: -- degree of medical probability that I  
20 think you need to have -- I think it's the same standard by  
21 analogy as it would be on a -- kind of a causation because  
22 it's --

23 MR. PRINCE: Right.

24 THE COURT: -- in my mind it's a lot the same.

25 MR. PRINCE: Right. So I guess the --

1 THE COURT: Whether it is or not.

2 MR. PRINCE: So there -- but --

3 THE COURT: So that's how -- and unless something  
4 changes and you show me something or I see the evidence come  
5 in, there's something different.

6 MR. PRINCE: Okay. Very good.

7 MR. HENRIOD: Well, by out, I need to clarify  
8 exactly what we mean. Does that mean it can't come in -- I  
9 understand that our experts can't testify -- I want to make  
10 sure I understand your ruling.

11 Does that mean that we cannot mention it or ask the  
12 treating physicians or plaintiffs' experts about it and we  
13 can't elicit any testimony about it at all?

14 THE COURT: That's my -- that's my belief of Judge  
15 Villani's ruling and I haven't seen anything that changed  
16 that.

17 MR. PRINCE: Okay.

18 THE COURT: I don't see -- I think he was kind of  
19 all encompassing. I know we have the issue about the  
20 plaintiff and -- didn't tell the truth, lied, inconsistent  
21 statement, I'm not sure what we're calling it.

22 At this point, I'm keeping it out. If that changes,  
23 depending on her testimony and how it goes, I think it's kind  
24 of an end-run around the original ruling. If I thought it was  
25 more probative then I might be willing to go down that road.

1           But I do think it's prejudicial. I'm not going to  
2 have a side trial on whether she lied to the doctors or told  
3 the truth to the doctors. I don't think it's necessary in  
4 this case. I don't think it really gets you -- I mean, I know  
5 where you want to go with it, but I also think it's kind of  
6 other bad acts; is she lying to the doctors because she wants  
7 to get more money here.

8           And now I'm thinking we need to meet outside the  
9 presence because I need to find out, did she even say that, or  
10 did the doctor write it down wrong, or -- or did she just not  
11 think of it, well, because it had resolved five years ago, it  
12 just wasn't at the forefront of her -- I just don't want that.  
13 I don't think it's probative enough to warrant putting it in  
14 the trial.

15           MR. WINNER: And maybe we do a proof out the --

16           THE COURT: Having said that --

17           MR. WINNER: -- offer of proof outside the presence  
18 while the witness is still on the stand.

19           THE COURT: Correct. We -- we can --

20           MR. WINNER: Yeah, okay.

21           THE COURT: Like I said, I'm not -- because  
22 Villani's ruling was it doesn't come in unless witnesses  
23 testify to the contrary. So if there's a door opened  
24 somewhere or whatnot, fine.

25           MR. PRINCE: Okay.

1 THE COURT: But at this moment don't put it in  
2 openings.  
3 MR. HENRIOD: Not at all.  
4 THE COURT: No.  
5 MR. WINNER: All right.  
6 MR. HENRIOD: Very well.  
7 MR. PRINCE: Okay. Very good.  
8 THE COURT: Okay.  
9 MR. PRINCE: We're ready.  
10 THE COURT: Do you guys talk about your openings or  
11 other -- do you know what each other are doing or do we  
12 anticipate a lot of objections during them?  
13 MR. WINNER: I --  
14 THE COURT: Just so I know.  
15 MR. WINNER: I don't believe Mr. Prince has to share  
16 his opening with me and I --  
17 THE COURT: Well, I was just wondering.  
18 MR. WINNER: I can't promise I won't object. I -- I  
19 don't know.  
20 THE COURT: Oh, I was just -- you know --  
21 traditionally, I was just wondering if they go along or they  
22 don't. That's all.  
23 MR. PRINCE: No.  
24 MR. WINNER: I plan to object just to interrupt, if  
25 I can. That's --



1 MR. PRINCE: Yeah, that's fine.  
2 THE COURT: All right.  
3 MR. PRINCE: We're good.  
4 THE MARSHAL: All right.  
5 MR. PRINCE: I guess the only thing is he can't show  
6 the sub rosa video because you never reviewed it in advance,  
7 so you're not trying to show the sub rosa in opening, right?  
8 MR. WINNER: No.  
9 MR. PRINCE: Okay. Or discuss it, right?  
10 MR. WINNER: Correct.  
11 MR. PRINCE: Okay. Good. Or those employment  
12 records, right?  
13 MR. WINNER: Oh, the employment records?  
14 MR. PRINCE: Yeah.  
15 MR. WINNER: No.  
16 MR. PRINCE: Or talk about the discharge or what the  
17 reasons for that --  
18 MR. WINNER: No.  
19 MR. PRINCE: Okay.  
20 THE MARSHAL: All rise for the entering jury.  
21 (Jury enters at 10:06 A.M.)@  
22 THE COURT: Good morning, ladies and gentlemen,  
23 welcome back.  
24 THE JURY: Good morning.  
25 THE COURT: Does everybody have pens and notepads

1 and badges and everything?

2 THE JURY: Yes.

3 THE COURT: We're going to begin with openings this  
4 morning but beforehand, I've got a few pre-instructions to  
5 read to you, to just kind of give you a lay of the land before  
6 we get to the end so that you can have them in mind as you're  
7 listening to the evidence. And these are in no particular  
8 order at all.

9 Preponderance of the evidence means such evidence as  
10 when considered and compared with that opposed to it has more  
11 convincing force and produces in your mind a belief that what  
12 is sought to be proved is more probably true than not true.

13 In determining whether a party has met this burden  
14 you will consider all the evidence whether produced by the  
15 plaintiff or the defendant.

16 In order to establish a claim of negligence the  
17 plaintiff must prove the following elements by preponderance  
18 of the evidence; that the defendant was negligent; 2) that the  
19 plaintiff sustained damage, and 3) that the defendant's  
20 negligence was the proximate cause of damages by the  
21 plaintiff.

22 When I use the word "negligence" in these  
23 instructions, I mean the failure to do something which a  
24 reasonably careful person would do, or the doing of something  
25 which a reasonably careful person would not do, to avoid

1 injury to themselves or others under circumstances similar to  
2 those shown by the evidence.

3           It is the failure to use ordinary or reasonable  
4 care. Ordinary or reasonable care is that care which persons  
5 of ordinary prudence would use in order to avoid injury to  
6 themselves or others under circumstances similar to those  
7 shown by the evidence.

8           The law does not say how a reasonably careful person  
9 would act under those circumstances. That is for you to  
10 decide. You will note that the person whose conduct we set up  
11 as a standard is not the extraordinarily cautious individual,  
12 nor the exceptionally skillful one, but the person of  
13 reasonable and ordinary prudence.

14           It is the duty of the driver of any vehicle to avoid  
15 placing himself or others in danger and to use like care to  
16 avoid an accident, to keep a proper lookout for traffic and  
17 other conditions to be reasonably anticipated and to maintain  
18 proper control of his vehicle.

19           In determining the amount of losses, if any,  
20 suffered by the plaintiff as a proximate result of the motor  
21 vehicle collision in question, you will take into  
22 consideration the nature, extent, and duration of the injuries  
23 or damage you believe from the evidence plaintiffs have  
24 sustained. And you will decide upon a sum of money sufficient  
25 to reasonably and fairly compensate plaintiffs for the

1 following items: 1) the reasonable medical expenses  
2 plaintiffs have necessarily incurred as a result of the motor  
3 vehicle collision; 2) the reasonable medical expenses you  
4 believe the plaintiffs are reasonably certain to incur in the  
5 future as a result of the motor vehicle collision; 3) the  
6 physical and mental pain, suffering, anguish and disability  
7 endured by the plaintiffs from the date of the motor vehicle  
8 collision to the present; 4) the physical and mental pain,  
9 suffering, anguish and disability which you believe plaintiffs  
10 are reasonably certain to experience in the future as a result  
11 of the motor vehicle collision; 5) the loss of enjoyment of  
12 life and compensation for the loss of ability to participate  
13 and derive pleasure from the normal activities of daily life,  
14 or for the plaintiff's inability to pursue their talents,  
15 recreational interests, hobbies or avocations, endured by the  
16 plaintiff from the date of the motor vehicle collision to the  
17 present, and the loss of enjoyment of life and compensation  
18 for the loss of ability to participate and derive pleasure for  
19 the normal activities of daily life, or for the plaintiffs'  
20 inability to pursue their talents, recreational interests,  
21 hobbies or avocations which you believe plaintiffs are  
22 reasonably certain to experience in the future as a result of  
23 the motor vehicle collision.

24           Although you are to consider only the evidence in  
25 this case in reaching a verdict, you must bring to the

1 consideration of the evidence your every day common sense and  
2 judgment as reasonable men and women. Thus, you are not  
3 limited solely to what you see and hear as the witnesses  
4 testify.

5           You may draw reasonable inferences from the evidence  
6 which you feel are justified in light of common experience  
7 keeping in mind that such inferences should not be based on  
8 speculation or guess. A verdict may never be influenced by  
9 sympathy, prejudice or public opinion. Your decision should  
10 be the product of sincere judgment and sound discretion in  
11 accordance with these rules of law.

12           Whether any of the elements of damage have been  
13 proven by the evidence is for you to determine. Neither  
14 sympathy nor speculation is a proper basis for determining  
15 damages. However, absolute certainty as to damages is not  
16 required. It is only required that the plaintiff prove each  
17 item of damage by a preponderance of the evidence.

18           The plaintiff may not recover damages if her  
19 comparative negligence is greater than the negligence of the  
20 defendant. However, if the plaintiff is negligent the  
21 plaintiff still may recover a reduced sum so long as her  
22 comparative negligence is not greater than the negligence of  
23 the defendant.

24           If you determine that the plaintiff is entitled to  
25 recover you shall return by general verdict the total amount

1 of damages sustained by the plaintiff without regard to her  
2 comparative negligence and you shall return a special verdict  
3 indicating the percentage of negligence attributable to each  
4 party.

5           The percentage of the negligence attributable to the  
6 plaintiff shall reduce the amount of such recovery by the  
7 proportionate amount of such negligence and the reduction will  
8 be made by the court.

9           The credibility or believability of a witness should  
10 be determined by his or her manner upon the stand, his or her  
11 relationship to the parties, his or her fears, motives,  
12 interests or feelings, his or her opportunity to observe the  
13 matter to which he or she has testified, the reasonableness of  
14 his or her statements, and the strength or weakness of his or  
15 her recollections.

16           If you believe that a witness has lied about any  
17 material fact in the case you may disregard the entire  
18 testimony of that witness or any portion of this testimony  
19 which is not proved by other evidence.

20           Okay. Are the parties ready to open?

21           MR. PRINCE: Yep. We are. Thank you.

22           [Pause in the proceedings]

23           THE COURT: Is either side invoking the exclusionary  
24 rule?

25           MR. PRINCE: We are.

1 MR. WINNER: Excuse me. Can we approach, please?  
2 THE COURT: Um-hum.  
3 (Bench conference)  
4 MR. WINNER: Before we start, do you intend to apply  
5 the exclusionary rule to experts? A couple of Judges do, most  
6 don't.  
7 MR. PRINCE: No, I don't think that applies to  
8 expert witnesses.  
9 MR. WINNER: Okay. Thank you.  
10 THE COURT: It doesn't?  
11 MR. WINNER: Sorry.  
12 MR. PRINCE: It doesn't. They can sit in.  
13 THE COURT: Okay. By you guys to that?  
14 MR. WINNER: Yes.  
15 MR. PRINCE: The rule -- I think the rule allows for  
16 this -- so you know the rule allows for that in my opinion and  
17 I think he agrees with that.  
18 MR. WINNER: I agree. Thank you.  
19 THE COURT: Okay. Okay.  
20 MR. PRINCE: Thank you.  
21 THE COURT: Thanks.  
22 (End of bench conference)  
23 MR. WINNER: Sorry, Dennis.  
24 //  
25 //

1 PLAINIFF'S OPENING STATEMENT

2 MR. PRINCE: All right, ladies and gentlemen, good  
3 morning. Happy Friday.

4 THE JURY: Good morning.

5 MR. PRINCE: After four long days of jury selection,  
6 although they were half days, today's our day to -- to get  
7 started. And again, it's my pleasure, and our pleasure, and  
8 my law firm's pleasure to represent both Desire and he sister-  
9 in-law, Guadalupe, in this case.

10 And today is our opening statement and I want to  
11 thank you for being here, and let's get started.

12 And I'm going to talk about Desire Evans-Waiau. I'm  
13 going to call her Desire. And I'm going to do that portion,  
14 kind of explain the nature of the case to you, and what  
15 happened to her. And then my associate, Jack Degree, is going  
16 to talk about Guadalupe.

17 What I want to start with is kind of a overview of  
18 the case so you kind of have an outline of what I'm going to  
19 be talking about and where we're going in this case. And I  
20 kind of want to put together a -- I put together a road map  
21 which is kind of a time line of events and we're going to talk  
22 about the evidence because we have the burden of proof.

23 And I want to demonstrate to you why the evidence is  
24 so compelling for your verdict in favor of Desire and  
25 Guadalupe, not only causing this collision, but the serious



1 injuries sustained by Desire.

2           So I may look down here. I have a monitor just  
3 below here that see -- you see -- it's exactly what you see  
4 here, but there's another slide so it tells me what's coming  
5 up behind it. So that's -- that's -- if I look down, that's  
6 exactly what's down there. I like you to know exactly what  
7 I'm looking at. It'd be what you're looking at.

8           So what we're going to start off with, before  
9 October of 2015, Desire was leading a pain-free life. She's a  
10 mother of three little girls, she's a wife, she's a working  
11 mom, living an active life. She's in her early 20s with three  
12 little girls that she's raising.

13           And October 30th, 2015, is really the starting line  
14 for this case and that's the date that all of Desire's  
15 physical problems with her spine started, and she started with  
16 severe pain, starting that day. That was the event that  
17 started her path and journey on this chronic pain cycle.

18           And January of 2016, you're going to learn and we're  
19 going to show you that she was confirmed to have severe disc  
20 pain, confirmed through diagnostic injections by a pain  
21 management specialist confirming her problems coming from a  
22 disc in her neck.

23           In April 2016, a couple of months later they -- Dr.  
24 Rosler who's her pain management physician confirmed that her  
25 disc pain was in fact causing her problem.

1           In May of 2016, at the age of 25 years old, Desire  
2 is now recommended by a neurosurgeon to have a 2 level  
3 cervical spine reconstructive fusion surgery. And we're going  
4 to talk about the implications of that and particularly  
5 Desire's age. And as we're talking about this case I want you  
6 to be thinking about her age because her age really works  
7 against her when you're talking about a fusion surgery on a  
8 really long term.

9           In July of 2016, Desire was involved in another  
10 rear-end collision. Someone struck her from the rear. What  
11 you're going to learn is there was a temporary aggravation of  
12 her condition. Her neck pain didn't really change but she had  
13 some increase in back pain but it didn't change the cervical  
14 -- I mean, the surgical recommendation already made in May of  
15 2016.

16           And so you're clear, we're making to claim for any  
17 injuries obviously associated with the July of 2016 event, but  
18 all those injuries were soft tissue and they ultimately went  
19 away within a few months. And it really is more to her lower  
20 back. It didn't affect her neck at all.

21           And on -- she had a -- she wanted a second opinion  
22 and in July of 2016, Dr. Garber, who you're going to learn,  
23 the second neurosurgeon confirms that she needs spinal  
24 reconstructive surgery but only at one level, not two levels.

25           And the -- we're going to talk about why that was an

1 important decision for Desire. And ultimately she has neck  
2 fusion surgery and ultimately she succumbed to that at the age  
3 of 25, on September 1st, 2016, simply because the pain, the  
4 limitations, the difficulty not only with the quality of her  
5 own life, but taking care of her children and her family,  
6 which was her first priority, were so much that she needed  
7 some relief.

8 And really the surgery was successful and we're  
9 going to talk about that.

10 But first, I think some rules of the road are really  
11 in order. This is a motor vehicle collision and rules of the  
12 road are obviously talked about that during the jury  
13 selection. The Judge gave you some preliminary instructions.  
14 They won't be all that you get on this point, but I think some  
15 basics are in order.

16 First off, drivers must pay full attention to  
17 traffic in front of them. I think that's a very simple rule,  
18 so that if something develops, if cars slow down, if they stop  
19 for a reason, for whatever reason, that you have enough time  
20 and space to stop and avoid a collision.

21 Second, drivers must keep a safe distance. And this  
22 rule is obviously simple, but important, every time we take  
23 the wheel because driving is -- can be a life safety issue and  
24 we cause a collision you can cause serious injuries. That's  
25 what you're going to learn what happened in this case.

1           And three, drivers on a busy street must anticipate  
2 that traffic will slow down or stop suddenly. And the  
3 evidence is we're going to you is that the defendant, Ms.  
4 Tate, she violated all these basic safety rules in causing  
5 this rear-end collision on October 30th, 2015.

6           And when you violate these rules it really comes  
7 down to responsibility and accountability. And a driver who  
8 does not slow down for stopped traffic and causes a collision  
9 as the Court just instructed you is responsible for all of the  
10 harms and the losses that result. And when you don't follow  
11 the rules and you injure somebody like you did in Desire's  
12 case, a serious injury like a disc injury and a spinal fusion  
13 can result.

14           And what you're seeing here is this is the hardware  
15 in Desire's neck at the C6-7 level -- do we have the spinal  
16 model? We didn't bring it? That's okay.

17           This is the lowest level of your cervical spine and  
18 what you're going to learn is the lowest two levels which is  
19 C6 and C7, I'm going to give you a little anatomy lesson here  
20 in a few minutes. Maybe you already know a lot about it. But  
21 those levels are the ones that have the -- provide the most  
22 motion and mobility for your neck. And she's already had one  
23 fused by the age of 25. And so when you don't follow the  
24 rules that's what can happen.

25           Desire has already incurred so far more than

1 \$180,000 in medical expenses associated with her injuries for  
2 her initial conservative treatment, her pain management,  
3 imaging, as well as her surgery. So she has past medical  
4 expenses because of her injuries of over \$180,000.

5 What I'd like to kind of start with and kind of give  
6 you an idea of what happens when people don't follow the rules  
7 the nature of her injuries. So we had a C6-7 disc herniation  
8 which required -- they call it an anterior cervical fusion  
9 which means they went in from the front, cut through her neck,  
10 which has a permanent scar on her neck to take out the disc  
11 and put that hardware in and the screws that we saw.

12 She had a soft tissue neck sprain and strain, a  
13 thoracic or a mid-back sprain and strain, and she had a lower  
14 back or a lumbar spine sprain and strain.

15 And since October 30th, 2015, Desire's had 24 doctor  
16 visits, 30 chiropractor visits. She's had 6 x-rays, MRIs,  
17 she's had two spinal injections to confirm the source of her  
18 pain, and one fusion surgery where she had to spend multiple  
19 days in the hospital.

20 Let me tell you a little about Desire. Desire moved  
21 to Las Vegas from Hawaii when she was about six years old, so  
22 she grew up here on Las Vegas. This is her family. This is  
23 her husband, George. They've been together since she was 18  
24 years old.

25 And I want to make sure I get everybody's names

1 right. The oldest child is Sienna [phonetic], that's Alia  
2 [phonetic] and the youngest one is Myra [phonetic]. And what  
3 you're going to learn is that when Desire and George got  
4 together, the two older kids, those are George's from a prior  
5 relationship. But since she was 18, Desire has been their  
6 mother.

7           Their mother -- their biological mother hasn't taken  
8 an active role in their life throughout their life and Desire  
9 is their mother and has been raising them since she was 18  
10 years old. And George and Desire have the blessing of having  
11 their own -- their child Myra together, and the Lord has  
12 blessed them with now that she is eight months pregnant,  
13 you'll see on the right, and their son is going to be born  
14 here in the next month. So they have a little baby boy on the  
15 way.

16           So she's been working various jobs. And maybe  
17 they're of modest means, but they're hardworking and very  
18 family orientated. And what you're going to learn is, the --  
19 as most mothers know, everybody else came first, and then she  
20 had to deal with her injuries later, which kind of meant that  
21 a lot of the -- the effect of her injuries and the quality of  
22 life is -- that's because she put everybody else first.

23           But that's her family. That's her pride, that's her  
24 joy, and that's her first responsibility in this life, is  
25 taking care of them and being a mother and a wife.

1 All right. October 30th, 2015. I'm showing you a  
2 picture here of the Ling which is where the old Harrah's was.  
3 That's the -- she was taking the kids there, all three kids  
4 were in the back of her car in car seats. Her sister-in-law,  
5 Guadalupe, was in the car, and they were all going to a trick-  
6 or-treating event, since that's the day before Halloween, at  
7 the Ling on October 30th, 2015. And that's what brings us  
8 here today.

9 In any personal injury case, you really have three  
10 questions to answer, and these are the questions.

11 One is, who was at fault; two, was the plaintiff  
12 injured, and in this case, were both Desire and Guadalupe  
13 injured; and three, how much money is necessary to balance out  
14 all the harms, the losses for a lifetime of pain, suffering  
15 and limitation when it comes to Desire?

16 First things first; let's talk about -- let me get  
17 you oriented. What we are showing you a Google image map.  
18 And this accident happened on Flamingo Road, just east of Las  
19 Vegas Boulevard. This is the corner of Las Vegas Boulevard  
20 and Flamingo. That would be the Cromwell and then you have  
21 the Ling over here just to the south.

22 And the accident actually occurred right there where  
23 that circle is. That's Ling Drive, it's the intersection with  
24 Flamingo. And the defendant, Ms. Tate, she was driving west  
25 on Flamingo road and her intention was to drive to the

1 Venetian. She was going to a concert at the Venetian. So she  
2 was going to go west on Flamingo, that's her intended route,  
3 make a right turn on Las Vegas Boulevard, and then make a  
4 right turn into the Venetian.

5           Desire's route, she was driving west on Flamingo  
6 Road and was going to make a right turn and go into the Linq  
7 in the back. Here's a little closer view. As you'll see, the  
8 intersection of Flamingo and the Linq that's controlled --  
9 it's a three-way -- it's a three-way intersection, two -- two  
10 directions going east and west. As you know, the Flamingo is  
11 one of the busiest streets in Las Vegas. It's an east/west  
12 thoroughfare. The Linq is really a theater street to go back  
13 behind the Venetian, the -- at the Linq Hotel or -- and  
14 Harrah's.

15           And it happened in the right-hand lane where we have  
16 -- that -- you can see a bus in the right-hand lane. Let me  
17 bring you down to a street view. This -- this view is  
18 actually looking west. This -- where this white van is,  
19 you'll see that's the right-hand lane, and that's where the  
20 lane and this collision took place in.

21           You'll see that there's a crosswalk and you'll see  
22 pedestrians in the crosswalk. As you know, that's in the  
23 resort corridor. And that's going to play a role here. The  
24 -- it's a traffic -- there's a traffic control for both -- for  
25 all directions, east and west, as well as people coming out of



1 -- on Linq Drive.

2 Let me kind of -- I have created some -- kind of  
3 like the diagrams for you to kind of explain the story.

4 So Desire's driving west on Flamingo with her  
5 family. There is a car in front of her and it's a red light.  
6 Desire has her right-hand blinker on because she's going to be  
7 making a right turn. And she comes to a stop behind the car  
8 immediately in front of her, because it's a red light.

9 There's a pedestrian -- I just put one pedestrian  
10 there, but there's pedestrians on the sidewalk and across.  
11 This accident happens between 5:30 and 6:00 o'clock. Traffic  
12 was pretty heavy as you would expect on a Friday night.

13 So the car, even though it's a right -- how people  
14 can make a right turn on a red light. So the car in front of  
15 Desire makes a right turn and goes down Linq Drive. And  
16 Desire pulls up to the stop line, and also wants to make a  
17 right hand turn.

18 The defendant is driving a -- Desire is driving a  
19 Honda Civic. The defendant is driving a 2014 Acura SUV and  
20 she's now driving 35 miles an hour up Flamingo Road westbound  
21 approaching the Linq. And initially, Desire remains stopped  
22 because of the light.

23 And as she starts to make a right turn on the red,  
24 the pedestrian starts to go -- the light turns green and the  
25 pedestrian takes a few steps into the street so Desire,

1 naturally, she has to stop. So she applies her brakes and  
2 brings her car to a stop.

3 And the defendant, she never sees any of this take  
4 place. She doesn't see Desire stop, she doesn't see the  
5 pedestrian start to cross the street, even though we showed  
6 you the Google image a moment ago, but that's an area that's  
7 going to be common to have pedestrians in that area. And  
8 there's our corridor.

9 And so as Desire is stopped there, the defendant is  
10 traveling 35 miles an hour and collides with the rear of  
11 Desire's car. Her right front corner hits Desire's left rear  
12 corner of the car causing a pretty significant collision.

13 Now, flip.

14 By this time, the light is green where at the time  
15 of the collision, but the defendant didn't really slow down,  
16 didn't see Desire. All she thought was Desire slammed on her  
17 brakes because she was driving too fast and not paying  
18 attention and wasn't leaving enough space in between.

19 And so that is the basic collision. It's simple.  
20 It's avoidable. It should have been avoided and all these  
21 consequences. This is the left rear of Desire's car. It's a  
22 pretty significant impact and damage to the rear bumper, the  
23 tail section, as you'll see, the quarter panel. Those are  
24 actually taken at the scene.

25 You'll see here the indenting, how the deformation

1 of the trunk, the quarter panel denting, the substantial  
2 damage to the left rear portion of the bumper. It's a 1998  
3 Honda, it's actually an Accord, not a Civic. The total cost,  
4 \$3,800, but since it was -- given it's age, it was considered  
5 a total loss.

6           The defendant's vehicle, this is her 2014 Acura with  
7 significant front -- right front corner damage, because the  
8 right front corner impacted the left rear corner of Desire's  
9 car. And there's over \$5,000 in damage to the defendant's  
10 Acura RDX SUV, because of this collision.

11           We believe the evidence is going to be that the sole  
12 cause of this collision is the fact that the defendant wasn't  
13 pay full attention, going too fast, didn't leave a safe  
14 distance and didn't bring her car to a stop safely and in time  
15 and that's why it caused a collision. Because Desire, she was  
16 stopped at the time so.

17           But the question is why are we here? We asked the  
18 defendant this question, if you claim that another driver  
19 caused or contributed to the crash, tell us who it is.

20           She said, the driver of the plaintiff's vehicle  
21 braked hard and abruptly without signaling that she intended  
22 to make a turn.

23           So she's blaming Desire for all of this.

24           As you're going to learn here in a minute, she  
25 doesn't accept any level of responsibility for causing this

1 collision or even contributing to it. She blames Desire for  
2 all of this.

3 And one of the things that we do before we bring a  
4 case to court, we ask -- we take a deposition which is  
5 testimony under oath. So we asked question of Ms. Tate about,  
6 who do you think is to blame for this accident? And she says,  
7 "There's a lot of factors that have caused the accident."

8 And we asked her, "What are the factors?" And she  
9 said, "Her," which means Desire, "slamming on the brakes in  
10 front of me."

11 And we asked her, like, "Hey, looking back is there  
12 anything that you think you could've done differently to avoid  
13 it?" And she says, "I was following all the rules of the  
14 road."

15 And as you're going to learn as we've shown you, she  
16 wasn't following the rules of the road. She violated the  
17 rules of the road by not keeping a safe lookout, by driving  
18 too fast, not keeping a safe distance and avoiding this.

19 But we even asked her, "Do you think if you were a  
20 little bit further behind this accident might not have  
21 happened?"

22 And her answer was, "Maybe -- what? Like a mile  
23 away? I don't know."

24 So that demonstrates her attitude towards this case  
25 and towards Desire and being flip with her statement that what

1 if I was a mile away.

2           So we asked her, "So when we go to trial and when  
3 we're going to have our jury in front of us what are you going  
4 to tell them? What is your testimony going to be regarding  
5 anything you could have done differently to avoid this  
6 collision?"

7           "Well, I could've said -- I could not have driven  
8 that night. I could have avoided the accident. If I just  
9 would have stayed home and not gone to the show I would not  
10 have been there."

11           So being a mile away and maybe just not even going  
12 to the show that night. Now, I guess we think the answer is  
13 more simple; pay attention to what you're doing, follow the  
14 rules of the road and this doesn't happen.

15           And let's talk about -- a little bit about the laws  
16 of negligence because I think that's important for you to kind  
17 of --

18           MR. WINNER: Excuse me, Your Honor. May I approach?

19           THE COURT: Yep.

20                           (Bench conference)

21           MR. WINNER: I really don't like interrupting.

22           When we were arguing motions before it was -- the  
23 Judge granted a motion to suggest that the manner in which we  
24 defended the case should be raised or talked about or argued  
25 about. And what I just heard, too, I heard that this shows

1 what her attitude is, she doesn't care, she's callous which I  
2 think violates that order and would be inappropriate to -- you  
3 know --

4 MR. PRINCE: I'm going to get the order.

5 MR. WINNER: Okay.

6 MR. PRINCE: May I approach?

7 THE COURT: Which order is this; is this my order?  
8 Villani's order?

9 MR. WINNER: Villani.

10 THE COURT: Okay. The one that we filed out --

11 MR. PRINCE: Oh yes, may we -- you have to turn the  
12 -- the noise on.

13 THE CLERK: We're working on it.

14 MR. PRINCE: Oh.

15 THE COURT RECORDER: It's frozen.

16 MR. PRINCE: Okay.

17 THE COURT: It's frozen.

18 MR. PRINCE: Okay.

19 MR. WINNER: I'm sorry, Dennis, I don't mean to  
20 interrupt you. I really don't.

21 MR. PRINCE: I don't care.

22 MR. WINNER: I was saying [inaudible] counsel  
23 interjecting his opinions or his objection, here's what I  
24 think, here's what I think, that is inappropriate for a  
25 prosecutor, it's inappropriate for a lawyer.

1 THE COURT: Okay.

2 MR. WINNER: Especially in opening statement.

3 THE COURT: Okay.

4 MR. PRINCE: The only thing it says here is, it

5 says, counsel cannot argue this matters in trial because

6 defendant Tate is trying to avoid her responsibility. I'm

7 saying she doesn't accept any. I'm not trying to -- she can

8 defend herself all she wants, and I demonstrate that's her

9 attitude towards the event.

10 MR. WINNER: I thought it [inaudible] 30th.

11 [Inaudible].

12 THE COURT: Isn't that the same thing?

13 MR. PRINCE: No. She's not -- you have to read it.

14 It's -- it's in trial because she's trying to avoid

15 responsibility. They can defend their case all they want. I

16 can also say she doesn't accept any responsibility. And this

17 is her attitude towards it.

18 THE COURT: That's the order?

19 MR. PRINCE: I'm not saying she doesn't have a right

20 to come in and defend herself. I'm just saying that is her

21 attitude.

22 MR. WINNER: Well, her attitude is not relevant to

23 the damages [inaudible].

24 MR. PRINCE: Well, yeah, but that's not -- that's

25 not prohibited. We can talk about attitude and that's her

1 attitude towards the fault issue. She's making -- she's  
2 saying that Desire is the blame.

3 MR. WINNER: That's -- the argument is punitive and  
4 it violates that order.

5 MR. PRINCE: No, it doesn't.

6 MR. WINNER: And it's not relevant.

7 MR. PRINCE: It doesn't violate that order. Because  
8 I'm not saying that she's in here trying to --

9 MR. WINNER: This -- this was already argued by your  
10 associate. I don't think you were here. You lost. You're  
11 not allowed to do this.

12 MR. PRINCE: No, I have the order right here and I'm  
13 very familiar with what the content is.

14 MR. WINNER: Okay.

15 THE COURT: I'm going to sustain that objection. I  
16 think it violates the order.

17 MR. PRINCE: What --

18 THE COURT: So move on.

19 MR. PRINCE: -- what -- what part? What part of it  
20 is --

21 MR. WINNER: Failing to accept responsibility.

22 THE COURT: Yes.

23 MR. PRINCE: No, I just said she doesn't accept it.  
24 I didn't say she failed to. I said she doesn't accept that.  
25 She's blaming Desire. She is blaming Desire. That's her --



1 that's what she said. I have the right to say that.

2 MR. WINNER: You have the right to say that, but not

3 the --

4 THE COURT: But not the avoiding responsibility.

5 MR. PRINCE: I didn't say she's avoiding -- I said

6 she doesn't accept any.

7 MR. WINNER: It's the same thing.

8 THE COURT: I think that's the same thing. So just

9 move on.

10 MR. WINNER: I'm going to ask for a curative

11 instruction and move to strike.

12 MR. PRINCE: No, thank you.

13 THE COURT: So how do you want me to say? How do

14 you want me -- let me -- [inaudible] a curative instruction on

15 something like that; do you want to say it now?

16 MR. WINNER: Yes.

17 THE COURT: What do you want me to say?

18 MR. WINNER: We are not here -- you are to disregard

19 any comment that the reason we're here is someone is trying to

20 escape responsibility or --

21 MR. PRINCE: Well, I didn't --

22 MR. WINNER: -- accept responsibility.

23 MR. PRINCE: -- I didn't say that. No, no, no, then

24 let's excuse the jury, because I didn't -- I didn't say that.

25 I didn't say she -- I said --

1           THE COURT: I'll have to get a read-back because I  
2 honestly don't remember the exact wording. I just know it was  
3 the same --

4           MR. PRINCE: I just said she doesn't accept  
5 responsibility. And this is her attitude about the accident  
6 [inaudible].

7           THE COURT: I'm not so troubled about the attitude  
8 part.

9           MR. PRINCE: Yeah. If I -- I didn't say she was  
10 trying --

11          THE COURT: It's the responsibility, just because I  
12 feel like it's a violation of the order.

13          MR. PRINCE: Yeah, it doesn't -- it doesn't mean --  
14 you can use the word "responsible". This whole case is about  
15 responsibility, right? The legal responsibility. And -- and  
16 -- Mr. --

17          THE COURT: Even in --

18          MR. PRINCE: -- and Mr. Winner --

19          THE COURT: But I didn't make that order  
20 [inaudible].

21          MR. PRINCE: -- but Mr. Winner -- Mr. Winner talked  
22 about responsibility yesterday, but if you're not  
23 responsibility for causing a collision you should be held  
24 liable. He talked about that. He used the term all over the  
25 place yesterday.

1 THE COURT: I know, but I got an objection.  
2 MR. PRINCE: He has the right to defend.  
3 THE COURT: I know, I -- I'm just saying, it just  
4 seems to be a direct violation of that, so I'm going to  
5 sustain it. I'll say whatever you want curatively. You're  
6 not going to do anymore. What do you want me to -- give me  
7 the language. Because I -- I don't recall the exact verbiage.  
8 Do you mean pull it up?  
9 MR. WINNER: Um --  
10 THE COURT: Do you want me to just -- shall I just  
11 read --  
12 MR. WINNER: She hasn't accepted responsibility, the  
13 reason we're here is she hasn't accepted responsibility.  
14 MR. PRINCE: That's not what I said. She -- I said  
15 she doesn't accept any, but I didn't say the reason we're  
16 here. I said she's not -- she doesn't -- she accept  
17 responsibility. She blames Desire for this. I showed you an  
18 interrogatory so --  
19 THE COURT: I know, but I'm just saying --  
20 MR. PRINCE: -- that's not responsibility, right?  
21 THE COURT: I know, but that's what he said you  
22 can't say. I don't know why, but --  
23 MR. PRINCE: No, he says you can -- you can argue  
24 this matters in trial because it's trying to avoid -- I didn't  
25 say she's trying to avoid. They have a right to defend

1    themselves. I have the right to say that she doesn't accept  
2    that responsibility, because she doesn't, on the [inaudible]  
3    she doesn't.

4               MR. WINNER: That's -- that's -- that my objection.  
5    That's why I'm --

6               MR. PRINCE: And --

7               MR. WINNER: -- approaching.

8               MR. PRINCE: And that's a [inaudible].

9               MR. WINNER: This is exactly why I brought the  
10   motion.

11              THE COURT: Okay. I'm going to sustain it and I'm  
12   going to just -- you're not going to do anymore of that,  
13   right? You're done with that, right?

14              MR. PRINCE: Yeah, but I want to know what the scope  
15   of that is, because I don't think that's -- that's not --  
16   that's not the intent of it in my mind.

17              THE COURT: Well, I don't know. Look, [inaudible].

18              MR. WINNER: Okay. If -- if -- if --

19              THE COURT: I apologize. I'm not -- I --

20              MR. WINNER: If Mr. Prince has the evidence and will  
21   show she is responsible for this, I can't object to that. But  
22   the evidence will show she's not owning up to her  
23   responsibility, she's not accepting her responsibility, that's  
24   punitive and that's not appropriate.

25              MR. PRINCE: That's not punitive. But she doesn't

1 accept responsibility, that's a fact.

2 THE COURT: I know. I just feel like it's a  
3 violation of his order.

4 MR. PRINCE: Oh, so then -- so then he can't say  
5 she's not responsible? Right. That -- that cuts two ways.  
6 He can't say she's not responsible. You can't say that then  
7 because you know he's going to get up here and say that. So  
8 you can't argue that. That [indiscernible] --

9 THE COURT: I doubt he's going to --

10 MR. PRINCE: -- you can't look at me and then all of  
11 a sudden he can never -- she -- the reason -- yeah, she has  
12 the right to defend herself and she's not responsible for  
13 causing this collision. Desire's responsible.

14 MR. WINNER: Actually --

15 MR. PRINCE: He can't argue Desire's responsible.

16 THE COURT: I'm guessing he's not going to --

17 MR. WINNER: Actually, Dennis, I don't think I'm  
18 going to say that.

19 THE COURT: Yeah, because -- that's probably not a  
20 good idea. I'm just going to say, to the extent that counsel  
21 is arguing defendant Tate is trying to avoid responsibility,  
22 that -- that -- are you going to stricken and just --

23 MR. PRINCE: To that extent, yeah. That's fine.

24 THE COURT: Is that okay?

25 MR. WINNER: That's fine.

1 MR. PRINCE: Yeah.

2 THE COURT: Can I have this for a second?

3 MR. PRINCE: Yeah.

4 MR. WINNER: Thank you, Judge.

5 (End of bench conference)

6 THE COURT: Ladies and gentlemen, to the extent that  
7 Counsel was arguing that Defendant Tate is trying to avoid her  
8 responsibility that portion of the argument will be stricken  
9 and you are ordered to disregard it; okay?

10 MR. PRINCE: We believe the evidence is going to  
11 show you under the laws of negligence that the defendant is  
12 legally responsible for causing this collision. And she is  
13 the sole cause of why we're here.

14 Now, I want to start off with the preponderance of  
15 the evidence because I want to -- this is the instruction the  
16 Judge just gave you that we talked about during the opening  
17 statement. I want to reenforce it because it gives you a  
18 context when you're receiving the evidence as to what is the  
19 legal standard that my clients are held to.

20 Preponderance of the evidence means such evidence as  
21 when considered and compared to that opposed to it is more  
22 convincing and produces in your mind and belief what is sought  
23 to be proved as more probably true than not true. That's more  
24 likely true than not, the 51/49 percent that we talked about.  
25 And that's -- that's the legal standard that we're -- you're

1 to judge this case by, all issues in this case by.

2           The elements of negligence, we all have -- the  
3 plaintiff has to prove the defendant was negligent, sustained  
4 damage, that the defendant was the cause of those damages. So  
5 three simple things; who is at fault, was the plaintiff  
6 injured and what are the damages, all by a preponderance of  
7 the evidence.

8           And one of the proposed instructions the Judge just  
9 gave you talked about what does it mean? It says, well, she  
10 must drive reasonable and safe. You must drive using ordinary  
11 and reasonable care. And we submit, based upon the evidence,  
12 that if you're not following too close, you're not paying full  
13 attention, you're not keeping a safe distance, that's not  
14 reasonable for anybody.

15           We do not expect anybody to be perfect, but when  
16 you're negligent, as in the case here, you're to be held  
17 accountable for all the harms and losses that are caused.

18           The Judge gave you another instruction.

19           It's the duty of a driver of any vehicle to avoid  
20 placing himself or herself in danger and to use like care to  
21 avoid an accident, to keep a proper lookout for traffic and  
22 other conditions to be reasonably anticipated and to maintain  
23 proper control of his vehicle.

24           And here the evidence is going to demonstrate to you  
25 that defendant did not keep a safe -- keep a lookout, it

1 wasn't a safe distance, it was simply driving too fast for  
2 what was going on in the road that day. And how do we know  
3 that? One, she told an investigator after this happened, she  
4 says, "I really wasn't aware because I was traveling so fast  
5 and she slammed on her brakes."

6           Desire had been stopped waiting for a car in front  
7 of her because she was legally required to stop, with her turn  
8 signal on. The defendant didn't see it because she wasn't  
9 paying attention.

10           The impact happened at 35 miles an hour. And under  
11 any circumstance you should have been at least slowing down.  
12 The light had just barely turned green, there was pedestrians  
13 and cars stopped in front of you. If you don't see that  
14 slowing down and start to slow down, that's a problem. If  
15 you're driving at the speed limit, at the point of impact, you  
16 weren't paying attention.

17           And how do we know that? This is what the under --  
18 the testimony under oath, under the penalties of perjury, that  
19 the defendant gave.

20           "Do you know how fast you were traveling at the time  
21 of the impact to the rear of my client's vehicle?"

22           "I believe it was 35 miles an hour."

23           "Do you believe that 35 miles an hour was the speed  
24 limit on Flamingo Road where the accident occurred?"

25           Answer, "Yes".



1           So she made no effort to slow down. Well, she might  
2 have tried to swerve, she must have been distracted, must not  
3 have been paying attention. But if you're not even slowing  
4 down when traffic is barely moving, that's a problem.

5           And so we answered the first question for you; who's  
6 at fault? And that's the sole cause is the defendant. That's  
7 what caused this.

8           What are Desire's injuries, harms and losses?

9           That's where the most time is going to be spent on  
10 this case as well as Guadalupe talking about the physical  
11 injury, its effect on her life, everything that she went  
12 through. But the starting point for you in the days, weeks  
13 and months, and a couple of years before the crash, Desire was  
14 pain-free, living a very active life. One of the great things  
15 about being a young mother is you can be really active with  
16 your kids and that's a really special time for any parent, but  
17 including mothers.

18           This is Desire's neck now and we're going to talk  
19 about the -- which was fused, and obviously she didn't need in  
20 the year, the months or a couple of years leading up to this  
21 she didn't need any treatment for her neck, it wasn't required  
22 for a fusion and all the things that you're going to learn  
23 goes with someone having a fused spine.

24           Now, this is part of our anatomy lesson. And so  
25 there's really three segments, there's really four segments to

1 the spine, but three major ones. We have the cervical spine  
2 which is your neck, we have the thoracic spine which is your  
3 middle back, and the lumbar spine which is our low back.  
4 There's seven cervical spine vertebrae, there's 12 thoracic  
5 and five lumbar, and then you have the sacrum. And we're  
6 going to be focusing our time talking about the cervical spine  
7 in this case, because that's where the structural injury was  
8 for Desire.

9           And there's really two components when someone's  
10 injured in a motor vehicle collision like this. There's a  
11 soft tissue component, which you're going to learn is the  
12 muscles and ligaments and tendons, and then there's going to  
13 be a structural component which is the spine itself; the disc,  
14 the nerves.

15           And when we're talking about the soft tissues, we're  
16 talking about muscles, tendons and ligaments and the body is a  
17 wonderfully complex structure that has a wonderful ability to  
18 heal itself. But unfortunately, when there's structural  
19 injuries to a disc or to a nerve it doesn't have that ability  
20 and pain becomes chronic. The inflammation becomes chronic.  
21 People have significant ongoing problems.

22           But I want to show you, when we talk about soft  
23 tissue injuries, we're -- Desire had a component of that --  
24 really how -- how complex the soft tissue structures are of  
25 the spine. And so watch all the different layers of the

1 muscles, tendons and ligaments of the body, because I'm going  
2 to -- we're kind of like taking them off layer by layer for  
3 you. It's an amazing design that we have and the ability with  
4 all that its designed to protect our spinal cord.

5           Because really the spinal cord is the information  
6 superhighway of the body. It controls literally our -- all  
7 the communication within our brain, our arms, our legs, every  
8 part of our movement, our ability to stand up as human beings.  
9 It is an amazing complex structure and when it's injured it  
10 has long-term consequences.

11           And so we're going to be talking about the cervical  
12 spine. Remember, I said there's seven levels of the cervical  
13 spine. So the white part here, that's considered bone.  
14 That's what they call a vertebral body. That's the bone. And  
15 in between the bone is -- is -- are the discs. Those are the  
16 shock absorbers or the cushions between each of the vertebrae  
17 of the spine.

18           And on each side -- and there -- you can feel like  
19 on our spine see the little -- the little nobs? This is  
20 actually from the back. This is the front. When you see the  
21 disc, this is the front side. This would be the back. This  
22 would be the little nobs on your -- that you can feel on your  
23 spine, the little lumps.

24           On each side there's these little joints kind of in  
25 between these knuckle joints, those are called facet joints.

1 That allows you to move side to side, bend forward, bend to  
2 the side, bend back and forth. Those will give us the  
3 mobility we have. And the discs are our shock absorbers in our  
4 spine.

5           We're going to be spending our time talking about a  
6 disc injury that Desire had, and I want to talk about the  
7 anatomy of a disc. The disc is -- it really has two parts of  
8 it. The outer part, they call that the annulus. It's like a  
9 steel belted radial tire. It has all these very tight fibers  
10 that interrelate to each other and it's very, very strong.

11           And the middle part is the nucleus. And that's the  
12 part when it gets ruptured the nucleus material can start  
13 coming out. When we talk about a disc a herniation, which I'm  
14 going to -- which Desire had, we're going to talk about that  
15 and I'm going to show it to you. This material starts to leak  
16 out.

17           So here's a top down view -- I wish I had my spine  
18 model here but I want you to think of it as picture being  
19 taken straight down of your spine. Remember, this is the back  
20 of your spine here. This is always -- the discs point towards  
21 the front, both in the neck and the back, the low back.

22           And on each side, there's -- through these little  
23 openings is called -- are the nerve roots. And it's -- every  
24 level of your spine from C1 all the way down through your  
25 sacrum there's nerves exiting from outside of that.

1           And what happens is when you have a disc herniation,  
2 the disc material comes out and causes a protrusion or bulging  
3 and it comes in contact with the nerve which causes  
4 inflammation. And the whole key to this whole is really about  
5 inflammation, whether it be a soft tissue injury or the disc  
6 injury, inflammation is the cause of pain.

7           And when you have inflammation, particularly of a  
8 nerve root, that causes pain to start going down your arm and  
9 your legs. When we talk about sciatica, that's typically what  
10 happens. And in Desire's case, you have -- she had a aspect  
11 of impacting her nerve, whether it be a chemical irritation.  
12 And so this is a spine model. So now we're going to go -- I'm  
13 going to go back a little bit here.

14           So now this is our cervical spine at the very top.  
15 And you can kind of see, this is the -- the back and this is  
16 the -- this part is the front. And now we have in between  
17 each level and down here, this is -- these are the discs,  
18 these clear kind of gelatinous material, that -- those are the  
19 -- what they call the intervertebral discs. And these yellow  
20 pieces, those are nerve roots.

21           And out of every level of the spine you have true  
22 nerve roots which they're the same bilateral, meaning, they go  
23 down each side. They go down into your arms, they provide  
24 sensation, motor function and down into both your arms and  
25 into your legs.

1           In Desire's case, we're going to be talking about a  
2 disc herniation at her C6-7 level. And what happens is, when  
3 you have a disc injury in your -- you have an injury to your  
4 disc in your neck, pain starts to shoot down into one arm or  
5 both arms. And they're called radiculopathy. And we're going  
6 to spend a lot of time talking about that in this case because  
7 that's one of the problems that Desire had.

8           So we have a disc injury and a soft tissue injury.  
9 This case, Desire -- for Desire it involves both. She had  
10 both a muscle injury and a sprain and strain that ultimately  
11 did go away and she was left with a permanent disc injury  
12 which ultimately required surgery. So we're going to be  
13 talking about how -- what happened, how the body responds to  
14 trauma and creates a soft tissue injury because of the  
15 inflammation and the pain as well as the disc injury.

16           What we're going to do is demonstrate our position  
17 through the clinical evidence. This case is going to be based  
18 upon clinical, medical evidence.

19           And there's various pieces of this puzzle, and we're  
20 going to talk about this clinical correlation chart throughout  
21 this case. And a big part of how physicians reach a diagnosis  
22 and treat patients is the patient history; what are your  
23 symptoms, when did the symptoms start, where are the symptoms?  
24 Are they just in your neck? Do they go into your hand? Do  
25 they go into your feet? How long have they been present?

1 It's how were you doing before this? How are you doing now?  
2 How are you responding to treatment? So that's a big  
3 component of this.

4 Another part is like the physicians, all of their  
5 examination findings. Is it consistent with the history? How  
6 do people respond to treatment? Is physical therapy helping  
7 you? Is it not helping you? Do the injections you're  
8 getting, did it take away the pain, or does the pain remain  
9 the same?

10 Diagnostic imaging. Those are doctor exams.  
11 Diagnostic imagings would be x-rays, MRIs, CT scans, the  
12 objective stuff. But we also talk other tests in here.  
13 That's another big component is like pain management  
14 injections which Desire underwent -- she underwent two of  
15 those to try to find out the source of her pain.

16 Now, let's go back to the day of the crash. Desire,  
17 that night like many people, she didn't feel any pain that  
18 night. She didn't ask -- she didn't go to the hospital. And  
19 in fact the police officer because it was taking so long at  
20 the time because she wasn't feeling any pain at the time when  
21 Metro wasn't coming out if no one reported an injury at the  
22 scene they weren't coming out.

23 So a Metro officer came out, the parties exchanged  
24 information. So she went on and took her kids to the trick-  
25 or-treat function at the Linq that night. Then the next

1 morning which is a Saturday, that's when she started feeling  
2 severe pain in her neck, her back, her low back and her arm.  
3 But nevertheless, she took her kids trick-or-treating, and she  
4 sought care the first thing on Monday.

5 She did go see a lawyer because she had concern  
6 because her car was obviously significantly damaged. She had  
7 questions. She had some confusion. And the lawyer gave her a  
8 name of a chiropractor that she went to on Monday, November  
9 2nd.

10 And so her first visit to Align Chiropractic was on  
11 November 2nd, that Monday after the accident. And her biggest  
12 complaint was neck pain, shoulder pain and back pain. She was  
13 reporting that it was every day and it was constant.

14 And what I'm showing you here is and what's  
15 important about this is this pain drawing. This -- the key to  
16 this case is not only the neck pain but the pain into the arm.  
17 She had that immediately and when she first went to the doctor  
18 that arm pain is significant because that's one of the main  
19 reasons why she ended up having the surgery because of this  
20 nerve related injury.

21 And so she tells the doctor that she was involved in  
22 a collision. She was pain-free before. She's having a hard  
23 time taking care of her daughters and because they were young  
24 -- this was almost four years ago so obviously she is having a  
25 -- couldn't pick them up anymore, having a difficult time



1 caring for them. She rated her pain in neck as an 8 out of  
2 10. She also had pain in mid-back and back but really the  
3 neck was the most severe.

4 And she tells the doctor that -- says, The patient  
5 states she's having sharp throbbing pain in the left side of  
6 her neck to the left mid thoracic and left low side of her  
7 back. It radiates into the left hand to her fingers, feels  
8 numbness and tingling sensation at nighttime.

9 It's the pain coming down the arms and the numbness  
10 and tingling which is really going to be concerning as you're  
11 going to learn. But that's the -- the doctor did an  
12 examination and his testing confirmed, his orthopedic tests,  
13 the chiropractor performed was positive when he pressed on the  
14 neck, pushed it down, and made her do certain maneuvers which  
15 created pain into her left side of her neck and into her arm,  
16 confirming through exam findings her condition.

17 Also, sensation, she had decreased sensation in her  
18 arm consistent with a disc issue and a nerve issue because  
19 that's one they're looking for. Do you have hypersensation,  
20 have you had loss of sensation because she was reporting pain  
21 and numbness into her arm.

22 And one of the working diagnoses from the very  
23 beginning was a disc injury. As you'll see, the diagnosis  
24 number one, by the chiropractor was cervical disc disorder  
25 with radiculopathy. And radiculopathy means pain that goes

1 into your -- from your neck or your low back into your arm or  
2 your legs.

3 And so the chiropractor realized that this is likely  
4 more than soft tissue and ordered a referral to pain  
5 management, ordered an MRI. If you have a soft tissue injury  
6 only, you don't need that. Soft tissue injuries go away  
7 within a few days, a few weeks, maybe a few months. And you  
8 don't require any advanced imaging, like an MRI, and certainly  
9 don't need to go see a specialist.

10 But her neck pain was significant from the  
11 beginning. It was having a difficult effect on her life. She  
12 goes back to the chiropractor talking about sharp pain in her  
13 left shoulder, feels sore in her neck region but was having an  
14 impact on her ability to pick up her kids and take care of her  
15 young kids.

16 And with time the soft tissue injuries in her neck  
17 and her mid-back and her low back they go away. They  
18 diminish. And what we're left with is this structural disc  
19 issue which ultimately remained for her.

20 And I kind want to -- I created a chart for us that  
21 most patients kind of like this hierarchy if you will. People  
22 who have soft tissue injuries most of the time over the  
23 counter medication, some kind of ointments, lifestyle changes,  
24 take it easy, rest for a few days, that -- that takes care of  
25 most problems.

1           The next is like simple interventions like physical  
2 therapy, conservative care, medication, that helps. You can  
3 do non-surgical issues like spinal injections.

4           And when you get up to the top where Desire is, this  
5 is one of those few cases where these self-help measures,  
6 simple interventions and even some of the pain management, it  
7 didn't work for her. Her pain didn't get to go away. And so  
8 she was one of the few patients that had to have a surgical  
9 intervention.

10           And one of the things that the physicians are doing  
11 now is where is the pain coming from? And so they kind of  
12 have to investigate where the source of this pain is coming  
13 from. And so the chiropractor sends Desire for an MRI of her  
14 neck, part of the investigation. And what they find out is  
15 that she has a bilateral disc protrusion which is a herniation  
16 at her C6-7 level. That's the level now we know she has  
17 surgery.

18           And what it means is also it says, effacing the C7  
19 nerve roots, which mean the disc protrusion is now affecting  
20 the nerve root. Remember, I showed you the disc herniation,  
21 the pressing upon the nerve root or having it come into  
22 contact with that?

23           Part of it could be the chemical coming from the  
24 nucleus. Remember, the gel -- the disc is like a jelly donut  
25 and the jelly part is the nucleus. And when it starts to leak

1 out it's very irritating. It's kind of a toxic material and  
2 when it comes into contact with other structures like a nerve  
3 it becomes inflamed and very painful and it can cause like  
4 numbness or tingling or pain.

5           So the neck -- the cervical MRI now objectively  
6 confirms a disc herniation. And there's the disc herniation  
7 right there at C6-7 at the lowest level of her spine. And  
8 we're going to have Dr. Rosler here today who's a pain  
9 management specialist talk about that, as well as the  
10 neurosurgeons involved in her case.

11           And that's what it shows. That's a -- it's a  
12 diagram of a disc herniation now affecting a nerve root which  
13 would be on the right -- this would be opposite -- but  
14 affecting one of the nerve roots which would explain the  
15 nature of the symptoms going down her arms. And so now Desire  
16 has -- we know she has a disc protrusion, it's affecting a  
17 nerve root, and would be one of the explanations for pain  
18 going down her arm.

19           And we use the term radiculopathy, and I want to be  
20 sure you understand what that means. This could be severe  
21 pain or numbness, which radiates to the shoulder, arm, and  
22 hand. You're going to hear that word radiculopathy a lot  
23 during the course of this case, so it's important to  
24 understand that because that -- remember the diagram that  
25 Desire had when she first went to the chiropractor going down

1 her left arm? That's cervical radiculopathy, so it's there  
2 from the beginning.

3 Now, you may hear, oh, there's -- there's MRIs are  
4 really normal. The defense experts are going to come in and  
5 really it wasn't that big of a problem, there's no objective  
6 injury. But what I want you to be clear on this is this.  
7 There is also concern about her shoulder, her left shoulder,  
8 and they did an MRI of her left shoulder.

9 And what it shows is a bone contusion of her left  
10 shoulder. That means a bone bruise. The only trauma she had  
11 was this motor vehicle collision. So it was enough to bruise  
12 her bone of her left shoulder, in addition to the disc  
13 herniation at C6-7. So you have two forms or objective  
14 injury, but enough to -- but this was, in fact, significant  
15 enough to bruise her bone and, clearly, was enough to damage  
16 that cervical disc.

17 So as part of the investigation goes on, the  
18 chiropractor, Dr. McCauley, referred her to Dr. Rosler.  
19 You're going to see Dr. Rosler today. Dr. Rosler is board  
20 certified as an anesthesiologist in pain management. He has  
21 what they call fellowship training, which is an additional  
22 year beyond his residency training to specialize in treating  
23 patients with pain and chronic pain. What his role is, in  
24 part, to try to find the source of the pain. That's his goal.

25 And when Desire sees him in December of 2015, about

1 two months after the collision, he documents she's got  
2 headaches, left-sided neck pain, left shoulder pain, left  
3 parascapular pain, which is down behind the shoulder, pain  
4 shooting down the left arm, and numbness into the left hand,  
5 cervical radiculopathy.

6           And here is the pain diagram that she draws for Dr.  
7 Rosler on the very first visit. All the pain coming from the  
8 left side of the neck going down the left hand into the arm  
9 with numbness into the hand. So pain is in the arm, numbness  
10 in the hand. All extremely consistent with a C6-7 disc  
11 herniation with nerve root problem.

12           Dr. Rosler, let's work through this, he does also  
13 what they call a sensory exam. He's testing her to see what's  
14 affecting you, what's causing your loss of sensation in your  
15 arm. She's got a decreased sensation, what they call the left  
16 C7 dermatome. Every one of these nerve roots that come out,  
17 they affect a different part of the arm and the hand. They  
18 all have a specific region.

19           So when he says that her pain falls in a C7  
20 dermatome, which would be this level, it goes down a very  
21 specific part of the back of the arm into the hand that he can  
22 follow. So he is -- he is, through his exam, he's confirming  
23 that description in what she's telling him. He diagnoses her  
24 correctly with a cervical sprain-strain, which is what she  
25 had, left mechanical neck pain, parascapular pain with left

1 upper extremity radiculitis.

2           And every time you hear -itis, that means  
3 inflammation. Anytime you -itis in medicine, it's typically  
4 inflammation. There is some sort of nerve-related pain or  
5 problem, nerve root irritation. And what he recommends for  
6 her is a spinal injection that's part of another test, and we  
7 talked about this part of our clinical correlation.

8           He wants to schedule what they call a selective  
9 nerve root block to rule out cervical discogenic  
10 symptomatology. What does he mean by that? He means he's  
11 trying to confirm does she have a disc problem or not a disc  
12 problem, where is this pain coming from. That's his goal.

13           And there's two -- what you're going to learn is  
14 there's two goals of spinal injections. One is they want to  
15 determine the source of the pain. We're going to call that  
16 the diagnostic part of it, where is the pain coming from. The  
17 second part is, the part of the goal, can we reduce the pain.

18           And the reason they're trying to do this, we want to  
19 find out the source of the pain in case we can figure out what  
20 the treatment plan or even surgery would be, but also can we  
21 provide you some relief. Because meanwhile, this is now  
22 almost three months after that, her pain is now becoming  
23 chronic, it's severe, it's affecting the quality of her life,  
24 the ability to take care of her children.

25           And as you're going to learn from her is while she

1 was going through this, she is still there to take care of a  
2 young family. Her husband has to work, and she has to put,  
3 most days, like many mothers, put everybody else ahead of her,  
4 and then she took care of herself more at the end and it  
5 became very debilitating to her throughout this process.

6 But two goals of the spine injection is source of  
7 pain and reducing pain. They call that the therapeutic  
8 benefit if you get a reduction in your pain. And here is a  
9 simple -- this is like a selective nerve root block. Dr.  
10 Rosler will explain this today. You use a needle, and then  
11 inject into a specific like level of your spine.

12 There's two types of medication. One is like a  
13 numbing agent, like a lidocaine, like you go to a dentist and  
14 kind of numb -- get yourself numbed up. That's one  
15 medication. The second would be the steroid. And the steroid  
16 is important for this reason. It's longer acting. The  
17 diagnostic part is the numbing agent.

18 If you have immediate pain relief, that tells us --  
19 gives us a diagnosis, yeah, that may be where your pain is  
20 coming from. If you get longer relief, the steroid worked  
21 because the steroid, remember, reduces the inflammation. And  
22 as the inflammation goes down, hopefully the pain and symptoms  
23 go down. And so the injections that Dr. Rosler performs has  
24 two goals, diagnosing and hopefully maybe treating the pain.

25 Here's what they call a dermatome chart. Remember



1 we talked about all the nerves? You can see the C7. It kind  
2 of comes down through the back of the arm and down into the  
3 hand and to the -- these two fingers. On each side it's the  
4 same way. It's like a book. It's like an index to a book.  
5 It kind of tells you where, you know, which chapter and what  
6 you're going to find in each chapter. It follows this kind of  
7 a distribution and Dr. Rosler pointed out that the disc  
8 between 6 and 7 and the nerve root, that was what he suspected  
9 was causing her problem.

10           So on January 7, 2016, using her response to  
11 treatment, he injected her at the C7 nerve root level. She  
12 went from an 8 to a zero. That confirms to him that that's  
13 where the pain is coming from. Not only did it take away the  
14 neck pain, it took away the arm pain, which was significant.

15           She comes back about a week later. Before her pain  
16 level was an 8, now it's down to a 1 or a 2. So the steroid  
17 now has reduced the inflammation because the steroid can work  
18 for days, it may not work at all, it may work days, weeks, or  
19 even months. It's highly variable because everybody is very  
20 different in terms of their response to inflammation. And so  
21 she actually had a very good initial response to this.

22           By February 3rd she's released from her chiropractor  
23 because her pain level is down. The steroid is working.  
24 Really now it's more of a structural problem with the disc.  
25 So the chiropractic care is not going to help the structural

1 problem with the disc. It helps the soft tissues heal. So by  
2 this time the soft tissues are pretty well under control, and  
3 now they're really down to the structural issue of the spine.

4 And so what I want to do is clinically correlate all  
5 of these events pointing to this disc injury. So we know a  
6 significant collision happened on October 30th. Her pain  
7 diagram started with neck pain, left arm pain, confirmed by  
8 MRI of disc herniation. She had a good response to the  
9 injection, and that reduced her pain. All of those factors  
10 combined correlate to a disc injury affecting her nerve.

11 So by February 2018 -- or 2016, she goes to Dr.  
12 Rosler and says, hey, I've had a really good outcome, I'm pain  
13 free. And what you're going to learn is that was only short  
14 lasting, which is how you would expect the steroid at some  
15 point is going to wear off. She happened to have a pretty  
16 good response, so she is pain free, but the steroid doesn't  
17 fix the underlying problem. That was temporary.

18 And you're going to learn that these injections,  
19 even through the defense experts, that these injections often  
20 don't work or they only provide temporary relief, which was  
21 the case with Desire because, ultimately, she still has the  
22 ongoing disc protrusion. This injection doesn't take that  
23 away. That still remains. While it's helpful, it doesn't  
24 repair the underlying problem.

25 You can inject your knee with a steroid or cortisone

1 shot. You hear people talk about that. That's to reduce the  
2 inflammation. Same thing happens here. After awhile it wears  
3 off and then the pain starts to come back again. I think many  
4 people have heard that and it's the same -- it's the identical  
5 process.

6           And so by February -- excuse me, by March 29th,  
7 Desire has to go back to Dr. Rosler and she reports a return  
8 of her symptoms with the pain into her arm and into her hand  
9 because the steroid, by this time, has worn off. Dr. Rosler,  
10 he recommends a repeat neck injection. Hey, I want to confirm  
11 that's your pain. I confirmed that's your pain, but I want to  
12 see if I can give to you, rather than sending you to a  
13 surgeon, I want to see if another injection can give you a few  
14 months of relief.

15           Because you're going to learn from Dr. Rosler, once  
16 you confirm that it's a disc issue, really you need to be sent  
17 to a spine surgeon. And the concerning part, and really the  
18 part he struggled with in Desire is her age. If you start  
19 fusing the spine, which we're going to talk about, at such a  
20 young age, that creates a very long road. Because once you  
21 fuse one level, over time the other levels are going to break  
22 down. It's like dominos. We're going to talk about that in a  
23 minute.

24           You always want surgery to be your last option, so  
25 he thought maybe another conservative repeat of the injection,

1 which is what he did. So she had a repeat of that injection  
2 on April 11, 2016. Her score just before the injection at the  
3 surgical suite was an 8. After it was over, it was zero. The  
4 same thing that happened in January. Again, confirming that  
5 the problem was coming from the C6-7 disc.

6 She goes back to Dr. Rosler. Unfortunately, for  
7 Desire, she says I went down to a zero, but she says now I'm  
8 back to a 5 out of 10, and she reports only a day of relief.  
9 Remember last time she got pain free? This time it didn't  
10 work as well. So now what? Really, her only option now is to  
11 be referred to a surgeon. And because this is affecting a  
12 nerve, Dr. Rosler referred her to a neurosurgeon Dr. Gene,  
13 they call him Gene, Khavkin.

14 And Dr. Khavkin trained at the University of  
15 Northwestern, he did his fellowship training in neurosurgery  
16 at University of Chicago. He has world class training. And  
17 neurosurgeons deal with not only cranial issues, but nerve  
18 issues. They specialize in things like this that relate to  
19 nerve issues. And referring to Dr. Khavkin, what is the  
20 potential fix for Desire?

21 Dr. Khavkin sees her on May 17, 2016. He takes the  
22 history, that these problems started from the accident, she's  
23 talking about pain in the neck, stiffness at the base of the  
24 skull that radiates to the shoulders, the trapezius muscle,  
25 and radiating down her arms intermittently, on the left worse

1 than her right. She also has numbness.

2 His diagnosis was displacement of the intervertebral  
3 disc, meaning she has a disc injury, a disc condition. What's  
4 interesting is I want you to compare these two. November 2,  
5 2015, the first date with the chiropractor, he suspected a  
6 disc problem. It says here cervical disc disorder with  
7 radiculopathy. And look what the neurosurgeon does six, seven  
8 months later, displacement of intervertebral disc mid-cervical  
9 region. It's almost essentially the same diagnosis that the  
10 chiropractor suspected at the very beginning.

11 What Dr. Khavkin recommends is actually a two-level  
12 fusion. He's recommending to do C5-6 and C6-7, and that is a  
13 big surgery. What's an anterior cervical fusion? Desire has  
14 a permanent scar on her neck. They create an opening in your  
15 neck, they expose your spine, they remove the disc, they put  
16 in a spacer, and then they add in the hardware that you see in  
17 Desire's neck.

18 And this is kind of what it looks like when you fuse  
19 two levels. And that was -- that recommendation was  
20 important, and it gave everybody a lot of pause for concern  
21 because of her age. C5-6 and C6-7, that's where most of your  
22 motion, like 60 to 70 percent of your motion in your neck  
23 comes at the base of your spine. The minute you start fusing  
24 that, you start having the risk of more surgery at these other  
25 levels in the future.

1           And one of the things that Dr. Khavkin told Desire  
2 is that you might need additional surgery in the future, so  
3 that's part of the risk of this. Once you start this process,  
4 you might die, you might be paralyzed, you might get worse,  
5 you might get no relief. And in addition, even if everything  
6 goes perfectly, you may require additional surgery in the  
7 future.

8           And it's kind of like this domino effect. Once you  
9 take down one level, it's like one level falls, the next level  
10 starts to break down, and it starts to tip over. And what  
11 they call that is adjacent segment degeneration. As the body  
12 has its wear and tear, and her -- her -- she had no  
13 degeneration before this. None.

14           The body starts to -- the movements, bending,  
15 twisting, lifting, activity, it will make the levels above  
16 where the hardware is, above or below it, break down faster  
17 and become symptomatic and require further treatment. So  
18 fusing any level of your spine with hardware causes an  
19 overload of the adjacent segments, and everybody is going to  
20 agree to that.

21           Because think about it, you're designed -- your body  
22 is designed to have seven -- seven discs -- excuse me, seven  
23 discs in your cervical spine. You take away one, that means  
24 more of that load, stress, and strain has to be put on the  
25 others above it or below it as the case may be. That's

1 exactly what's happening in her case.

2           So knowing at her age that if you do a two-level  
3 surgery, you're guaranteed you're going to have a surgery at  
4 C4-5. Now you've got three levels fused probably by the time  
5 you're in your mid-40s, which is still very young. So now you  
6 have -- this is what it would look like when you have a  
7 three-level. So that's what she had to consider in May of  
8 2016.

9           By the summer of July -- in June 2016, I want you to  
10 pay attention to the pain score here for a minute, maybe make  
11 a note of this for yourself. June 21, 2016, she's continuing  
12 to complain of pain in her neck as a 9 out of 10. Her mid and  
13 low back are pretty well resolved by then. She's awaiting  
14 surgery with Dr. Khavkin. So he's already recommended a  
15 surgery for May, so the timeline is May of 2016. Dr. -- she's  
16 recommended for a two-level fusion.

17           June 21, 2016, this becomes important, so this date  
18 is critical, her pain score on her neck is 9 out of 10. She's  
19 got ongoing pain in her neck and into her left arm. The  
20 diagnosis remains the same. Discogenic left neck pain with  
21 pain into the left upper extremity, radiculitis, which is the  
22 nerve root irritation.

23           So Desire was involved in a rear end collision on  
24 July 10, 2016. She was -- she was with her husband, he was  
25 driving, and there was a collision. And she did have -- she

1 did go to the hospital emergency room after that. She did  
2 have some ongoing pain, mostly in her low back. So it's a  
3 soft tissue injury that she had from there.

4 She did go by ambulance from that scene partly  
5 because her husband had to drive from the scene to go to work,  
6 so she went by ambulance to get checked out. We're not  
7 asking, obviously, for nothing associated with that. No  
8 treatment or anything because she didn't really have any. Not  
9 too much, anyway.

10 July 10, 2016, only caused soft tissue injuries to  
11 the cervical lumbar and the thoracic. And those complaints  
12 went away, didn't require anything interventional. And I want  
13 you to now pay attention to this pain score, July 26, 2016.  
14 Remember June 21st her pain was a 9 in her neck. It says the  
15 patient complains of neck pain 8 to 9 at its worst, a low back  
16 pain rating at a 10.

17 So it remained after that July accident was her low  
18 back. Her neck pain remained 8 to 9 out of 10. It remained  
19 the same. So it was the same before and the same after. No  
20 new -- you're going to learn from the doctors, no additional  
21 symptoms or change in her condition. By this time she's also  
22 went for a second opinion with Dr. Jason Garber who is also a  
23 neurosurgeon.

24 So the symptoms were primarily low back. It says  
25 reports of onset of low back pain with associated pain rating



1 on her left leg. So Desire, instead of having the surgery  
2 with Dr. Khavkin, appropriately, wants a second opinion of Dr.  
3 Jason Garber who is another neurosurgeon who trained at Baylor  
4 in Houston, Texas. And Dr. Garber, he recommended a cervical  
5 fusion, just a single-level fusion, which is what she  
6 ultimately did go on to have.

7           So Dr. Garber, he's the one who did the surgery. He  
8 recommended a single-level fusion, which is let's start with  
9 C6-7 and see how you respond to that rather than doing two  
10 levels because you're guaranteed three levels if you do two  
11 levels at once, so let's try something more conservative, and  
12 she opted to go with Dr. Garber for fusion surgery.

13           September 1, 2016, was the day of her surgery. And  
14 by that point you're going to learn from Desire she was at her  
15 wit's end with the pain, the arm pain was unrelenting, it  
16 hadn't gone away in almost a year, it was affecting the  
17 quality of her life, her daily activities, taking care of her  
18 young children, picking them up. That's a special time in a  
19 parent's life when their children are young and toddlers and  
20 your ability to physically pick them up, they have lots of  
21 needs at that point in time, and you can't get that time back.  
22 So the case really has a lot to do with her abilities as a  
23 mother.

24           But I think what's significant was Desire and Jorge  
25 and their family lived with Jorge's parents at the time. And

1 on the day of the surgery, Jorge took Desire to the hospital,  
2 to Valley Hospital, and, unfortunately, someone had to take  
3 care of the children, so he had to go back.

4           So she was left there at the hospital by herself  
5 crying, scared, alone in the preoperative area hoping, number  
6 one, I wake up, hoping I'm not paralyzed, hoping everything  
7 goes perfectly. She was cold and alone. I think that was a  
8 scary, as you're going to learn from her, a very scary time,  
9 all caused by this October 30, 2015, motor vehicle collision,  
10 having to face that alone.

11           And when she had that surgery because of other  
12 family obligations, her grandparents, they had to go to work,  
13 she woke up and no one was there for her. So she had to face  
14 those things alone. That took incredible strength. Jorge  
15 obviously spent time with her after she recovered. I mean, he  
16 got off work when he could after the kids were taken care of,  
17 but that was a very difficult day for everyone involved,  
18 including her family.

19           So she had the surgery, this a one-level surgery by  
20 Dr. Garber. And fortunately for her, she did well. So after  
21 the surgery on October 7th she goes back to Dr. Rosler, the  
22 pain doctor. And by that point her pain level is down to 1  
23 out of 10. So her pain level is significantly reduced and the  
24 arm pain is pretty well done with. So the surgery took the  
25 pressure of the nerve, so now the arm pain is gone.

1           So she did well after the surgery, and by July of  
2 2017, she felt significantly improved. She still had ongoing  
3 neck pain, but it was nowhere near where it had done before.  
4 So the surgery and her outcome really kind of helps us  
5 determine using this clinical correlation response to not only  
6 the treatment, but the surgery with the neck pain and numbness  
7 resolving, that really helped tell us that that was really the  
8 problem at C6-7.

9           But it doesn't tell us the whole story because now  
10 while she's now fused, when you fuse, that means they take  
11 away all the motion at C6-7. It's fixed now. Fused means  
12 fixed. So now it doesn't move, bend, twist, it doesn't carry  
13 any load, it doesn't have any of the shock absorber anymore.  
14 So now C5-6 is going to be the one carrying the load, and it's  
15 going to cause -- there's going to be adjacent segment  
16 breakdown at that level with time.

17           And as you're going to learn, this is a process. So  
18 what we've already talked about is within about 15 years or  
19 so, she's going to need another surgery. If it breaks down  
20 anywhere from about 2 to 4 percent per year, and it's additive  
21 every year it's going to continually break down.

22           And the adjacent segment, while you initially do  
23 well, what happens is it becomes like this whole process  
24 starts again. The pain begins, the pain kind of increases  
25 with time, it becomes nagging, it becomes chronic again, it

1 starts affecting the quality of your sleep, your ability to  
2 rest, your activity levels, arm and hand symptoms return, pain  
3 affects your activities and the quality of your life. And  
4 that's what she has.

5           When every time you make -- particularly at her age,  
6 when you make a decision to have a surgery like this, you know  
7 this is going to happen. You don't know exactly what day,  
8 there's nothing on a calendar to tell you to anticipate it.  
9 It's just going to happen. One day it's just going to really  
10 be significant. All of the sudden this pain is now taking  
11 over your life once again and it's going to require you to go  
12 seek medical care. And then this whole process, doctor  
13 visits, MRIs, physical therapy, injections, and surgery  
14 ultimately happens.

15           And it's kind of through this process if you're  
16 trying to like -- the surgeon will say wait until you can't --  
17 wait until you can't take it anymore. But you know one day,  
18 somehow, somewhere down the line affecting your life while  
19 you're raising your children that you are going to reach a  
20 point that you are at your wit's end and you're going to need  
21 that surgery again and having to face that cold hard reality  
22 that you're going to have to have a surgery.

23           So by around age 40 or so, she's going to need  
24 another surgery, so now she's going to have two levels fused.  
25 She's still a very young woman with about another 40 years of

1 life expectancy. And that cost is approximately \$280,419 to  
2 now have to deal with two levels of the spine. So that is  
3 going to be in her future.

4           And so now, once we have two levels fused, because  
5 we're talking about the rest of her life in this case, we have  
6 to -- you're going to hear evidence of what she's going to  
7 endure and expect, so we're going to have to plan for these  
8 issues to balance out these harms and these losses. But now  
9 it's going to start all over again. So by age 55, she may  
10 very well need surgical again in her lifetime. That's a very  
11 real risk.

12           And so eventually she's going to get to -- has a  
13 real risk of having three levels fused. Remember, if she had  
14 surgery with Dr. Khavkin, she was guaranteed to have a  
15 third-level fuse. So she's going to maybe likely go through  
16 this whole process three times in her lifetime.

17           And for Desire, it's important because she has a new  
18 baby coming and that infant is going to require a lot of her  
19 picking up, loving it. There's moms and dads, it's a -- it's  
20 physical. You want them to be happy, you want to hold them,  
21 you need to pick them up. They need -- I've got -- I've got a  
22 diaper bag, I've got the baby in the other arm. All those  
23 activities are going to affect her and it's going to affect  
24 the quality of her life. And she already has had to modify a  
25 lot of her activity to avoid any injury, to avoid these things

1 from happening.

2           So what is the response from the defendant of these  
3 issues? We know that she doesn't -- they blame Desire for all  
4 of this. The first -- the first answer is that Desire was not  
5 injured at all. At all. We know that's not true. Well, if  
6 she was injured, if she was, hypothetically, it was a soft  
7 tissue injury.

8           But we know pain radiating down the arm like that,  
9 that's not a soft tissue injury. We know a disc protrusion, a  
10 disc herniation, that's not a soft tissue injury. That's a  
11 structural injury to your spine. We know the bone contusion,  
12 the bone bruise, that is clearly not a soft tissue injury.

13           We know that we have one of these site specific  
14 injections by a pain management physician. Your score goes  
15 down from 8 to a zero, that's not a soft tissue injury.  
16 That's a disc injury with nerve problems. Confirmed again,  
17 two different times confirmed again. Desire did well after  
18 the surgery, so you know her response is appropriate.

19           So what you're going to learn is they have Dr. Wang,  
20 who is a surgeon from USC. He works routinely with this law  
21 firm, dozens of cases over the years. He flies to Las Vegas  
22 to do exams. He doesn't treat patients here. He doesn't do  
23 surgery on anybody here. He comes here to participate in the  
24 litigation and he does it for money.

25           And what you're going to learn is he flies out here,

1 he does multiple exams here on a Saturday, and he charges  
2 \$7,500 per exam. So if you do two, three, four exams, you had  
3 a big day. You flew to Las Vegas in the morning, you come  
4 back in the afternoon, tens of thousands of dollars to do  
5 this. He probably makes hundreds of thousands, into seven  
6 figures annually doing this. That's who they hired to come in  
7 and say it's a soft tissue at most.

8 Dr. Joseph Schifini, a pain management doctor. This  
9 is actually a picture from his website. At least 40 percent  
10 of his cases are hired at -- participates in litigation like  
11 this for the defense, almost exclusively for the defense. 40  
12 percent of his whole practice is dedicated to doing expert  
13 witness work. Hundreds of thousands if not in the seven  
14 figures a year. It's very lucrative.

15 And that's the picture he has of him racing his race  
16 cars on his website. I just wanted to show you who he is so  
17 you could see his face. That wasn't me picking it out, it's  
18 just what he shows on his website. And he routinely works  
19 with Mr. Winner's law firm. And they're going to come in and  
20 say Desire either wasn't injured, and at most she had a soft  
21 tissue injury. But we know, based on the clinical evidence of  
22 this case, that's not true.

23 So now we've answered the second question, which  
24 brings us to why we're here. Respectfully, I want to say this  
25 respectfully, we're not here for your sympathy. She has a

1 very loving family. She has all the sympathy at home. This  
2 case is about an accounting, the impact on her life and the  
3 quality of her life.

4 We're asking you to decide this case based on the  
5 evidence. This is not an accounting. You know, we don't need  
6 sympathy. Today is not the day for sympathy for her, so we're  
7 asking you to set that aside. But we want you to understand  
8 what she went through as a human being and what she will go  
9 through as a wife, as a mother, as a human being.

10 And so what are the damages? We have past medical  
11 expenses, future medical expenses, past pain and suffering,  
12 and future pain and suffering. The past medical expenses, the  
13 jury instruction the Court just gave to you says in  
14 determining the amount of losses suffered by the plaintiffs is  
15 the reasonable medical expenses plaintiff has necessarily  
16 incurred as a result.

17 We know that to be a little over 180 -- it's about  
18 \$182,217.62. That money goes to other people. That's already  
19 accounted for. We know that she has future medical expenses.  
20 The addition of -- like the first same instruction, the  
21 reasonable medical expenses you believe the plaintiffs are  
22 reasonably certain to incur in the future. We know she has at  
23 least one surgery.

24 We know she's going to live about another 54 years  
25 is her life expectancy until about 82. Her future surgeries,



1 if she just has one of these, is at a minimum \$280,419 for  
2 future medical care costs for having a second surgery,  
3 assuming everything goes perfectly. That's assuming no  
4 infection, no complication or anything.

5 But also it's important to understand pain and  
6 suffering because the law provides this. The physical and  
7 mental -- and mental pain, suffering, anguish, and disability  
8 endured from the plaintiff from the date of the motor vehicle  
9 collision to the present. The law places a high value on the  
10 quality of people's life, with their health, and juries are  
11 asked to make those kind of decisions.

12 Now, what is the value of good health? It's  
13 invaluable. And particularly, when you're young and you're  
14 raising young children and you want to participate in the way  
15 you want to participate, that your -- that opportunity is  
16 taken away from you or affected by somebody else. They don't  
17 have a right to do that under the law. And the evidence is  
18 going to show the affect that this has had on Desire.

19 So with regard to future pain and suffering, that  
20 also allows for the physical and mental pain, suffering, and  
21 anguish that you have. And one thing that Desire has coming,  
22 she has a young baby that's coming that's going to require a  
23 lot of time and attention in her efforts. And while she may  
24 be doing pretty well now, her age kind of works against her  
25 because she did have a good outcome, but we know with time

1 this is going to change.

2           And being that active with that newborn baby, plus  
3 her responsibility with her other three daughters, with her  
4 son coming and her other three daughters, that will take its  
5 toll on this. You're going to talk about -- you're going to  
6 learn about chronic pain and it's a kind of -- it's a cycle,  
7 but it is kind of like a sleeping problem, anxiety, you're not  
8 doing well, you start to lose the quality of your life and it  
9 robs you of your time and your ability to participate.

10           And I think this is a simple quote, that the most  
11 precious resource we have is time. That's a quote from Steve  
12 Jobs, and that's true. We only have a limited amount of time  
13 on this earth. We have the right to be free from harm and  
14 injury, but we're talking about the what the impact on Desire.

15           And the law provides and it uniquely understands  
16 this, and one of the instructions the Judge just gave you, I  
17 want you to understand this instruction, that's why I'm  
18 repeating it here. It's not just a physical injury. The loss  
19 of enjoyment of life and compensation for the loss of ability  
20 to participate and derive pleasure from normal activities of  
21 life. The law gives value to the high value, and you're going  
22 to be asked to assess that and make a determination in this  
23 case based upon the evidence.

24           And what we believe the evidence is going to  
25 demonstrate that the past medical and future medical expenses

1 in excess of \$450,000, and because of what Desire has had to  
2 go through already, what she's going to have to go through  
3 with those chronic pain cycles, the recurrence of her problem  
4 in having to have these additional -- at least one surgery,  
5 maybe more, and live with chronic pain as her adult life wanes  
6 on is more than \$3 million.

7 And we're going to demonstrate that to you by her  
8 evidence, by the clinical testimony of the physicians, by  
9 objective evidence. And at the end of this case, you're going  
10 to decide on all of those three questions. And whatever you  
11 decide is appropriate, we understand. I'm excited and proud  
12 to represent Desire and Guadalupe and I'm anxious to hear from  
13 you on your verdict. I want to thank you for your time and  
14 attention in this case. Thank you very much.

15 Now, we have -- Mr. DeGree is going to speak on  
16 behalf of Guadalupe.

17 MR. DeGREE: Good morning. As Dennis just  
18 mentioned, we also represent Guadalupe Parra-Mendez. She is a  
19 co-plaintiff in this case. We're representing her also  
20 against the defendant in this case. And here's what I'm here  
21 to tell you about. I'm here to explain to you what's happened  
22 to her and explain to you about what the injury is she  
23 sustained, and also going to explain to you about how her life  
24 has been impacted as a result of what happened on the October  
25 30th collision.

1           And it's important to recognize here we have two  
2 different individuals, Desire and Guadalupe. And one  
3 component that you're going to learn about this case is that  
4 different people have different spines. Everyone is unique,  
5 everyone has a unique spine. Everyone is built differently,  
6 everyone functions differently, everyone responds to treatment  
7 different, and everyone responds to trauma differently.  
8 Everyone is unique, just like Desire is unique and different  
9 from Guadalupe, and vice-versa.

10           So who is Guadalupe? She is 26 years old. She was  
11 born in California. She moved to Las Vegas in 2001 with her  
12 parents and three older brothers. She's lived here for the  
13 last 18 years. Went to high school in Las Vegas. Attended  
14 Chaparral High School. Presently works in a call center. At  
15 the time -- actually going through training right now at a  
16 call center.

17           At the time of this motor vehicle collision, she was  
18 working at the Cromwell down by the Linq as a casino cash  
19 counter. She's Desire's sister-in-law. And for her hobbies  
20 and activities, she's a big family person, enjoys family get  
21 togethers, family barbeques, enjoys playing with her dogs,  
22 taking the dogs to the dog park.

23           What she really, really enjoys is actually playing  
24 with Desire's kids. They get together two, three, four times  
25 a week. She goes over to Desire's house and she's an auntie

1 to these children and to the fourth one on the way.

2           What you'll also learn about her is that she's a  
3 fault free passenger. She was sitting in the front seat of  
4 Desire's car when the defendant crashed into them on that  
5 night. This question is easy. She did absolutely nothing  
6 wrong here, and that's why she's considered a fault free  
7 passenger in this case.

8           The three questions that you're going to be asked to  
9 answer as part of your verdict in this case and part of the  
10 determination that you have is to -- is the same three  
11 questions that you're going to have to answer with respect to  
12 Desire. The first one being who is at fault. Our position is  
13 the same.

14           Obviously, we believe -- well, obviously, Desire --  
15 or, excuse me, Guadalupe's position is that the defendant is  
16 at fault for what transpired here. Guadalupe did nothing  
17 wrong. You're going to be asked to make a decision as to  
18 whether or not she was injured. And if so, because it's a  
19 civil case and because that's all you can do, you're going to  
20 be asked how much is necessary to balance the harms and losses  
21 from injury and pain and the suffering that she sustained.

22           So what are Guadalupe's injuries, harms, and losses?  
23 These are her medical expenses in this case. She first went  
24 to Align Chiropractic. She also received MRI imaging. She  
25 treated at that facility from November 2, 2015, through early

1 spring of 2016. She also treated with Dr. Rosler, who, as  
2 Dennis mentioned, you'll be hearing from this afternoon, at  
3 Interventional Pain & Spine on two separate occasions,  
4 December 18th and January 20th. She also received co-managed  
5 care at NLV Pain Management & Urgent Care. She went there for  
6 one visit.

7           Guadalupe's injuries caused as a result of the  
8 defendant's negligence, a neck sprain, a mid-back sprain, and  
9 a low back sprain. I'm not going to get into the details and  
10 specifics of what all that means. Dennis has done a good job  
11 of explaining to you all the medical terminology that you'll  
12 see in this case, how people are affected, what kind of  
13 prognosis they can expect, what injuries that Guadalupe  
14 sustained in this case.

15           Those are soft tissue injuries only. They do go  
16 away. They do resolve after treatment and evaluation and  
17 time, but there's nothing soft about them. They are an  
18 injury. And in this case, her soft tissue injuries resolved.

19           She received treatment from -- well, she was -- the  
20 treatment that she received consisted of three doctor visits,  
21 23 chiropractic visits at Align Chiropractic, a total of five  
22 x-rays and MRIs, three x-rays shortly after the collision to  
23 determine -- usually with x-rays they determine whether or not  
24 there's a fracture or dislocation or something that needs  
25 immediately emergent attention. And then two MRIs, one for

1 the neck and then one for the low back. You also learned that  
2 prior to this happening on October 30th, she was pain free and  
3 doing well on her spine before this ever occurred.

4 Now, there's been discussion with respect to Desire  
5 as to disc injury versus soft tissue injury. And in Desire's  
6 case, as you heard, she has both. She had soft tissue  
7 injuries which resolved over time. She also had a disc  
8 injury, which she's still living with to this day.

9 What we learned about Guadalupe's treatment through  
10 her care and through time and her response is that she didn't  
11 have a disc injury, fortunately, thankfully. How did they --  
12 how did the doctors come to that conclusion? Through the same  
13 clinical correlation that they do for Desire, that they did  
14 for Guadalupe, that they do for all the patients that they  
15 treat.

16 It's the same exact clinical correlation. They look  
17 at the patient history, the examination findings, chiropractic  
18 exam, physical exam, response to treatment, how is she doing  
19 over the course of those three months, diagnostic imaging, we  
20 had the x-rays, but MRI imaging. And in this case we didn't  
21 have additional testing in the form of pain management and  
22 injections. It did not go that far.

23 Obviously, the crash occurred on a Friday evening.  
24 She was excited that night. She -- they picked her up at her  
25 house. She was doing what she always does, which is having a

1 fun, exciting evening with Desire and her three children. She  
2 worked at the Cromwell, which is right next to the Linq. So  
3 the -- the trick or treating event that they were putting on  
4 that evening was at her work, so she was very excited about  
5 it. And that happened on a Friday night, and obviously the  
6 31st is Halloween. That's a Saturday.

7 Sunday -- she's starting to experience significant  
8 pain upon waking up on Saturday, but like most chiropractor  
9 offices, doctor offices, physical therapy offices, most of  
10 them are closed Saturday and Sunday. She presents to Align  
11 Chiropractic for the first day of treatment on the following  
12 Monday.

13 On her first day at Align, they start with patient  
14 history. She reports being involved in the same motor vehicle  
15 collision as Desire on October 30, 2015. There's an  
16 explanation of what transpired. It talks about her loss of  
17 enjoyment, kind of how she's been affected over the past three  
18 days.

19 Since the accident she's had some difficulty  
20 performing house duties, just managing her business around the  
21 house. She can't stand for long periods of time at work. She  
22 continued to go to work. She had difficulty at work because  
23 her job as a casino cash counter, she's on her feet a lot of  
24 the time, and that's throughout the day.

25 So she had to make modification not just in the



1 first few days, but throughout the next couple of months in  
2 order to help her get through work. She needs to get by, she  
3 has to make ends meet, and she continued to plug away at work,  
4 albeit with modifications, taking breaks, sometimes sitting  
5 down as best she can.

6 She starts -- she reported that she was having sharp  
7 throbbing pains in her low back and neck. It hurts during the  
8 night in the low back when she's sleeping. She wakes up  
9 feeling -- feeling bad. She's starting to have severe  
10 headaches, nauseas, throbbing pains in the left side of the  
11 neck radiating into the left arm and fingers.

12 The chiropractor performed the physical exam on that  
13 first day, an orthopedic exam, the first one a cervical  
14 maximum compression test. It's also called a Spurling's exam.  
15 It's applying pressure down on the head and then rotating it  
16 to see if there's any nerve root compression stretching into  
17 the extremities. On this case it came up positive for the  
18 left side. Kemp's test, which is more of a low back exam  
19 determining where the pain is generating from the low back,  
20 came up positive for that, as well.

21 The chiropractor on the first day diagnosed her with  
22 cervical disc disorder, radiculopathy, sprain of the lumbar  
23 spine, sprain of the thoracic spine, and muscle spasms of the  
24 back. This is an initial working diagnosis, sometimes called  
25 -- well, sometimes called a working diagnosis, sometimes

1 called a differential diagnosis. It's through time that these  
2 diagnoses can change. That's upon initial evaluation.

3           So what did doctors do? Well, in Desire's case,  
4 through the extended treatment that she's had over the last  
5 few years, the doctors were able to roll in a diagnosis of  
6 traumatic structural injury in her neck. But what doctors  
7 also do is oftentimes they have to rule out. Sometimes they  
8 have concern and they feel that additional evaluation is  
9 necessary because there might be overlapping symptoms. And so  
10 instead of ruling in a diagnosis, doctors want to be sure and  
11 rule out a diagnosis and make sure there's not something else  
12 going on.

13           She has overlapping symptoms. So when she's  
14 presenting about ten days after the motor vehicle collision,  
15 she still had an achy, stiffness, throbbing, and sharp pains.  
16 Those are pains you would probably expect with a muscle sprain  
17 strain, but she's also having the additional symptom of the  
18 radiating pain down the left arm into the hand. That's not  
19 something you would typically expect with sprain-strain, so  
20 there's additional concern.

21           What the chiropractor does at that point in time  
22 because of that radiating pain, refers Guadalupe for a lumbar  
23 spine MRI in her low back, based also on physical exam. Now,  
24 she was originally scheduled for November 10th. She  
25 ultimately had it on November 20th, ten days later. In the

1 meantime, the chiropractor referred her to Dr. Ross for  
2 additional evaluation.

3           Dr. Ross is a medical doctor and NLV Pain Management  
4 & Urgent Care. She only went there one time. Chiropractors  
5 cannot prescribe medications, so they have to make referrals  
6 to medical doctors in order to do that. Dr. Ross evaluated  
7 her, documented her pain symptomatology, and prescribed her  
8 some ibuprofen to co-manage her care as she's continuing with  
9 treatment to help with her symptomatology. She only went  
10 there one time.

11           Further evaluation as needed. She's having some  
12 overlapping symptoms. Is there more going on, something more  
13 than a soft tissue? Based upon the physical exams that she  
14 added to her lumbar spine and cervical spine and how she's  
15 responding to treatment, she's doing -- she's doing well, but  
16 not as well as they would have liked. And then by this time  
17 they have the MRI findings back from the low back.

18           So Align Med refers her to Dr. Rosler, again, who  
19 you will hear from later today, he is an interventional pain  
20 specialist, for further evaluation. First visit with Dr.  
21 Rosler is December 18th, so you're now about six to seven  
22 weeks following the motor vehicle collision.

23           He does the same thing like the rest of the doctors  
24 do, clinically correlate the symptoms, documents the mechanism  
25 of injury, documents that she's having some numbness in her

1 left forearm, documenting neck pain, back pain, it's all  
2 dependent upon activities, some days are better than others.  
3 If she's working, she's going to be in a little bit more pain.  
4 If she has the opportunity to rest, she's going to be in less  
5 pain. So he's documenting how her pain and her symptoms are  
6 affecting her and what causes it.

7 His impression, initial impression, is cervical  
8 sprain-strain, so that's a neck sprain. Lumbar sprain-strain  
9 of low back, a low back sprain. As to the neck, he did  
10 document left upper extremity radiculopathy because she was  
11 having some of those overlapping symptoms of disc injury, and  
12 with the low back also indicating discogenic versus facet  
13 mediated pain. Mr. Prince already kind of explained to you  
14 disc pain versus facet pain.

15 His recommendations are continue with conservative  
16 treatment. He knows that she's receiving chiropractic care.  
17 He knows that she's getting some benefit from chiropractic  
18 care. So his first recommendation is continue with that. We  
19 are getting results there, so continue to go ahead and do that  
20 and let's see how it goes.

21 He also wants to obtain an MRI of the cervical  
22 spine. He already had the MRI from the low back, but he wants  
23 to take a look at the neck, as well, just based upon those  
24 symptoms that she was complaining of. He referred her for a  
25 surgical consultation as it relates to the findings of the

1 lumbar MRI. That's just the consultation.

2           As we were talking about doctors have to rule in,  
3 rule out. He did not order interventional pain procedures.  
4 He did not think she was clinically indicated for diagnostic  
5 injection. He didn't put her through that, but I do bring  
6 that up because at this time when he's treating her on the  
7 first visit, there's overlapping symptomatology and that's  
8 concerning for her because it isn't clear even six to seven  
9 weeks after this motor vehicle collision, is this a  
10 sprain-strain, or could there be something more going on here?  
11 He tells her to come back in three weeks after the MRI for  
12 reevaluation, continue doing what you're doing, come back, and  
13 let's see how you're doing.

14           She comes back January 20th, approximately a month  
15 later. She's doing well. The chiropractic care is helping.  
16 Her symptoms, her radiating symptoms, have gone away,  
17 fortunately. He says continue with conservative care, return  
18 if the symptoms persist. If this is going well, continue to  
19 go. If it comes back, come back and see me. She never goes  
20 to Dr. Rosler ever again. Doesn't need to.

21           She continues with the conservative care. She goes  
22 a week later. She's doing good. The benefits are lasting  
23 longer, sometimes with the more conservative care, via  
24 physical therapy or via chiropractic treatment in the acute  
25 phase of anywhere from 6 to 12 weeks, they go -- they go for

1 treatment and it works initially only for a couple days, but  
2 through time, after a month or two, you start to get benefit  
3 for five days, six days, until eventually it goes away.

4           That's why with chiropractic care you usually go  
5 three, sometimes four times a week for a few weeks, and then  
6 it diminishes to two to three times, eventually one to two  
7 times, and then you're done, you're discharged. She's  
8 responding very well.

9           February 12, 2016, her pain is resolved. She's  
10 doing well. She has reached maximum medical improvement. You  
11 might hear that -- those terms later on in this case, what  
12 that means. What the doctors will testify to you is that the  
13 maximum medical improvement means that's the best that they  
14 can do for the type of care that that doctor provides, okay.

15           So, for example, chiropractic care, maximum medical  
16 improvement means this is the best that we can do for what we  
17 do as a chiropractic provider. It doesn't mean that you're  
18 completely pain free, it doesn't mean the symptoms don't  
19 persist, but that's the best that they can do, and for further  
20 evaluation you'll need to continue with a specialist.

21           Nevertheless, in Guadalupe's case, she's doing well.  
22 The benefits are lasting longer, goals are being met, she's  
23 tolerating the treatment. And February 12, 2016, is the last  
24 day that she ever treated with any medical provider as a  
25 result of this collision.

1           You've heard clinical correlation. Dennis explained  
2 clinical correlation with respect to Desire's injury. If you  
3 were watching during that presentation, it was clinical  
4 correlation of disc injury. Here in Guadalupe's case, this  
5 was clinical correlation of soft tissue injury. She was in  
6 the accident when she -- when she was a passenger of being  
7 rear ended.

8           She had neck and low back pain. They took imaging  
9 studies of the neck and low back. She was evaluated and  
10 treated through chiropractic care, through medical management,  
11 and through Dr. Rosler. And through continued conservative  
12 treatment and chiropractic care, her pain reduced, which is  
13 good news.

14           The response from the defendant is somewhat similar  
15 in this case. It's that at most, Guadalupe suffered a soft  
16 tissue sprain-strain as a result of the October 30, 2015,  
17 crash. At most. If she was injured, it's a sprain-strain.  
18 That's what they're going to tell you.

19           They also hired Dr. Schifini in this case. I'm not  
20 going to go into the details of Dr. Schifini. Dennis has  
21 already explained that. But he was provided all of  
22 Guadalupe's medical records in this case. He reviewed all of  
23 them, and he formed his opinions about her, too, and whether  
24 or not her injuries related to the collision.

25           What are some of his opinions? Importantly here, if

1 she was injured, Dr. Schifini, his opinion is that all of her  
2 treatment was reasonable and necessary. He'll opine that all  
3 of her treatment was medically appropriate for her soft tissue  
4 injuries. He opined that all of her treatment is directly and  
5 causally related to the 2015 crash. All of her treatment.  
6 The one visit to Dr. Ross, the two visits to Dr. Rosler, the  
7 lumbar MRI, the cervical MRI, the 23 chiropractic visits, all  
8 of it reasonable and appropriate for treating her injuries.

9           So was she injured? Our answer is yes. How much  
10 money is necessary to balance the harms and losses from injury  
11 and pain and suffering she sustained? A case just like  
12 Desire's case is about full accountability.

13           With respect to Guadalupe, though, we're seeking for  
14 her past medical expenses and past pain and suffering. And I  
15 emphasize that there. I say past because she is doing well.  
16 She -- she's recovered from her injuries and she's getting by  
17 and she's doing fine and that's why we're not -- she hasn't  
18 been recommended for future medical treatment.

19           She's not going to undergo surgery. She's not going  
20 to undergo the adjacent segment breakdown and this lifelong  
21 cycle of pain and suffering that Desire is going to have. But  
22 she did have past medical expenses and she did have a three  
23 and a half month period of past pain and suffering.

24           Past medical damages, we showed that to you a little  
25 bit earlier. Her past medical bills were to the tune of



1 \$10,204.18. Past pain and suffering, she had three doctor  
2 visits, 23 chiropractic visits, five x-rays, MRIs, probably  
3 over 100 hours devoted to just medical appointments,  
4 medication, and limited daily activities.

5 I put that, the hours devoted to medical  
6 appointments because between the top three here you have 26,  
7 30, 31 medical appointments. If she -- that doesn't factor in  
8 the time she spends getting ready to go to these appointments,  
9 traveling to the doctor's office, waiting in the lobby,  
10 waiting to be called back, having to give a medical history  
11 over and over and over again, each time telling the doctors  
12 how you've been doing since the last time, what things are  
13 helping, what things are hurting, actually being chiropractic  
14 manipulated, hot/cold packs, electrical stimulation, all of  
15 that, then waiting to get discharged and going home.

16 If she spends four hours doing just one appointment,  
17 she just devoted over 100 hour of her life to medical  
18 appointments as a result of this collision. Medication,  
19 limited daily activities, none of this factors in how her life  
20 was affected for those three and half -- it was 105 days. 105  
21 days from the time the motor vehicle collision occurred until  
22 her last medical appointment when she was discharged and doing  
23 well.

24 During that time, she has to make modifications.  
25 She's waking up. She's not sleeping well. It's taking her

1 longer to fall asleep, she's waking up tired, she's waking up  
2 stiff. She's continuing to go about her business as best as  
3 she can. She has to. She goes to work, she implements  
4 modifications at work, she gets tired.

5           At the end of the day, she goes home, she sticks to  
6 -- she'll tell you she stuck to herself at that time because  
7 she wasn't able to do as much as she wanted to do. She used  
8 to take the dogs to the dog park, used to go to Desire's house  
9 more often. She mostly just went home because she needed the  
10 rest, the rest would help during that three and a half months.  
11 It's a soft tissue injury, but it's not a soft recovery for  
12 those three and a half months.

13           Guadalupe's harms and losses, past medical expenses  
14 of -- we'll be asking for \$10,204.18, and for the three and a  
15 half months of past pain and suffering that she endured over  
16 that time through all those medical appointments and altering  
17 her life for those three and a half months, we will be asking  
18 for \$40,000. So we've asked you the three questions, the same  
19 three questions that you're going to be asked to make  
20 determinations on for -- for both Desire and Guadalupe. Thank  
21 you and we look forward to proving this case to you.

22           THE COURT: Thank you.

23           You want a break before you start, Mr. Winner? Does  
24 everybody want a break?

25           MR. WINNER: What's that?

1 THE COURT: Do you want a break before you start?

2 MR. WINNER: If I could take two minutes to use the

3 little lawyer's room, that would be good.

4 THE COURT: Maybe everybody --

5 MR. WINNER: But other than that --

6 THE COURT: -- would be like --

7 MR. WINNER: -- I'm ready to go.

8 THE COURT: Anybody else want a ten minute? Okay.

9 We'll take ten minutes. And this should be closer to ten

10 minutes because we've only got ten of you now to be as bad.

11 So during the recess you are admonished not to talk

12 or converse among yourselves or with anyone else on any

13 subject connected to this trial, or read, watch, or listen to

14 any report of or commentary on the trial or any person

15 connected with this trial by any medium of information,

16 including, without limitation, newspapers, television, the

17 Internet, and radio, or form or express any opinion on any

18 subject connected with the trial until the case is finally

19 submitted to you. About 12:10.

20 (Jury recessed at 11:54 A.M.)

21 THE COURT: Counsel, do you all want -- are we going

22 to -- do you want to put on a witness after you open --

23 MR. PRINCE: No, I want to go to lunch.

24 THE COURT: -- before lunch?

25 MR. PRINCE: No.

1 THE COURT: Okay.

2 MR. PRINCE: Go to lunch and then --

3 THE COURT: All right.

4 MR. PRINCE: Okay.

5 THE COURT: An hour enough for everybody for lunch?

6 MR. PRINCE: An hour what?

7 THE COURT: Enough time.

8 MR. PRINCE: An hour? Yeah.

9 (Court recessed at 11:56 A.M., until 12:08 P.M.)

10 (Inside the presence of the jury)

11 THE COURT: Okay. Mr. Winner?

12 MR. WINNER: Yes. Thank you, Your Honor.

13 DEFENDANT'S OPENING STATEMENT

14 MR. WINNER: Everybody still awake? Do you want to

15 go to lunch? I'll try to go a little faster than I might

16 otherwise.

17 So, Mr. Prince -- first of all, I want to compliment

18 Mr. Prince who's an old colleague of mine and he and I began

19 to work together in this city 25-plus years ago. He's

20 obviously a very fine lawyer. I've always admired his

21 courtroom skills. He's a very effective advocate and I want

22 to compliment him on the presentation he's making here.

23 I believe since we've known each other for a long

24 time we're going to behave like gentlemen in this case, but he

25 and I have some very, very strong disagreements about this

1 case.

2 Evans v. Tate. Now, as Mr. Prince pointed out to  
3 you, the accident happened here. This is a -- this is an  
4 overhead daytime picture, but it happened at -- at nighttime  
5 and we have some disagreement about what actually happened.

6 But Babylyn was driving west. Babylyn is a nurse.  
7 She has worked as a triage nurse. She's worked as an  
8 emergency room nurse, she's worked as a hospital nurse. She  
9 spends her -- she spends her life -- she spends her  
10 professional life helping people.

11 That will be a little bit important in a little  
12 while and we can talk about that. But Babylyn had worked a  
13 night shift the night before. She had gone home and gone to  
14 bed. She had awoken at 4:30 or 5:00 o'clock after a full  
15 night's sleep and she was going to meet her friends at some  
16 show called Rock of Ages, which I've never heard of, but that  
17 was going on down on the Strip.

18 So she was driving west, past what the entrance was  
19 to the Linq. She was driving along in the right hand lane.  
20 She was driving the speed limit going 35 miles an hour. She  
21 was driving by herself.

22 She was driving somewhere around here. Now, we have  
23 a serious factual disagreement here in that Mr. Prince said  
24 and the plaintiff has said that, well, there was a red light  
25 and she was stopped at the red light.

1           Babylyn is going to tell you there was -- there was  
2 no red light. It was a green light and everyone was  
3 proceeding through the intersection and she's following along  
4 with traffic.

5           Babylyn unexpectedly saw the plaintiff's car here at  
6 the entrance to the Linq, suddenly slamming on its brakes and  
7 seemingly skidding to a stop. She's not sure if the  
8 plaintiff's car came to a complete stop, but she saw that the  
9 car was stopping abruptly right in front of her.

10           She did not see any turn signal on. She did not see  
11 any turn signal on. She did not know why this car in front of  
12 her was skidding and slamming on its brakes and coming to a  
13 sudden stop right here at this intersection, but it did.

14           Now, Babylyn slammed on her brakes. She didn't want  
15 to run into anybody. She slammed on her brakes. She still  
16 couldn't figure out why anyone was stopping. There was no  
17 turn signal. She didn't see any light.

18           She swerved her car to the left and she slammed on  
19 her brakes. Babylyn doesn't know how much farther she would  
20 have needed to come to a complete stop but she was going 35  
21 miles an hour before she hit her brakes. And then she slammed  
22 on her brakes and slowed, veered a bit to her left, and the  
23 front of her car did contact the rear of the plaintiff car.

24           Nobody disputes that that happened. Nobody disputes  
25 that that happened. You are not going to hear from Babylyn,

1 you're not going to hear from me, nobody has ever heard from  
2 Babylyn or from me that this didn't happen that way. She came  
3 into contact with the rear of somebody else's car.

4 She is going to say, I have no idea why she was  
5 slamming on her brakes in front of me. No, idea.

6 Okay. This was -- I don't know what that is -- but  
7 this was some of the damage to Babylyn's car and as you can  
8 see it -- a lot of the damage looks like it's under the bumper  
9 rather than over the bumper.

10 Facts of the accident; again, this is -- this is  
11 sort of a stock color graph and it's daytime, but Babylyn  
12 would have been traveling along here when she was the one car  
13 in front of her slam on its brakes.

14 Okay. The abrupt braking happened right here.  
15 That's where the braking happened at the entrance to the Linq.  
16 It appeared maybe that somebody who was going to the Linq  
17 maybe realized, oh my gosh, this is my turn, and slammed on  
18 brakes.

19 But Babylyn did not see any turn signal, did not see  
20 any turn signal. She said that to the police officer at the  
21 scene, she said it when she gave a statement a couple of days  
22 later, she said it in this lawsuit, I don't know why was  
23 stopping, I didn't see a turn signal.

24 You know what else Babylyn said at the scene, to the  
25 plaintiff, to the police officer? I'm so sorry. I'm so

1 sorry. I'm sorry this happened. I'm so sorry I bumped into  
2 you. I'm sorry.

3 The plaintiff said that she was turning right to go  
4 to the Linq and that she had stopped for a pedestrian. You  
5 know, Babylyn said, okay, I'm sorry, but I didn't see a turn  
6 signal and I didn't see any pedestrians. I don't know why you  
7 stopped.

8 She also said, I'm so sorry, is there any way I can  
9 help? Is there any way I can help? I'm so sorry. She called  
10 her Baby. I'm so sorry, Baby. Are you okay? Can I help?

11 Babylyn testified she saw no turn signal, no  
12 pedestrian, she was shocked, startled to see someone slamming  
13 on brakes immediately in front of her. She slammed on her  
14 brakes but could not quite get stopped in time. She thinks if  
15 she had had another few feet she would've been able to come to  
16 a complete stop but she didn't.

17 Okay. She saw no pedestrians. Maybe they were,  
18 maybe there weren't, but Babylyn will say, I didn't see any  
19 pedestrians and I didn't see a turn signal.

20 Okay. Facts of the accident.

21 Okay, as you can see, much of the damage here was  
22 underneath what would be the bumper of this little Acura SUV  
23 and I think you'll hear, not all of this down here was  
24 accident related damage but much of the damage here is over  
25 the bumper on the plaintiff's Honda; okay? And you can see



1 from this later picture it's -- I don't know, guys as old as  
2 me call these -- call these low riders. I don't know what you  
3 call that, but it looks like the car is lowered, and the  
4 bumper is clearly lower than the bumper of the Acura is.

5 So it looks like this was not a bumper to bumper  
6 contact but something below the bumper hitting here at the  
7 trunk lid and on those taillights on the left side. It was  
8 not, it appears, bumper to bumper contact. Okay?

9 Damage appears to be over the bumper and under the  
10 bumper and Babylyn braked hard.

11 Okay. This was not a 35 mile an hour impact.  
12 Babylyn did say when she was asked by the plaintiff's lawyer,  
13 "How fast were you going at the time of the impact?"

14 She said, "Thirty-five."

15 She also said and clarified, Well, I was going 35  
16 before the accident happened and before I braked. I braked.  
17 I braked as hard as I could and I swerved.

18 Okay. Babylyn was completely uninjured, not injured  
19 at all. According to Babylyn, I didn't hit her very hard. It  
20 didn't happen very hard. I might of pushed her a couple feet,  
21 I didn't -- I didn't hit her very hard. It didn't seem like a  
22 big deal.

23 Here you can see the back of the plaintiff's car.  
24 Obviously, it looks like it's been modified a bit. These are  
25 smaller wheels. It looks like it's been lowered. There's a

1 spoiler on it. This appears maybe to be blacked out or smoked  
2 out. Taillights.

3 A driver shall not suddenly stop or suddenly  
4 decrease the speed of a vehicle without giving an appropriate  
5 signal to the driver of any vehicle immediately to the rear.

6 MR. PRINCE: Your Honor, can we approach a second?

7 THE COURT: Sure.

8 MR. PRINCE: Take that down.

9 (Bench conference)

10 MR. PRINCE: I need to -- he gave -- he's making a  
11 statement that has -- it's a jury instruction that he has  
12 absolutely no basis to give and he's leaving it up so it's  
13 absolute misconduct by him. That is not one of the -- that's  
14 a statute. He's trying to suggest -- he's saying -- and it's  
15 in quotes saying that that's an issue. That's not one of your  
16 pre-instructions. That was not one of the pre-instructions.  
17 They didn't offer that [inaudible].

18 MR. WINNER: Yours wasn't a pre-instruction either,  
19 was it?

20 MR. PRINCE: Yes, it -- absolutely it was.  
21 Absolutely. A hundred percent it was. And so I need you to  
22 tell them to strike that, tell them to disregard that, because  
23 you don't even have any evidence of this right now.

24 So that's not -- that's a statement of the law.  
25 It's actually an NRS statute and he's quoting it and saying

1 -- he's telling them that's the rule. That's not one of your  
2 pre-instructions.

3 THE COURT: Didn't you talk about following too  
4 closely, speed and stuff like that?

5 MR. PRINCE: Yeah, but he's quoting a jury  
6 instruction. He's going to try to offer --

7 THE COURT: You can tell us what the law is. Isn't  
8 that what you're kind of doing as well?

9 MR. PRINCE: No. I'm just talking about just  
10 general like speed, rules of the road, just people talking  
11 about speed.

12 MR. WINNER: You can't --

13 MR. PRINCE: I --

14 MR. WINNER: -- follow another car so closely as  
15 to --

16 THE COURT: Yeah, actually, I think those --

17 MR. PRINCE: No, no, no, you gave an --

18 MR. WINNER: But --

19 THE COURT: -- are the same.

20 MR. WINNER: But --

21 MR. PRINCE: -- instruction. But Judge, he's -- how  
22 can he argue an instruction when you didn't give the  
23 instruction yet?

24 THE COURT: I know, but I think he's arguing the law  
25 the same way you did.

1 MR. WINNER: Dennis, you did the same --  
2 MR. PRINCE: No, I didn't.  
3 MR. WINNER: -- you read an instruction.  
4 MR. PRINCE: No --  
5 MR. WINNER: -- that you didn't offer as a pre-  
6 instruction.  
7 MR. PRINCE: Yes, I did. Those are all -- get what  
8 you gave. The only instructions I showed to that jury -- are  
9 you kidding? I only showed what you gave.  
10 THE COURT: Well, I understand what you showed but  
11 my recollection --  
12 MR. PRINCE: So don't tell me I showed something  
13 that I did not --  
14 THE COURT: Do you guys --  
15 MR. PRINCE: -- that she didn't give.  
16 THE COURT: -- both have printouts of your Power  
17 Points?  
18 MR. PRINCE: Yes.  
19 THE COURT: Can I --  
20 MR. WINNER: Yeah.  
21 MR. PRINCE: Yeah. Absolutely.  
22 THE COURT: Can I see it?  
23 MR. PRINCE: Well, tell him to take that down.  
24 Instruct him -- that's what happens; when you have a problem  
25 with a Power Point they have to instruct him to take it down.

1 He's like just leaving it up. He knows he's -- all this  
2 gamesmanship nonsense. I -- actually, I want you to send --  
3 MR. WINNER: Oh --  
4 MR. PRINCE: -- the jury out.  
5 MR. WINNER: -- gamesmanship.  
6 MR. PRINCE: I would like you to send the jury out  
7 so we can talk about it.  
8 THE MARSHAL: This is from Seat 9. He is not sure  
9 if he's worked with the defendant.  
10 (Court/counsel reviewing note)  
11 MR. PRINCE: Okay. Is it -- oh, yeah.  
12 THE MARSHAL: Seat 9.  
13 MR. WINNER: Yeah, screen's down.  
14 MR. PRINCE: Yeah.  
15 THE COURT: That's from Juror No. 9.  
16 MR. WINNER: Where is the defendant employed?  
17 MR. PRINCE: Meaning your client.  
18 MR. WINNER: I guess that's not relevant if they  
19 want to find out.  
20 MR. PRINCE: It is relevant. I mean --  
21 THE COURT: No, he wants to know if she worked with  
22 her.  
23 MR. WINNER: He's a -- he's a nurse.  
24 THE COURT: I mean, I think he's saying he might  
25 recognize her.

1 MR. WINNER: She's worked different places.  
2 MR. PRINCE: I want to --  
3 MR. WINNER: I [inaudible] --  
4 MR. PRINCE: I want to know. I want to -- I want to  
5 resolve that issue.  
6 MR. WINNER: Okay.  
7 MR. PRINCE: And I want to have the jury excused so  
8 we can deal with this.  
9 MR. WINNER: Okay.  
10 MR. PRINCE: Well, I'm not talking to you, I'm  
11 talking to the Judge.  
12 THE COURT: That's okay. It's all good.  
13 MR. WINNER: Okay. The -- she was employed  
14 somewhere else at the time of the accident. She's employed  
15 now at Montevista Hospital. I can't -- I don't recall where  
16 she was working at the [indiscernible] the accident. Maybe  
17 you do.  
18 MR. PRINCE: Sunrise.  
19 MR. WINNER: Okay.  
20 MR. PRINCE: He worked at Summerlin. I don't know  
21 if she's worked at Summerlin. You need to find out.  
22 THE COURT: Is that where he worked?  
23 MR. PRINCE: He worked at Summerlin.  
24 THE COURT: Only?  
25 MR. PRINCE: Yes.

1 THE COURT: I suppose, yeah?

2 MR. WINNER: Sunrise and -- I don't think she's ever  
3 worked at Summerlin. I don't have a problem with answering  
4 this if you don't.

5 MR. PRINCE: Well, I want to find out a little bit  
6 more from him where he's worked and maybe they know each other  
7 from work because that would have influenced some of my  
8 decision-making.

9 THE COURT: Yeah, for sure. I mean, I don't --

10 MR. PRINCE: Absolutely.

11 THE COURT: -- I don't think it's a problem, but --

12 MR. PRINCE: Well, I do have a copy of my Power  
13 Point.

14 THE COURT: Hum?

15 MR. PRINCE: I do have a copy of my Power Point.

16 THE COURT: Okay.

17 MR. PRINCE: Yeah.

18 THE COURT: Why don't I look at that.

19 MR. PRINCE: Yep.

20 THE COURT: Let's send everybody out in the hallway  
21 for a minute, except him.

22 MR. WINNER: Okay.

23 THE COURT: We'll ask him a couple questions.

24 (End of bench conference)

25 THE COURT: Ladies and gentlemen, I'm going to ask

1 you, except for Juror No. 9, I'm just going to ask you all to  
2 step out in the hallway for a couple of minutes. We just have  
3 a quick issue. Thank you.

4           During the recess, you're admonished not to talk to  
5 or converse among yourselves or with anyone else on any  
6 subject connected to this trial or read, watch or listen to  
7 any report or commentary on the trial by any person connected  
8 with this trial, by any medium of information, including  
9 without limitation to newspapers, television, the Internet and  
10 radio, or form or express any opinion on any subject connected  
11 with the trial until the case is finally submitted to you.

12                       (Jury recessed at 12:22 P.M.)

13                       (Outside the presence of the jury)

14                       (Juror No. 9 is present)

15           THE COURT: We're outside the presence of the jury  
16 with the exception of Juror No. 9, Mr. Mitros.

17           I got a note from my Marshal indicating that you had  
18 a concern and you were wondering where the defendant had been  
19 employed.

20           JUROR NO. 9: Correct. I just want to make sure I  
21 haven't worked with the defendant in the past.

22           THE COURT: Okay. Are you -- is this based upon the  
23 fact that she's a nurse you're asking?

24           JUROR NO. 9: Correct, yes.

25           THE COURT: Or do you actually recognize her on any



1 level?

2 JUROR NO. 9: No. It's strictly because she's a  
3 nurse and it's kind of a small community and we have people  
4 come in out of that community frequently.

5 THE COURT: And --

6 JUROR NO. 9: So that's my only concern. I don't  
7 have any prejudice for or against who she is. I was just --  
8 wanted to make sure.

9 THE COURT: Okay. And you work at Summerlin  
10 Hospital?

11 JUROR NO. 9: I work at Summerlin. I've worked at  
12 Valley for many years. I've got --

13 THE COURT: Anywhere else?

14 JUROR NO. 9: I worked with Lifeguard International,  
15 I've worked with Med Flight, I've got kind of a --

16 MR. WINNER: Let -- let me confirm. I know it's  
17 Montevista Hospital now, and was it Sunrise in the past?

18 MS. TATE: I've worked at Summerlin Emergency in  
19 2015, I think 2016, at Summerlin --

20 MR. WINNER: Sunrise --

21 MS. TATE: -- ER -- Summerlin ER.

22 MR. WINNER: Summerlin ER 2015 and 2016.

23 THE COURT: All right.

24 MR. PRINCE: Was that a time period you worked at  
25 Summerlin Hospital, sir?

1 JUROR NO. 9: Yes.

2 MR. PRINCE: Okay. Oh, wow.

3 THE COURT: Would you have been in the ER?

4 JUROR NO. 9: I work ICU, so we intermingle quite

5 frequently. I'll go into the ER frequently to pick up

6 patients or to assist.

7 THE COURT: Okay. But as you sit there you have no

8 independent recollection of her?

9 JUROR NO. 9: No, I do not.

10 THE COURT: And is there anything about the fact

11 that you may have passed at some point during a shift that

12 would cause you to not be able to be impartial or fair in this

13 trial?

14 JUROR NO. 9: I -- no, no. But it does seem like I

15 should let you guys know at least.

16 THE COURT: Sure. Any other questions from counsel?

17 MR. PRINCE: I do.

18 How frequent -- what -- how frequently do you have

19 inter -- you know, some involvement or go into the ER, you

20 know --

21 JUROR NO. 9: Well, every shift I'm down there for

22 one reason or another.

23 THE COURT: Okay. What shift do you typically work?

24 JUROR NO. 9: Days, 6:30 to -- or 6:00 to 6:30 at

25 night.

1 MR. PRINCE: 6:00 to 6:00, okay.

2 JUROR NO. 9: Um-hum.

3 MR. PRINCE: And does she -- does she look like  
4 someone who's familiar to you as you sit here?

5 JUROR NO. 9: No, she does not. No, I looked at her  
6 on the first day, but now I'm kind of looking with a different  
7 set of eyes just because.

8 MR. PRINCE: Right. I mean, obviously, now if  
9 she's a nurse, you're a nurse, you've worked at the same  
10 hospital, does that give you some alignment just kind of like,  
11 hey, professionally, I kind of, you know, since you have a  
12 connection with her just because you've now -- or you're both  
13 nurses on some level?

14 MR. WINNER: You don't work day shift?

15 JUROR NO. 9: Hum.

16 MR. PRINCE: I guess I'm concerned about that.

17 JUROR NO. 9: And understandably.

18 MR. PRINCE: Yeah, I mean, I --

19 JUROR NO. 9: I can't give you any real reason why I  
20 would be or wouldn't be. No, I still feel fairly neutral  
21 about the whole situation so.

22 MR. PRINCE: I appreciate you bringing that to our  
23 attention and we'd obviously probably just -- the statements  
24 being made here today obviously caused you to wonder where  
25 she's worked and whether you've had any -- so you can't tell

1 me whether you've had any professional interaction with her?  
2 You may have and you may not have?  
3 JUROR NO. 9: Correct.  
4 MR. PRINCE: Okay.  
5 THE COURT: Um --  
6 MR. PRINCE: I guess --  
7 MR. WINNER: Mr. Mitros, if I were to tell you she  
8 worked night shift at Summerlin, never day shift, and she did  
9 that four days a month does that help you?  
10 JUROR NO. 9: Again, I have no recollection of her  
11 period.  
12 MR. WINNER: Okay.  
13 JUROR NO. 9: Yeah.  
14 MR. WINNER: Did you ever work night shift --  
15 JUROR NO. 9: No, but --  
16 MR. WINNER: -- at Summerlin?  
17 JUROR NO. 9: -- our shifts do --  
18 MR. WINNER: Overlap?  
19 JUROR NO. 9: -- cross over on --  
20 MR. WINNER: Okay.  
21 JUROR NO. 9: -- occasion.  
22 MR. WINNER: Right.  
23 THE COURT: Okay.  
24 MR. WINNER: Nothing more from me.  
25 THE COURT: Anything else?

1 MR. WINNER: Thanks.

2 THE COURT: All right. If you would step out in the  
3 hallway with the rest of the jurors, please?

4 JUROR NO. 9: Yes, ma'am.

5 THE COURT: Appreciate it.

6 (Juror No. 9 exits the courtroom)

7 MR. PRINCE: Well, I remain concerned about that  
8 disclosure. They have substantially similar training. They  
9 may have worked together. They may have -- their paths may  
10 have crossed. He can't -- while he says he'd try to be  
11 neutral, I'm not convinced he can given the alignment  
12 professionally and potentially have worked together at the  
13 same hospital.

14 THE COURT: Is this the first time you're hearing  
15 that the defendant is a nurse by --

16 MR. PRINCE: No, I knew she was a nurse. But I  
17 didn't know -- but I didn't know she worked at Summerlin. I  
18 only knew -- she said she worked at Sunrise in her deposition.  
19 She told us she worked at Sunrise.

20 So -- but now --

21 THE COURT: I haven't --

22 MR. PRINCE: -- now learning today that they worked  
23 at the same hospital at the same time period is very  
24 concerning and I would have exercised my peremptory challenges  
25 likely differently because he was on my list. So now I'm very

1 concerned about that issue.

2 I didn't know that she worked at Summerlin. I only  
3 thought she -- she told us she worked at Sunrise. So  
4 obviously, that -- I wasn't concerned about that.

5 THE COURT: Well, I don't know that we did an  
6 exhaustive search of his history either, so I think we  
7 probably at voir dire might have asked other questions.

8 MR. PRINCE: Yeah.

9 THE COURT: But I don't think we're as --

10 MR. PRINCE: Her deposition was in 2018, and there  
11 was no mention of the word Summerlin about where she worked,  
12 because we asked her where she worked and what she did.

13 And so the fact that she didn't tell us, so now we  
14 don't have a disclosure, so therefore I'm not -- I'm not using  
15 that during my course of my voir dire so I'm deprived -- I was  
16 deprived of that opportunity.

17 Now, we're learning for the first time -- something  
18 jogged his memory about her.

19 THE COURT: I think the only thing that he jogged  
20 was that she's a nurse.

21 MR. WINNER: Yes.

22 THE COURT: Honestly, I don't think he has any idea  
23 who she is. I think he's just being overly cautious to say,  
24 hey, we're in the same profession, it's a small community, you  
25 all should know that --

1 MR. PRINCE: And that's -- that's the concerning --  
2 THE COURT: -- we may have crossed paths.  
3 MR. PRINCE: -- part is like he has an -- a  
4 professional alignment. He characterized it as a small  
5 community working at the same hospital. He's got a natural  
6 affiliation with her on some level and that prevented me from  
7 meaningfully voir diring him and making different decisions.  
8 THE COURT: Well, I don't think I stopped --  
9 MR. PRINCE: It's that --  
10 THE COURT: -- you from asking the questions. I  
11 think you could have asked those questions.  
12 At this point, I don't see any reason to remove him  
13 unless both of you agree.  
14 MR. WINNER: No.  
15 THE COURT: He is an alternate. I'll --  
16 MR. WINNER: Right.  
17 THE COURT: I'll look around a little bit and if I  
18 feel differently we can always remove him later.  
19 MR. PRINCE: Okay.  
20 THE COURT: But I feel like he could be fair and  
21 impartial. I don't necessarily think that that -- I don't  
22 think anything's changed quite frankly other than, like I  
23 said, he was given information that he wasn't given during the  
24 voir dire process, but certainly could have been.  
25 We have a lawyer in the back. You guys are both

1 lawyers, and I guess that -- it could have been -- you did  
2 pursue all that with him, you know, you're an attorney, I'm an  
3 attorney, all that went down.

4 I think this could have been asked as well. So  
5 that's where we're going to stay for now. We'll leave him --

6 MR. PRINCE: Okay.

7 THE COURT: -- on. If I change my mind --

8 MR. PRINCE: Okay.

9 THE COURT: -- I could change my mind.

10 MR. PRINCE: All right. You wanted to see my -- the  
11 concern --

12 THE COURT: I assume, Mr. Winner, you are not  
13 agreeing to excuse him?

14 MR. WINNER: No, I don't think we need to excuse  
15 him.

16 THE COURT: Okay.

17 MR. WINNER: My -- I don't recall exactly what  
18 instructions were that talked about, but Mr. Prince did talk  
19 about the rules of the road, and not following other vehicles  
20 too closely, etcetera.

21 THE COURT: That's my --

22 MR. WINNER: Yeah.

23 THE COURT: -- did you bring me your Power Point,  
24 Mr. --

25 MR. PRINCE: I haven't. I'm doing it now. I will



1 bring you the relevant slides. It's the way that Mr.  
2 Winner --

3 THE COURT: And I assume you'll both deposit a copy  
4 of your Power Points with the --

5 MR. PRINCE: I will.

6 THE COURT: -- Court at some point?

7 MR. PRINCE: Yes.

8 MR. WINNER: Yes.

9 THE COURT: Thank you.

10 MR. PRINCE: He said I showed instructions that the  
11 Court had not given. That's false. I'm going to show you the  
12 instructions I actually gave. I showed --

13 THE COURT: No, I know the instructions -- the  
14 instructions that you gave, but I'm just saying that you did  
15 the same --

16 MR. PRINCE: I also said --

17 THE COURT: -- speed rules --

18 MR. PRINCE: -- I said --

19 THE COURT: -- if you will.

20 MR. PRINCE: -- some rules, drivers must --

21 THE COURT: Right.

22 MR. PRINCE: -- pay full -- but I'm going to get  
23 that through evidence. So she's -- the defendant's going to  
24 admit these things. He's now saying there's this -- quoting,  
25 which is a really a jury instruction. I don't want them to

1 think that that is a jury instruction. And the way that he's  
2 presenting it, that is a jury instruction.

3 THE COURT: I just clarified it's not a jury  
4 instruction.

5 MR. PRINCE: Yeah, but he's saying, trying to  
6 suggest that it is.

7 MR. WINNER: I don't think I said that, but if I  
8 did, I --

9 THE COURT: I took it to just be another --

10 MR. WINNER: -- I don't recall.

11 THE COURT: -- rule of the road.

12 MR. WINNER: Yeah.

13 THE COURT: That the -- I mean --

14 MR. PRINCE: Well, then he -- then the --

15 THE COURT: The quotes are coming from -- is that  
16 statutory language --

17 MR. PRINCE: Yes.

18 THE COURT: -- is that why you have it in quotes?

19 MR. WINNER: It is, yes.

20 THE COURT: Okay. So why wouldn't that be?

21 MR. PRINCE: Because it's not an instruction yet.  
22 You don't know if you're going to give that instruction. You  
23 may not give that instruction.

24 THE COURT: I know. It still doesn't mean it's not  
25 a rule of the road. And I assume if you can do the rules of

1 the road, he can do the rules of the road. Isn't that -- I  
2 mean like --

3 MR. PRINCE: Yeah, I'm talking --

4 THE COURT: -- that seems fair.

5 MR. PRINCE: -- I'm talking about something kind of  
6 like -- he's quoting like something -- like that's something  
7 official. I'm just using general --

8 THE COURT: Which I think you could have.

9 MR. PRINCE: -- making general statements.

10 THE COURT: I think you could have quoted whatever  
11 statute it was that --

12 MR. PRINCE: No, no, oh I --

13 THE COURT: -- said the same thing.

14 MR. PRINCE: -- don't think you can quote a statute.  
15 How do you know if you're going to give that instruction?

16 You don't -- he doesn't --

17 THE COURT: It doesn't have to be an --

18 MR. PRINCE: -- [inaudible].

19 THE COURT: -- instruction, it could still come in  
20 to -- it could still come into trial when you guys are  
21 debating the rules of the road, who's -- who --

22 MR. PRINCE: Well, I think you have to --

23 THE COURT: -- who violated their duty.

24 MR. PRINCE: -- you have to decide. I'm talking  
25 about -- I'm using it to prove my negligence case. When I say

1 rules of the road I'm just talking about --

2 THE COURT: Well, I think he's probably --

3 MR. PRINCE: -- general [inaudible] --

4 THE COURT: -- trying --

5 MR. PRINCE: -- concepts.

6 THE COURT: -- to prove his comparative negligence

7 case.

8 MR. PRINCE: Yeah, but he's calling -- but the "and

9 quote" but no, that's a -- that's a law he's quoting. I'm not

10 quoting a law. I'm just quoting simple driver rules --

11 THE COURT: But they are laws.

12 MR. PRINCE: Those aren't -- those aren't laws.

13 Those are just --

14 THE COURT: They're not?

15 MR. PRINCE: No. I'm saying part of the -- our

16 negligence case and what drivers accept as generally accepted,

17 that's what I'm saying. Whatever laws I quoted are what you

18 gave, only what you gave. He's -- he's quoting a law. That's

19 my problem with his -- with his --

20 THE COURT: Okay.

21 MR. PRINCE: -- [inaudible].

22 THE COURT: Just make it clear that it's not a jury

23 instruction. At this point I'm going to overrule that

24 objection and there we go.

25 MR. WINNER: I -- I understand. I can move on from

1 there.

2 THE COURT: Okay? Are we ready to bring them right  
3 back in everybody?

4 In no way rushing you, Mr. Winner, how long  
5 approximately do you think your --

6 MR. WINNER: I had another statute and I don't want  
7 to draw another objection, I want to get through this, so  
8 we're going to remove that quickly before we begin again if  
9 you don't mind.

10 THE COURT: Okay.

11 MR. WINNER: Can you remove that second one, please,  
12 from the screen? Perfect.

13 (Jury enters at 12:33 P.M.)

14 THE COURT: Okay.

15 MR. WINNER: May I retrieve my clicker?

16 THE COURT: You may. Would you give that to Mr.  
17 Prince please before I mix it up with my stuff? He loaned  
18 that to me earlier.

19 MR. WINNER: Oh.

20 THE COURT: Thank you.

21 MR. WINNER: Dennis, you left this at the bench.

22 (Pause in the proceedings)

23 MR. WINNER: Okay. Thank you. Are we working now?  
24 Sorry folks, okay.

25 What happened after the accident. The first thing

1 was, Babylyn said, I'm sorry. I'm sorry. And her first  
2 concern was talking to the other people making sure they were  
3 okay.

4 Babylyn's going to tell you she was completely  
5 unhurt. She said, I braked really hard. I didn't hit her  
6 very hard. I'm fine. But she's a nurse. She wanted to make  
7 sure everyone was okay.

8 The plaintiff said, I'm fine. I'm not hurt. No  
9 injury. I'm fine. She had some people in the car with her,  
10 her sister-in-law, and a kid or two, and she said, everybody  
11 in the car is fine. Nobody's hurt. Nobody's hurt.

12 Babylyn wasn't asked, I believe, but Babylyn did  
13 call the police. And there's a -- I don't think we're going to  
14 need to hear it because I don't think there's an argument  
15 about it, but there's a tape that police made of the phone  
16 call from Babylyn and it's affirmed that nobody's hurt,  
17 everybody is fine, everybody's fine. I bumped into the back  
18 of her. Both cars are driveable. Everybody's fine. And the  
19 police didn't want to come to the scene; okay?

20 The plaintiff insisted, I want the police to come  
21 anyway. I'm not hurt, my passengers are not hurt, but I want  
22 the police to come anyway in case I need it later. I want a  
23 report in case I need it later.

24 They waited around on the police for I can't  
25 remember how long it was. You'll hear it was 40 minutes or an

1 hour or more, during which time nobody, nobody in the  
2 plaintiff car reported to have the slightest injury. Nobody  
3 was injured.

4 Now, as I mentioned to you, Mrs. Tate is a nurse.  
5 She's been a triage nurse, she's been an emergency room nurse.  
6 She now works at Montevista Hospital, obviously, dealing with  
7 mental health, addiction, other things. But in the past, she  
8 has worked as an emergency room nurse, as a trauma nurse, as a  
9 triage nurse.

10 She is not going to tell you that she went and  
11 examined and did an evaluation of all the people that were in  
12 the other car; she didn't do that. She wasn't asked to do  
13 that, she didn't do that. But she does have training as a  
14 nurse. She has training for assessing injuries. She said  
15 based on the way they were walking, their demeanor, their  
16 facial expressions, their gait, everyone appeared to be  
17 perfectly uninjured and fine. Not only that, everybody in the  
18 car said, I'm fine. I'm not hurt. We're fine.

19 They were going to go trick-or-treating at the Linq  
20 for some party at the Linq. They were all going to go trick-  
21 or-treating, but they didn't want to leave to go trick-or-  
22 treating. They wanted to wait for however long it took,  
23 whether it took an hour or an hour-and-a-half, they wanted to  
24 wait until the police came to write a report because they  
25 wanted a report before they left. And then they went trick-

1 or-treating.

2           Okay. I mentioned she's a nurse. She's worked  
3 doing triage, ER. She didn't think it was that much of an  
4 impact, didn't feel like that much to her. She needed another  
5 few feet to stop.

6           But her concern was for everyone else. Does anybody  
7 need any help? Does anybody need any medical help? Does  
8 anybody need me to call a doctor, call an ambulance? They all  
9 said, no, no, no we're fine. We're fine.

10           She said, I'm very sorry. I'm so sorry. I didn't  
11 see you stopping in front of me. I'm so sorry.

12           But she did not do an examination or an assessment.  
13 Plaintiff said she's fine. Showed no signs of injury. The  
14 plaintiff, Mrs. Evans, said, I'm fine. Everybody in my car is  
15 fine. But she demanded that the police appear in case she  
16 needed it later. The police came but they didn't write a  
17 ticket to anybody; not to the plaintiff, not to the defendant,  
18 no tickets were issued.

19           MR. PRINCE: Your Honor -- can we approach, Your  
20 Honor?

21           THE COURT: Sure.

22           MR. PRINCE: Excuse the jury, please.

23                           (Bench conference)

24           MR. PRINCE: Excuse the jury. I want to move for a  
25 mistrial right now. I need to -- I want to excuse the jury.



1 Wow. I need to -- I want to make a motion for a mistrial  
2 immediately.

3 MR. WINNER: On what?

4 MR. PRINCE: Yeah.

5 THE COURT: Okay.

6 MR. PRINCE: Let's go ahead and -- Jack get the  
7 Frias case, Frias v. Valle case.

8 THE COURT: Do you want to do the lunch yet --

9 MR. PRINCE: Hold on.

10 THE COURT: -- now or --

11 MR. WINNER: Yeah, I know what Frias v. Valle says.

12 MR. PRINCE: Yes.

13 MR. WINNER: No.

14 THE COURT: Huh?

15 MR. WINNER: No.

16 MR. PRINCE: That's okay.

17 (End of bench conference)

18 THE COURT: Okay. Ladies and gentlemen, during the  
19 recess, you're admonished not to talk to or converse amongst  
20 yourselves or with anyone else on any subject connected to  
21 this trial or read, watch or listen to any report or  
22 commentary on the trial by any person connected with this  
23 trial, by any medium of information, including without  
24 limitation to newspapers, television, the Internet and radio,  
25 or form or express any opinion on any subject connected with

1 the trial until it's finally submitted to you.

2 Would you just step out in the hallway for a few  
3 minutes, please?

4 THE MARSHAL: All rise for the exiting jury.

5 (Jury exits at 12:40 P.M.)

6 (Outside the presence of the jury)

7 MR. PRINCE: I want you to find every case in the  
8 last two years.

9 THE COURT: The record will reflect we're outside  
10 the presence of the jury.

11 MR. PRINCE: Your Honor, during Mr. Winner -- well,  
12 first off, this is a disputed liability case. And one of the  
13 things you're going to learn is that routinely the defense  
14 files motions when their clients receive a citation to exclude  
15 any reference to the citation.

16 There's a case called Frias v. Valle. What's the  
17 cite, Jack? V-a-l-l-e. 698 P.2d 875. And I'm in the process  
18 -- I'm instructing my office to find motions that Mr. Winner's  
19 law firm has filed to exclude any reference to a traffic  
20 citation.

21 Right now, in front of this jury --

22 MR. WINNER: You don't have to.

23 MR. PRINCE: No, no, no.

24 MR. WINNER: I've filed them.

25 MR. PRINCE: I don't want to be interrupted right

1 now. And right now in front of this jury he knew at this time  
2 Metro wasn't even responding to -- when there's a non-injury  
3 accident.

4 He just told this jury that no one got a citation.  
5 There's no way a plaintiff -- we -- we -- we're barred from  
6 introducing evidence of citations. Now he's trying to use the  
7 inverse to say, oh, no one got a ticket so therefore the cops  
8 determined no one was at fault, that my client's not at fault.

9 We can't even suggest -- we can't even talk about  
10 driver number one, who does that mean? Well, that's the  
11 at-fault driver, let alone a citation. That law is  
12 unmistakably clear. Mr. Winner files those motions every  
13 single time, and there is no way for me to unring this bell  
14 that the cops came, no one issued a citation because they give  
15 so much deference to the police officers when it comes to this  
16 traffic investigation.

17 He just gave them an exchange of information card  
18 and that's all he did. Now he's suggesting no one got a  
19 ticket. They -- so now the inference is -- and we could never  
20 fix this. Ever. And it's honestly stunning that he did this  
21 and it's an absolute form of misconduct because Mr. Winner and  
22 his law firm, they know.

23 And I want to find the motion so we understand how  
24 egregious this is. I've had dozens of cases with his law  
25 firm. They file that motion in every singular case. Because

1 they don't want a presumption, if you will, of an officer  
2 giving someone a citation.

3           There was no citation. There's no way to fix it.  
4 There's no curative instruction you could give at this point,  
5 even if you disregarded it. It's absolute misconduct. It's  
6 an absolute knowing violation of the law.

7           And the only way, Judge, we can do this is I'm  
8 demanding a mistrial because I cannot have a fair trial for my  
9 clients right now. There is no conceivable way in this case  
10 to do that. None. None.

11           I -- it's regrettable and I'm sick to my stomach  
12 right now over this because I can't even believe -- that is  
13 such a basic tenant of motor vehicle negligence cases, that  
14 you can't unring that bell ever.

15           Because now he's trying to say -- the suggestion is  
16 oh, the cops came and my client's not at fault, no one got a  
17 ticket. Let's put the slide back up. I want to read the  
18 slide exact.

19           MR. WINNER: Gave nobody a ticket, including the  
20 plaintiff.

21           MR. PRINCE: Oh, whatever. Look at it. It's an in  
22 caps, it is all in caps. That's the final thing he said. So  
23 there is no way he wasn't trying to have the jury draw the  
24 inference that no one was determined to be at fault.

25           Hey, no, my client's not at fault. That's the only

1 reasonable conclusion that you can have. He went on and on  
2 five times saying, my client insisted the police come instead  
3 of going on trick-or-treating.

4 She had substantial property damage to her car. Who  
5 was going to pay that? Forget an injury for a minute. There  
6 was -- she had damage to her car. It's obvious and physical.  
7 Did GEICO pay your property damage?

8 MS. EVANS-WAIAU: Um --

9 MR. PRINCE: The defense's insurance company? Do  
10 you know?

11 MS. EVANS-WAIAU: I don't remember.

12 MR. PRINCE: That's fine. Regardless of that, she  
13 had property damage to her car, so she did have damage at the  
14 scene, regardless of any injury issue.

15 THE COURT: I -- I get that. This is -- what's your  
16 response to -- I'm going to have to -- obviously, I don't know  
17 this, so give me your --

18 MR. WINNER: Well, I have --

19 THE COURT: -- response and I'm going to have to  
20 look at -- I don't --

21 MR. WINNER: I -- I do file that motion. If either  
22 side gets the ticket, if either side gets a ticket that's  
23 typically not admissible. I have filed that motion and I've  
24 had that filed -- motion filed against me where the plaintiff  
25 -- where the plaintiff may have gotten a ticket.

1                   However, where -- where a party does not --  
2                   THE COURT:   It feels a little bit like --  
3                   MR. WINNER:   -- get a ticket I'm --  
4                   THE COURT:   -- the converse is true though, doesn't  
5 it?  
6                   MR. WINNER:   Yeah, no, I've -- I've never had a case  
7 -- I've never seen an appellate case where if a cop shows up  
8 at the scene and says, I don't know what happened and doesn't  
9 give anybody a ticket, I've never -- I've never seen a  
10 published case where that's been excluded.  
11                  MR. PRINCE:   Oh --  
12                  MR. WINNER:   Had there -- had there been a ticket  
13 issued to the plaintiff --  
14                  MR. PRINCE:   Wow.  
15                  MR. WINNER:   -- I wouldn't bring it up. Had there  
16 been a ticket issued to my client, I would have insisted that  
17 I not bring it up.  
18                  THE COURT:   I know, but I think my brain --  
19                  MR. WINNER:   I'm not aware of -- I'm not aware of  
20 any -- I'm not aware of any -- and Mr. Prince can yell all he  
21 wants and turn as red as he wants, I'm staying as calm as I  
22 can; he's wrong. Frias/Valle doesn't say that if a party  
23 doesn't get a ticket he gets a mistrial. What Frias v. Valle  
24 says if someone does get a ticket --  
25                  MR. PRINCE:   Wow.

1           MR. WINNER:  -- if someone does get a ticket the  
2 jury -- the jury is not allowed to hear about that unless  
3 there's been a guilty plea or a finding of liability by the  
4 traffic court.

5           MR. PRINCE:  Right.

6           THE COURT:  Well, I --

7           MR. WINNER:  And if you'll -- if -- if he actually  
8 wants a mistrial on this --

9           MR. PRINCE:  I do.

10          MR. WINNER:  -- fact that somebody didn't get a  
11 ticket, I suspect there's some other reason for that.  And  
12 that's because he doesn't like the nurse who's sitting there  
13 looking like this at him while he's talking about his case.

14          MR. PRINCE:  The -- the alternate?  No, that is not  
15 the case.  My concern is that the Court found in Frias -- it's  
16 -- it was an error, reversible error to admit the traffic  
17 accident report which included a reference to the citation.

18          You don't get to have it both ways.  Oh, and in the  
19 case where my client gets a citation, I don't reference that.  
20 The minute now, oh, the cops took no law enforcement action  
21 and issued no citation, it's as if the suggestion is, they  
22 reach a conclusion that there's no -- they weren't at fault,  
23 because officers make those --

24          THE COURT:  Well, I -- I get the argument.

25          MR. PRINCE:  -- conclusion, and they didn't do that

1 here. He just made them exchange informational cards. That's  
2 it. And it was at the time period where Metro wasn't even  
3 responding to non-injury accidents.

4 So that's why they did nothing.

5 THE COURT: I understand. But --

6 MR. WINNER: Unless they were insisted.

7 THE COURT: -- is that not something --

8 MR. PRINCE: And so --

9 THE COURT: -- that can be -- would be presented to  
10 the jury? Because I think that's already the flavor of  
11 everything out there.

12 MR. PRINCE: What's that?

13 THE COURT: That's kind of the flavor that's out  
14 there that Metro isn't responding to anything but property  
15 damage. And --

16 MR. PRINCE: They -- they've since --

17 THE COURT: -- I don't necessarily --

18 MR. PRINCE: -- changed that.

19 THE COURT: -- think that that means that they  
20 didn't find anybody at fault. I mean --

21 MR. PRINCE: Normally, you can't even -- the -- the  
22 officers -- and I'm going to go a step further. Mr. Winner  
23 -- and I'm going to -- we're going to find these motions --  
24 Mr. Winner files motions that like the officer can't even give  
25 an opinion as to who is at fault, not just the report, but I'm



1 going to find those and you can ask him that question; do you  
2 file motions seeking to preclude the officer from testifying  
3 who is at fault? Forgetting the citation for a minute.

4 MR. WINNER: You don't need to look. I have filed  
5 those.

6 MR. PRINCE: Correct.

7 THE COURT: And I assume nobody has filed -- filed a  
8 motion to keep out the fact that no tickets -- citations were  
9 filed --

10 MR. WINNER: Correct.

11 THE COURT: -- or issued? And --

12 MR. PRINCE: Well so -- well whether he's --

13 THE COURT: -- I don't -- I'm asking all the --

14 MR. PRINCE: That's correct.

15 THE COURT: -- questions I think that might make a  
16 difference when I go back there --

17 MR. PRINCE: That's correct.

18 THE COURT: -- and talk to who I have to talk to and  
19 look up what I have to look up. So nobody filed a motion to  
20 keep it out.

21 MR. PRINCE: Correct.

22 MR. WINNER: Well, my office has filed that motion.  
23 You don't need to look. My office has filed that motion.

24 MR. PRINCE: They routinely do it in every case.

25 THE COURT: Well, it makes --

1 MR. PRINCE: Every case I've seen.

2 MR. WINNER: Yeah.

3 THE COURT: -- I get it.

4 MR. PRINCE: Because they don't want any

5 presumption. Now there's a -- now, oh, the police officer

6 didn't see her at fault, otherwise they'd have given her a

7 ticket. Why else would he even reference that? That's wrong.

8 MR. WINNER: Well, okay, what --

9 MR. PRINCE: And that's an absolute form of

10 misconduct. He clearly understands the law, because he's

11 acknowledged his office files the cases based upon Frias to

12 one, no ticket evidence comes in. Two, officer can't give an

13 opinion on fault. Those -- those are the two things that he

14 files it -- that's what Frias stands for. And that's what his

15 law firm uses as a basis.

16 And if I have -- he's -- he's already acknowledged

17 he files those and it's routine. They're -- and it was a

18 reversible error to admit that, to even admit that citation.

19 So the inference is --

20 THE COURT: After the ruling though?

21 MR. PRINCE: What?

22 THE COURT: After the ruling?

23 MR. PRINCE: No, no, no. The Court ruled in Frias,

24 it can -- the traffic report and the ticket can come in. The

25 Court reversed it and said --

1 THE COURT: I see, I see.

2 MR. PRINCE: -- it was reversed later to --

3 THE COURT: Okay.

4 MR. PRINCE: -- allow that in.

5 THE COURT: I got you.

6 MR. PRINCE: Because of this issue. So therefore,

7 that's why it's a -- it's a major issue. I'm like -- I'm

8 elevated because I'm stunned that oh, well, it doesn't say you

9 can't. No, the thing is, it's all encompassing. Even if

10 there was no ticket, you can't use the inverse, well, there's

11 no ticket so therefore, the inference being, hey, no one

12 determined -- my client wasn't at fault otherwise she likely

13 would have gotten a ticket. That's the inference, the officer

14 made that determination.

15 We don't even know who the officer is to even ask a

16 question of it -- of him; what did you do, who did you

17 interview? There's nothing.

18 THE COURT: Well, as I understand this --

19 MR. WINNER: Are we --

20 THE COURT: -- there was -- there is --

21 MR. WINNER: May I respond?

22 THE COURT: -- nothing. Go ahead.

23 MR. WINNER: Okay. Well, one, what I heard in Mr.

24 Prince's opening statement, which was clever, and it was good

25 advocacy, was why are we here? Why are we hear? This crazy

1 defendant ran into the back of my client and how could she say  
2 it's anybody else's fault? How could she possibly say it's  
3 anybody else's fault? She's wasting your time. She's  
4 avoiding responsibility. She's shirking responsibility.

5 She ran into the back of another car. And then  
6 rules of the road are out there. You can't follow another car  
7 too closely. You can't place yourself in danger of other  
8 vehicles.

9 I put up a statute, which he objected to, saying you  
10 can't bring your car to a stop in the middle of the road. And  
11 guess what? Cops, at their client's instance, showed up at  
12 the scene and said, I'm not writing anybody a ticket.

13 That's what he doesn't like. What he doesn't like  
14 is, it doesn't fit his narrative that we're being stupid and  
15 unreasonable, and we violated the law and it's obvious.

16 And by the way, Frias -- Frias v. Valle does not say  
17 that if somebody doesn't get a ticket, that's excluded. It  
18 doesn't say that.

19 And for whatever reason, if the police officer  
20 thought that this was this unimportant or significant property  
21 damage was caused and it was somebody's fault and he -- two  
22 officers came to the scene and had to deal with this because  
23 the plaintiff insisted on it so she could get a report; the  
24 plaintiff insisted on it so that she can get a report and the  
25 police officer showed up --

1 MR. PRINCE: Yeah.

2 MR. WINNER: -- and wrote nobody a ticket. And

3 that's a mistrial?

4 MR. PRINCE: Absolutely.

5 MR. WINNER: After what he just did in his opening

6 statement?

7 MR. PRINCE: Yes.

8 MR. WINNER: He actually did violate an order, a

9 very clear order. He didn't file a motion about this. And I

10 disagree, I don't think the law is clear on this at all. I

11 don't think if a party --

12 MR. PRINCE: Wow.

13 MR. WINNER: -- doesn't get a ticket that's

14 excluded. I might be making the same argument Mr. Prince

15 makes, but a mistrial?

16 MR. PRINCE: Wow.

17 THE COURT: Well, I've got -- like I said, I'm not

18 ready to rule. I don't -- I've never read the case. I don't

19 know anything about it. I am -- so do you -- does anybody --

20 does anybody feel they need to brief it or am I just going to

21 go?

22 MR. WINNER: I don't need to brief it.

23 THE COURT: Huh?

24 MR. PRINCE: Yeah, I'm just looking -- I'm just

25 using one case that they've recently filed. And I'm just

1 going to give you the name of the case and you can look it up.  
2 So this is -- you have cite for this law firm. It's the case  
3 of Rugoletti, R-u-g-o-l-e-t-t-i. It's from 2009.

4 THE COURT: Okay, wait. Slow down. R-u-g --

5 MR. PRINCE: O-L-E-T-T-I -- have someone at our own  
6 firm -- Case No. A-544910. Mr. Winner's law firm, they filed  
7 a Motion in Limine seeking to exclude a traffic accident  
8 report and witness statements.

9 Yeah, evidence of traffic citation is also  
10 inadmissible. They're citing to that, in reference to the --  
11 the excluding -- right, it says, The Nevada Supreme Court has  
12 previously ruled that its error -- this is their statement --  
13 this law firm's statement -- that it's error to admit a  
14 traffic accident report into evidence in a civil action. The  
15 Court excluded a traffic accident report from evidence because  
16 it contains statements of third parties, the police officers,  
17 as to the cause of the accident and a reference to issuance of  
18 citation. It is the function of the trier of fact to decide  
19 who and what caused an accident. The conclusion of Officer  
20 Sowder -- that's from the case of Frias -- based upon  
21 statements of third parties and cursory inspection of the  
22 scene did not qualify him to testify as to who was at fault.  
23 Evidence of traffic citation was also inadmissible. By  
24 admitting the traffic accident report into evidence the trial  
25 court erred, meaning, reversible error.

1           That's the language from their motion, this law firm  
2 who routinely files this motion. That encompasses the whole  
3 thing. You don't get to say, oh no ticket was issued,  
4 therefore, that's the officer's conclusion.

5           THE COURT: No, I've -- I get it. That's --

6           MR. PRINCE: There's no way to fairly proceed in  
7 light of that. Because normally we don't even hear that. You  
8 can't -- if I had the officer come in and testify he gets --  
9 he gets -- do you talk about statements he got -- collected  
10 from either party or the adverse party, he could talk about  
11 his physical inspection, the scene of the accident.

12           He can't give opinion as to fault or cause even if  
13 he was here. We can't even -- we don't even know who the  
14 officer is. We don't -- we can't even examine him as to what  
15 they did and what their investigation entailed if any, likely  
16 nothing.

17           Here, here's the card. Fill it out. Bye. They  
18 don't even remember it at this point. And you know that.

19           THE COURT: All right. Shall we take our lunch  
20 break now?

21           MR. WINNER: I'm -- I'm ready to continue. I  
22 disagree with what he's saying. I don't know that it was  
23 offered for that purpose. If you'd like me to withdraw that,  
24 if you'd like me to say what a police officer said as to fault  
25 or whether a ticket was issued is not something for you to

1 consider.

2 I don't care. That's not fine. My point being,  
3 well, partly it -- partly it was in response to Mr. Prince in  
4 his opening saying the only reason we're here is some crazy  
5 defendant won't up to her responsibility which violates an  
6 order. And two --

7 THE COURT: Well, my --

8 MR. WINNER: -- the police obviously didn't think  
9 this was a very big deal, not enough of a deal to write  
10 anybody a ticket after significant property damage.

11 MR. PRINCE: There was significant property damage.  
12 And the fact that my client wanted the officers to come  
13 because she had damage to her vehicle is -- is reason enough.

14 THE COURT: And then my concern, Mr. Winner, is in  
15 your comments you conversely argued what others would have  
16 argued with a citation, somehow giving credibility or  
17 incredibility to the accident and the causation by saying,  
18 cops responded, they didn't even think it was a big deal.

19 So if the law is that you can't be doing that, then  
20 I have a -- I'm a little worried. So --

21 MR. WINNER: Well --

22 THE COURT: I'm --

23 MR. PRINCE: When you think about the --

24 MR. WINNER: -- okay.

25 MR. PRINCE: -- consequence, my clients are



1 claiming, Desire --

2 MR. WINNER: She was asking me a question --

3 MR. PRINCE: -- a permanent injury.

4 MR. WINNER: -- not you a question, so I'd

5 appreciate you not interrupting.

6 What the law says is if a party gets a ticket that

7 is typically not admissible --

8 THE COURT: But if it's -- it's because --

9 MR. WINNER: -- unless some other things are met.

10 And I would point out -- I would point out, I put up there

11 that neither party was given a ticket. I didn't say the

12 plaintiff was given a ticket --

13 THE COURT: I understand that.

14 MR. WINNER: -- either.

15 THE COURT: I understand that. But at the end of

16 the day we're really talking about your client not getting a

17 ticket. And so I think on some level you've got the cops kind

18 of vouching for your client and I -- I just don't know what

19 the legal implication of that is.

20 I don't know if it's something -- I -- if what I'm

21 hearing is correct, that citations don't get in absent -- I

22 get -- citations coming in when there's an admission or a

23 guilty plea, that's not really a citation coming in. That's

24 more of a ownership of liability and admission by a defendant.

25 That's that whole different --

1 MR. PRINCE: Yeah.

2 THE COURT: -- I think.

3 MR. WINNER: And there's two cases --

4 MR. PRINCE: But I want to --

5 MR. WINNER: -- Frias and I forget what the other  
6 one was --

7 MR. PRINCE: Well, I want to give you another  
8 citation, Judge.

9 THE COURT: Okay.

10 MR. PRINCE: I want to -- and again, it's the --  
11 it's the case -- this is my -- it's specific to my law firm,  
12 Jacqueline Garcia v. Nawfali, -A-W-F-A-L-I --

13 THE COURT: Wait.

14 MR. PRINCE: -- Case No. A-16-742054, by the Atkin  
15 Winner Law Firm, by these specific lawyers, including Ms.  
16 Lorelli. Defendant's Motion in Limine to Exclude, Redact  
17 Traffic Accident Report, Exclude Traffic Citation to Prevent  
18 Officers from Giving Opinions as to Fault, Causation, or  
19 Damages.

20 Again, quoting at length, the Frias v. Valle case,  
21 taking about that officers can't talk about citations, they  
22 can't talk -- they can't give an opinion as to fault in  
23 causing the accident, and the whole -- the predicate argument  
24 is -- and they said it's -- The Nevada Supreme Court has  
25 previously ruled it is error to admit a accident report into

1 evidence in a civil action. The Nevada Supreme Court excluded  
2 a traffic accident report from evidence because it contains  
3 statements of third parties such as police officers'  
4 conclusions as to the cause of the accident and the reference  
5 to issuance of traffic citations.

6 And they go on to talk about the long-standing  
7 Nevada law, traffic accident report, and traffic citations  
8 should not be admitted into evidence at the time of the trial.

9 Think about that; they can't have it -- this is in  
10 2018.

11 THE COURT: I totally -- I -- I get it.

12 MR. PRINCE: I mean, that's their --

13 THE COURT: I just -- I just have to go --

14 MR. PRINCE: -- law firm's position. So -- so my  
15 point in saying that is, Mr. Winner uniquely knows this.  
16 That's why I'm using his pleadings, because he uniquely knows  
17 this information. He knows that that -- that is an area that  
18 you don't even get to go into because he files, him, himself  
19 and his law firm, these motions to exclude it.

20 To now argue the inference which is to suggest that  
21 the officers showed up -- and he argued, oh my client  
22 insisted, insisted, insisted, and when the officers got there,  
23 nobody got a ticket.

24 MR. WINNER: You -- you might want to also read the  
25 -- that -- that --

1 MR. PRINCE: Excuse me. Well, hang on.  
2 MR. WINNER: -- that law firm --  
3 MR. PRINCE: I'm not done.  
4 MR. WINNER: -- opposed them motion saying, no, it  
5 does come in.  
6 MR. PRINCE: No, I -- it does not come in.  
7 MR. WINNER: Okay.  
8 MR. PRINCE: It never comes in. There may be other  
9 parts of the report, the traffic report that get to come in  
10 because there may be -- we may be -- dimensions, scene  
11 diagrams, there may be other things that we want.  
12 MR. WINNER: All right.  
13 MR. PRINCE: But the citation never gets to come in.  
14 That's clear.  
15 MR. WINNER: The citation does not, I agree.  
16 MR. PRINCE: And the absence therefore, doesn't help  
17 you.  
18 THE COURT: Or the fact of the citation?  
19 MR. PRINCE: Correct. The fact of it.  
20 MR. WINNER: The fact of the citation does not come  
21 in.  
22 THE COURT: Okay. All right. We're going to -- do  
23 you want to just let the jury go --  
24 MR. WINNER: Well, the --  
25 THE COURT: -- tell them to come back at 2:00?

1           THE MARSHAL: 2:00?

2           MR. PRINCE: Well, again, my only issue is, Judge,  
3 in fairness --

4           MR. WINNER: We're running out of time today.

5           MR. PRINCE: -- is if we're going to -- if you're  
6 going to grant our motion for a mistrial I want to let my  
7 physician know so he doesn't have to come down here. I have  
8 an expert coming.

9           THE COURT: Well, I haven't decided if I'm going to  
10 -- I mean, I'm going to do everything I can not to but if I  
11 have to I will. I mean --

12          MR. PRINCE: I just don't know -- let me make my  
13 record further.

14          There's no way for me to unring this bell, and  
15 they're making a liability argument. There's no way for me to  
16 fix this. This nothing -- there's nothing you could do.

17          THE COURT: Well, I don't -- I don't necessarily  
18 agree with that, because I think the -- and obviously the  
19 evidence isn't out there yet, but I think the way the openings  
20 have gone, I think when they're told that the officers did  
21 nothing at the scene, they didn't write a citation, not  
22 because they investigated or believed anybody was right or  
23 wrong, I mean, that's the way I understand it. I mean, this  
24 is the new wave across the country. The cops aren't coming  
25 out if somebody's not even hurt let alone if they come out to

1 document something -- I don't know, I may be wrong. I just  
2 feel like there's a way to undo it.

3 MR. PRINCE: Yeah but I don't see how my client can  
4 fix that. But there's -- but you can't even --

5 THE COURT: I don't know. I'm going to go try and  
6 find a way for you to fix.

7 MR. WINNER: A curative instruction --

8 MR. PRINCE: There's no curative, Judge.

9 MR. WINNER: -- is what Judge Maupin says.

10 MR. PRINCE: There's no curative. There's nothing  
11 in way he did it.

12 THE COURT: Well --

13 MR. PRINCE: There's nothing to do -- I mean,  
14 there's just such a prejudice in that point. Maybe you can  
15 confer with some other colleagues or research it, whatever you  
16 need to do but --

17 THE COURT: I'm -- I'm going to.

18 MR. PRINCE: Okay.

19 THE COURT: And just in case, bring me a curative  
20 instruction if I decide not to, if there's -- your best  
21 curative. I know it's your second choice, but --

22 MR. PRINCE: I understand.

23 THE COURT: Okay? See you all at 2:00 o'clock.

24 And I can't -- I don't know if I'm going to grant  
25 it, so I don't know what to tell your expert, I don't know.

1 MR. PRINCE: Whatever.

2 THE COURT: Do I have the Power Points? Do you have  
3 copies to give me now?

4 MR. PRINCE: I do.

5 MR. WINNER: Mine's a work in -- yeah.

6 THE COURT: Okay.

7 MR. WINNER: Mine's still a work in progress, I  
8 think.

9 THE COURT: Okay. Can you just give me the --

10 MR. WINNER: But I'll need to remove some things.

11 THE COURT: -- will you just send me the page in  
12 question?

13 MR. PRINCE: Yeah, but see -- but see the way --

14 MR. WINNER: Can you -- like screen shot that page?

15 MR. PRINCE: -- I want to -- I want to -- with the  
16 page? This is what I want.

17 MR. HENRIOD: This one?

18 MR. WINNER: Yeah.

19 MR. PRINCE: The way it reads, that my client  
20 insisted that the police come out, comma, in case she needed  
21 it later, and then in all caps, for the point of emphasis was,  
22 the police came and issued no one a ticket.

23 THE COURT: No, I -- I got. But I want -- but I  
24 want a copy of the page.

25 MR. WINNER: That's -- that's what's on the page.

1 THE COURT: Yvette, can you pull me up the argument  
2 that was being made at that point, too?

3 All right. I'll be back in an hour. We're off.

4 (Court recessed at 1:01 P.M., until 1:51 P.M.)

5 (Outside the presence of the jury)

6 THE COURT: Anybody else want to say anything else?

7 MR. WINNER: Not from us. No, thank you.

8 MR. PRINCE: I guess, what are you preliminary  
9 thoughts and I guess I'll just --

10 THE COURT: I'm going to -- I don't believe I have a  
11 choice but to declare the mistrial.

12 MR. PRINCE: Okay.

13 MR. WINNER: Really?

14 THE COURT: Yeah. I've done research, I've spoken  
15 to a colleague. It's my belief that upon reading the Frias  
16 case, that it is error to admit any kind of police officer  
17 report or his -- it's up to the jury. And, in fact, in your  
18 motion that you generally file you say, "It's a function of  
19 the trier of fact to decide who and what caused the accident.  
20 The conclusions of Officer Sowder based upon statements of  
21 third parties and a cursory inspection of the scene did not  
22 qualify him to testifying who is at fault. Evidence of the  
23 traffic citation was also inadmissible. By admitting Sowder's  
24 traffic accident report into evidence, the trial court erred."

25 I think the very same logic that was argued there,



1 to keep it out, you have conversely planted, and not only did  
2 you say it, but you said it in all caps, and --

3 MR. WINNER: I did.

4 THE COURT: -- the implication by -- from your  
5 argument is the police came, wrote no report and gave nobody a  
6 ticket, I believe plants in the jurors' mind, and I don't know  
7 how to get it out, the fact that they came. It wasn't a big  
8 deal. They looked around and didn't, couldn't determine  
9 anybody was liable for anything.

10 And I think for the same reasons that you tried to  
11 keep it out before, the fact that you make the argument here,  
12 I don't know how to unring that bell. I can't come up with a  
13 curative instruction that takes away that argument, because at  
14 the end of the day no report was taken and no citation was  
15 issued. And you basically shouted that to the jury in your  
16 Power Point. So --

17 MR. PRINCE: Can we have that marked as Court  
18 Exhibit No. 1, the Power Point slide, please? Because I want  
19 it for our record? Because I don't have a copy of it. I --  
20 I'll need one, but I don't have one.

21 MR. HENRIOD: So it -- I think it can be removed. I  
22 don't think that -- there is no case on point saying that the  
23 inverse is necessarily inadmissible.

24 And this motion in limine is frequently filed.  
25 Here, if they thought that the law did extend --

1 MR. PRINCE: Oh.

2 MR. HENRIOD: -- they could have filed the motion in  
3 limine. They didn't. And, I mean, I think all that needs to  
4 be told to the jury is that they should disregard it, that  
5 it's irrelevant because on the scene traffic scene officers  
6 may elect not to issue citations for any number of reasons.

7 And it doesn't necessarily mean that there is  
8 negligence or fault on the part of either party. It's  
9 inadmissible and they should disregard it. So I think the law  
10 is not clear.

11 And I think that the prejudice, I think there really  
12 is no prejudice if it is cured with as simple a statement as  
13 that and not only is it possible to do that technically and  
14 legally, but I think even as a matter of common sense for  
15 people on the jury.

16 It's going to be plausible and completely  
17 understandable that a traffic officer would not add, even  
18 assuming we were negligent, they typically don't add insult to  
19 injury.

20 My daughter was in an accident a few months ago and  
21 they didn't give her a citation. I doubt I'm the only one who  
22 has had that experience where it's going to be completely  
23 understandable that an officer decided not to issue the  
24 ticket. That doesn't necessarily mean that there was no  
25 negligence. I think that could be imparted in this.

1           THE COURT: I -- I get that. But I -- I mean, I  
2 have opposite -- I've got to tell you; to me when they respond  
3 to an accident like that, I'm a little surprised they didn't  
4 write a ticket. That would mean something to me --

5           MR. PRINCE: Right.

6           THE COURT: -- on some level; good or bad. And, you  
7 know, I guess we could -- I don't even know how we could  
8 change it. Yeah, it's probably not it, but I definitely think  
9 it's got some -- some value and I don't know how to fix that.  
10 I don't -- I just -- I wish you hadn't said it. I don't think  
11 there's any curative.

12           I think particularly the way you said it and you  
13 were fairly strong about it, she insisted the cops come out.  
14 They came out and they didn't -- they didn't even file a  
15 report let alone a citation. I mean, it's almost explicitly  
16 telling them, it was no big deal to the cops. They didn't  
17 determine her to be liable.

18           MR. PRINCE: And that --

19           THE COURT: And that's what -- you've -- you've --  
20 you filed motions to say they can't do that. And I don't know  
21 why anybody would think that wouldn't extend to the converse.

22           MR. WINNER: Well, we --

23           THE COURT: If you can't say the cops found her at  
24 fault, you sure can't say the cops didn't find her at fault,  
25 which is really what we're doing.

1 MR. WINNER: Well, I believe my point was the cops  
2 thought it was such a -- not a big deal, they didn't bother to  
3 write a report or write a ticket. And I said they didn't  
4 write a ticket to either side.

5 We're arguing that the plaintiff --

6 THE COURT: I understand that.

7 MR. WINNER: -- bears fault to this.

8 THE COURT: But let's face it, yours is a rear-end,  
9 so it means a lot more that they didn't write your client --

10 MR. PRINCE: Right

11 THE COURT: -- a ticket than the other side. No  
12 one's sicker about this than I am.

13 MR. WINNER: Well, I don't feel very good about it  
14 myself. What -- what do we do now?

15 MR. PRINCE: Well, we're going --

16 MR. WINNER: What does Mr. Prince want to do now?

17 MR. PRINCE: I want to start over with a new trial.

18 I don't know if we can accommodate it now, or next week, or  
19 otherwise. If we can get -- go -- let's pick a new jury. But  
20 I plan on filing some motions related to attorneys fees and  
21 costs, which will need to be briefed before you, about how  
22 this arose. And that needs to be decided.

23 So and then we can reset the matter for a trial.

24 And that my whole schedule -- you -- you're gone next week and  
25 so everything is disrupted so there's no way to like pick a --

1 it's Friday afternoon. We can't like start picking a jury  
2 next week, in my mind, because now all the scheduling is  
3 completely, even with the expert witnesses, completely  
4 altered.

5 So I think we need to come back, maybe for a Status  
6 Check, and reset the case for a trial relatively soon.  
7 Obviously, I've blocked out this period of time to do it, and  
8 so did you, so.

9 MR. HENRIOD: I can file whatever motion he wants.  
10 I don't think there is misconduct that warrants fees or costs  
11 or anything.

12 THE COURT: I don't either.

13 MR. HENRIOD: If the Court --

14 THE COURT: I mean, I'll read the motions. I don't  
15 either.

16 MR. HENRIOD: No, I mean if we are --

17 MR. PRINCE: But -- but there's -- there's base --

18 MR. HENRIOD: -- if we are doing this, it's because  
19 the Court is making a determination that, I believe, is an  
20 extension of Nevada law. I -- I think that the way that it  
21 was handled was not any clear violation of any clear law, and  
22 so I -- no, I don't think that there is misconduct here even  
23 if the Court finds that a mistrial is necessary.

24 THE COURT: Okay.

25 MR. WINNER: For whatever it is worth, and I say

1 this for the benefit of the Court and for Mr. Prince; for  
2 whatever it is worth, there were some brief communication in  
3 my office and with co-counsel, and with our other counsel  
4 about this saying, well, if neither side got a ticket and the  
5 cops didn't think it was a big deal, I'm not pointing out that  
6 somebody was written a ticket; is there anything wrong with me  
7 saying this?

8 I mean, somebody might -- might object, but I would  
9 think the objection would be overruled; does anybody see  
10 anything wrong with saying this? It's not like I did it willy  
11 nilly. And the -- the consensus unanimously was, no, there's  
12 nothing wrong with that. The cops didn't think it was a big  
13 deal. They didn't even write a report or write a ticket and  
14 that's why I included it.

15 MR. PRINCE: Yeah.

16 MR. WINNER: I really didn't think I was crossing a  
17 line or violating a rule. I hope I don't need to say I  
18 wouldn't have done so on --

19 THE COURT: I don't --

20 MR. WINNER: -- purpose, and all due respect to your  
21 ruling, I don't believe I did.

22 MR. PRINCE: Okay. Well --

23 THE COURT: And I -- just -- it's the way --

24 MR. WINNER: And I --

25 MR. PRINCE: Well, I guess the transcript --

1 THE COURT: I don't know what to tell you. I'm --

2 MR. PRINCE: -- the transcript will be -- well,  
3 number one, it goes to a core issue in the case, the issue of  
4 liability or fault.

5 MR. WINNER: I agree.

6 MR. PRINCE: The whole -- the way -- the  
7 presentation, the context of the presentation, the repeated  
8 statement by defense counsel that my client insisted that the  
9 police officers come, factually, both parties called, and he  
10 was incorrect that my client, Desire Evans, she's the one that  
11 has the 911 tape.

12 And so yeah, she did want them to come, that's true.  
13 But to suggest that the officers came, wrote no report, and  
14 issued no citation, was to infer, there's no other reasonable  
15 inference that they were offering it for, other than their  
16 client wasn't determined to be at fault by the police  
17 officers.

18 Police officers, particularly the motor detail,  
19 their job, their sole responsibility is to enforce traffic  
20 laws. They make decisions in the field. And you know what,  
21 to most jurors, I think they're significant decisions. I  
22 think most jurors feel they're significant decisions. People  
23 -- the most common interaction that most people have --  
24 citizens have with the law is motor -- is some kind of moving  
25 violation or traffic violation.

1           And so for those reasons, I mean, to suggest all in  
2 caps, the final statement, right after he said that my client  
3 insisted the police come in case she needed it later, there's  
4 no other inference that -- other than they were trying -- that  
5 supports our position that our client wasn't at fault, but  
6 moreover, it's -- the Frias v. Valle case full addresses this  
7 issue.

8           There's no room. If you -- if it's error to admit  
9 it, it's error to suggest that, oh no -- no one came. You  
10 don't get to have it both ways. Intellectually, if the law  
11 couldn't function that way, it'd be chaos. Then there'd be no  
12 order to the rules of evidence. And it's such a long-standing  
13 rule, and Mr. Winner's filed this motion to many replete  
14 times --

15           MR. WINNER: Okay.

16           MR. PRINCE: -- it is almost 101 for motor vehicle  
17 negligence cases in Nevada based upon the Frias case. And  
18 when we compile the number of motions where he's filed that  
19 and we present that to you, I think you'll see that there's no  
20 even a reasonable argument for an extension of the law,  
21 there's no gray area in the case, nothing.

22           And when it comes to the -- particularly, when it  
23 comes to the -- the citation in particular. The report,  
24 there's various versions of the reports often come in in a  
25 redacted format. And we always redact for insurance, number



1 one, and two, any evidence of fault, determination of fault  
2 and citation. That's always.

3 THE COURT: Well, and that's what I'm concerned  
4 with. And I think -- I think that Frias was addressing the  
5 conclusions of the officer and I think that by saying no -- no  
6 citation was issued, those are the conclusions of the officer  
7 on some level, that the inference is the officer concluded, no  
8 citation needed to be written, because nobody was at fault or  
9 whatever. But I -- to me it's it's in there.

10 MR. WINNER: I respect your ruling.

11 THE COURT: I -- I know.

12 MR. WINNER: But respectfully, I disagree with the  
13 ruling. We do not believe there was any -- any conduct that  
14 would warrant sanctions or fees of any kind, but that'll be  
15 briefed -- that'll be briefed and handled on another day.

16 MR. PRINCE: Yeah.

17 MR. WINNER: So anything else to say on the record,  
18 Mr. Prince?

19 MR. PRINCE: Nothing for me, Judge.

20 MR. WINNER: Okay. Off the record I need to ask --

21 MR. PRINCE: No, I don't want --

22 MR. HENRIOD: No.

23 MR. PRINCE: I don't want to be off the record.

24 MR. WINNER: Okay.

25 MR. PRINCE: I know I don't want to be off the

1 record.

2 MR. WINNER: Well, I'm asking --

3 THE COURT: Well, let's bring the jury in.

4 MR. WINNER: -- about scheduling.

5 MR. PRINCE: Well, yeah, I want --

6 THE COURT: Let's -- let's -- let's bring the --

7 MR. PRINCE: -- everything we talk about --

8 THE COURT: -- jury in and --

9 MR. PRINCE: Okay.

10 THE COURT: -- let them go --

11 MR. WINNER: Yes.

12 THE COURT: -- first and then we can discuss

13 scheduling.

14 THE MARSHAL: All rise for the entering jury.

15 (Jury enters at 2:04 P.M.)

16 THE COURT: Counsel, approach while they're coming

17 in.

18 (Bench conference)

19 MR. PRINCE: I know, I'm waiting for the jury to

20 walk by.

21 THE COURT: Does anyone have a -- what do I tell

22 them?

23 MR. PRINCE: Just -- just tell them --

24 THE COURT: Should I tell them it's just --

25 MR. PRINCE: Just say the Court has declared a

1 mistrial and tell them thank you for their service.

2 MR. HENRIOD: No, I mean, I think that you can say  
3 that -- that the trial is concluded and you thank you them for  
4 their service and you can excuse them. I don't think you need  
5 to tell them why.

6 MR. WINNER: Do you have a disagreement?

7 MR. PRINCE: That's fine. No, that's fine. Say  
8 that the trial's concluded. Yeah.

9 THE COURT: Okay.

10 MR. PRINCE: Yeah, that's fine.

11 THE COURT: Thanks.

12 MR. WINNER: Thank you.

13 (End of bench conference)

14 THE COURT: Ladies and gentlemen, good news or bad  
15 news, over the past hour the trial has been concluded.  
16 Apparently, it's good news.

17 So I want to thank you all for your service and you  
18 are excused with our thanks. Appreciate it.

19 THE MARSHAL: You can just leave the notebooks on  
20 the chairs and -- and please.

21 All rise for the exiting jury.

22 (Jury is excused at 2:05 P.M.)

23 (Outside the presence of the jury)

24 THE COURT: This is the -- we're outside the  
25 presence of the jury now.

1 MR. PRINCE: Yes.

2 THE COURT: This is the page that was provided to  
3 me, I think by Mr. Winner, right?

4 MR. WINNER: Yeah.

5 MR. PRINCE: Yes. Can you --

6 THE COURT: Is this the exact copy -- Mr. Winner, is  
7 this an exact copy of the -- I think I got this from you.

8 MR. WINNER: Yes.

9 THE COURT: Okay.

10 MR. PRINCE: Could we -- we don't have a copy of  
11 that. Could you make a copy of that? And then I'd like to  
12 mark one of them as a court -- Court Exhibit 1.

13 THE COURT: Yep.

14 MR. PRINCE: For the purpose of our record.

15 MR. WINNER: I might be able to screen shot it from  
16 here if you'd rather.

17 MR. PRINCE: And want a copy -- I want a copy of  
18 exactly what the Court has.

19 THE COURT: She'll go make a copy.

20 MR. WINNER: You do what you like.

21 THE COURT: Okay. What's next week? I don't know  
22 that we could get a jury now next week

23 MR. PRINCE: Right.

24 THE COURT: I don't know that we couldn't.

25 MR. PRINCE: Can we come in for a Status Check

1 Monday or Tuesday and kind of assess -- I need to check my --  
2 everybody's availability now, because everything was kind of -  
3 - it was difficult to get it all lined up.

4 MR. WINNER: It was. I had experts available the --

5 THE COURT: When are yours available? When were  
6 your experts -- are they --

7 MR. WINNER: You're asking Dennis?

8 THE COURT: Is --

9 MR. PRINCE: I thought every --

10 THE COURT: Well, I'm asking you both.

11 MR. PRINCE: -- every -- well, my answer is --

12 THE COURT: Is there a possibility that we can get  
13 it going to keep with the experts' availability or no?

14 MR. PRINCE: I don't know their expert, their  
15 availability beyond Wednesday of next week. I had lined  
16 everybody up, slotted them for -- through Wednesday. So I  
17 need --

18 THE COURT: If I --

19 MR. PRINCE: I need to go back, reach out to them,  
20 look at their scheduling and in light of, you know, how I  
21 think --

22 THE COURT: Well, and I'm trying to figure out is if  
23 I didn't go to the judicial thing up in Reno, and so I was  
24 here on Thursday and Friday, would that make any difference?

25 MR. PRINCE: I was wondering if -- I guess it's

1 almost 2:00 on a Friday. I'm going to need -- I may need  
2 until Monday to get -- to find out everybody's availability  
3 and get everything reslotted.

4 So I want to -- if we can maybe come back Monday,  
5 I'm happy to -- or Tuesday morning, I don't know, I'm trying  
6 to figure out a way to -- I was thinking maybe the following  
7 week if that's a possibility. But --

8 MR. WINNER: I don't -- I don't know. May I pose a  
9 question?

10 MR. PRINCE: I don't know.

11 MR. WINNER: If the Court -- if the Court --

12 THE COURT: Well --

13 MR. WINNER: Okay.

14 THE COURT: -- you know what, I mean, you guys want  
15 to check? You took up my whole stack and so my stack goes  
16 through Friday the 24th.

17 MR. PRINCE: Okay. I have a -- I was planning to be  
18 out of town on the 13th this -- on that Monday, that I still  
19 -- I've already paid for that, but we -- if we were dark -- I  
20 mean, if my experts are available, then let's do it, so. I  
21 need to call just my experts to confirm availability just to  
22 -- for scheduling. I just need to know that. And I  
23 [inaudible].

24 MR. WINNER: I -- I would need to know if Mr. -- Mr.  
25 Prince has assured me he intends to withdraw a couple of

1 claims which meant I was calling down a couple of witnesses.  
2 I assume, but I want to confirm, that I don't need to contact  
3 those additional witnesses, but only the 2 or 3 I had.

4 MR. PRINCE: That's correct.

5 MR. WINNER: Okay.

6 MR. PRINCE: That's the same.

7 THE COURT: All right. So it doesn't sound like  
8 we're ready to pick -- decide if we're ready for trial yet.  
9 Do you want to come back -- you can come in Tuesday before --

10 MR. PRINCE: Let's come in Tuesday.

11 THE COURT: -- my criminal calendar?

12 MR. PRINCE: Yeah, why don't we come in on Tuesday.  
13 That'll work fine.

14 THE COURT: All right.

15 MR. WINNER: You want to come Tuesday of next --  
16 this coming week?

17 MR. PRINCE: Yeah, this coming week, to schedule, so  
18 we can report to her what our status is.

19 MR. WINNER: Okay.

20 MR. PRINCE: Whatever his availability is.

21 MR. WINNER: Do you believe -- if the Court wouldn't  
22 mind if I ask Mr. Prince -- do you believe my expert who's  
23 coming in from out of the country, I think, to be available on  
24 Wednesday of the -- or Monday of the following week, I had  
25 them Monday and Tuesday; is that too soon?

1 MR. PRINCE: It would be.  
2 MR. WINNER: Okay.  
3 THE COURT: So I'm not bringing the jury in next  
4 week yet, right?  
5 MR. PRINCE: Not yet. Let's meet Tuesday.  
6 THE COURT: Okay.  
7 MR. PRINCE: And --  
8 THE COURT: We could meet Monday but my guess is,  
9 because it's late today, you probably --  
10 MR. PRINCE: I probably won't know until --  
11 THE COURT: -- won't have answer for me on Monday.  
12 MR. PRINCE: I won't have an answer until Monday.  
13 THE COURT: All right. Tuesday at 9:00. It's my  
14 crim calendar, so if you guys get here so we can --  
15 MR. PRINCE: Oh.  
16 THE COURT: -- pull it before?  
17 MR. WINNER: Tuesday at 9:00 a.m. of next week?  
18 THE COURT: Yeah, 8:55.  
19 MR. WINNER: That's --  
20 MR. PRINCE: Okay.  
21 MR. WINNER: Sure.  
22 MR. HENRIOD: Dennis, Tuesday at 9:00? Does that  
23 work?  
24 MR. PRINCE: Yes. Works fine.  
25 THE COURT: We'll put it on -- you want to -- we're



1 going to put it on the record on calendar officially, right?  
2 MR. PRINCE: What?  
3 THE COURT: This --  
4 MR. PRINCE: The status check?  
5 THE COURT: -- trial status check.  
6 MR. PRINCE: We're on the record right now. I hope  
7 we haven't gone off the record.  
8 THE COURT RECORDER: No, no.  
9 THE COURT: No, we haven't.  
10 MR. PRINCE: Oh, okay.  
11 MR. HENRIOD: So -- so on the calendar.  
12 THE COURT: You're going to be on calendar --  
13 MR. PRINCE: Yeah, Tuesday.  
14 THE COURT: -- in my criminal calendar on Tuesday.  
15 MR. PRINCE: Yes. Yes.  
16 THE COURT: She was asking if it was just informally  
17 meeting to talk trials, and I said, no, it's on calendar.  
18 MR. PRINCE: I want to be on -- I want to be on the  
19 record, yes. Yeah.  
20 THE CLERK: So 8:55?  
21 THE COURT: Yeah, schedule it for 9:00.  
22 THE CLERK: 9:00, okay.  
23 THE COURT: But we'll take it whenever.  
24 We are off? Are we off?  
25 THE COURT RECORDER: Yes.  
26 THE COURT: All right. We're off now.

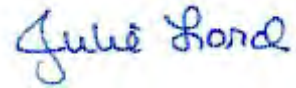
(Court adjourned at 2:11 P.M.)

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\* \* \* \* \*

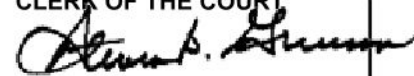
ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



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JULIE LORD, INDEPENDENT TRANSCRIBER  
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Attorneys for Plaintiffs  
*Desire Evans-Waiiau and Guadalupe Parra-Mendez*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DESIRE EVANS-WAIAU, individually,  
GUADALUPE PARRA-MENDEZ,  
individually; JORGE PARRA-MEZA as  
guardian for MAYRA PARRA, a minor;  
JORGE PARRA-MEZA, as guardian for  
AALIYAH PARRA, a minor; and JORGE  
PARRA-MEZA, as guardian for SIENNA  
PARRA, a minor,

Plaintiffs,

vs.  
BABYLYN TATE, individually, DOES I-X,  
and ROE CORPORATIONS I-X, inclusive,

Defendants.

CASE NO.: A-16-736457-C  
DEPT. NO.: XVII

**TRIAL BRIEF REGARDING DEFENSE  
COUNSEL IS PRECLUDED FROM  
STATING OR IMPLYING PLAINTIFF  
SHOULD NOT HAVE INSISTED AN  
OFFICER SHOULD COME TO THE  
SCENE FOR A REPORT**

PLAINTIFFS DESIRE EVANS-WAIAU and GUADALUPE PARRA-MENDEZ, by and  
through their attorneys of record, DENNIS M. PRINCE, ESQ. and TRACY A. EGLET, ESQ. of

EGLET PRINCE, hereby submit their *Trial Brief Regarding Defense Counsel is Precluded From Stating or Implying Plaintiff Should Not Have Insisted an Officer Should Come to the Scene for a Report.*

This Brief is based upon the pleadings and papers on file in this action, the Points and Authorities set forth herein, and any argument the court may entertain at the time of the hearing.

DATED this \_ day of May, 2019.

**EGLET PRINCE**

/s/ Jack F. Degree  
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
Nevada Bar No. 6419  
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Attorneys for Plaintiffs  
*Desire Evans-Waiiau and Guadalupe Parra-Mendez*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**LEGAL AUTHORITY FOR BRIEF**

This Trial Brief is served pursuant to Eighth Judicial District Court Rule 7.27, which allows counsel to submit to the court a trial memoranda of points and authorities at any time prior to the close of trial. EDCR 7.27. One of the primary functions of the trial court is to act as an evidentiary gatekeeper, admitting only appropriate evidence. The court is vested with the discretion to simplify issues for trial and, when necessary, exclude or admit evidence. *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 320-21 (1995). The trial court's determinations concerning the admissibility of evidence will not be overturned unless they show an abuse of discretion. *Id.*

**II.**

**FACTUAL BACKGROUND**

This matter arises from a motor vehicle collision that occurred on October 30, 2015. Plaintiff Desire Evans-Waiiau traveled westbound on Flamingo Road towards The Linq in a 1998 Honda Accord. Plaintiff Guadalupe Parra-Mendez traveled in the right front passenger's seat of the Honda. Defendant Bablyn Tate also traveled westbound on Flamingo Road in a 2014 Acura RDX. Desire's vehicle was stopped at the red light to turn right onto Linq Lane towards The Linq with one vehicle in front of hers. Desire's right signal was activated. After the vehicle in front of Desire made the right turn, Desire moved forward to turn right. As she was about to turn right, multiple pedestrians entered the crosswalk, which forced her to stop her vehicle. Defendant negligently failed to pay attention and crashed into the rear of Plaintiffs' vehicle. Plaintiffs Desire and Guadalupe sustained severe injuries because of the collision. It is disputed whether Desire's diagnosis, medical procedures, and medical treatments are causally related to the subject incident.

**III.**

**LEGAL ARGUMENT**

One of the primary functions of the trial court is to act as an evidentiary gatekeeper, permitting the admission of only appropriate evidence. The trial court's determination concerning

admissibility will not be overturned without a showing of abuse of discretion. *Uniroyal Goodrich Tire Company v. Mercer*, 111 Nev. 318, 321 (1995).

In *Lioce v. Cohen*, 124 Nev. 1 (2008), the defense counsel committed professional misconduct by stating the golden rule, giving his personal opinion regarding the justness of plaintiffs' causes, and causing jury nullification during his closing arguments. *See Lioce*, 124 Nev. 20-23. The Court determined that "defense counsel's closing argument encouraged the jurors to look beyond the law and the relevant facts in deciding the cases before them." *Lioce*, 124 Nev. 6. The Court concluded that the defense counsel "not only violated his ethical duties, he also prejudiced the jury against the plaintiffs." *Id.* at 22. Jury nullification is defined as,

[a] jury's knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is [\*\*983] larger than the case itself or **because the result dictated by law is contrary to the jury's sense of justice, morality, or fairness.**

*Lioce*, 124 Nev. 20 (citing *Black's Law Dictionary* 875 (8th ed. 2004) (emphasis added)).

Further, according to Nevada law, after any vehicle collision "resulting to damage to any vehicle or other property which is driven or attended by any person," the driver **is required to report the collision** to either a police authority or the Nevada Highway Patrol. *See Nev. R. Stat.* 484E.030 (1-2) (emphasis added). Not only is it the law, but it is common knowledge that most people after a collision call the police for assistance.

Furthermore, Nevada's Department of Motor Vehicles literally states in their handbook that their drivers must notify law enforcement when they are in a collision:

#### What to Do in a Crash

- Stop.
- Get medical help for the injured.
- Warn traffic.
- Notify law enforcement.
- Fender bender? Move to the shoulder. If there is only damage to a vehicle or other property (no injuries) and the vehicle can be moved safely, move to a location that does not obstruct traffic and return to the scene.
- Exchange your name, address, driver's license number, registration and insurance information with other drivers involved.
- If the accident involves an unattended vehicle or other property, you must give the owner your name, address, driver's license number, registration and insurance information, either in person or by leaving a note.





See Nevada Driver's Handbook, (2015).

Defense Counsel is prohibited from implying to the jury that Plaintiff Evans-Waiiau or any other party should not have insisted or requested an officer come to the collision scene for a police report. Nevada statutory law and the Nevada Department of Motor Vehicles instructs on notifying law enforcement and reporting a collision when it occurs. Therefore, Counsel must not state that calling the police to report the collision has any negative connotation. This is because it is contrary to Nevada law. Further, the parties also may not suggest to the jury that it is not the law to not contact the police, nor that it is a waste of time for a party to contact the police following a collision. If Counsel states that Plaintiff acted wrong by wanting the police to come to the scene, the result is jury nullification.

#### IV.

#### CONCLUSION

Based on the foregoing facts, law, and analysis, Plaintiffs respectfully request that this Court note that Defense Counsel may not comment on a party's insistence to call the police after the subject collision.

DATED this 13<sup>th</sup> day of May, 2019.

RESPECTFULLY SUBMITTED BY:

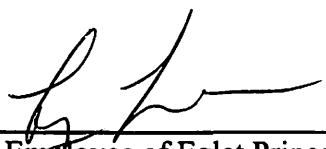
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/s/ Jack F. Degree  
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JACK F. DEGREE, ESQ.  
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Attorneys for Plaintiffs  
*Desire Evans-Waiiau and Guadalupe Parra-Mendez*

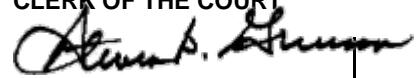
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on May 13, 2019, I caused a true and correct copy of the foregoing document entitled **TRIAL BRIEF REGARDING DEFENSE COUNSEL IS PRECLUDED FROM STATING OR IMPLYING PLAINTIFF SHOULD NOT HAVE INSISTED AN OFFICER SHOULD COME TO THE SCENE FOR A REPORT** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

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 Andrew D. Smith, Esq.  
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 Las Vegas, Nevada 89102  
 Attorneys for Defendant  
*Bablyn Tate*

  
 An Employee of Eglet Prince

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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

|                             |   |                        |
|-----------------------------|---|------------------------|
| DESIRE EVANS-WAIAU, et al., | ) |                        |
|                             | ) |                        |
| Plaintiffs,                 | ) | CASE NO. A-16-736457-C |
|                             | ) |                        |
| vs.                         | ) | DEPT. NO. XVIII        |
|                             | ) |                        |
| BABYLYN TATE,               | ) |                        |
|                             | ) |                        |
| Defendant.                  | ) |                        |
|                             | ) |                        |

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

TUESDAY, MAY 14, 2019

**RECORDER'S ROUGH DRAFT TRANSCRIPT OF:**

**JURY TRIAL - DAY 1**

**PARTIAL TRANSCRIPT  
(PROCEEDINGS FROM 3:51:55 P.M. TO 4:58:24 P.M.)**

APPEARANCES:

|                     |                                                                             |
|---------------------|-----------------------------------------------------------------------------|
| FOR THE PLAINTIFFS: | DENNIS M. PRINCE, ESQ.<br>JACK F. DEGREE, ESQ.                              |
| FOR THE DEFENDANT:  | THOMAS E. WINNER, ESQ.<br>JOEL D. HENRIOD, ESQ.<br>CAITLIN J. LORELLI, ESQ. |

RECORDED BY: YVETTE SISON, COURT RECORDER  
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

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LAS VEGAS, NEVADA, TUESDAY, MAY 14, 2019

(Transcript begins at 3:51:55 P.M.)

\* \* \* \* \*

(Inside the presence of the prospective jurors)

(Bench conference)

THE COURT: Oh, guys? Do we -- they need to know if we are going to need more jurors tomorrow.

MR. PRINCE: Maybe just have somebody on the ready just in case. I mean, these questions are kind of easy ones today so I think tomorrow -- I think we have some ready for tomorrow just in case.

THE COURT: How many do you want?

MR. PRINCE: Twenty.

THE COURT: Twenty?

MR. WINNER: How many did we lose, about 15 maybe?

MR. PRINCE: Probably 10, 15, yeah.

THE COURT: What?

MR. PRINCE: How many jurors we lost. How many did you let go for cause?

THE COURT: Oh.

MR. WINNER: I have a suspicion there'll be more.

MR. PRINCE: Yeah, I do, too.

THE COURT: You think? Seventeen.

MR. PRINCE: Yeah.

THE COURT: Seventeen out of --

1 MR. PRINCE: Yeah, why don't you have 25.  
2 THE COURT: -- a bunch. All right.  
3 MR. PRINCE: Yeah, there'll be a bunch coming off  
4 here for sure.  
5 THE COURT: Okay.  
6 (Speaking to the Clerk) Twenty-five please, for  
7 tomorrow.  
8 MR. WINNER: Do you just want to break?  
9 MR. PRINCE: Just want to use the restroom.  
10 MR. WINNER: Okay.  
11 (End of bench conference)  
12 THE COURT: Ladies and gentlemen, we're going to  
13 take a ten-minute recess.  
14 During the recess, you're admonished not to talk to  
15 or converse among yourselves or with anyone else on any  
16 subject connected to this trial or read, watch or listen to  
17 any report of or commentary on this trial, of any person  
18 connected with this trial, by any medium of information,  
19 including without limitation to newspapers, television, the  
20 Internet and radio, or form or express any opinion on any  
21 subject connected with the trial until the case is finally  
22 submitted to you.  
23 Also, just to give you a heads up, none of the  
24 parties or anybody involved in the trial are going to talk to  
25 you. They're not being rude. They're all fine, nice people.

1 But their ethics require that they not, so they -- they won't  
2 even, how you doing, good day, wave or anything; okay?  
3 So there you go.  
4 THE MARSHAL: All rise for the exiting jury.  
5 THE COURT: See you ten.  
6 (Outside the presence of the prospective jurors)  
7 THE COURT: Nothing outside, right?  
8 MR. PRINCE: No.  
9 THE COURT: Okay.  
10 We're going to go to 5:00; is that the plan, right?  
11 MR. PRINCE: Yes.  
12 THE COURT: Okay.  
13 (Court recessed at 3:53 P.M., until 3:55 P.M.)  
14 (Prospective jurors enter at 4:11 P.M.)  
15 THE MARSHAL: All present, Your Honor.  
16 THE COURT: Okay. Mr. Prince?  
17 MR. PRINCE: Yeah.  
18 Okay. You know, I think I've finally decided that  
19 I'm sick of lawyer advertising. I'm just tired of lawyer ads.  
20 Who is here that's like tired of all the lawyer advertising?  
21 Anybody tired of lawyer advertising?  
22 Ms. Reeves?  
23 PROSPECTIVE JUROR NO. 245: Yes, sir.  
24 MR. PRINCE: Tell me why you're tired of lawyer  
25 advertising.

1 PROSPECTIVE JUROR NO. 245: [Inaudible].

2 MR. PRINCE: Yeah. [Inaudible] everybody just comes  
3 in here and it's just, you know, creates this skeptical view  
4 of --

5 PROSPECTIVE JUROR NO. 245: Well --

6 MR. PRINCE: -- whatever -- things going on and, you  
7 know, it's just a --

8 PROSPECTIVE JUROR NO. 245: [Inaudible] with that.

9 MR. PRINCE: -- and there's just a ton of it. It's  
10 just like -- it feels like it's everywhere when I look on TV  
11 [inaudible].

12 PROSPECTIVE JUROR NO. 245: Well, I mean, it's not  
13 just that. It's like they'll do a hockey game, not attorneys  
14 [inaudible] at least. Everyone -- I mean -- I mean, how many  
15 attorneys can be sponsoring a hockey game; really? Is there  
16 that much business?

17 Again, that's my [inaudible].

18 MR. PRINCE: No, no, I -- yeah, tell me why you feel  
19 that way.

20 PROSPECTIVE JUROR NO. 245: I mean, again, it's  
21 only --

22 MR. PRINCE: What does that make you feel about  
23 personal injury cases and, you know, people who do -- lawyers  
24 who do personal injury? I don't advertise, so.

25 UNIDENTIFIED PROSPECTIVE JUROR: A dime a dozen.



1 PROSPECTIVE JUROR NO. 245: Oh, yeah, basically.  
2 MR. PRINCE: Made you what?  
3 PROSPECTIVE JUROR NO. 245: A dime a dozen. I mean,  
4 you're like, really? I mean, is there a time and energy that  
5 we -- maybe we just see so much of it. And I know things  
6 happen, and I believe that if you are at fault somebody should  
7 make sure it's right.  
8 MR. PRINCE: Okay.  
9 PROSPECTIVE JUROR NO. 245: Don't get me wrong.  
10 MR. PRINCE: Okay.  
11 PROSPECTIVE JUROR NO. 245: But there is a time and  
12 place that I just -- you -- and it's not just attorneys. It's  
13 -- I'm sure there's something else that we can --  
14 MR. PRINCE: Okay.  
15 PROSPECTIVE JUROR NO. 245: -- talk about. But yes,  
16 there --  
17 MR. PRINCE: Okay.  
18 PROSPECTIVE JUROR NO. 245: -- when you brought that  
19 up, yeah.  
20 MR. PRINCE: Yeah. I mean, do you think that the  
21 lawyer advertising promotes too many cases, too many frivolous  
22 case? Do you think it has an effect on the system?  
23 PROSPECTIVE JUROR NO. 245: It could.  
24 MR. PRINCE: You, yourself. I'm asking your own  
25 feeling, your belief on that.