

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.

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**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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1 fashion, then the person who caused it should be held  
2 accountable for it.

3 MR. WINNER: Okay. I wrote down you said the other  
4 day, Ms. Westbrooks, that you tend to believe anyone that says  
5 she's hurt.

6 PROSPECTIVE JUROR NO. 282: I can't deny what  
7 [inaudible].

8 MR. WINNER: I'm sorry?

9 PROSPECTIVE JUROR NO. 282: I cannot deny anyone of  
10 their illness.

11 MR. WINNER: Okay.

12 PROSPECTIVE JUROR NO. 282: I'm not a doctor. I  
13 don't -- I'm not in it for cash medical field part of it so if  
14 you say you're hurt, I have to see you hurt. I have a twin at  
15 home today because she said her stomach was upset. I don't  
16 know what contributed to that. I asked her what she ate, you  
17 know, was it -- you know, how was she playing. But I did  
18 allow her to stay home because that's -- that's her  
19 experience. That's what she's feeling.

20 MR. WINNER: Okay. If there's conflicting evidence  
21 that one party says I'm hurt and maybe a doctor says, I don't  
22 -- I don't really see the injury there, I don't think she's  
23 hurt, are you going to automatically believe the plaintiff  
24 over the doctor, because she said she's hurt?

25 PROSPECTIVE JUROR NO. 282: Well, not all hurt you

1 can see.

2 MR. WINNER: True.

3 PROSPECTIVE JUROR NO. 282: So it's not that I'm not  
4 going to believe [inaudible] a medical individual, but I  
5 probably would try to get a little more supporting details if  
6 there is a way we can [inaudible] but I'm not going to  
7 question because it's a lot of pain that you can't see, but  
8 that does not mean pain doesn't exist.

9 MR. WINNER: Fair enough.

10 If there are disputes among doctors, some doctors  
11 say, I think there's an injury and she's hurt, and other  
12 doctors say, no, I don't really see there's an injury, I don't  
13 really see much hurt.

14 Are you going to believe the plaintiff just because  
15 -- are you going to tend to believe the person who says she  
16 was hurt?

17 PROSPECTIVE JUROR NO. 282: Because you have a 50/50  
18 and [inaudible] going to probably need another somewhat  
19 supporting details to -- to get this scale up [inaudible].

20 MR. WINNER: Okay.

21 PROSPECTIVE JUROR NO. 282: Because you've got one  
22 saying no, you've got one saying yes. So we gonna to have to  
23 probably do a few more doctors appointments or something or  
24 we're going to have to get a little bit more supporting detail  
25 so we can really figure out what the situation is.

1 But if there's no medical device that can see pain  
2 then in some form or fashion it's HIPAA law you cannot deny  
3 anyone of their illness.

4 MR. WINNER: Okay. So if someone says she's in pain  
5 would you ever have any reason to be skeptical of it?

6 PROSPECTIVE JUROR NO. 282: I'm not ever skeptical  
7 of anyone.

8 MR. WINNER: Okay.

9 PROSPECTIVE JUROR NO. 282: I just take what's given  
10 to me. I might do a little research. As long as there's some  
11 supporting details, again, that's if -- that's going to be  
12 what it is. If there's something to back it up, then that's  
13 the way I'm going to go. And if there is nothing there to  
14 support, if you can't explain, if you can't give me more, you  
15 know, [inaudible] a hundred percent more because it don't have  
16 to be for certain. I just need enough to know that that's  
17 exactly what it is.

18 MR. WINNER: Okay. Are you going to be skeptical of  
19 the defendant who is denying having caused the injury or the  
20 extent of injury?

21 PROSPECTIVE JUROR NO. 282: Not at all. If the  
22 defendant can give us some supporting details on how the  
23 situation occurred because I was listening thinking I -- it  
24 didn't come around to me -- but I was thinking about the car  
25 situation, too.



1           Like, if you're on the highway, I was driving up and  
2 down this 95, 515, whatever it is, and rocks come flying; if a  
3 person that's unexpected incident that occurred, your reaction  
4 can have an effect on other drivers on the road.

5           MR. WINNER: Yes.

6           PROSPECTIVE JUROR NO. 282: So, I don't know. And  
7 of course, none of us know the full details of this particular  
8 accident and we all [inaudible]. But taking that into  
9 consideration, I can't -- I mean, I just -- I just need to  
10 see.

11           And if it's -- if it's not supported and in favor of  
12 the plaintiff then the defendant of course is, you know,  
13 awarded whatever it is that, you know, they didn't want to do.  
14 If -- if the details is more favored of the plaintiff, then  
15 that's what the award goes to.

16           But I do think both parties, of course, like in any  
17 case, have to bring what they have for us to make a decision.

18           MR. WINNER: Well, my concern is, the only person  
19 claiming to be hurt here is the plaintiff.

20           PROSPECTIVE JUROR NO. 282: Right. And the  
21 defendant has to -- supposedly have some type of proof or some  
22 supporting details why they feel like they should -- they  
23 shouldn't be held accountable for them.

24           MR. WINNER: Well, actually, the plaintiff has the  
25 burden of proof now, I mean, the -- it's not the time to give

1 a -- talk about the law of the case, but the plaintiff has the  
2 burden of proof. And the plaintiff is claiming she was hurt  
3 in this case.

4 We have some disagreement with that. The defendant  
5 doesn't have [inaudible] my question to you is; if the  
6 plaintiff says, yes, I was hurt, because you're not skeptical  
7 of anyone, are you going to automatically believe that  
8 before --

9 PROSPECTIVE JUROR NO. 282: No, it's not automatic.

10 MR. WINNER: -- before we hear any evidence?

11 PROSPECTIVE JUROR NO. 282: No. I -- that's what I  
12 said, I have to hear the supporting details in order to make a  
13 decision.

14 MR. WINNER: Okay.

15 PROSPECTIVE JUROR NO. 282: It's not -- it's not --  
16 I mean, no, I'm not going to walk around and believing  
17 everybody's just lying. That's just not who I am.

18 MR. WINNER: Okay.

19 PROSPECTIVE JUROR NO. 282: You show me who you are,  
20 you give me exactly what it is for me to believe that you are  
21 who you say you are.

22 MR. WINNER: Okay.

23 PROSPECTIVE JUROR NO. 282: And one more thing. And  
24 I think -- in any form or fashion -- accidents and hurt  
25 sometimes people don't endure certain pain levels until after

1 the fact, long-term, you know?

2 I've know people who've been in certain situations  
3 and it's taken for a doctor to say, oh, have you had this  
4 happen to you because they tried to rule out why this is  
5 occurring, well, why are you having that.

6 Some people do little slips and falls, sprained  
7 ankles and then a few months, you know, you know this ankle  
8 you sprained but then all of a sudden you like okay, I got a  
9 little soreness here or, you know, so if it doesn't happen  
10 right off the bat, I believe that's -- that's a fact, because  
11 sometimes people are in situations and they not affected right  
12 away.

13 But that doesn't mean that this hurt is not, you  
14 know, coming from what the situation was.

15 MR. WINNER: So somebody could get pain a few months  
16 later that you think that might be from a car accident?

17 PROSPECTIVE JUROR NO. 282: No. Not a [inaudible].

18 MR. WINNER: I'm not trying to put words in your  
19 mouth, I'm just asking the question.

20 PROSPECTIVE JUROR NO. 282: If they was injured and  
21 you know, you go to the hospital and they kind of say, well,  
22 it's hurting, it's going to -- and pain comes and goes,  
23 internal pain comes and goes. If they can't rule out anything  
24 broken, swollen, sprained, fractured or whatever the case may  
25 be, slipped discs, all of that, I mean, people -- it's

1 possible that people have some internal pain, whether it's  
2 headaches, stomach cramps that -- I mean, they can't figure  
3 out why my son would be hurt, you know, those type of  
4 situations.

5 MR. WINNER: Before you hear any evidence in the  
6 case, are you going to be more inclined to believe the  
7 plaintiff's doctor than the defendant doctor?

8 PROSPECTIVE JUROR NO. 282: No, sir.

9 MR. WINNER: Okay. And if the plaintiff and the  
10 plaintiff doctor don't prove to you by a preponderance of the  
11 evidence that her pain, her symptoms or her complaints were  
12 actually caused by Babylyn Tate, are you going to have any  
13 difficulty saying, Ms. Tate, I'm sorry you have this -- or Ms.  
14 -- Ms. Evan-Waiiau -- I'm sorry, you have this pain, but it's  
15 not Babylyn Tate's fault, you don't get any money for it.

16 Is that going to be hard for you?

17 PROSPECTIVE JUROR NO. 282: No, sir.

18 MR. WINNER: Okay. Mr. Sweikert, on the swimming  
19 team, do you have to knock heads together --

20 PROSPECTIVE JUROR NO. 376: Um --

21 MR. WINNER: -- on teammates who are fighting with  
22 each other?

23 PROSPECTIVE JUROR NO. 376: Yeah. It happens  
24 sometimes. I mean, when you're with someone for long enough  
25 you'll -- you'll have problems with people.

1           MR. WINNER: Do you know how to pick out people who  
2 -- well, as one of your colleagues here said, sometimes you  
3 can kind of pick out the people who might have a reputation  
4 for being a little more truthful than others.

5           PROSPECTIVE JUROR NO. 376: Yeah.

6           MR. WINNER: Okay.

7           PROSPECTIVE JUROR NO. 376: I mean, and how I would  
8 resolve the disputes; is that what you're going to ask?

9           MR. WINNER: Yeah.

10          PROSPECTIVE JUROR NO. 376: So how I would resolve  
11 disputes would be -- I mean, one thing that I would actually  
12 consider is, you know, like as was said earlier, character,  
13 but if that's not presented in this case, then I wouldn't have  
14 a problem, you know, if it was two strangers, I'd be able to  
15 do it.

16          For swimming, in particular, most of the time it's  
17 not just one person, it's both people who have, you know, a  
18 certain merit to what they're saying and why they're upset.

19          MR. WINNER: Different perceptions.

20          PROSPECTIVE JUROR NO. 376: Different perception.  
21 Yeah. So instead of, you know, and at least in my example,  
22 instead of just saying, okay, you're right and you're wrong,  
23 it's okay, how do we -- how do we get friendly again, like  
24 what -- what can be done to resolve this issue, without just  
25 casting the blame on one person, because sometimes it's both.

1 MR. WINNER: I think I asked you this question or  
2 somebody asked the question already. But can we agree that  
3 accidents can happen, or bad things can happen, even on the  
4 roads, without anybody being at fault?

5 Okay. Has anybody here ever been judged in  
6 hindsight, like you did something that you thought was, you  
7 know, reasonable enough at the time, and then sometime later  
8 somebody said, my gosh, that thing you did was sure negligent  
9 or stupid or wrong, and you thought, my gosh, I didn't realize  
10 I'd done anything wrong.

11 That's an experience probably common to all of us,  
12 right?

13 Okay. It was kind of a silly question and I hope  
14 I'm not the only person old enough to remember this. Does  
15 everybody remember the movie the Sixth -- the Sixth Sense? I  
16 think it was 1999. I see a lot of -- who remembers the Sixth  
17 Sense? A lot of hands went up.

18 So when you watched the movie the first time, you  
19 get to, for those of you who haven't seen it, you get to --  
20 you get to an ah-ha moment at the end where you realize that  
21 the main character was a ghost and wasn't alive through the  
22 whole movie. Do you remember that? Does everyone remember  
23 that movie?

24 UNIDENTIFIED PROSPECTIVE JURORS: Yes.

25 MR. WINNER: Who went back and watched it a second

1 time? Everybody did.

2 When you went back -- wasn't it obvious when you  
3 went back and watched it a second time?

4 When you watched it a second time, you could see  
5 really clearly, oh my gosh, how come I didn't see it the first  
6 time. Is there anybody who thought after watching the movie  
7 that second time, my God, I was an idiot. I was negligent. I  
8 should've seen the hook coming at the end of the movie the  
9 whole time. How reckless. How negligent of me for not seeing  
10 that this was going to come.

11 Is there anybody who thought that?

12 Okay. We had some answers about this the other day.  
13 And I want to make -- I want to promise you that I will not  
14 ask you to reveal any details or any names; no names. I won't  
15 ask you to give any names or embarrass anyone. But we heard  
16 some talk about this the other day.

17 Has anybody had the experience of a co-worker or a  
18 neighbor or an in-law or a family member or a cousin or  
19 somebody down the street, or an acquaintance from school, or  
20 somebody at work; has anybody had the experience of someone,  
21 maybe they had a disability claim, or a worker's compensation  
22 claim, or some kind of injury claim that they were presenting  
23 and you backed off and thought, that doesn't look right to me.  
24 I don't -- I don't think I like the way that looks.

25 Has anybody had that experience? I'm seeing lots of

1 hands going up.

2 Pass the mike down front and I'll ask Mr. Schuldt  
3 first.

4 PROSPECTIVE JUROR NO. 309: Well, basically, I mean,  
5 just because of the fact that it wasn't in the camera's site,  
6 I mean, you can't always say it didn't happen, but there's  
7 been a couple times at work where there's employees that will  
8 get hurt in certain areas where there's no cameras and they  
9 claim disabilities and things for that.

10 MR. WINNER: Excuse me. What -- what was it about  
11 the claims that were being made that caused you to be a little  
12 suspicious?

13 PROSPECTIVE JUROR NO. 309: There was one where he  
14 fell off of the dock area of -- the loading dock area of the  
15 school.

16 MR. WINNER: Yeah.

17 PROSPECTIVE JUROR NO. 309: And there's no cameras  
18 there and things like that. And -- and then the other one was  
19 in a small kitchen where also there's no cameras or anything.  
20 And it's just -- it seems suspicious because of the fact --  
21 because of that fact.

22 MR. WINNER: Just because of no cameras?

23 PROSPECTIVE JUROR NO. 309: Well, because of that  
24 fact, and then also because of the fact that you know one of  
25 the -- one of the gentlemen that fell off was a pretty heavy



1 gentleman and figured there'd probably be a little more damage  
2 to, you know, but then again, you can't suspect anything like  
3 that, but you just would think off the top of your head, you  
4 know, hey, figured there'd be a lot more damage than what  
5 they're claiming.

6 MR. WINNER: Something about it looks a little  
7 fishy?

8 PROSPECTIVE JUROR NO. 309: Yeah.

9 MR. WINNER: Okay. And the circumstances and what  
10 you did know made it seem a little -- didn't quite add up?

11 PROSPECTIVE JUROR NO. 309: Yeah.

12 MR. WINNER: Okay.

13 PROSPECTIVE JUROR NO. 309: It just seems like it  
14 [inaudible] basically a profit.

15 MR. WINNER: Or to stay off work for a long time?

16 PROSPECTIVE JUROR NO. 309: Or workers comp or --

17 MR. WINNER: Yeah.

18 PROSPECTIVE JUROR NO. 309: Kind of a common thing.

19 MR. WINNER: I'm not going to ask for names, I  
20 promised you I wouldn't but was this an acquaintance of yours  
21 or a co-worker or --

22 PROSPECTIVE JUROR NO. 309: Yeah, co-workers.

23 MR. WINNER: All right.

24 PROSPECTIVE JUROR NO. 309: Co-workers are two  
25 different areas, two different people, two different areas.

1 MR. WINNER: Well, I assume he had a doctor  
2 supporting him telling him he was disabled and he couldn't  
3 work, right?

4 PROSPECTIVE JUROR NO. 309: Right, right.

5 MR. WINNER: How did he do that?

6 PROSPECTIVE JUROR NO. 309: I don't know, I guess  
7 the -- he -- you know, of course after this, maybe they don't  
8 [inaudible] things like that, you know, but then there's  
9 always that question of preexisting issues and, you know,  
10 things like that also.

11 MR. WINNER: Okay. Did you think maybe he was  
12 exaggerating?

13 PROSPECTIVE JUROR NO. 309: You know, I mean, you  
14 know --

15 MR. WINNER: It's okay, I'm just asking what you  
16 think.

17 PROSPECTIVE JUROR NO. 309: -- I mean, you know,  
18 hopefully -- hopefully he was telling the truth and everything  
19 was, you know, a straight edge but, you know, that's just kind  
20 of too common nowadays for, you know, that profit, for people  
21 to, you know, do that to get out of work and things like that.

22 MR. WINNER: Okay. Any other incidents like that or  
23 are they all kind of like that?

24 PROSPECTIVE JUROR NO. 309: No, that was the only  
25 two I can really think of.

1 MR. WINNER: So the loading dock and the kitchen  
2 there weren't any cameras?

3 PROSPECTIVE JUROR NO. 309: Yeah.

4 MR. WINNER: I saw some other hands. Were there any  
5 other hands in the first row?

6 Second row, anybody else have an acquaintance,  
7 neighbor, in-law, co-worker, a fellow Elks Lodge member, I  
8 don't know, the church maybe?

9 PROSPECTIVE JUROR NO. 311: I had a co-worker one  
10 time that I was riding with and I was driving a service  
11 vehicle.

12 MR. WINNER: This is Mr. Ralston.

13 PROSPECTIVE JUROR NO. 311: And we were going down  
14 Eastern and a lady lost control of her car and she hit the  
15 back of a truck. And just shook the truck lightly.

16 So we pulled over, filed all the reports and  
17 everything. And went to work the next day and he was off and  
18 apparently he had filed a claim from that accident. Neither  
19 one of us were hurt because it was so minor that nobody was  
20 hurt.

21 MR. WINNER: You were in the car and he was in a  
22 truck?

23 PROSPECTIVE JUROR NO. 311: I was driving the truck,  
24 he was a passenger in the truck.

25 MR. WINNER: Oh.

1 PROSPECTIVE JUROR NO. 311: And then the car hit the  
2 truck on the back passenger side.

3 MR. WINNER: You were fine?

4 PROSPECTIVE JUROR NO. 311: I was fine. We pulled  
5 over. Everything went -- you know, we called all the police  
6 and all that stuff and they came and checked it out.

7 She had pulled her purse up, and hit the emergency  
8 brake and accidentally hit the car is what happened.

9 MR. WINNER: Okay.

10 PROSPECTIVE JUROR NO. 311: But apparently he went  
11 and filed -- got a lawyer and went to a couple chiropractor  
12 sessions from what I understand and got a settlement out of  
13 that accident. And I didn't. I thought it was the wrong  
14 thing to do.

15 MR. WINNER: Why'd you think it was the wrong thing  
16 to do?

17 PROSPECTIVE JUROR NO. 311: Because I didn't believe  
18 he wasn't hurt.

19 MR. WINNER: Okay.

20 PROSPECTIVE JUROR NO. 311: I just know he wasn't  
21 hurt, so.

22 MR. WINNER: Was this a guy you knew or was it a --

23 PROSPECTIVE JUROR NO. 311: It was a --

24 MR. WINNER: -- stranger?

25 PROSPECTIVE JUROR NO. 311: -- co-worker.

1 MR. WINNER: Huh?

2 PROSPECTIVE JUROR NO. 311: Co-worker.

3 MR. WINNER: Did he admit to you that --

4 PROSPECTIVE JUROR NO. 311: No.

5 MR. WINNER: How do you manage to get his doctors to

6 write those reports for him?

7 PROSPECTIVE JUROR NO. 311: I don't know. I -- I'm

8 -- alls I know that he made the call to a lawyer I believe and

9 then they sent him to a chiropractor and several months later

10 he got a settlement.

11 MR. WINNER: Okay.

12 PROSPECTIVE JUROR NO. 311: But whether it was an

13 insurance payoff or not, I'm not too sure, but that's what I

14 was told.

15 MR. WINNER: Is that the only incident that you can

16 recall?

17 PROSPECTIVE JUROR NO. 311: Well, like that, yeah,

18 yeah.

19 MR. WINNER: Okay. Any other incidents involving

20 co-workers, neighbors, anybody else, stories you've heard?

21 PROSPECTIVE JUROR NO. 311: Not so much.

22 MR. WINNER: Okay. Mr. Gomes, did you have your

23 hand up? No.

24 Mr. StrickLer? No. [Inaudible].

25 Ms. Jackson? No?

1           Anybody else in the third row, second row,  
2 experience something like that? Okay.

3           Mr. Horner, I think you mentioned the other day that  
4 sometimes people are in it for money. Have you heard or seen  
5 stories like that?

6           PROSPECTIVE JUROR NO. 250: I did.

7           MR. WINNER: Yeah.

8           PROSPECTIVE JUROR NO. 250: That people are in it  
9 for money?

10          MR. WINNER: What's that?

11          PROSPECTIVE JUROR NO. 250: Is that what you said?

12          MR. WINNER: Yeah, I think you said sometimes people  
13 are in -- disability claims or other claims or compensation  
14 claims for less than pure motives or they're in it just for a  
15 little profit.

16          PROSPECTIVE JUROR NO. 250: I don't remember that.

17          MR. WINNER: Okay. Have you had an -- I wrote my  
18 note down wrong then, I apologize.

19          Have you seen instances where you thought people  
20 were maybe using the system a little bit or taking advantage  
21 of it among co-workers, or acquaintances, neighbors, anything  
22 like that?

23          PROSPECTIVE JUROR NO. 250: No.

24          MR. WINNER: Okay. Anybody else in the back row?

25          Yes. Ms. Cundiff.

1 PROSPECTIVE JUROR NO. 244: Well, I told my story.  
2 It was yesterday or the day before.

3 MR. WINNER: Yeah.

4 PROSPECTIVE JUROR NO. 244: There's a guy at work  
5 who's slipped and fell. And I don't doubt that he hurt  
6 himself, you know, his knee or whatever.

7 But I guess he's filed a claim against the company.  
8 And this has been ongoing for a long time. And when he's  
9 around management and everybody he's always, you know, limping  
10 and, you know, really milking it.

11 But when he doesn't think anybody's watching him and  
12 I watch him, and he can walk just like nobody else's business.  
13 I mean, you can obviously see that he gets along just fine.

14 But he abuses FMLA because of it and --

15 MR. WINNER: Um, does that mean you believe every  
16 plaintiff or every claimant in every personal injury suit must  
17 be milking it or lying?

18 PROSPECTIVE JUROR NO. 244: No. But I'm very  
19 observant. I will be -- I will be watching.

20 MR. WINNER: Okay. Some people call me skeptical at  
21 times, I don't mean I'm skeptical, but maybe you've had the  
22 same experience I've had.

23 A couple years ago, I had some stranger come to my  
24 front door, ring the doorbell, knock on the door and he told  
25 me that he was just a door-to-door sales guy.

1           He told me that he was a roof contractor and he just  
2 happened to be a roofing guy and he just happened to be coming  
3 by my house and it looks like I needed a new roof. And would  
4 I like to buy a new roof.

5           I've also had people come by my house and ask me if  
6 I wanted aluminum siding or if I wanted new windows. Have  
7 most of us had people come to the door asking for things like  
8 that? I see lots of hands.

9           UNIDENTIFIED PROSPECTIVE JUROR: Yes.

10          MR. WINNER: When somebody comes to the door like  
11 that, do you automatically believe them?

12          I see some heads shaking. I see Mr. Marquez's head  
13 shaking. Mr. Marquez, the guy who comes to your door is a  
14 stranger. He seems sincere, and he says, hey, I'm looking at  
15 your roof and I think you need some -- you need something  
16 done. Do you believe him?

17          PROSPECTIVE JUROR NO. 264: Well, I said before that  
18 I always like to give everybody the benefit of the doubt, but  
19 I'm also -- I like to be smart about the decisions that I  
20 make. If somebody comes up to my door and usually I will say,  
21 you know, I'm sorry, if -- I'm actually busy, but if I ever  
22 need some services, I will look for -- I will look -- I will  
23 go online and look for contractors.

24          But that's how I manage myself. I don't just buy a  
25 roof because somebody comes and tells me that I need one. I



1 will buy it when I think I need -- when I -- when I know I  
2 need it, I will look for a contractor that will sell me one.

3 MR. WINNER: So you won't just automatically believe  
4 a stranger who shows up at your door asking to sell you  
5 something?

6 PROSPECTIVE JUROR NO. 264: It's not that I will  
7 believe the stranger, I will just usually just tell them that  
8 I'm busy, that I'm not going to take their offer, because I  
9 will look for my contractor whenever I need it.

10 MR. WINNER: Okay. A healthy level of skepticism or  
11 just wanting to verify, I suppose, right?

12 PROSPECTIVE JUROR NO. 264: Yes, absolutely.

13 And I -- I'm also very careful. Even though I try  
14 to give everybody the benefit of the doubt, I -- I'm very  
15 careful who I open the door to, especially, I've had two kids  
16 in the house, and I don't just want to let anybody push me in  
17 and try to, you know, come in and --

18 MR. WINNER: Oh, yeah.

19 PROSPECTIVE JUROR NO. 264: -- you know, and I'm  
20 actually -- I actually have a gun, so when I come -- when  
21 somebody comes to my door I -- I -- I make sure that I have my  
22 gun with me. Not -- not like that.

23 UNIDENTIFIED PROSPECTIVE JUROR: I do.

24 MR. WINNER: You do?

25 UNIDENTIFIED PROSPECTIVE JUROR: Absolutely. I'm

1 from [inaudible]. Absolutely.

2 MR. WINNER: Okay. A shotgun makes a great noise,  
3 right?

4 PROSPECTIVE JUROR NO. 264: You know, a person on  
5 the radio said trust, but verify. So, I trust and I --

6 MR. WINNER: Trust and verify.

7 PROSPECTIVE JUROR NO. 264: -- and I verify.

8 MR. WINNER: What if the guy who came to -- I assume  
9 that your -- your response seemed like a common and a  
10 reasonable one. Does everybody kind of agree with what Mr.  
11 Marquez said?

12 UNIDENTIFIED PROSPECTIVE JUROR: Um-hum.

13 MR. WINNER: You wouldn't automatically believe  
14 somebody who came to your door?

15 UNIDENTIFIED PROSPECTIVE JUROR: [Inaudible].

16 MR. WINNER: Anybody disagree with him? No.  
17 Okay. Mr. Marquez, let me add a wrinkle.  
18 What if the guy said, hey, I can help you verify.  
19 My brother-in-law also has a roofing business and he can be  
20 over here in 15 minutes and he'll tell you the same thing and  
21 he'll sell you the roof. So, look, you can go see my friend  
22 and he'll sell you the roof.

23 Now, you've heard from two of us. You have a second  
24 opinion.

25 PROSPECTIVE JUROR NO. 264: So --

1 MR. WINNER: Would you believe him then?

2 PROSPECTIVE JUROR NO. 264: Well, no, actually, that  
3 would make it less believable.

4 MR. WINNER: Why?

5 PROSPECTIVE JUROR NO. 264: Because now you have  
6 somebody that's telling me, I have somebody that could be in  
7 chaoots with me to verify what I'm telling you. I just came  
8 out of nowhere to offer you something and I have a second  
9 person who is also coming out of nowhere to verify what I'm  
10 saying. So that wouldn't [inaudible].

11 MR. WINNER: Right. Okay. Trust but verify.

12 Mr. Marquez, I don't mean to change the subject, but  
13 since you're -- since you're there, you indicated that a  
14 couple of things over the last couple of days I wanted to ask  
15 you about.

16 One is, you -- you were injured in an accident about  
17 six months ago; and you had -- I think you said there might be  
18 some suspicion of a disk problem.

19 PROSPECTIVE JUROR NO. 264: I'm sorry, what was the  
20 question that I'm --

21 MR. WINNER: Was there a suspicion of a disk problem  
22 in your neck or in your low back?

23 PROSPECTIVE JUROR NO. 264: Yes.

24 MR. WINNER: Okay.

25 PROSPECTIVE JUROR NO. 264: And, yes, it -- so I'm

1 going through therapy right now and it's not solved yet so.

2 MR. WINNER: Okay. Should Ms. Tate be  
3 uncomfortable, the injury that's alleged in this case, and  
4 there's a dispute about it, but there -- the injury alleged in  
5 this case is very similar to yours.

6 Ms. Tate is alleged of -- the plaintiff has alleged  
7 some disk injury which is in dispute. Would the fact that the  
8 injury that is alleged in this case is similar to what you've  
9 experienced for the last six months, should that -- should Ms.  
10 Tate be uncomfortable having you judging her, in her case, or  
11 can you set that aside?

12 PROSPECTIVE JUROR NO. 264: Yes.

13 And also, I want to make a -- I want to clarify  
14 something.

15 MR. WINNER: Yes.

16 PROSPECTIVE JUROR NO. 264: My injury was not  
17 totally done with the accident. The doctor had told me that I  
18 had a previous injury that the disk made it worse.

19 MR. WINNER: Made it worse.

20 PROSPECTIVE JUROR NO. 264: Yes. So I don't  
21 remember having any accident before, when I was about eight  
22 years old, I actually fell and broke my ankle. Maybe that's  
23 when it happened. But I -- but I -- the doctor told me that  
24 it was not -- this injury is an old injury but it -- now it's  
25 -- it's worse.

1           So that's just clarify that it's [inaudible] not of  
2 the result completely of this last accident -- the accident.

3           MR. WINNER: So the disk issue that was there has  
4 probably been there before for whatever reason, wear and tear,  
5 and then the accident happened and --

6           PROSPECTIVE JUROR NO. 264: Yes.

7           MR. WINNER: -- it feels worse?

8           PROSPECTIVE JUROR NO. 264: Yes.

9           MR. WINNER: [Inaudible]. You also mentioned that  
10 your friend who's a lawyer and I assume you trust your friend,  
11 your friend picked the therapist that you went to or picked  
12 the doctor that you went to?

13          PROSPECTIVE JUROR NO. 264: Yes.

14          MR. WINNER: And you said you didn't like -- that  
15 didn't make you feel [inaudible]?

16          PROSPECTIVE JUROR NO. 264: I didn't like it. I,  
17 you know, I was actually going to -- I -- I was going to -- I  
18 asked my friend, you know what, I think I'm just going to go  
19 with somebody else.

20          But he persuaded me to continue with that one, so I  
21 -- so I did, he's my friend. I said, okay, let's do it. And  
22 then -- but I was very skeptical. And if I -- I made it very  
23 clear if I noticed something I will probably just change, you  
24 know, the -- the doctor or in this case a chiropractor.

25          MR. WINNER: Ms. Pool, when she was here the other

1 day, mentioned that she didn't like that the -- the doctor was  
2 saying, how come you didn't claim your pain was worse on your  
3 visits. You heard that when she was [inaudible]?

4 PROSPECTIVE JUROR NO. 264: I'm sorry, what was that  
5 -- what was that?

6 MR. WINNER: As Ms. Pool mentioned the other day  
7 that she didn't like the -- she had the same situation and she  
8 didn't like that the doctor was saying, how come you aren't  
9 reporting you pain scores are worse, how come you aren't  
10 saying you're hurt worse than you are?

11 Have you had that experience?

12 PROSPECTIVE JUROR NO. 264: No.

13 MR. WINNER: Okay.

14 PROSPECTIVE JUROR NO. 264: No. Just --

15 MR. WINNER: Is there anything about what the  
16 therapist has done or has suggested that has made you a little  
17 uncomfortable that this made you extra cautious?

18 PROSPECTIVE JUROR NO. 264: I feel like I'm going to  
19 therapy and it's not -- you know, they just keep telling me to  
20 come back.

21 MR. WINNER: Yeah.

22 PROSPECTIVE JUROR NO. 264: And I don't really feel  
23 like it's doing anything. I tend to believe that they're  
24 exaggerating a little bit, even on my own case. So --

25 MR. WINNER: You think the therapist is

1 exaggerating?

2 PROSPECTIVE JUROR NO. 264: I -- yes, it's -- yeah,  
3 the -- I believe that they're just -- they're -- I mean, they  
4 lay me down and they put some electrons on the back and the  
5 little massage and that's it.

6 I don't feel like they're doing much. So I'm very  
7 hopeful that this is going to be over. I think they're going  
8 to -- they're going to finish the treatment soon. And I have  
9 some discomfort, but I really want to get over this myself,  
10 and I just want this to be over with.

11 MR. WINNER: Why do you think the therapist might be  
12 exaggerating?

13 PROSPECTIVE JUROR NO. 264: I -- I believe that  
14 because of the system, the way it is, it just -- it is open  
15 with loopholes for people to exaggerate and a lot of people  
16 get -- like I said it before, a lot of people may find this is  
17 an opportunity to -- to make a profit, not just the -- and I  
18 don't blame the person in the accident.

19 I believe that, you know, the system allows it and  
20 thus there's people who pushes for that, you know, from the  
21 doctor, to the lawyers, to everybody involved.

22 MR. WINNER: And do you think the lawyers and the  
23 doctors are pushing to make a profit? Is that what you mean?

24 PROSPECTIVE JUROR NO. 264: And I don't -- I don't  
25 say this as a -- you know, just to talk bad about somebody

1 but, you know, the last --

2 MR. WINNER: That's okay.

3 PROSPECTIVE JUROR NO. 264: -- the system allows it.  
4 The system allows it and, you know, everybody is in the  
5 business to make a profit.

6 MR. WINNER: Okay. Have you thought about changing  
7 doctors?

8 PROSPECTIVE JUROR NO. 264: Yes, and I'm -- this is  
9 going to be almost done. I don't -- and again, I don't think  
10 -- I don't have enough proof to say that they are exaggerating  
11 or they're making me -- but I believe that we're almost to the  
12 end of the treatment and I just -- yesterday I was in my -- in  
13 my therapy and they told me that they're almost done, they're  
14 almost over.

15 MR. WINNER: You don't know for sure, but it makes  
16 you uncomfortable?

17 PROSPECTIVE JUROR NO. 264: Yes.

18 MR. WINNER: Okay.

19 PROSPECTIVE JUROR NO. 264: I just wish I wouldn't  
20 be -- I wasn't in this situation.

21 MR. WINNER: I understand. Thank you.

22 Your Honor -- excuse me one moment.

23 (Bench conference)

24 MR. WINNER: I'm going to go the rest of the day but  
25 I'd like five minutes to use the restroom if that's convenient



1 for the Court and you.

2 MR. PRINCE: Whatever the Court says.

3 THE COURT: Yeah. Well, did you -- what did you say  
4 before?

5 MR. WINNER: I'm still going. I'm not going to be  
6 done today. If you want to leave at 4:30 that's fine, but I  
7 will --

8 MR. PRINCE: We'll definitely leave at 4:30  
9 [inaudible].

10 MR. WINNER: I'll suck it up for a few minutes, I  
11 guess, but I kind of needed to use the restroom.

12 THE COURT: Okay. Well, we can just have them be at  
13 ease. Anybody who wants to use the restroom, if you want a  
14 two-minute break, I don't --

15 MR. WINNER: Yeah, five minutes is fine.

16 THE COURT: And we'll just go until 4:30, I think.

17 MR. WINNER: 4:30, 4:35 and be done, or at 4:30?

18 THE COURT: Yeah, I told them 4:30 yesterday so I  
19 don't see --

20 MR. PRINCE: Can we have -- we can start at 10:00 on  
21 Monday?

22 THE COURT: Unless you -- yeah, unless you tell me  
23 that if we go until 5:00 we can finish today.

24 MR. WINNER: I don't think so.

25 THE COURT: Then, I mean --

1 MR. PRINCE: I thought you were going to be short.  
2 MR. WINNER: Yeah, I thought so, too.  
3 MR. PRINCE: Yeah.  
4 (End of bench conference)  
5 THE COURT: Ladies and gentlemen, we're just going  
6 to be at recess for a couple minutes if anybody wants to use  
7 the restroom, go ahead. We're going to break at 4:30 because  
8 I told you yesterday we would. But if you want -- anybody  
9 needed a quickie now.  
10 THE MARSHAL: Five minutes for everybody?  
11 THE COURT: Yeah, yeah.  
12 THE MARSHAL: It makes it easier accountability  
13 wise.  
14 THE COURT: Okay. Well, I thought it was easier,  
15 quicker, if everybody stays kind of in a group, but whatever  
16 you want. Five minutes.  
17 MR. WINNER: Thank you.  
18 THE COURT: Oh, wait.  
19 During the recess, you are admonished not to talk to  
20 or converse among yourselves or with anyone else on any  
21 subject connected to this trial or read, watch or listen to  
22 any report of or any commentary on the trial by any person  
23 connected with this trial, by any medium of information,  
24 including without limitation, newspapers, television, the  
25 Internet and radio, or form or express any opinion on any

1 subject connected with the trial until the case is finally  
2 submitted to you.

3 Since we're only going, if you all don't come back,  
4 it's going to be really --

5 UNIDENTIFIED PROSPECTIVE JUROR: It'll be quick.

6 THE COURT: -- just come back really fast, okay?  
7 Thanks.

8 THE MARSHAL: All rise for the exiting jury.

9 (Court recessed at 4:18 P.M., until 4:23 P.M.)

10 (Inside the presence of the prospective jurors)

11 THE COURT: Are we ready to get our last eight  
12 minutes?

13 MR. PRINCE: Oh, I'm ready.

14 MR. WINNER: Yeah.

15 (Pause in the proceedings)

16 MR. PRINCE: I'm ready to go to 5:00 if we have to.

17 THE COURT: Will it make a substantial difference if  
18 we go to 5:00?

19 MR. WINNER: I'm happy to go to 5:00. It's up to  
20 you.

21 THE COURT: Well, I'm not asking about happy to go  
22 to 5:00. I would prefer not --

23 MR. PRINCE: She's asking if you can be done.

24 THE COURT: -- because I had told the jury 4:30 and  
25 not for nothing, I have a 6:00 o'clock engagement that I can

1 -- I can certainly be late.

2 MR. PRINCE: We can be done --

3 THE COURT: And I don't mind doing that --

4 MR. PRINCE: Yeah. We'll --

5 MR. HENRIOD: Yeah. I mean, I don't -- I don't know  
6 that we can be done in a half hour. I mean, you've tried to  
7 move it along. But compared to three-and-a-half days, it's --

8 MR. PRINCE: Okay, well, number one, we didn't go  
9 three-and-a-half days; right? We started at 1:00, 1:30,  
10 sometimes almost 2:00.

11 MR. HENRIOD: [Inaudible]. Fine.

12 MR. PRINCE: Yeah, yeah.

13 THE COURT: I just wanted to know if like if staying  
14 until 5:00 would get some people to stay home or if we could  
15 get to the jury. We're not going to get to it. So --

16 MR. PRINCE: No, we're not going to be able to do  
17 that today.

18 THE COURT: But now we're at the point where --

19 MR. PRINCE: We need to come in -- and question them  
20 for five minutes?

21 MR. HENRIOD: We do have -- well, let me just throw  
22 this out there, if it's not an option, it's not an option.

23 I think we do have three motions for cause. We  
24 might be able to spare three people to trip on Monday.

25 MR. PRINCE: Well, we're not going to be able to

1 traverse.

2 MR. HENRIOD: Do you want to handle those?

3 MR. PRINCE: I'm going to -- I'm going traverse, so.

4 MR. HENRIOD: Okay. Then --

5 MR. PRINCE: Well, tell me who your motions are.

6 MR. HENRIOD: Well, I think, number one, right, to

7 begin with --

8 MR. PRINCE: Okay. Well, just tell me -- just give

9 me the numbers.

10 MR. HENRIOD: Okay. Number one, Ms. Westbrooks and

11 then down here to the -- down to the bottom right.

12 MR. PRINCE: Oh, then no.

13 MR. WINNER: No, Westbrook is down at the bottom

14 left. It'd be Pronti is number one.

15 MR. PRINCE: Who are the three?

16 MR. WINNER: I think I can ask some follow-ups. We

17 might have one of --

18 MR. PRINCE: Who are the three? You said three.

19 MR. WINNER: Well, two, and I have some follow-ups.

20 But if you want to traverse then we can [inaudible].

21 MR. PRINCE: Oh, of course. Yeah, right, right. I

22 will traverse. Just tell me when, you know -- I'm not

23 agreeing to anybody or I don't -- I don't know who the third

24 person is so I don't even know --

25 MR. HENRIOD: Okay.

1 THE COURT: Adam, will you check with the jury? I  
2 had told them yesterday we would be done at 4:30. Ask them if  
3 there is anybody -- if -- I know I said 4:30, but could they  
4 go until 5:00.

5 THE MARSHAL: Okay. So go until 5:00?

6 THE COURT: Ask them, if -- if one person says, no,  
7 I'm not doing it.

8 THE MARSHAL: Okay.

9 THE COURT: But if they're willing to stay, we'll  
10 just stay until 5:00.

11 THE MARSHAL: All right.

12 (Pause in the proceedings)

13 (Prospective jurors enter at 4:27 P.M.)

14 THE MARSHAL: All present, Your Honor.

15 THE COURT: Thank you.

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

18 MR. WINNER: Yes.

19 THE COURT: Mr. Winner?

20 MR. WINNER: The day's almost over.

21 We talked a couple of minutes ago about the Sixth  
22 Sense movie, judging something in hindsight.

23 Thank you. We talked a few moments ago about the  
24 Sixth Sense movie and judging in hindsight. Can we all agree  
25 that sometimes it's not possible to judge everything in

1 hindsight? Okay. Can we agree that just because an accident  
2 happened doesn't mean somebody has to be completely at fault  
3 for that accident? Okay. I see lots of nods. Thank you.

4 The Judge will tell you some law at the end of the  
5 case is, this isn't -- Mr. Prince said a phrase the other day,  
6 you broke it, you buy it, and respectfully, that's not the law  
7 of negligence.

8 Ms. Tate here standing accused of negligence, that  
9 means, making a mistake, being careless, doing something that  
10 a reasonable prudent person under the circumstances would not  
11 have done. And if that's what she did, she was negligent, and  
12 if she caused any damages because of her negligence, she owes  
13 the damages she caused.

14 Okay. So are you all okay following that  
15 instruction and judging Babylyn Tate not on whether an  
16 accident happened but whether she did what a reasonably  
17 prudent person would not have done under the circumstances in  
18 that moment?

19 Can we judge Babylyn Tate by a reasonable person  
20 standard and not just in hindsight? Is that fair? Can you do  
21 that? Okay.

22 We talked about the word "reasonable" and I asked  
23 many of you what the word reasonable means to you and what it  
24 means to be a reasonable person or a reasonably prudent  
25 person. And I got a lot of definitions.

1           Can we all agree that a reasonable person is not a  
2 perfect person, and a reasonable person is not an ability to  
3 see the present in hindsight?

4           MR. PRINCE: Judge can we approach for a second?

5                               (Bench conference)

6           MR. PRINCE: We have [inaudible] same issue last  
7 time, him trying to discuss reasonable person standard. The  
8 jury instruction is very particular and very specific on what  
9 the law is. He's asking for juror definitions. He's kind of  
10 talking about a reasonable prudent person.

11           So now I'm objecting to his use the term and having  
12 them define what they think a reasonably prudent person is or  
13 not is when the jury instructions very specifically will cover  
14 that topic.

15           And so my objections, number one, it's inaccurate  
16 the way he's saying it. And two, it's not for the jurors to  
17 define that. You give the definition of that to them. You  
18 give that parameter. So therefore, all that line of  
19 questioning is inappropriate.

20           MR. HENRIOD: What I believe the issue is, is that  
21 -- that the instructions, right, rely on the [indiscernible]  
22 reasonable law, but they don't explain what reasonable is.

23           MR. PRINCE: Oh yes, they do. Hang on.

24           MR. HENRIOD: So we need to know what the word means  
25 to them, right? We need to know what fairness is to them. We



1 need to know what they're coming to those instructions  
2 [inaudible].

3 MR. WINNER: The last time around I said, ordinary  
4 person, and Mr. Prince correctly corrected me on.

5 MR. PRINCE: The instruction that you give, ordinary  
6 reasonable care is that care which a person to ordinary  
7 prudence would use in order to avoid injury to themselves or  
8 others under circumstances similar.

9 It does give you a definition. So contrary to what  
10 Mr. -- Mr. -- counsel is saying, Mr. Henriod is saying, it  
11 does give you a definition. So --

12 MR. HENRIOD: Of reasonable?

13 MR. PRINCE: Yeah.

14 MR. HENRIOD: What does it say the definition of  
15 reasonable is?

16 MR. PRINCE: What does it matter? He can't quote  
17 it. It has to be given. So you're not up here to ask the  
18 jurors what their opinion of it. You're going to define  
19 ordinary care for them, and there's multiple instructions of  
20 what negligence is going to be.

21 It could be a violation of the statute. There could  
22 be other legal standards relating to motor vehicle operation.  
23 So that's just one term of art. And there's going to be  
24 others that they give. There's going to be negligence as a  
25 matter of law instructions.

1           So -- which always -- which is a statutory  
2 violation. So I'm objecting to him saying it's only what a  
3 reasonably prudent person would do. That is not true. You --  
4 you may very likely give an instruction on negligence per se  
5 in which a violation of a statute because that is negligence.  
6 It --

7           MR. WINNER: [Inaudible].

8           MR. PRINCE: It doesn't even matter to me whether  
9 Joel knows that and the answer is --

10          MR. WINNER: No, I know that.

11          MR. PRINCE: And so it doesn't even need to be pled.  
12 Forget that for a minute.

13          MR. WINNER: Yes, it needs to be pled.

14          MR. PRINCE: That's not accurate. And because  
15 negligence per se is a part of negligence. It's a way you  
16 prove negligence.

17               And so if it's negligence as a matter of law, it  
18 doesn't even have to be reasonable. You don't -- just a  
19 violation of the law is enough. So for him --

20          THE COURT: So --

21          MR. PRINCE: -- and now he's asking for juror input  
22 on what --

23          THE COURT: Tell me your -- what was your question  
24 again that he objected to, the exact question?

25          MR. WINNER: Are we okay holding Babylyn Tate to a

1 standard of a reasonably prudent person and what does  
2 reasonable mean to you and not judging her in hindsight.

3 THE COURT: Did you ask those together?

4 MR. PRINCE: Yes.

5 MR. WINNER: Well, I asked --

6 THE COURT: Was the objection to that whole question  
7 or did you ask that, then get responses, and then move on to  
8 reasonable?

9 MR. WINNER: I didn't get responses, I got nods.  
10 Yeah, then I said, can we agree not to judge her in hindsight,  
11 but judge what a reasonable prudent person would have done  
12 under the circumstances I believe.

13 MR. PRINCE: Well --

14 THE COURT: What was the question directly before  
15 the objection?

16 MR. PRINCE: Is can we hold her to a reasonably  
17 prudent person standard, and then he says, what does a  
18 reasonable prudent person mean to you? He's now asking them  
19 for the, but how do they -- how they define when somebody's  
20 reasonably prudent.

21 You're going to define that. The jurors do not  
22 define that. I have my instruction right here, but this is  
23 what gave last time. And that's just one of them. There's  
24 going to be other methods of proving negligence which could  
25 include a violation of a statute. And that doesn't even

1 depend upon being reasonable.

2 THE COURT: Okay. I'm going to sustain it based  
3 upon -- I don't -- I don't think asking them what terms mean  
4 that ultimately are going to be -- I think it touches on the  
5 law.

6 MR. PRINCE: Right, it does.

7 MR. HENRIOD: Is it --

8 MR. PRINCE: And moreover --

9 THE COURT: Instructions on the law.

10 MR. HENRIOD: Yeah.

11 THE COURT: I don't mind -- can you -- do you have a  
12 problem treating her as a reasonably prudent person; that part  
13 I'm fine with.

14 MR. WINNER: Okay.

15 THE COURT: It's the next step, what does reasonable  
16 mean to you because I think -- I don't know, I just feel --

17 MR. PRINCE: Well, my issue is --

18 THE COURT: -- you're looking for guidance on how to  
19 present your case.

20 MR. WINNER: Okay.

21 MR. PRINCE: Hang on, what --

22 THE COURT: I don't know what the exact --

23 MR. PRINCE: Well --

24 MR. HENRIOD: Okay.

25 MR. PRINCE: -- well -- well -- well --

1 THE COURT: -- thing is but that's my -- my problem  
2 with it.

3 MR. PRINCE: -- let's hold on for a second too  
4 because he's saying that the Judge -- I know for a fact that  
5 you're going to instruct on burden of proof because you've  
6 already done it and that's required.

7 THE COURT: I know.

8 MR. PRINCE: So hang on, him to say, well, the Judge  
9 at the end of the case is going to tell you negligence means  
10 this, negligence is going to mean more than that, because if I  
11 prove to you and you instruct on a statute, I don't have to  
12 prove that it was unreasonable --

13 THE COURT: How do you get to --

14 MR. PRINCE: -- so for him to say that's like the  
15 only way you can be negligent, that is not true.

16 THE COURT: But that isn't -- but that has --

17 MR. PRINCE: It's a misstatement.

18 THE COURT: -- [inaudible] on the jury, right?

19 MR. PRINCE: No, no, but he's --

20 MR. WINNER: She was also charged with negligence.

21 MR. HENRIOD: You have a [inaudible] issue of  
22 throwing [inaudible].

23 MR. PRINCE: -- saying the only way you can prove it  
24 is by being unreasonable and what a reasonably prudent  
25 person --

1           THE COURT: I don't know, is this -- not even has  
2 anything to do with the jury selection right this minute?

3           MR. PRINCE: Yes, it does. Because --

4           THE COURT: I don't -- I don't get the tie-in.

5           MR. PRINCE: I'm tying -- let me tie it in for you.  
6 He's saying that the only way he can prove negligence is by  
7 not being reasonable, what an ordinary reasonable person would  
8 do under the same circumstances.

9           I'm saying to you, you can prove it by a violation  
10 of a statute which does not depend on being reasonable.

11          THE COURT: Okay. But we can continue --

12          MR. PRINCE: And so --

13          THE COURT: -- with the questioning right now  
14 without --

15          MR. PRINCE: No, but he's saying that's the only way  
16 [inaudible].

17          MR. WINNER: No, I didn't say the only way. I said  
18 she stands accused of negligence. That's what she was sued  
19 for.

20          MR. PRINCE: Yeah, but you can prove it by more than  
21 that. There's other ways to prove it other than just saying  
22 hey, you were -- didn't act like a reasonably prudent person  
23 under the circumstances.

24          THE COURT: Okay. But this isn't -- this isn't an  
25 opening statement or --

1 MR. PRINCE: No, no, no, I know.  
2 THE COURT: -- this is just asking --  
3 MR. PRINCE: But he's -- he's telling the jury  
4 you're -- at the end of the case you're going to be instructed  
5 this is what negligence means.  
6 MR. WINNER: And she's accused of negligence.  
7 MR. HENRIOD: [Inaudible].  
8 MR. PRINCE: So but no, they haven't been given an  
9 instruction in negligence and it could mean numerous things.  
10 THE COURT: I know. But there's a lot of stuff that  
11 we're doing, like you told them about the burden of proof  
12 that's coming --  
13 MR. PRINCE: Well, that -- well, that's a --  
14 THE COURT: -- and that's, you know --  
15 MR. PRINCE: -- truth.  
16 THE COURT: -- and then you -- well, I understand  
17 that, and it -- and this is true as well.  
18 So I haven't even heard it yet. So --  
19 MR. PRINCE: But my problem is his explanation of it  
20 and they're -- and they're instilling it and you haven't given  
21 any instructions yet on this particular point because there --  
22 at the end of the case there's going to be -- and he said at  
23 the end of the case the Judge is going to instruct you.  
24 There's going to be numerous instructions you give. That will  
25 be one.

1 THE COURT: Right.

2 MR. PRINCE: But there's other ways to prove  
3 negligence. That's not the sole method --

4 THE COURT: Okay.

5 MR. PRINCE: -- under the law, and I'm saying I  
6 don't want him talking about the law anymore on this point.  
7 That's touching upon the law.

8 He's asking how they would apply the law.

9 THE COURT: Okay. Well, as far as I know --

10 MR. PRINCE: Also --

11 THE COURT: -- the question that I'm even handling  
12 is I'm fine with the, wait, can you hold her the reasonable  
13 person standard [inaudible] --

14 MR. WINNER: But not asking the question.

15 THE COURT: -- have it there. But then I don't want  
16 you to say --

17 MR. PRINCE: But then you -- but then he's --

18 THE COURT: -- what is reasonable to you.

19 MR. PRINCE: -- already asked that -- then he's  
20 already asked that question.

21 THE COURT: So, we're done.

22 MR. PRINCE: He's already asked that question.

23 MR. HENRIOD: [Inaudible].

24 MR. WINNER: I'll withdraw the question.

25 THE COURT: Okay.



1 MR. PRINCE: He's already asked that question, so --  
2 MR. WINNER: I'll --  
3 MR. PRINCE: -- it's always the tag teaming and I  
4 don't understanding why the tag teaming. My counsel can -- we  
5 -- we -- I just do the talking. And so --  
6 THE COURT: It's all good. It's all good. As long  
7 as you do it one at a time.  
8 MR. HENRIOD: I'm going to object to [inaudible].  
9 MR. PRINCE: What?  
10 MR. HENRIOD: I said I don't object if you want to  
11 chime in.  
12 MR. PRINCE: No, you guys just like to tag team up  
13 here and it's annoying.  
14 MR. HENRIOD: Yeah, okay.  
15 MR. PRINCE: Because it's like -- it's like --  
16 MR. HENRIOD: Here -- okay --  
17 MR. PRINCE: So and I'm not done talking.  
18 MR. HENRIOD: Okay, I'm -- do you want to point out  
19 that we need to --  
20 THE COURT: [Inaudible] I sustained it.  
21 MR. PRINCE: Well, I'm not done -- I'm not done  
22 speaking.  
23 THE COURT: You won.  
24 MR. HENRIOD: [Inaudible].  
25 MR. PRINCE: I know. But I want to get some

1 parameters that you he can't go down this path.  
2 THE COURT: You won, I sustained it.  
3 MR. PRINCE: Right. They can't go anymore down this  
4 path.  
5 THE COURT: No, what is reasonable, no. We're done.  
6 MR. PRINCE: He's already -- he's already asked the  
7 question about will everybody hold her to a reasonable -- a  
8 reasonable person standard.  
9 THE COURT: But I said that's okay.  
10 MR. PRINCE: They all -- they all nodded. They  
11 already -- no, he's already asked the [inaudible].  
12 THE COURT: I said that's okay.  
13 MR. PRINCE: Right. He's already asked --  
14 THE COURT: The question that you --  
15 MR. PRINCE: -- it.  
16 THE COURT: -- objected to when I --  
17 MR. WINNER: What's the --  
18 THE COURT: -- [inaudible] --  
19 MR. WINNER: -- term reasonable mean to you --  
20 THE COURT: -- what's the term reasonable --  
21 reasonable to you and I'm --  
22 MR. WINNER: -- is what you sustained.  
23 MR. PRINCE: Right.  
24 THE COURT: -- saying no.  
25 MR. PRINCE: I understand.

1 MR. WINNER: Okay.

2 THE COURT: So you're sustaining.

3 MR. PRINCE: What I'm saying, don't go back and ask  
4 the same question, will you hold her to a reasonable person,  
5 he's already asked the question. Don't be repetitive. And  
6 that would be an asked and answered question.

7 MR. WINNER: No, I don't need to repeat it.

8 MR. PRINCE: Okay.

9 THE COURT: There you go.

10 MR. PRINCE: We're getting close.

11 MR. WINNER: Before we leave --

12 MR. PRINCE: Please don't touch me.

13 THE COURT: It's going to be 5:00 o'clock.

14 MR. WINNER: Sorry?

15 MR. PRINCE: Just don't touch me.

16 MR. WINNER: Don't touch you?

17 MR. PRINCE: Yeah. You're about to touch me. I  
18 don't want you to touch me in front of the jury.

19 MR. WINNER: A little [indiscernible] are we,  
20 Dennis?

21 MR. PRINCE: No. I just don't want you to touch me.

22 MR. WINNER: The -- I do intend, like last time, to  
23 talk about the sympathy instruction and setting sympathy  
24 aside; you didn't have an objection to that, but you're saying  
25 I can't talk about any law or instructions at all or did you

1 just mean this one?

2 MR. PRINCE: I mean, in particular, this one. Yeah,  
3 you --

4 MR. WINNER: Okay.

5 MR. PRINCE: -- hang on -- it's like oh God, you've  
6 already asked the jury, can you decide the case not based on  
7 sympathy but based on the evidence and you've already asked  
8 that question. That's an asked and answered question.

9 THE COURT: I don't recall it. I don't think it  
10 was. I don't know, we'll see when we get there.

11 MR. WINNER: No, we won't get to it.

12 THE COURT: Let's not anticipate. We're not even  
13 getting to it today.

14 Oh, sustained for the record.

15 MR. WINNER: Okay.

16 I know we have an answer from -- I know we have an  
17 answer from Mr. Horner earlier, but has anybody ever been  
18 sued, other than Mr. Horner?

19 And yeah, Ms. White, we heard from also.

20 Has anybody else ever been sued? Okay.

21 Has anybody here ever felt taken advantage of?

22 Most hands. Let me ask a narrower question.

23 Is there anybody who ever felt like their kindness  
24 or trying to do the right thing was taken advantage of?

25 Ms. Stevens down in front.

1 PROSPECTIVE JUROR NO. 323: Um-hum.

2 MR. WINNER: Her hand went up. Have you ever felt  
3 like you're trying to do the right thing, or trying to do the  
4 kind thing, or the polite thing and got taken advantage of and  
5 you wish you hadn't later?

6 PROSPECTIVE JUROR NO. 323: Yes.

7 MR. WINNER: Tell us about that. You don't need to  
8 name names or say anything embarrassing. I'm just asking.

9 PROSPECTIVE JUROR NO. 323: It bothered me enough to  
10 where I quit and left the company.

11 MR. WINNER: What happened? You tried to do the  
12 right thing or did something kind and you were taken advantage  
13 of?

14 PROSPECTIVE JUROR NO. 323: Yeah. I'm not going to  
15 disclose it.

16 MR. WINNER: Okay. How did it make you feel?

17 PROSPECTIVE JUROR NO. 323: Worthless.

18 MR. WINNER: Did it make you feel like you wished  
19 you had --

20 PROSPECTIVE JUROR NO. 323: No, it made me feel  
21 worthless and absolutely wished I hadn't.

22 MR. WINNER: Okay. Did it make you regret doing the  
23 kind thing --

24 PROSPECTIVE JUROR NO. 323: Absolutely.

25 MR. WINNER: -- or the nice thing? I think that's a

1 common experience. I'm sorry you went through it. I'm sorry  
2 you felt worthless.

3 PROSPECTIVE JUROR NO. 323: Thank you.

4 MR. WINNER: Anybody else have an experience similar  
5 to Ms. Stevens and try to do the kind thing or the right  
6 thing, just step up and do something that you thought was  
7 right in the moment and then you felt taken advantage of?

8 PROSPECTIVE JUROR NO. 376: Um --

9 MR. WINNER: Mr. Sweikert?

10 PROSPECTIVE JUROR NO. 376: Something that I'm sure  
11 most of us have seen or heard of. Sometimes I'll drive and  
12 then there's someone on the side of the road asking for money  
13 and I'm in a particularly good mood so I'll, you know, like give  
14 them some money. And then they, you know, turn around and  
15 they whip out their thousand dollar smartphone and make a  
16 call.

17 I imagine that happens to a lot of people, but  
18 instances like those is what came to mind when you asked that  
19 question.

20 MR. WINNER: Okay. That's interesting. So you felt  
21 like you were taken advantage of?

22 PROSPECTIVE JUROR NO. 323: Yeah.

23 MR. WINNER: Okay. Anybody else had a experience  
24 similar to Mr. Sweikert and Ms. Stevens?

25 Yes, sir; Mr. Strickler?

1 PROSPECTIVE JUROR NO. 275: Yeah, I was in a Home  
2 Depot and a guy comes up to the truck as I'm getting out and,  
3 you know, hey can you help me out, my car's broke, the wife's  
4 in a restaurant and, you know, a big ole story.

5 But I got talking to him and he was from my home  
6 town. We know common people. He became believable. And so I  
7 gave him what change I had [inaudible].

8 MR. WINNER: I don't mean to interrupt but was this  
9 somebody you knew or just somebody -- a stranger who  
10 introduced himself --

11 PROSPECTIVE JUROR NO. 275: Just a stranger.

12 MR. WINNER: -- to you as --

13 PROSPECTIVE JUROR NO. 275: Yeah, introduced  
14 himself.

15 MR. WINNER: -- [inaudible]?

16 PROSPECTIVE JUROR NO. 275: And --

17 MR. WINNER: Okay. Gotcha.

18 PROSPECTIVE JUROR NO. 275: And so I gave him what  
19 money I had. And I felt pretty good about it.

20 MR. WINNER: Sure.

21 PROSPECTIVE JUROR NO. 275: But a week later I'm in  
22 the same Home Depot and he comes up with the same story and I  
23 knew then that I'd been taken.

24 MR. WINNER: So it was a story that only could've  
25 been true the week before?

1 PROSPECTIVE JUROR NO. 275: Yeah. He obviously  
2 didn't have a broken car and he obviously wasn't in a  
3 desperate right then situation to fix it. This was his job.

4 MR. WINNER: I've got a -- I've got a sick wife and  
5 I'm --

6 PROSPECTIVE JUROR NO. 275: Um-hum.

7 MR. WINNER: -- on my way to the bus station --

8 PROSPECTIVE JUROR NO. 275: Yeah.

9 MR. WINNER: -- I just need 20 bucks to -- okay. I  
10 think maybe we've all experienced that.

11 Anybody have an experience like that similar to Mr.  
12 Strickler? Ms. Stevens, Mr. Sweikert? I imagine many of us  
13 have. Any other hands, any other stories?

14 Has anybody ever apologized for something, trying to  
15 be polite, trying to do the right thing, apologize for  
16 something and then felt used afterwards because you had? Has  
17 that ever happened to some of you, apologized to a friend,  
18 offered something to a friend, try to do the right thing, and  
19 felt taken advantage of, or used afterwards? Anybody familiar  
20 with a circumstance like that?

21 Has anybody ever been accused of something and has  
22 to spend time and money because you thought you were right?

23 Does anybody know anybody, anybody close to you been  
24 accused of something; I won't ask you to name names -- and  
25 that person had to expend time and money to try to prove he



1 was right?

2           Okay. Was it -- I think there was two of you, one  
3 was Mr. Marquez, one might have been Ms. Cundiff or Ms.  
4 Reeves, talked about professional accidentors, or professional  
5 victims. Was that you, Mr. Marquez, mentioned that? Was that  
6 you, Ms. Cundiff? Okay.

7           That example I gave you about the door-to-door  
8 salesman coming to telling you, you need a new roof, telling  
9 you -- telling you you need a new roof; you need a new roof.  
10 I was just walking about your house and you need a new roof  
11 and guess what, if you pay me I can fix your roof for you.  
12 You need a new roof.

13           Would we all be a little skeptical about that?

14           And what if he said, I can get my friend or my  
15 brother-in-law, he's got a roofing company and he might charge  
16 you even a little less, but he'll come over here and he'll  
17 tell you the same thing. I'll get you a second opinion and  
18 you can make a decision to get a new roof.

19           Would everybody be a little skeptical?

20           Let me add -- let me add a wrinkle. What if the  
21 door-to-door salesman coming by was a college student who had  
22 kids to feed and it was 40 degrees outside, and you felt bad.  
23 His nose is run and running and he's ringing your doorbell out  
24 in the cold. And he obviously needs to earn a living.

25           Will you feel sympathy for him? Would your sympathy

1 overcome your skepticism or would you still have questions?

2 PROSPECTIVE JUROR NO. 264: Even though I'll feel --

3 MR. WINNER: Mr. Marquez?

4 PROSPECTIVE JUROR NO. 264: -- even though I will  
5 feel sympathy for him, I would not give him the contract. I  
6 would not give him the contract because of that. And most  
7 likely if that was the case, if he was sent by someone, an  
8 adult, so, or another company here.

9 MR. WINNER: Okay. So you wouldn't buy something  
10 from him just because he was -- you felt sorry for him, and  
11 just because he bothered to come to your door?

12 PROSPECTIVE JUROR NO. 264: No. I will -- I will  
13 appreciate that a young man and -- or a young person is  
14 seeking work or in this case a contract, you know, it's not  
15 just playing games at home, it's trying to make a buck, that's  
16 something good. But I would not necessarily make a decision  
17 based on the fact that I feel sympathy for him or her.

18 MR. WINNER: And would you want to get the second  
19 opinion from his brother-in-law or his other brother-in-law,  
20 or his friend?

21 PROSPECTIVE JUROR NO. 264: No.

22 MR. WINNER: And if you felt sympathy for him, that  
23 wouldn't change the way you looked at it?

24 PROSPECTIVE JUROR NO. 264: No.

25 MR. WINNER: Let me [inaudible] --

1           PROSPECTIVE JUROR NO. 264: I'll be nice to him or  
2 her. I mean, I'm not going to be --

3           MR. WINNER: What's that?

4           PROSPECTIVE JUROR NO. 264: I will be nice to them,  
5 but I would not give them the contract just because of that.

6           MR. WINNER: Okay. You'd be polite but not --

7           PROSPECTIVE JUROR NO. 264: Correct.

8           MR. WINNER: You wouldn't buy it. Okay.

9           Would it make any difference if you could buy that  
10 roof using somebody else's money? Would you feel any  
11 differently about it?

12           PROSPECTIVE JUROR NO. 264: No. However, if that  
13 young boy or -- is coming to my door offering to cut my lawn,  
14 even though I didn't need it, just because it's a young boy  
15 trying to make a buck, I will probably give it to him.

16           MR. WINNER: And it's a little less money too right?

17           PROSPECTIVE JUROR NO. 264: Yes, absolutely.

18           MR. WINNER: That's good.

19           PROSPECTIVE JUROR NO. 264: So it goes -- it goes in  
20 hand with the -- with the amount.

21           MR. WINNER: Okay. Mr. Marquez, while you have the  
22 microphone with you, when you had your -- when you had your  
23 accident, you said it was about six months ago? I'm going off  
24 memory.

25           PROSPECTIVE JUROR NO. 264: December.

1 MR. WINNER: Seven months?

2 PROSPECTIVE JUROR NO. 264: December from last year.

3 MR. WINNER: December of last year, so five to six  
4 months. Okay. And that was a car accident where you pulled  
5 out and somebody backed into you?

6 PROSPECTIVE JUROR NO. 264: I was driving north on  
7 1st Street and some -- and I'm doing the speed limit which is  
8 like 15 miles an hour. And somebody -- or 20 -- and somebody  
9 just back up from one of the garages here. I think it was the  
10 police department right there on 1st, and they just came out  
11 of nowhere into my lane backing up.

12 He didn't see me and to me it was all very sudden.  
13 I couldn't -- I didn't have no time to do anything.

14 MR. WINNER: No choice. Did you -- did you have  
15 anybody with you in your car?

16 PROSPECTIVE JUROR NO. 264: No, I was by myself.

17 MR. WINNER: Okay. Did you know you were hurt right  
18 away?

19 PROSPECTIVE JUROR NO. 264: Yes. I hurt -- I  
20 thought I hit the -- the -- the wheel but it was -- it was  
21 just the -- the seatbelt --

22 MR. WINNER: Yeah.

23 PROSPECTIVE JUROR NO. 264: -- but it kind of  
24 [indiscernible] so it -- for a few months my ribs hurt. I  
25 didn't get any broken ribs or anything but it hurt. And it

1 was just the --

2 MR. WINNER: Those hurt, those --

3 PROSPECTIVE JUROR NO. 264: Yeah, it --

4 MR. WINNER: -- bruised ribs just --

5 PROSPECTIVE JUROR NO. 264: -- was -- I was all  
6 bruised right here, too, so.

7 MR. WINNER: Okay.

8 PROSPECTIVE JUROR NO. 264: I hit -- I hit him in  
9 the -- the -- to the -- from the front right at the corner of  
10 my car.

11 MR. WINNER: Okay. Who else had -- I remember Ms.  
12 Stevens, I think.

13 You mentioned that you're -- it wasn't you, it might  
14 have been your partner had some disc issues; is that right?

15 PROSPECTIVE JUROR NO. 323: Um-hum.

16 MR. WINNER: Yeah. Can I borrow that from you?  
17 Thank you. And I won't ask you anything embarrassing that you  
18 don't want to answer. And if you answered this already when  
19 Mr. Prince asked you, I just didn't write it down. I wasn't  
20 listening or I'm scatterbrained so I apologize.

21 How was it that those disc issues came about?

22 PROSPECTIVE JUROR NO. 323: He never asked me so it  
23 never came up.

24 She had an accident years ago and the doctor said at  
25 that point in time -- and this is just hearsay from what she

1 tells me.

2 MR. WINNER: So you weren't with her at the time?

3 PROSPECTIVE JUROR NO. 323: No.

4 MR. WINNER: Okay.

5 PROSPECTIVE JUROR NO. 323: No. So she told me she  
6 had an accident. The doctor at the time with the x-rays and  
7 diagnosis said that she would eventually with her degenerative  
8 would have to be fused.

9 MR. WINNER: Okay.

10 PROSPECTIVE JUROR NO. 323: But she has a little  
11 mobility and right now she's hurting. She's older. She wants  
12 quality not quantity of life. So she's going through the  
13 process of [inaudible]. She's looking at it.

14 MR. WINNER: Does she have any thoughts on what  
15 caused or brought about the disc problems or is it just  
16 getting older?

17 PROSPECTIVE JUROR NO. 323: Car accident.

18 MR. WINNER: Car accident?

19 PROSPECTIVE JUROR NO. 323: Car accident.

20 MR. WINNER: Which was --

21 PROSPECTIVE JUROR NO. 323: She was rear-ended.

22 MR. WINNER: Do you know how many years ago that  
23 would have been?

24 PROSPECTIVE JUROR NO. 323: About 30.

25 MR. WINNER: Okay.

1 PROSPECTIVE JUROR NO. 323: Probably 35 now, because  
2 she doesn't tell time very well.

3 MR. WINNER: I like how you said that.

4 PROSPECTIVE JUROR NO. 323: She's retired. Time  
5 doesn't matter now.

6 MR. WINNER: Would the fact that this accident  
7 concerns an alleged disc injury that's disputed, but that's  
8 -- there is an allegation of a disc injury here, and you're  
9 obviously with a partner whom you care very much for, who has  
10 experienced pain from a disc injury. Is that going to be a  
11 little too close to home for you, or is it going to be  
12 difficult for you to set sympathy aside?

13 I'm just asking if that's going to hit too close to  
14 home.

15 PROSPECTIVE JUROR NO. 323: No, because sympathy  
16 doesn't have anything to do with it. It's just -- it's the  
17 facts like I stated before. I mean, you just have to -- you  
18 have to show me burden of proof.

19 MR. WINNER: Okay. Would the -- would the fact that  
20 your partner has experienced pain from a disc and the  
21 plaintiff here is claiming injury to a disc, would that cause  
22 you to lose any -- and I'm just asking you to be honest.

23 PROSPECTIVE JUROR NO. 323: No.

24 MR. WINNER: Would that cause you to lose any  
25 objectivity of --

1 PROSPECTIVE JUROR NO. 323: No.

2 MR. WINNER: -- does that cause you to favor the  
3 plaintiff a little more than the defendant --

4 PROSPECTIVE JUROR NO. 323: No.

5 MR. WINNER: -- who is disputing a disc injury?

6 PROSPECTIVE JUROR NO. 323: No.

7 MR. WINNER: Okay.

8 PROSPECTIVE JUROR NO. 323: If I said yes, you'd  
9 dismiss me?

10 MR. WINNER: If you tell the truth, I don't mind  
11 having --

12 PROSPECTIVE JUROR NO. 323: I had told the truth the  
13 first time.

14 MR. WINNER: Okay. Who else [inaudible]?

15 PROSPECTIVE JUROR NO. 323: [Inaudible].

16 MR. WINNER: I'm sorry?

17 PROSPECTIVE JUROR NO. 323: It's Friday, I'm a  
18 little punchy.

19 MR. WINNER: I understand. And I didn't bring all  
20 my notes up here. Who else has either themselves or a loved  
21 one or a relative or someone close to you would have back or  
22 neck issues? And I know we already -- we've already spoken to  
23 Mr. Gomes. Anybody else?

24 PROSPECTIVE JUROR NO. 376: I mentioned previously  
25 that my dad has that.



1 MR. WINNER: Your dad, yeah.

2 PROSPECTIVE JUROR NO. 323: Yeah. And that wasn't -  
3 - that wasn't through a car accident, it was just from wear  
4 and tear and then, you know, he played football so that is  
5 just contact.

6 MR. WINNER: So that was -- unless he's still  
7 playing football that would have been some years ago I would  
8 assume?

9 PROSPECTIVE JUROR NO. 323: Yeah, [inaudible].

10 MR. WINNER: What's that?

11 PROSPECTIVE JUROR NO. 323: It -- yeah, it was -- it  
12 was when he was in high school, so.

13 MR. WINNER: Okay. Would the fact that your dad has  
14 experienced some disc problems over the years does that strike  
15 a little too close to home to you, and make it difficult for  
16 you to listen to the evidence in this case --

17 PROSPECTIVE JUROR NO. 323: No.

18 MR. WINNER: -- impartially?

19 PROSPECTIVE JUROR NO. 323: No. No.

20 MR. WINNER: You'd be okay? Anybody else?

21 Okay. We'll go back to -- pass it back to Ms.  
22 Rodriguez, please.

23 PROSPECTIVE JUROR NO. 249: Same here. I had  
24 mentioned yesterday my dad has suffered chronic head, neck and  
25 back.

1 MR. WINNER: What -- and thank you, I remember that  
2 now. Remind me, please, what brought about the chronic neck  
3 and back issues?

4 PROSPECTIVE JUROR NO. 249: The doctors don't really  
5 know. I think that's probably the question.

6 MR. WINNER: It just came on over the course of  
7 years?

8 PROSPECTIVE JUROR NO. 249: Um-hum.

9 MR. WINNER: Yeah. Wear and tear?

10 PROSPECTIVE JUROR NO. 249: Um-hum.

11 MR. WINNER: How many -- how long ago did that begin  
12 or come back?

13 PROSPECTIVE JUROR NO. 249: He's been in pain as  
14 long as I can remember.

15 MR. WINNER: Okay. Does he do --

16 PROSPECTIVE JUROR NO. 249: About 40 years.

17 MR. WINNER: -- anything for it?

18 PROSPECTIVE JUROR NO. 249: Huh?

19 MR. WINNER: Does he do anything for it?

20 PROSPECTIVE JUROR NO. 249: Tries different  
21 medications, he sees lots of doctors. They think it's one  
22 thing and then it's not. Then --

23 MR. WINNER: Remind me, what does your father do?

24 PROSPECTIVE JUROR NO. 249: He works for himself.  
25 He's unable to work consistently.

1 MR. WINNER: Was he doing something years ago that  
2 might have brought it out, the discomfort in the neck and  
3 back?

4 PROSPECTIVE JUROR NO. 249: There's -- there's  
5 theories. He's been in minor accidents. They think that may  
6 have contributed, but it wasn't a significant accident. He  
7 worked for a furniture store, so lifting, possibly.

8 MR. WINNER: Oh, lifting furniture and moving things  
9 and --

10 PROSPECTIVE JUROR NO. 249: Uh-huh.

11 MR. WINNER: Yeah.

12 PROSPECTIVE JUROR NO. 249: But it's -- he doesn't  
13 recall any injuries at the time, no -- no instance stands out.

14 MR. WINNER: Okay. Would the fact that your father  
15 has experienced discomfort with a disc and the allegation  
16 here, the allegation is a problem with a disc, which is  
17 disputed, but if that's the allegation and that medical  
18 condition is in your family, would that cause you to favor the  
19 plaintiff more than the defendant coming into the case?

20 PROSPECTIVE JUROR NO. 249: No, sir.

21 MR. WINNER: Okay. Should Babylyn Tate be concerned  
22 about having someone like you sitting on the jury because your  
23 family has experienced those symptoms in the past?

24 PROSPECTIVE JUROR NO. 249: No, sir.

25 MR. WINNER: Okay. Excuse me.

1           Your Honor, I think that will be a good stopping  
2 point if that works for you.

3           THE COURT: You squeezed every last second out.

4           MR. WINNER: Not quite. There's one minute left.

5           THE COURT: Well, on this computer, more accurate  
6 it's 5:00 o'clock and 11 seconds.

7           MR. WINNER: I have 4:59, I believe.

8           UNIDENTIFIED PROSPECTIVE JUROR: I have 5:01.

9           MR. WINNER: Ladies and gentlemen, thank you for  
10 your patience.

11          THE COURT: All right. Ladies and gentlemen, we're  
12 going take our weekend recess.

13          During the recess, you are admonished not to talk to  
14 or converse among yourselves or with anyone else on any  
15 subject connected to this trial or read, watch or listen to  
16 any report of or commentary on the trial of any person  
17 connected with this trial, by any medium of information,  
18 including without limitation, to newspapers, television, the  
19 Internet and radio, or form or express any opinion on any  
20 subject connected with the trial until the case is finally  
21 submitted to you.

22          Have a good weekend. We'll see you back here Monday  
23 at 10:00.

24          THE MARSHAL: All rise for the exiting jury.

25          PROSPECTIVE JUROR NO. 451: Sorry, I can't come next

1 week because my daughter -- I said -- I gave you a letter.  
2 They have surgery last Tuesday and I can't be with her. And I  
3 had to take care of my grandson because her husband going out  
4 of the town for work. So, sorry.

5 THE COURT: Who is taking care of her now?

6 PROSPECTIVE JUROR NO. 451: He's in school.

7 THE COURT: Well, the daughter that --

8 PROSPECTIVE JUROR NO. 451: Her dad -- her dad could  
9 get out --

10 THE COURT: -- the daughter that had surgery.

11 PROSPECTIVE JUROR NO. 451: My daughter had the  
12 surgery. My grandson is in his school. Next week the kids  
13 are start to get off early.

14 THE COURT: Oh, for summer?

15 PROSPECTIVE JUROR NO. 451: So -- yeah, for the  
16 summer. The whole week, Monday, Tuesday, Wednesday, Thursday  
17 going to be half day. So I had to pick it up and take care of  
18 him because his dad is out of the town for work.

19 THE COURT: And you're saying you put that in your  
20 letter?

21 PROSPECTIVE JUROR NO. 451: No. And the letter said  
22 I had to take care of my daughter because there's nobody with  
23 her right now. She's alone. That's what I end up going check  
24 if she's okay.

25 THE COURT: Well, who's with her now?

1 PROSPECTIVE JUROR NO. 451: She's alone. That's  
2 what [indiscernible] I letted yesterday.

3 THE COURT: What kind of surgery was it?

4 PROSPECTIVE JUROR NO. 451: It's a hysterectomy. I  
5 don't know how you say it.

6 THE COURT: So somebody else had some -- has an  
7 issue with coming back next week? Well, I mean, you know what  
8 I'm saying, a legitimate -- not legitimate, but an issue that  
9 would get you excused.

10 PROSPECTIVE JUROR NO. 264: Can I give you mine just  
11 -- or my -- I was with the impression you said before that we  
12 were going to start at 1:00 o'clock like every day and I had  
13 promised my son ten years, he's kind of -- a school person  
14 takes him and I promised him that I was going to be there on  
15 Monday morning --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 264: -- it's just going to be  
18 in the morning.

19 THE COURT: Counsel approach.

20 THE MARSHAL: Everybody just have a seat.

21 (Bench conference)

22 THE COURT: I leave it up to you with respect to  
23 that one, if he had something he was planning on because of  
24 the scheduling, I told him, we'll give yo a choice. We'll  
25 either excuse him or we'll start at 1:00 so he can go, like he

1 planned on.

2 MR. WINNER: Can we start at noon?

3 THE COURT: Yeah, I mean, if he can.

4 MR. PRINCE: Yeah, well, we need to kind of get on  
5 the pace a little bit that's why I wanted to start at 10:00.  
6 I mean, you told them most days you start at 1:00 but --

7 THE COURT: And I think I did tell them that Mondays  
8 and Fridays would be 10:00 if you all agreed on it, but I  
9 believe I threw that -- I don't know. I'm -- that's just what  
10 I'm leaning towards.

11 MR. PRINCE: Um --

12 THE COURT: What's his name, Perez, Mr. Perez?

13 MR. PRINCE: Marquez.

14 MR. WINNER: Marquez.

15 THE COURT: Marquez.

16 (End of bench conference)

17 THE COURT: Mr. Marquez, what time is the  
18 presentation?

19 PROSPECTIVE JUROR NO. 249: It's -- I believe it  
20 starts at 9:00, 9:30, we normally get in and I don't know -- I  
21 think it lasts like two hours or --

22 THE COURT: Could you get here at noon do you think?

23 PROSPECTIVE JUROR NO. 249: -- I'm sorry?

24 THE COURT: Could you make noon?

25 PROSPECTIVE JUROR NO. 249: Yes, noon is fine.

1 MR. PRINCE: Okay. That's what [inaudible].  
2 THE COURT: Does -- does noon help those other  
3 people that were having an issue?  
4 UNIDENTIFIED PROSPECTIVE JUROR: 1:00 o'clock.  
5 UNIDENTIFIED PROSPECTIVE JUROR: Better. Better.  
6 Better.  
7 THE COURT: Better?  
8 UNIDENTIFIED PROSPECTIVE JURORS: Better.  
9 THE COURT: That's good.  
10 MR. PRINCE: Yeah, noon's fine. If it's okay with  
11 you.  
12 THE COURT: Yeah, it's good. We'll take an extra  
13 short break in there, because one break won't be enough  
14 probably.  
15 PROSPECTIVE JUROR NO. 253: I just have a quick  
16 question. How long can this process take --  
17 UNIDENTIFIED PROSPECTIVE JUROR: Yes.  
18 PROSPECTIVE JUROR NO. 253: -- of picking the jury  
19 before the trial starts? Weeks?  
20 THE COURT: No.  
21 MR. PRINCE: No.  
22 MR. WINNER: No.  
23 THE COURT: No.  
24 PROSPECTIVE JUROR NO. 253: Okay.  
25 THE COURT: We'll finish -- I expect we'll finish



1 Monday.

2 PROSPECTIVE JUROR NO. 253: Monday?

3 THE COURT: Don't hold me to it and start throwing  
4 things if they don't --

5 MR. PRINCE: We're still on pace -- we're still on  
6 pace for everything --

7 PROSPECTIVE JUROR NO. 253: Okay.

8 MR. PRINCE: -- so we're close. We're close.

9 PROSPECTIVE JUROR NO. 243: I mean, we won't go  
10 right 'till June, will we with this -- no, only because I'm  
11 going back to New York in June, so.

12 THE COURT: We're all right. We are all right. I  
13 know it's going slowly but we'll -- it's fine.

14 MR. PRINCE: We're on our pace.

15 THE COURT: So noon helps everybody?

16 UNIDENTIFIED PROSPECTIVE JURORS: Yes.

17 UNIDENTIFIED PROSPECTIVE JUROR: 1:00 o'clock.

18 THE COURT: I'm sorry?

19 UNIDENTIFIED PROSPECTIVE JUROR: 1:00 o'clock. I  
20 have a -- I got accepted for a job and I already scheduled  
21 today to Monday. I can't reschedule that again.

22 THE COURT: Okay. Up to you guys. You want to push  
23 it to 1:00 so -- or do you want to excuse her?

24 MR. WINNER: Do we need her? I don't want to  
25 [inaudible] in the box. Do we need the woman who's sitting

1 way back there is my question?

2 (Bench conference)

3 MR. PRINCE: You said what?

4 THE COURT: Turn this way, guys.

5 MR. WINNER: I asked you a question, you make faces  
6 with it.

7 MR. PRINCE: Well, I don't understand what you're  
8 asking because it isn't clear and that's --

9 THE COURT: He's asking do you want to just release  
10 her because she's too far back in the box?

11 MR. PRINCE: No, no, no, no, she's like within a few  
12 coming up so.

13 THE COURT: All right. Then 1:00 o'clock?

14 MR. WINNER: Okay.

15 THE COURT: All that for naught?

16 MR. WINNER: That's fine.

17 MR. PRINCE: Yeah.

18 MR. HENRIOD: And then the -- the hysterectomy, the  
19 grandmother?

20 THE COURT: Do you want to get rid of her? I don't  
21 -- I don't think it's necessarily -- I mean, I'm not sure what  
22 she's doing for surgery that occurred several days ago, but I  
23 don't care if you want to let her go.

24 MR. WINNER: How far back is she?

25 THE COURT: I'm more worried about the kid that

1 she's got to take care of.  
2 MR. PRINCE: Yeah, me, too.  
3 MR. WINNER: That's fine.  
4 THE COURT: Okay. Yeah? So we're going to agree on  
5 her?  
6 MR. PRINCE: Okay.  
7 MR. HENRIOD: Yeah, I'm okay with [inaudible].  
8 THE COURT: Okay. What's her name?  
9 MR. WINNER: The grandmother with the hysterectomy?  
10 That's fine with me.  
11 MR. PRINCE: What?  
12 MR. HENRIOD: Let her go?  
13 MR. PRINCE: No. No. Let's bring her back.  
14 MR. HENRIOD: Okay.  
15 THE COURT: You want to bring her back?  
16 MR. PRINCE: Bring her back.  
17 MR. WINNER: Thank you.  
18 MR. PRINCE: Like, I don't understand, it's not her  
19 kid, right? It's not -- it's a -- is it a grand?  
20 THE COURT: It's her grandchild that --  
21 MR. PRINCE: It's her daughter?  
22 THE COURT: -- she takes care of and her daughter  
23 just had surgery and the husband's out of town.  
24 MR. PRINCE: Well, can you find -- can you find the  
25 letter that she sent? Do you remember her number?

1 THE COURT: Where's Adam? That's Adam's job.  
2 THE CLERK: Adam's right here.  
3 MR. PRINCE: I just want to see the letter. Is  
4 it --  
5 THE MARSHAL: Yes?  
6 THE COURT: Huh? What's the number of the gal  
7 that's got the kid with the surgery.  
8 MR. PRINCE: Yeah, with the -- the surgery.  
9 THE MARSHAL: Oh, that's [inaudible]. 451.  
10 THE COURT: 451.  
11 MR. PRINCE: I just wanted to see the letter that  
12 she --  
13 (Pause in the proceedings)  
14 THE COURT: 451?  
15 THE MARSHAL: Yep, Wendy, Wendy Leyva.  
16 MR. PRINCE: Oh, okay.  
17 (Court/Counsel reviewing letter)  
18 THE COURT: It doesn't seem worth fighting to me,  
19 but.  
20 MR. PRINCE: Huh?  
21 THE COURT: It doesn't seem like that big of -- I  
22 mean, I'd let her go, but. And I think she's added to it the  
23 fact that the child's father is out of town.  
24 MR. PRINCE: Yeah, I'm fine.  
25 THE COURT: Let her go?

1 MR. PRINCE: Yeah. Okay.  
2 THE COURT: Okay.  
3 MR. WINNER: You just want to let her go?  
4 THE COURT: I do, if you will agree.  
5 MR. PRINCE: I'm fine with that.  
6 MR. WINNER: Does that mean we can come at noon  
7 instead of 1:00?  
8 THE COURT: No, she's not the 1:00.  
9 MR. PRINCE: No, she's not the 1:00.  
10 THE COURT: She's, you know --  
11 MR. WINNER: Oh.  
12 MR. PRINCE: Shit.  
13 MR. WINNER: Okay.  
14 MR. PRINCE: That will totally mess up Monday.  
15 Shit. Okay.  
16 (End of bench conference)  
17 THE COURT: All right. Here's what we'll -- here's  
18 where I am going to -- Ms. Omata [sic] [phonetic], I'm going  
19 to excuse you.  
20 PROSPECTIVE JUROR NO. 451: Okay, thank you.  
21 THE COURT: And to accommodate everyone else we're  
22 going to come back at 1:00.  
23 UNIDENTIFIED PROSPECTIVE JUROR: Okay.  
24 THE COURT: Okay?  
25 UNIDENTIFIED PROSPECTIVE JUROR: Good. Okay.

1           THE COURT: Uh-uh.

2           PROSPECTIVE JUROR NO. 309: This is from the letter

3 I wrote you. I don't know if you've read it but --

4           THE COURT: Well, we've read all of them and those

5 who -- it was sufficient to excuse we have. So --

6           PROSPECTIVE JUROR NO. 309: Well, I don't -- I don't

7 -- I don't need an excused, just to maybe come in at a later

8 time on the day that -- whatever day scheduling for an

9 interview.

10          THE COURT: Which day was that?

11          PROSPECTIVE JUROR NO. 309: And then -- no, the

12 interview I'm not sure yet. I'll find out probably next week.

13 And then there was one day that was like a mandatory work day

14 that I wrote down the date. I don't have my phone on, because

15 [inaudible] but --

16          THE COURT: (To Clerk) Can you pull me his letter,

17 please?

18          PROSPECTIVE JUROR NO. 309: -- outside.

19          THE COURT: No worries.

20          PROSPECTIVE JUROR NO. 309: But, I mean, for the

21 interview thing, if I could do it in the morning and come just

22 at a later time that day is fine.

23          THE COURT: Hopefully, if it's on a Tuesday,

24 Wednesday or Thursday we generally don't start until 1:00.

25          PROSPECTIVE JUROR NO. 309: Okay, then I'll be fine.



1 THE COURT: Okay? Everybody else, is happy as we  
2 can be, all things considered?

3 UNIDENTIFIED SPEAKER: Okay. 1:00 on Monday.

4 THE COURT: 1:00 on Monday, same place.

5 THE MARSHAL: 1:00 o'clock on Monday. All rise for  
6 the exiting jury.

7 (Prospective jurors exit at 5:10 P.M.)

8 THE COURT: Okay. Do we need to -- since we're  
9 going so late in the day is there -- do we need -- should we  
10 meet earlier so that we truly bring the jury in at 1:00  
11 o'clock?

12 MR. PRINCE: Fine.

13 THE COURT: Should we all get here and --

14 MR. PRINCE: Sure.

15 MR. WINNER: Yeah, that's fine.

16 THE COURT: -- in case somebody comes up at  
17 something?

18 MR. PRINCE: Want to meet at 12:30 and just cover  
19 any issues we need to?

20 THE COURT: Sure. And then if there is nothing to  
21 cover then we'll just hang out.

22 Okay. So 12:30 on Monday, guys. Have a good  
23 weekend.

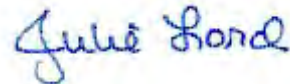
24 MR. WINNER: You too. Thanks, Judge.

25 (Court recessed at 5:11 P.M., until Monday,  
26 May 20, 2019, at 12:30 P.M.)



\* \* \* \* \*

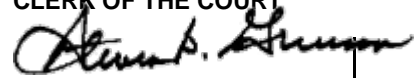
ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.



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JULIE LORD, TRANSCRIBER  
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12



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 21, 2019

**RECORDER'S ROUGH DRAFT TRANSCRIPT OF:  
JURY TRIAL - DAY 6**

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

1                   LAS VEGAS, NEVADA, TUESDAY, MAY 21, 2019

2                   (Case called at 12:43 P.M.)

3                   (Outside the presence of the jury)

4                   THE COURT: Hi guys.

5                   All right. With respect to the exchange of the  
6 Power Points, has that been provided?

7                   MR. PRINCE: I gave them mine. They're looking at  
8 mine now.

9                   THE COURT: Okay.

10                  MR. PRINCE: So it's done.

11                  THE COURT: As soon as you conclude they'll give you  
12 theirs before they begin. My position is the law is such that  
13 they would get to watch yours before theirs and so for  
14 whatever reason that's how it's built.

15                  You open, they open. They do get to see yours --

16                  MR. PRINCE: Okay.

17                  THE COURT: -- you don't get to see theirs and --  
18 but you'll get to see it before they give it.

19                  MR. PRINCE: Okay.

20                  THE COURT: I also have a Trial Brief to Exclude DMV  
21 Manuals and Training from Use During Trial and to Prohibit  
22 Questions based on the Reptile Script.

23                  Have you received that?

24                  MR. PRINCE: No.

25                  MR. WINNER: And I don't imagine that'll happen.

1 And you don't do reptile stuff in opening, do you?

2 MR. PRINCE: No. I don't know what reptile stuff is  
3 or what they're referring to. And am I going to be talking  
4 about that she drove unsafe; yeah. Unbelievably, yes of  
5 course. So --

6 THE COURT: Well --

7 MR. PRINCE: -- I think that even -- they even filed  
8 a Motion in Limine on that which was denied so.

9 THE COURT: I thought they did but, you know, these  
10 cases run together and --

11 MR. PRINCE: No. They --

12 THE COURT: -- a lot of the same motions --

13 MR. PRINCE: -- did and it was denied, so.

14 THE COURT: -- get filed so.

15 Anyway, here's where I'm looking with respect to  
16 excluding the DMV manuals and training, I'm inclined to grant  
17 that portion unless they were disclosed as evidence or  
18 impeachment evidence pursuant to 16.1.

19 With respect to anything about limiting reptile  
20 stuff, if it's an objectionable question, object and I will  
21 sustain it. I don't tell people what strategies to use or not  
22 use.

23 There you go. So if anybody needs to respond beyond  
24 that go ahead, otherwise, those rulings will stand; okay?

25 (Pause in the proceedings)

1 THE COURT: Okay. There's nothing else?  
2 MR. DEGREE: Tom, anything?  
3 THE COURT: Okay, so we're just here reviewing the  
4 Power Point?  
5 MR. WINNER: I'm still reading this. I think  
6 respectfully I'm going to have an objection or two. Most of  
7 these are not new screens but some of them are.  
8 THE COURT: Okay. Well, let me know when you're  
9 ready.  
10 MR. WINNER: Okay.  
11 THE COURT: I'm not going to sit here and watch you  
12 read.  
13 Do you need me?  
14 THE MARSHAL: Just waiting on one.  
15 THE COURT: Okay. Well, we only had them come back  
16 here at 12:45 so that we'd make sure they were here by 1:00.  
17 We can start early, as soon as they're all ready, as soon as  
18 counsel gets prepared; okay?  
19 THE MARSHAL: Okay.  
20 THE COURT: Did you all look at the transcript of  
21 the pre-instructions that I'm going to read? Does anybody  
22 have an objection?  
23 MR. WINNER: No. They're the same ones that he  
24 asked.  
25 MR. PRINCE: I am -- I am objecting on the

1 comparative negligence instruction so -- like I did the last  
2 time, so they don't have any evidence of that yet. I mean,  
3 the other ones are just the -- part of our burden.

4 THE COURT: Okay. But I allowed it last time? I  
5 allowed it last time?

6 MR. PRINCE: You did, yeah.

7 THE COURT: Okay.

8 MR. PRINCE: I mean, just because you're giving it  
9 now, you may decide at the end of the evidence that there's no  
10 basis for a comparative negligence instruction.

11 THE COURT: Oh, that's right. Okay, well, we'll  
12 revisit that when and if we need to.

13 MR. PRINCE: Okay.

14 THE COURT: I've got a criminal trial because next  
15 week is technically my criminal week. So when do you all  
16 anticipate being done next week? They have a two, two-and-a-  
17 half day'er that they want to try and sneak in.

18 MR. PRINCE: I think we're going to go almost the  
19 full week because Mr. Winner, I mean --

20 THE COURT: It's a short week, as well.

21 MR. PRINCE: Right.

22 MR. WINNER: Yeah, I have -- I was telling Mr.  
23 Prince I have witnesses coming from out of state, or one of  
24 them from out of state Tuesday, and my other expert's  
25 available Thursday.

1 THE COURT: Okay.

2 MR. WINNER: I visited with him about trying to  
3 settle up jury instructions on Wednesday so maybe we can go  
4 straight from that witness to closings on Thursday, unless you  
5 have a rebuttal case.

6 MR. PRINCE: Right. It seems likely.

7 THE COURT: Okay. Well, I can't do it in a day  
8 anyway so we'll move them over to the next week. But we  
9 definitely won't go into the following week; correct?

10 MR. PRINCE: No, I don't -- I don't believe so, no.

11 (Pause in the proceedings)

12 MR. PRINCE: Are you almost done?

13 Judge, I think we're going to have Mr. Winner's  
14 objections here momentarily on the Power Point.

15 THE COURT: All right.

16 (Pause in the proceedings)

17 THE COURT: All right. Mr. Winner, do you have  
18 objections?

19 MR. WINNER: I do.

20 MR. PRINCE: Yeah, he has it in his December 8th,  
21 2017.

22 MR. WINNER: I haven't looked at the second one yet.

23 (Pause in the proceedings)

24 THE COURT: Which is the first and which is the  
25 second; the fatter one the first one?



1 MR. PRINCE: Yeah.

2 MR. WINNER: The fatter one is, I assume. Well, I  
3 don't know, I assume he'll give that one first.

4 THE COURT: Now, FYI, I'm looking more for mistrial  
5 kinds of issues than -- whatever, okay.

6 MR. WINNER: These would be slides 35 through 39.

7 MR. PRINCE: She has a whole copy up there.

8 MR. WINNER: Yeah, 35 through 39, I think have kind  
9 of a punitive connotation to them.

10 MR. PRINCE: Oh, God.

11 MR. WINNER: They're argumentative. They tell the  
12 jury the reason we're here is because the defendant accepts no  
13 blame and it's all her fault and that's the reason we're here  
14 in trial.

15 MR. PRINCE: Those are the same slides I put up the  
16 last time, slightly different -- I took the word "responsible"  
17 off there because -- just to avoid any issues. So I says, why  
18 are we here? Defendant blames Desire -- if you look at 35  
19 that's her under oath statement during the course of discovery  
20 because she does blame Desire as a fact.

21 MR. WINNER: Well, saying the reason we're here is  
22 -- the reason we're here is because the defendant won't accept  
23 responsibility or doesn't accept responsibility; that's  
24 argumentative and it's punitive. It's also, I would suggest,  
25 misleading. As the Court knows, but the jury should not know,

1 there is insurance involved. There was an effort at trying to  
2 resolve the case involving paying money. The numbers were  
3 understandably far apart, but to tell the jury the reason  
4 we're here is the defendant won't accept any responsibility  
5 would be tantamount to my saying the reason we're here is the  
6 plaintiff wants too much money which I don't think I should be  
7 allowed to say on opening.

8 MR. PRINCE: They're argumentative?

9 THE COURT: I think that the slides are okay. I  
10 don't like the "defendant accepts no blame" portion. I think  
11 that --

12 MR. PRINCE: Where do I say that?

13 THE COURT: -- I don't think they're necessarily a  
14 problem.

15 MR. PRINCE: I said defendant blames Desire which  
16 she does. And she accepts no blame. So you want me to take  
17 that off, just the header off?

18 THE COURT: Here's what I'm saying; this is opening  
19 statement. I think those are more appropriate for closing  
20 argument.

21 MR. PRINCE: Do you want me to take the header off  
22 of it?

23 THE COURT: Yes.

24 MR. WINNER: And my --

25 MR. PRINCE: The --

1 MR. WINNER: -- my difficulty is the question, why  
2 are we here, and the answer being that.

3 MR. PRINCE: Well, why can't we tell the jury why  
4 we're here? I mean, that's part of a dispute, right? That  
5 the whole thing is a dispute.

6 THE COURT: Well, I think that's argument as well.

7 MR. PRINCE: Why are we here?

8 THE COURT: Why are we here and the defendant blames  
9 Desire. Again, I explained --

10 MR. PRINCE: Well, why can't I say -- I'm going to  
11 say that she blames others, because she does. I mean, what --  
12 who else are we going to say who caused the collision? I  
13 mean, she blames the collision on Desire. I mean, that's a  
14 fact.

15 THE COURT: I'm not saying -- I think it's an  
16 argument to be made --

17 MR. WINNER: Stating it as a fact, I don't object  
18 to.

19 THE COURT: -- I think it's a made -- I think that  
20 the fact itself is fine. You can -- I think you can say that  
21 she blames Desire. I just don't like the "why are we here"  
22 because I think that's argument.

23 MR. PRINCE: Okay. Then we're going to move this  
24 here and take off "why are we here" and then take off the  
25 other headers.

1           A/V TECH:   Okay.

2           MR. PRINCE:   And then just keep the same header

3 throughout that she blames Desire.

4           THE COURT:   Is that it?

5           MR. WINNER:   There was also -- there's a screen in

6 which the life expectancy table is mentioned. I think the

7 plaintiff filed a motion about it that was denied. In the

8 interest of moving things along I'm not going to make a -- a

9 stink about that, I'm just going to assume you're not going to

10 talk about that screen for a long period of time --

11          MR. PRINCE:   Other than --

12          MR. WINNER:   -- just that you're --

13          MR. PRINCE:   -- that's her life expectancy. We have

14 an expert report dated December 8th, 2017 where our expert,

15 Jason Garber testifies tomorrow, says that she assumes she has

16 a 55-year life expectancy. 54.8 years. I'm just using the

17 governmental table to talk about life expectancy.

18          THE COURT:   From today?

19          MR. PRINCE:   For today.

20          THE COURT:   From today?

21          MR. WINNER:   And Garber says that --

22          MR. PRINCE:   Yeah.

23          MR. WINNER:   -- in his report?

24          MR. PRINCE:   Yes, he does.

25          MR. WINNER:   A fifty --

1 MR. PRINCE: Yes, he does.  
2 MR. PRINCE: Okay. I accept what you say. That's  
3 fine.  
4 THE COURT: Okay.  
5 MR. WINNER: So, I mean --  
6 THE COURT: So we're good?  
7 MR. PRINCE: Okay.  
8 THE COURT: Mr. Winner, we're all good?  
9 MR. WINNER: Yeah, thank you.  
10 THE COURT: Thank you.  
11 THE MARSHAL: All the jury is here is well.  
12 THE COURT: Awesome. Everybody ready to bring in  
13 the jury or do you need a minute?  
14 MS. LORELLI: Just a minute if you don't mind.  
15 THE COURT: Okay.  
16 Do you all want the formal reading of the pleadings?  
17 MR. WINNER: No.  
18 MR. PRINCE: No, we don't.  
19 We can go a little late so we can finish my expert,  
20 right?  
21 THE COURT: Um-hum.  
22 MR. PRINCE: Okay.  
23 THE COURT: I think we agreed 7:00 would be the  
24 latest.  
25 MR. PRINCE: Yeah, yeah.

1           THE COURT: It doesn't have to go all the way to  
2 7:00 but you can have until 7:00.

3           MR. PRINCE: No, no, I'm anticipating to get through  
4 it.

5           MR. WINNER: If we're able to not go late tomorrow,  
6 I have kids, I would appreciate it. But if we have  
7 [inaudible].

8           THE COURT: We aren't going to go late tomorrow or  
9 Thursday. I already told you, I have prior commitments.

10          MR. PRINCE: Right. She has family obligations.

11          MR. WINNER: Thank you.

12          THE MARSHAL: You all set?

13          THE COURT: Um-hum.

14          THE MARSHAL: All right. I'll bring in the jury.

15          MR. PRINCE: Okay.

16          THE COURT: Ready. Ready to go.

17                   (Pause in the proceedings)

18          THE MARSHAL: All rise for the entering jury.

19                   (Jury enters at 12:59 P.M.)

20          THE MARSHAL: All present, Your Honor.

21                   (Inside the presence of the jury)

22          THE COURT: Do the parties stipulate to the presence  
23 of the jury?

24          MR. PRINCE: Yes, Your Honor. Thank you.

25          THE COURT: Welcome back, ladies and gentlemen. And

1 do you have your -- do you have your badges? Do you have your  
2 notepads? Everybody's got something to write with? So we're  
3 good to go.

4 Make sure you're wearing your badges at all times at  
5 the courthouse. That lets people know not to talk to you or  
6 in front of you, sometimes more importantly.

7 Okay. I'm going to read you a whole bunch of  
8 instructions so just relax.

9 Before we begin the trial, for those who remain as  
10 jurors, I want to let you know what you can expect. First, we  
11 want you to be as comfortable as possible while you're here.  
12 If you have trouble hearing or seeing at anytime during the  
13 trial, please raise your hand as an indication.

14 Also, if you need to use the restroom feel -- if you  
15 feel ill or if you have any other problem please also raise  
16 your hand as an indication. I encourage you to stand up and  
17 stretch between witnesses or when the attorneys are discussing  
18 something up at the bench with me.

19 You can also feel free to bring in any way or other  
20 clear liquid as long as it doesn't cause any disruptions in  
21 the proceedings.

22 During the trial we will generally -- we've already  
23 discussed our hours previously -- generally, Tuesdays,  
24 Wednesdays and Thursday it will be 1:00 to 5:00; Mondays and  
25 Fridays we may come in at 10:00.

1 But I told you this Friday, we're dark. Tomorrow  
2 will be 1:00 to 5:00, maybe actually a little bit earlier and  
3 as well on Thursday.

4 We generally will not stay past 5:00 absent a reason  
5 and I will also, as I did yesterday, discuss it with you if  
6 that's something that works for everybody.

7 To the extent that we were in -- we would generally  
8 break for lunch sometime around noon, and the length will kind  
9 of just depend on what's going on, I guess.

10 This is a civil suit commenced by the plaintiffs,  
11 Desire Evans-Waiau and Guadalupe -- I'm sorry, counsel,  
12 what's --

13 MR. PRINCE: Parra, Guadalupe Parra.

14 THE COURT: Thank you.

15 MR. PRINCE: Thank you.

16 THE COURT: -- versus Babylyn Tate, defendants.

17 This case is based on the Complaint to which the  
18 defendant has filed a response which we call an Answer.

19 My understanding is counsel are waiving the formal  
20 reading of the pleadings?

21 MR. PRINCE: At this time we are, Judge.

22 MR. WINNER: Yes, Your Honor.

23 THE COURT: Ladies and gentlemen, you must base your  
24 verdict solely on the evidence presented in the courtroom and  
25 the instructions on the law that I give you.



1           To protect the integrity of the jury process it is  
2 very important that you do not do any independent research  
3 about this case until the jury has reached a final decision.  
4 You may not visit the location involved in the case. You must  
5 not do any research or look up words, names or maps or  
6 anything else that may have anything to do with this case.

7           This includes reading newspapers, watching  
8 television or using a computer, cell phone, the Internet or  
9 any other means to get information related to this case or the  
10 people and places involved in the case. This applies whether  
11 you are in the courthouse, at home, or anywhere else.

12           Additionally, until you are discharged from service  
13 as a juror you must not provide or receive any information  
14 about your jury service to anyone, including friends, co-  
15 workers and family members. You may tell them that you have  
16 been selected for a jury and how long the case will take.

17           However, you must not give any information about the  
18 case itself or the people involved in the case. You must also  
19 warn people not to try to say anything to you, or write to you  
20 about your jury service or the case.

21           This includes face-to-face, phone or [indiscernible]  
22 communications. In this age of electronic communication I  
23 want to stress that you must not use electronic devices or  
24 computers to research or talk about this case including  
25 Googling, Tweeting, texting, blogging, e-mailing, posting

1 information on a website or any other means at all. All of us  
2 are depending on you to follow these rules so that there will  
3 be a fair and lawful resolution of this case.

4 The trial will proceed in the following order: The  
5 parties have the opportunity to make opening statements. What  
6 is said in opening statement is not evidence. These  
7 statements simply serve the purpose of an introduction to the  
8 evidence which the party making the statement intends to  
9 produce.

10 The plaintiff will introduce evidence in support of  
11 the plaintiff's claim. After the plaintiff presents evidence,  
12 the defendant may present evidence but is not obligated to do  
13 so. The parties may then present rebuttal evidence.

14 After the evidence is presented, I will instruct you  
15 on the law that you are to apply in reaching a verdict. You  
16 must not be concerned with the wisdom of any rule of law  
17 stated in these instructions or in the instructions which I  
18 will read you after the evidence.

19 Regardless of your opinion, any opinion you may have  
20 as to what the law ought to be, it would violate your oath to  
21 base a verdict upon any other view of the law than what was in  
22 the instructions.

23 After the instructions on the law are read to you,  
24 each party has the opportunity to present closing argument in  
25 support of their case. The plaintiff who has the burden of

1 proof goes first and last. What is said in closing argument  
2 is not evidence, just as what is said in opening statements is  
3 not evidence.

4 Closing arguments allow the parties to explain to  
5 you what they think the evidence has shown and what inferences  
6 they think you should draw from the evidence.

7 The evidence in this case will consist of sworn  
8 testimony of witnesses, all exhibits received in evidence,  
9 regardless of which side introduces the evidence. If the  
10 attorneys on both side stipulate to the existence of a fact,  
11 you must, unless otherwise instructed, accept the stipulation  
12 as evidence and regard that fact as proved.

13 I may take judicial notice of certain facts or  
14 events. If I take judicial notice of a fact [indiscernible]  
15 you must accept that fact as true.

16 In every case there are two types of evidence,  
17 direct and circumstantial. Direct evidence is testimony by a  
18 witness about what the person saw, heard or did.  
19 Circumstantial evidence is testimony or exhibits which are  
20 proof of a particular fact from which if that fact is proven  
21 you can infer the existence of a second fact.

22 For example, if you are outside, and you feel  
23 raindrops fall on you, that is direct evidence that it is  
24 raining because you see raindrops falling on you. But if you  
25 go to sleep at night and the ground is dry but when you wake

1 up in the morning the ground is all wet and there are puddles  
2 outside that is circumstantial evidence that it rained while  
3 you were asleep.

4           Although you didn't see it raining you know that the  
5 ground was dry when you went to sleep and now it is wet, that  
6 is circumstantial evidence that it rained last night.

7           You may consider both direct and circumstantial  
8 evidence in deciding this case. The law permits you to give  
9 equal weight to both types of evidence but it is up to you to  
10 decide how much weight to give a particular piece of evidence.

11           You are only to consider the evidence in this case  
12 but you are not limited solely to what you see and hear as  
13 witnesses testify. You must bring to the consideration of the  
14 evidence your common everyday sense and judgment as reasonable  
15 people.

16           You may draw reasonable inferences from the evidence  
17 you feel are justified in light of your experience keeping in  
18 mind that such inferences should not be based on speculation  
19 or guess.

20           Your purposes as jurors is to find and determine the  
21 facts. Under our system of civil procedure you are the sole  
22 judge of the facts. You determine the facts from testimony  
23 you hear and the other evidence including exhibits introduced  
24 in court. It is up to you to determine the inference with  
25 which you feel may be properly drawn from the evidence.

1           It is especially important that you perform you duty  
2 of determining facts diligently and conscientiously for  
3 ordinarily there is no means of correcting an erroneous  
4 statement.

5           Determination of facts by the jury. The parties may  
6 sometimes make objections to some testimony other -- or other  
7 evidence. It is the duty of a lawyer to object to evidence  
8 which he or she may believe may not properly be offered and  
9 you should not be prejudiced in any way against the lawyer who  
10 makes objections on behalf of a party he or she represents.

11           At times, I may sustain objections or direct that  
12 you disregard certain testimony or exhibits. You must not  
13 consider any evidence to which an objection has been sustained  
14 which -- or which I have instructed you to disregard.

15           You must not consider anything which you may have  
16 seen or heard when the Court is not in session, even if what  
17 you see or hear is said or done by one of the parties or by  
18 one of the witnesses.

19           Some evidence may be admitted for a limited purpose  
20 only. When I instruct you that an item of evidence is  
21 admitted for a limited purpose you must consider it only for  
22 that limited purpose and no other.

23           During the trial, it may be necessary for me to  
24 confer with the lawyers at the bench about questions of law or  
25 procedure that I need to make a decision on. Sometimes you

1 may be excused from the courtroom for the same reason.

2 We will try to limit these interruptions as much as  
3 possible but please understand if we take a break it's  
4 necessary and we appreciate your patience.

5 In considering the weight and value of the testimony  
6 by any witness you may take into consideration the appearance,  
7 attitude and behavior of the witness, the interest of the  
8 witness in the outcome of the case, if any, the relations of  
9 the witness to the defendant or the plaintiff, the inclination  
10 of the witness to speak truthfully or not and the probability  
11 or improbability the witness statements and all the facts and  
12 circumstances in evidence.

13 Thus, you may give the testimony of any witness just  
14 such weight and value as you believe the testimony of the  
15 witness is entitled to receive.

16 Until this case is submitted to you, you must not  
17 discuss it with anyone, even your fellow jurors. After it is  
18 submitted to you, you may discuss it only in the jury room  
19 with your fellow jurors. It is important that you keep an  
20 open mind and not decide any issue in the case until the  
21 entire case has been submitted to you, under instructions from  
22 me.

23 Again, if you discover during the course of trial  
24 that you have personal knowledge of the facts of the case or  
25 you know one of the witnesses, please give a note to the

1 marshal who will present it to me.

2           You will be given and have been given a badge to  
3 wear during your service. Again, please wear that badge at  
4 all times while you're in the courthouse or on break. This  
5 lets everyone know that you're a juror on the case. Again,  
6 it's important during the course of this trial, the attorneys  
7 on both sides, the court personnel, other than the marshal,  
8 are not permitted to talk to members of the jury.

9           By this, I mean they cannot only -- can they not  
10 talk about the case but they can't talk to you at all, not  
11 even ask the time of day. The badge helps them to identify  
12 you as a juror.

13           If someone will not talk to you, please understand  
14 they're not being rude. To ensure that absolute impartiality  
15 of the jury the people involved in this case are bound by  
16 ethics and the law to avoid contact with jurors until the case  
17 is decided.

18           You also have your paper and pens for your use. You  
19 are free to take notes during the trial, if you wish. But  
20 please keep your notes to yourself until you and your fellow  
21 jurors go to the jury room to decide the case. Do not let  
22 note-taking distract you.

23           You should also rely on your own memory of what was  
24 said and not be overly influenced by the notes of other  
25 jurors. If jurors have conflicting notes, you should not rely

1 on the notes because the court recorder's record contains the  
2 complete and authentic record of the trial.

3 I may take notes during trial. Please do not take  
4 that into consideration. If I begin to write during a  
5 witness's testimony, you're not to consider the testimony  
6 anymore important than any other.

7 In fact, you're not to consider anything I say or do  
8 during trial that suggests that I'm inclined to favor the  
9 claims or position of any party. I am required to remain  
10 neutral. It's wrong for you to conclude that anything I say  
11 or do means I am for one side or the other in trial.  
12 Discussing and deciding facts is your job alone.

13 Jurors are allowed to ask questions. The procedures  
14 require that you write your juror number and question on a  
15 full sheet of paper and give it to the marshal once the  
16 witness is still in the courtroom -- while the witness is  
17 still in the courtroom.

18 Questions must be factual in nature and designed to  
19 clarify information already presented. If it's a proper  
20 question, under the Court rules I'll ask it. If the evidence  
21 rules prevent me from asking a question then I won't ask it.

22 If I don't ask a question, I'll keep the question,  
23 and explain after the trial the purpose of the trial rule that  
24 preclude in asking it. Please reserve your questions until  
25 the attorneys have finished asking questions of the witnesses



1 and as the attorneys will likely answer your question.

2 Jurors must not place undue weight on the responses  
3 to their questions or draw any conclusions because a question  
4 was not asked.

5 Are any court translators going to be used?

6 MR. PRINCE: No, Your Honor.

7 THE COURT: Finally, in fairness to the parties in  
8 this case, you should keep an open mind throughout this trial.  
9 Reaching your conclusion only after your final deliberations  
10 on all the evidence is in, and you've heard the attorneys'  
11 closing arguments, and my instructions to you on the law, and  
12 then only after an interchange with other members of the jury.

13 All right. You've already been sworn in. Does  
14 either side want to invoke the exclusionary rule?

15 MR. PRINCE: Yes.

16 MR. WINNER: For non-experts, yes.

17 THE COURT: Okay. Now, just a few more instructions  
18 and then we'll get to openings.

19 Okay. These instructions are in no particular  
20 order. These are more specific instructions, kind of a  
21 forecast of the law that you'll get at the end. At the end,  
22 you will get the instructions, you'll get a hard copy as well,  
23 so for the time being we're just letting you know what's  
24 coming; okay?

25 Preponderance of the evidence means such evidence

1 that when considered and compared with that opposed to it has  
2 more convincing force and produces in your mind a belief that  
3 what is sought to be proved is more probably true than not  
4 true.

5 In determining whether a party has met this burden  
6 you will consider all the evidence whether produced by the  
7 plaintiff or the defendant.

8 In order to establish a claim of negligence the  
9 plaintiff must prove the following elements by a preponderance  
10 of the evidence, that the defendant was negligent; 2) that the  
11 plaintiff sustained damage, and 3) that the defendant's  
12 negligence was the proximate cause of damages by the  
13 plaintiff.

14 When I use the word "negligence" in these  
15 instructions, I mean the failure to do something which a  
16 reasonably careful person would do, or the doing of something  
17 which a reasonably careful person would not do, to avoid  
18 injury to themselves or others under circumstances similar to  
19 those shown by the evidence.

20 It is the failure to use ordinary or reasonable  
21 care. Ordinary or reasonable care is that care which persons  
22 of ordinary prudence would use in order to avoid injury to  
23 themselves or others under circumstances similar to those  
24 shown by the evidence.

25 The law does not say how a reasonably careful person

1 would act under those circumstances. That is for you to  
2 decide. You will note that the person whose conduct we set up  
3 as a standard is not the extraordinarily cautious individual,  
4 nor the exceptionally skillful one, but the person of  
5 reasonable and ordinary prudence.

6 It is the duty of the driver of any vehicle to avoid  
7 placing himself or others in danger and to use like care to  
8 avoid an accident, to keep a proper lookout for traffic and  
9 other conditions to be reasonably anticipated and to maintain  
10 proper control of his vehicle.

11 In determining the amount of losses, if any,  
12 suffered by the plaintiff as a proximate result of the motor  
13 vehicle collision in question, you will take into  
14 consideration the nature, extent, and duration of the injuries  
15 or damage you believe from the evidence plaintiffs have  
16 sustained. And you will decide upon a sum of money sufficient  
17 to reasonably and fairly compensate plaintiffs for the  
18 following items: 1) the reasonable medical expenses  
19 plaintiffs have necessarily incurred as a result of the motor  
20 vehicle collision; 2) the reasonable medical expenses you  
21 believe the plaintiffs are reasonably certain to incur in the  
22 future as a result of the motor vehicle collision; 3) the  
23 physical and mental pain, suffering, anguish and disability  
24 endured by the plaintiffs from the date of the motor vehicle  
25 collision to the present; 4) the physical and mental pain,

1 suffering, anguish and disability which you believe plaintiffs  
2 are reasonably certain to experience in the future as a result  
3 of the motor vehicle collision; 5) the loss of enjoyment of  
4 life and compensation for the loss of ability to participate  
5 and derive pleasure from the normal activities of daily life,  
6 or for the plaintiff's inability to pursue their talents,  
7 recreational interests, hobbies or avocations, endured by the  
8 plaintiff from the date of the motor vehicle collision to the  
9 present, and the loss of enjoyment of life and compensation  
10 for the loss of ability to participate and derive pleasure for  
11 the normal activities of daily life, or for the plaintiffs'  
12 inability to pursue their talents, recreational interests,  
13 hobbies or avocations which you believe are reasonably certain  
14 to experience in the future as a result of the motor vehicle  
15 collision.

16           Although you are to consider only the evidence in  
17 this case in reaching a verdict, you must bring to the  
18 consideration of the evidence your every day common sense and  
19 judgment as reasonable men and women. Thus, you are not  
20 limited solely to what you see and hear as the witnesses  
21 testify.

22           You may draw reasonable inferences from the evidence  
23 which you feel are justified in light of common experience  
24 keeping in mind that such inferences should not be based on  
25 speculation or guess. A verdict may never be influenced by

1 sympathy, prejudice or public opinion. Your decision should  
2 be the product of sincere judgment and sound discretion in  
3 accordance with these rules of law.

4           Whether any of the elements of damage have been  
5 proven by the evidence is for you to determine. Neither  
6 sympathy nor speculation is a proper basis for determining  
7 damages. However, absolute certainty as to damages is not  
8 required. It is only required that the plaintiff prove each  
9 item of damage by a preponderance of the evidence.

10           The plaintiff may not recover damages if her  
11 comparative negligence is greater than the negligence of the  
12 defendant. However, if the plaintiff is negligent the  
13 plaintiff still may recover a reduced sum so long as her  
14 comparative negligence is not greater than the negligence of  
15 the defendant.

16           If you determine that the plaintiff is entitled to  
17 recover you shall return by general verdict the total amount  
18 of damages sustained by the plaintiff without regard to her  
19 comparative negligence and you shall return a special verdict  
20 indicating the percentage of negligence attributable to each  
21 party.

22           The percentage of the negligence attributable to the  
23 plaintiff shall reduce the amount of such recovery by the  
24 proportionate amount of such negligence and the reduction will  
25 be made by the court.

1           The credibility or believability of a witness should  
2 be determined by his or her manner upon the stand, his or her  
3 relationship to the parties, his or her fears, motives,  
4 interests or feelings, his or her opportunity to observe the  
5 matter to which he or she has testified, the reasonableness of  
6 his or her statements, and the strength or weakness of his or  
7 her recollections.

8           If you believe that a witness has lied about any  
9 material fact in the case you may disregard the entire  
10 testimony of that witness or any portion of this testimony  
11 which is not proved by other evidence.

12           THE COURT: Okay. Are the parties ready to open?

13           MR. PRINCE: We are, Your Honor.

14           THE COURT: Mr. Prince?

15           MR. PRINCE: Your Honor, thank you.

16           It looks like we maybe have one question.

17           THE COURT: All ready?

18                       (Bench conference)

19           THE COURT: He wants to use his own notebook.

20           MR. WINNER: I don't have a problem with that, do  
21 you?

22           MR. PRINCE: I think we use -- no, I do have an  
23 issue. I want to use them in the court, notepad and they have  
24 to stay in the courtroom.

25           THE COURT: They have to stay in the courtroom but.

1 MR. WINNER: That's fine. I mean, he needs to leave  
2 his notes in the courtroom, I think --  
3 MR. PRINCE: Right.  
4 MR. WINNER: -- [inaudible].  
5 THE COURT: Correct.  
6 MR. PRINCE: If he's on his -- if he has his own pad  
7 as long as it -- the only thing in the pad is these notes then  
8 fine.  
9 THE COURT: Okay.  
10 MR. PRINCE: What's your preference?  
11 MR. HENRIOD: Yeah, so if it's digital the answer is  
12 no.  
13 THE COURT: I don't understand.  
14 MR. PRINCE: What?  
15 MR. WINNER: If it's digital the answer is no.  
16 MR. HENRIOD: So if it's digital the answer is no.  
17 MR. PRINCE: Oh, no, it has to be a written notepad,  
18 correct.  
19 MR. HENRIOD: Yeah.  
20 MR. PRINCE: It can't be anything digital.  
21 THE COURT: (To Juror) Mr. Sweikert, are you talking  
22 about a notepad or digital?  
23 JUROR NO. 8: [Inaudible].  
24 MR. WINNER: Digital, yeah.  
25 THE COURT: A notepad?

1 MR. PRINCE: Well, as long -- he has to leave all --  
2 THE COURT: It has to stay in the courtroom.  
3 JUROR NO. 8: Okay.  
4 THE COURT: No objection?  
5 MR. PRINCE: No, no objection as long as it stays in  
6 the courtroom.  
7 THE COURT: And there's nothing else in there,  
8 right? It's just a blank pad?  
9 JUROR NO. 8: No. It's blank.  
10 MR. PRINCE: Yeah, just leave it.  
11 MR. WINNER: It stays in the courtroom overnight  
12 until trial is over.  
13 THE COURT: And it stays until trial is over. You  
14 can't take it home for the long weekend.  
15 JUROR NO. 8: [Inaudible].  
16 (End of bench conference)  
17 THE COURT: We'll go ahead and [indiscernible] court  
18 exhibit. Okay.  
19 PLAINTIFF'S OPENING STATEMENT  
20 MR. PRINCE: All right. Good afternoon, everyone.  
21 Thank you for your patience over the last week. It's time for  
22 us to get started.  
23 As you know, we have the pleasure of representing  
24 both Desire Evans-Waiau and Guadalupe Parra-Mendez. And  
25 Desire, she's 37-weeks pregnant, as you can see. She's been



1 in and out of the courtroom. And we're excited to tell you  
2 their story.

3 We're going to break it up in kind of two phases.  
4 I'm going to talk about Desire Evans in the initial opening  
5 statement, and then my associate, Jack Degree, he's going to  
6 talk about Guadalupe's case and what you're going to hear in  
7 that case.

8 And I'm excited to tell you their story. And every  
9 story has a starting point. And what I want to do is kind of  
10 give you an overview of what you're going to be hearing over  
11 the next two weeks.

12 And we're going to start with that before this  
13 collision happened on October 30th, 2015, Desire was living  
14 pain free. She didn't need any medical treatment and was  
15 doing well.

16 Everything changed on October 30th, 2015. And I  
17 want to do as part of this, kind of this roadmap if you will,  
18 just give you some of the timeline and a chronology so you  
19 understand what you're going to be seeing in the case.

20 And after her collision in January of 2016, about  
21 two-and-a-half months later they confirmed that she has severe  
22 disc pain coming from one of the discs in her neck at C6-7 as  
23 you're going to learn.

24 In April of 2016, they confirmed again through  
25 diagnostic injections with a pain management physician that

1 she was having disc pain again at C6-7.

2 And by May of 2016, she was recommended for a two-  
3 level neck fusion by a neurosurgeon, Dr. Khavkin, who you're  
4 going to hear from on Thursday.

5 While that was -- all this was set in motion she was  
6 involved in a motor vehicle collision in July of 2016, and it  
7 caused a temporary aggravation most of her low back, not of  
8 her neck. She was already determined to be surgical and that  
9 accident, as you're going to learn by all of the evidence,  
10 played no role in her need for surgery.

11 And by July of 2016, she got a second opinion from  
12 Dr. Jason Garber who confirmed that she needed surgery and  
13 recommended a one level fusion as we're going to be talking  
14 about in this case.

15 And she ultimately had a neck fusion surgery at the  
16 age of 25 on September 1st, 2016. And what you're going to  
17 learn is age is somewhat working against Desire because when  
18 you have a surgery of this type it sets in motion a complete  
19 disease process called adjacent segment disease and it's  
20 almost like a domino theory where once you've used one level  
21 it's going to cause the other levels over time to break down  
22 causing a life of chronic pain and needing for future surgery.

23 And you're going to learn that before October 30th,  
24 2015, she didn't have any of these problems, didn't need any  
25 surgery and was doing well with her husband and her family.

1           Since we're going to be talking about a motor  
2 vehicle collision I think we should start with the rules of  
3 the road. I think everybody's familiar with the rules of the  
4 road. And I think they're very, very simple and they really  
5 apply importantly to this case.

6           The one is all drivers must pay full attention to  
7 traffic in front of them. And that's to avoid causing an  
8 injury, that's to avoid causing a collision and causing damage  
9 to people's cars. And second, drivers should always keep a  
10 safe distance because as we know, things happen on the road,  
11 people slow down, people come to stops for lots of different  
12 reasons.

13           And if we're not paying full attention, and we're  
14 not keeping a safe distance and on a busy street when traffic  
15 comes to a slowdown or a stop and you don't do those two  
16 things collisions happen and people get hurt. As we talked  
17 about during the voir dire, these rules of the road really are  
18 about life safety issues and people's health.

19           Responsibility. This case is about establishing  
20 responsibly of the defendant, Ms. Tate. And a driver who does  
21 not slow down for stopped traffic, that causes a collision, is  
22 responsible for all of the harms and the losses that they  
23 cause. And the Judge gave you a few instructions that I'm  
24 going to go over with us to help you when you're receiving the  
25 evidence you understand what the law allows for, not only in

1 establishing negligence but also what you can recover for all  
2 the harm and the loss and the damage which in this case is  
3 substantial.

4           And we believe in establishing fault and  
5 accountability for the harm meaning all the -- for the harms,  
6 losses, the medical expenses, the loss of enjoyment of life,  
7 the pain, suffering and even more importantly here, the mental  
8 anguish, is full responsibility. And we're just talking about  
9 establishing full legal responsibility on behalf of Desire.

10           What I'm showing you here is when you don't follow  
11 the rules this is an x-ray of Desire's neck after her neck  
12 fusion surgery and at the base of her spine you'll see the  
13 hardware where they removed her disc and now she's fused,  
14 meaning, you can't -- that section doesn't move anymore, as a  
15 result of this collision.

16           When you don't follow the rules of the road, in this  
17 case Desire has over \$180,000 in past medical expenses alone  
18 for all of the treatment, the imaging, the surgery, the  
19 hospitalization that she's gone through and she's going to  
20 need hundreds of thousands of dollars in the future.

21           But I'd like to give you an overview a little bit of  
22 what we've talking about. So far Desire has a C6-7 disc  
23 herniation which required a surgery. She had a soft tissue  
24 what they call a cervical sprain and strain [inaudible]  
25 resolve which is the soft tissue, the muscles tissues and

1 ligaments.

2           A mid back or thoracic sprain and strain as well as  
3 a low back or lumbar sprain and strain. The most significant  
4 issue we're going to be talking about is Desire's neck and the  
5 problem it's not only given her in the past, but what's going  
6 to -- what she has in store looking forward over the next 55  
7 years of her life.

8           October 30th, 2015 to the present, Desire's had 24  
9 doctor visits, 30 chiropractic visits. She's had six x-rays  
10 and MRIs, two spinal injections and so far one spinal surgery.

11           Who is Desire? Desire is originally from Hawaii. She  
12 moved to Las Vegas when she was six years old and she grew up  
13 here in Las Vegas. I'm showing you pictures of her family. She  
14 is with her husband, Jorge. Desire is 28 now. She's been with  
15 Jorge since she was 18.

16           She had -- they have three daughters. The two older  
17 daughters are Jorge's from a prior relationship and Desire has  
18 been their mother since she was 18. Their biological mother  
19 doesn't really play an active role in their life so Desire is  
20 their mother.

21           The younger child is their daughter together, Mayra.  
22 And Myra is 5. And they are blessed right now -- she is  
23 pregnant and pregnant with a little baby boy. And so her and  
24 Jorge they're very close. They have an active family.  
25 Obviously, Desire's primary role is as a husband -- or excuse me

1 -- is a wife and a mother and taking care of her children while  
2 she's worked various jobs off and on, but that's her  
3 responsibility and the love and joy of her life.

4 And we're going to talk about the effect of this  
5 accident and her injuries and how it's affected the quality of  
6 her life and her relationship and ability to participate as a  
7 mother.

8 As many people know, mothers have to put themselves  
9 last or second and put everybody else first and that played a  
10 role in Desire's recover and her ongoing pain and suffering and  
11 her own [inaudible].

12 In every case we have questions. And the first  
13 question we always ask is, who is at fault? Was somebody  
14 negligent? Was somebody careless? Could this all have been  
15 avoided?

16 The second question, was the plaintiff injured, and  
17 the third question is how much money if someone causes an  
18 injury, it's necessary to balance the harms, the loss from a  
19 lifetime of pain suffering and limitation.

20 Our story starts for this collision on October 30th,  
21 2015. That's the night before Halloween, Desire and Guadalupe  
22 were taking Desire's kids to a trick-or-treating event at the  
23 Linq, which is behind the old Harrah's there. And let me kind  
24 of orientate you where this collision happened.

25 Here's Las Vegas Boulevard. Now, as everybody knows,

1 Flamingo is a major east/west roadway in Las Vegas. Desire was  
2 driving west on Flamingo and intended to make a right turn at  
3 the Linq Lane to go park by the Linq. So this collision  
4 happened at Flamingo and Linq.

5 On the south side of the street is the Bally's Hotel,  
6 and on the right side it would be like near the Cromwell, right  
7 behind the Cromwell, the Flamingo Hilton and the Linq. As you  
8 can see here, this would be the Cromwell. This would be the  
9 Flaming Hilton and then the Linq is right there.

10 And I'm showing you the Venetian because that's where  
11 the defendant was going that night.

12 So let me give you the defendant, Ms. Tate's, her  
13 intended route. She was driving west on Flamingo Road. She was  
14 going to make a right turn on Las Vegas Boulevard and she was  
15 going to a concert on October 30th, which was a Friday night.  
16 Halloween was Saturday, October 31st. She was going to a  
17 concert at the Venetian.

18 So she was driving west from US 95 East on Flamingo  
19 and drove all the way west and to the point where we have the  
20 collision at the Linq Lane.

21 Desire, well, she was also driving west on Flamingo  
22 Road and intended to make a right turn on Linq Lane to go park  
23 behind Linq. As you know, that big ferris wheel they have on  
24 the back of the -- I think they call that the High Roller and  
25 she was going to take the kids there to trick-or-treat and ride

1 on the High Roller.

2           What I'm showing you here is a Google Earth image and  
3 this is the actual location of the collision. We're going to be  
4 talking about the right lane on westbound Flamingo to make a  
5 right turn into the -- onto Linq. And it happened right there  
6 at that intersection where there is a stoplight.

7           If you can see, it's a three-way stop. There's lanes  
8 going east and west and then there's -- you can only come out of  
9 the Linq because this is the Bally's Hotel right here and if you  
10 grew up here, this is where -- almost where the High Light  
11 [phonetic] was when we were kids.

12           This is a street view version of what we're talking  
13 about. And for many people living here for a long time or maybe  
14 not -- we have [indiscernible] hole in the wall which is an  
15 iconic Italian restaurant here in Las Vegas. And so I'm showing  
16 you -- see the white van there, that's the actual lane that  
17 Desire as well as Ms. Tate was driving in.

18           Desire was intending to make a right turn to go north  
19 on Linq and park behind the Linq. And you'll see a number of  
20 pedestrians and pedestrians do play a role in this -- this  
21 incident, and I want to tell you how they do.

22           So Desire comes to a complete stop on the night -- n  
23 that night. She stops behind a car because there is a red  
24 light. There is pedestrians because now we're in the resort  
25 corridor and it's a Friday night. Traffic is relatively busy



1 and there's people walking west in the same direction that  
2 Desire and Ms. Tate are traveling, walking on the sidewalk on  
3 the north side of the road.

4           While the light is still red the car in front of  
5 Desire makes a right turn. Desire was stopped with her turn  
6 signal on. All three kids were in the back seat in their car  
7 seats and Guadalupe was a passenger.

8           And so the first car makes a turn on the red light to  
9 make a right turn onto Linq and Desire pulls up. She stops  
10 again with her turn signal on.

11           The defendant is driving in a -- you'll see there i  
12 the red car. She's driving a red or burgundy Acura SUV. She's  
13 driving in the right hand lane, and according to her testimony  
14 as I'm going to show you, 35-miles an hour, approaching the red  
15 light.

16           Importantly, we asked her, did you see a pedestrian?  
17 We asked the defendant, Did you see pedestrians while you're  
18 driving on Flamingo? And this was her answer, I think when I  
19 was traveling westbound on the other side of Flamingo on the  
20 right -- which is to her right -- there's people walking but not  
21 on the intersection.

22           On the Friday in the area of the Strip -- and if you  
23 recall seeing pedestrians walking down the sidewalk on the right  
24 side of this page that's shown in this picture?

25           Answer, I think there's a few people.

1           So she's driving towards Linq Lane.     She sees  
2 pedestrians which is common because you're now in the resort  
3 corridor and it's a Friday night, one of the busiest nights in  
4 Las Vegas.

5           Well, so Desire's now stopped for the red light trying  
6 to make her right turn.   She starts to go.   The defendant is  
7 still driving 35-miles an hour behind her.   The light turns  
8 green.   As Desire's making the right turn and one of the  
9 pedestrians steps off of the sidewalk and she brings her car to  
10 a stop.   She has to apply her brakes to make sure she doesn't  
11 hit a pedestrian.   She never comes into contact with a  
12 pedestrian.   No problems with a pedestrian.

13           And unfortunately for Desire and Guadalupe, the  
14 defendant doesn't see this, doesn't see Desire stopping, doesn't  
15 see the light turn green and the pedestrian started to walk off  
16 the sidewalk and she collides with the rear -- the left rear  
17 corner of Desire's vehicle.

18           And we asked her, the defendant in her testimony  
19 before the trial, Did you see pedestrians walking along Flamingo  
20 just prior to the accident?

21           She says, I did not see them.

22           She didn't see the pedestrian start to walk off of the  
23 sidewalk.

24           She told me after -- the driver told me after there  
25 was a pedestrian crossing, that's why she slammed on her brake.

1 I didn't see it.

2 And we submit to you, if you're paying full attention  
3 on a Friday night, approaching Las Vegas Boulevard in the resort  
4 corridor and you had seen people walking along the sidewalk, you  
5 need to be watching out for pedestrians because when the light  
6 turns green they can now cross the crosswalk and everybody needs  
7 to be slowing down and making sure that there's no problems with  
8 pedestrians, particularly when Desire is stopped with her turn  
9 signal on.

10 MR. WINNER: Excuse me. Object to the argument, Your  
11 Honor.

12 MR. PRINCE: I believe that's what the evidence is  
13 going to show, Judge. That she should have seen her and she  
14 should have stopped before colliding with my client's car.

15 THE COURT: Overruled.

16 MR. PRINCE: So she didn't see those pedestrians  
17 crossing. And here's a photograph of Desire's vehicle after the  
18 collision. It was a fairly significant collision to the left  
19 rear corner of her car. You can see that the bumper is pulled  
20 down significantly on the left side.

21 You can see that the trunk lid is buckled and  
22 deformed. You can see the quarter panel is damaged and dented  
23 to her vehicle. There was \$3800 -- it's an older Honda Accord  
24 -- which was declared a total loss. But there was over --  
25 almost \$4,000 worth of damage to Desire's vehicle.

1           Here is a photograph of the defendant's -- the right  
2 front corner of her vehicle. You can see substantial damage was  
3 done to the right front corner, the quarter panel, the fender,  
4 the hood and the light.

5           You can see even more damage kind of as you -- the  
6 underside of it, the -- all the breakage of the [indiscernible]  
7 and the bumper, and the bumper assembly and how significantly  
8 deformed the actual car was as a result of this impact.

9           Here's another vehicle showing the -- another picture  
10 of the defendant's car showing a top down view so you can get an  
11 appreciate of that damage and that damage to the defendant's  
12 vehicle was over \$5,000.

13           And based on the evidence in this case, the sole cause  
14 of this collision, was the defendant not paying full attention  
15 driving 35-miles an hour, not slowing down when cars are stopped  
16 at a stoplight and my client stops for a pedestrian causing this  
17 collision.

18           But we asked the defendant who caused this. She  
19 blames Desire. And what I want to show you, as we go through  
20 this, I'm going to show you where I get this information from.  
21 This is a statement that the defendant made under oath in  
22 response to a written question.

23           And we asked her, If you claim that another driver  
24 caused or contributed to the crash, state the manner in which  
25 each person caused or contributed to the crash.

1           The driver of the plaintiff's vehicle braked hard and  
2 abruptly without signaling. She intended to make a turn. Upon  
3 information and belief the driver was plaintiff Desire Evans-  
4 Waiau.

5           So she blames Desire for this.

6           We asked her in her deposition which is sworn  
7 testimony under oath; we asked -- people can ask each other  
8 questions about events and factual information.

9           And we asked her, Who do you think is to blame for  
10 this accident, Ms. Tate?

11           She says, There's lots of factors that have caused the  
12 accident.

13           And we asked her, What are the factors?

14           And she said, Her slamming on her brake in front of  
15 me.

16           We asked her again, we asked her, Even looking back,  
17 is there anything you could have done differently?

18           And she says, I don't think so, because I followed the  
19 rules of the road.

20           We submit to you, ladies and gentlemen, that she did  
21 not follow the rules of the road. She was driving too fast,  
22 wasn't paying attention, and didn't bring her car to a stop like  
23 she should have.

24           We asked her again, Hey, do you think if you were  
25 further behind Desire this accident might not have happened?

1 And her attitude and her statement was, Maybe what, a mile away?  
2 I don't know.

3 And we knew because of these statements that we may  
4 end up in front of you. So we asked her, So when we go to  
5 trial, meaning, come in to talk to a jury, what is your  
6 testimony going to be regarding, if anything, you could have  
7 done differently to avoid this accident?

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

12 She accepts no responsibility for causing this  
13 collision. She blames Desire for everything. And her attitude  
14 was, if I wasn't on the road that night, if I was a mile away,  
15 maybe it could've been avoided.

16 The Judge gave you some instructions, and I want to  
17 kind of go over those, a few of those, as we kind of talk about  
18 establishing the fault and the negligence of Ms. Tate.

19 We talked about the burden of proof. And I want to  
20 read it to you so you understood what I was talking about in  
21 voir dire and where exactly I get that from, because this is  
22 part of the rules you're going to decide the case.

23 A preponderance of the evidence means such evidence  
24 when considered and compared with that opposed to it has more  
25 convincing force and produces in your mind a belief what is

1 sought to be proved is more probable true than not true and in  
2 determining whether the parties met this burden you'll consider  
3 all the evidence whether produced by the plaintiff or the  
4 defendant.

5 All we have to -- our legal burden is only more  
6 probable than not, meaning, 51 percent or more. We think we're  
7 going to tip the scale on its side and it's going to be -- you  
8 going to decide this case with a certainty. But that's the only  
9 legal standard we need to meet.

10 And as you listen to the evidence I want you to have  
11 this standard firmly in your mind.

12 Negligence. In order to establish a claim of  
13 negligence the plaintiff must prove the following elements by a  
14 preponderance of the evidence the defendant was negligence and  
15 the plaintiff has sustained damage and that was the cause of the  
16 damage.

17 But what does it mean to be negligent? The Judge gave  
18 you an instruction. When I use the word negligence, I mean the  
19 [indiscernible] to do something which a reasonably careful  
20 person would do or the doing of something which a reasonably  
21 careful person would not do, to avoid injury to themselves, or  
22 others, under circumstances similar to those shown by the  
23 evidence. It is the failure to use ordinary or reasonable care.

24 Ordinary or reasonable care is that care which persons  
25 of ordinary prudence would use in order to avoid injury to

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

3           The law does not say how a reasonably careful person  
4 would act under those circumstances, that's for you to decide.  
5 The person doesn't have to be perfect, but they have to act  
6 reasonable with ordinary care and prudence.

7           What does that mean? The Judge gave you another  
8 instruction, the duty of a driver. Is the duty of a driver of  
9 any vehicle to avoid placing himself or others in danger, to use  
10 like care to avoid an accident, to keep a proper lookout for  
11 traffic and other conditions to be reasonably anticipated, and  
12 to maintain control of his or her vehicle.

13           And we believe that the defendant did not keep a  
14 lookout, wasn't keeping a safe distance, and was driving too  
15 fast before she caused the collision in this case while Desire  
16 was stopped.

17           She said, the defendant told us and told others,  
18 before the lawsuit was even filed that, I wasn't really aware,  
19 because I was traveling so fast and she slammed on her brakes.  
20 Desire had been stopped.

21           She started to move forward and this pedestrian walked  
22 off and she stopped again to avoid that pedestrian. She didn't  
23 see that because she wasn't paying attention and was driving too  
24 fast.

25           We asked her again, did you apply your brakes before



1 the impact? She says, yes.

2 Was it less than a second?

3 I don't know, everything happened so fast. I saw her  
4 slam on her brake and I hit my brake. I tried to avoid hitting  
5 her and I couldn't. And we asked her how fast were you going at  
6 the time of the impact?

7 Because we think the defendant's going to come up here  
8 and say, she was close to stopping. She only needed a few more  
9 feet. And that's not true, because the defendant said we asked  
10 her -- and using her words, not the lawyer's words, these are  
11 Ms. Tate's words.

12 Do you know how fast you're traveling at the time you  
13 impact the rear of my client's vehicle?

14 Answer, I believe it was 35 miles.

15 Do you know the speed limit?

16 Answer, 35.

17 Do you believe that the 35-miles per hour was the  
18 speed limit on Flamingo where the accident occurred?

19 She says, Yes.

20 So she tells us that the impact happened when she was  
21 going 35. She tried to swerve but there was other traffic so  
22 she couldn't swerve.

23 And at the scene of the accident she got out of the  
24 car and tells Desire once or twice that she's sorry. She  
25 doesn't have her shoes on. She gets out and is walking around

1 in her socks on this -- on Flamingo Road. We don't know why she  
2 didn't have her shoes on. But obviously, she's -- you're going  
3 to hear Mr. Winner likely get up here and say that she  
4 repeatedly told Desire that she was sorry.

5 And the reason why she's sorry is because she caused  
6 this collision and substantial damage.

7 And we believe the evidence is going to show, ladies  
8 and gentlemen, that number one, it's always unreasonable to not  
9 pay full attention while you're driving 35-miles an hour on a  
10 busy street in the resort corridor in Las Vegas, Nevada. It's  
11 always unreasonable to not keep a safe distance while you're  
12 traveling 35-miles an hour and following too close. And it's  
13 always unreasonable to not stop before crashing into a car at a  
14 stoplight.

15 And so when we ask -- when you're asking the three  
16 questions; who was at fault, I think that evidence is clear,  
17 that the defendant is the sole cause of this collision, and  
18 there's nothing that Desire did, or caused or contributed to  
19 that, and she's just trying to blame Desire to avoid being --  
20 anyway.

21 Desire's harms; injuries and losses. That's what  
22 we're going to spend some time talking. And I told you at the  
23 beginning, the starting point is, in the weeks, months, and a  
24 couple of years before this crash, Desire was pain free, didn't  
25 need any medical treatment, had no problems with her spine,

1 wasn't -- didn't require any type of surgery.

2           Within a year of the accident, she now has a fusion  
3 surgery of her neck.

4           What we really need to talk about before we get going  
5 on that is really about the anatomy of the spine. And the spine  
6 really has three main segments. It's actually four, but the  
7 three ones we're going to talk about; it's the cervical spine,  
8 or the neck. There is seven cervical vertebrae. The thoracic  
9 spine, or we call the mid-back, or the torso, has 12 vertebrae  
10 and the lumbar spine, which is the -- your lower back has  
11 vertebrae. And we're going to spend our time talking about  
12 what's going on in the cervical spine.

13           And there's really two components to any type of  
14 injury case. There's a soft tissue component and a structural  
15 component. When we talk about soft tissues we're talking about  
16 the muscles, tendons and the ligaments. And the body has a  
17 tremendous amount of layers of muscles, tendons and ligaments.  
18 We're going to kind of show you those here.

19           So when you have a soft tissue injury those might get  
20 strained or stretched, but they heal very well. And those are  
21 the type of injuries that go away within a few weeks to a few  
22 months.

23           But when we're talking about a structural injury now  
24 we're talking about other aspects of the spine. And so what I'm  
25 showing you is a -- obviously, a spine model. You'll see in the

1 back side here, that's like the little nubs on our back. They  
2 call that a spinus process.

3 The -- this is the front of the spine. Every time you  
4 see the disc, that's always the front. Whenever you see the  
5 little bones in the back, you know that's the back.

6 At every level we have between the vertebral bodies  
7 that's actually bone. And between those are the discs. And  
8 coming out you'll see on my spine model here in yellow those are  
9 nerve roots. At every level of the spine, we have nerve roots  
10 coming out equal on both sides and go into our arms, into our  
11 back, into our legs.

12 The spine really truly is the information superhighway  
13 of our body. It allows us to move, function, stand up straight.  
14 It really is the core of our being as homosapiens, as human  
15 beings. But it really provides valuable support for us.

16 And these -- the discs which we're going to be talking  
17 about a disc injury in this case, those are like the shock  
18 absorber between the spine -- between the vertebral body --  
19 sorry. And there's two aspects of a disc. We have the internal  
20 part which is called the nucleus and that's kind of like a  
21 gelatin material. Oftentimes, doctors, you'll hear them  
22 describe a -- the disc is like a jelly donut. And the internal  
23 part that is the jelly, that would be the nucleus.

24 The outer part of it is the annulus. That's the  
25 strong part. It's like almost a steel belted radial tire. It's

1 like a very fibrous material and it's very strong and so it  
2 allows the body to move. It absorbs trauma, impact. And that  
3 material is what's very strong and provides the structural  
4 support for the disc itself, for the annulus.

5           What I'm showing you here is, if you're looking at the  
6 spine looking top down, you're going to see here, the back of  
7 the spine and the spinus process, you see the disc here. The  
8 nucleus is in the blue and on each side you have the nerve roots  
9 coming out.

10           And the nerve roots are important here because defense  
11 had a disc herniation that was affecting her nerve root and  
12 causing pain going down into one of her arms on the left side.

13           And so what happens when a disc becomes herniated the  
14 nucleus starts to come out, the annulus is disrupted as you can  
15 see there and the disc now becomes protruded or bulged. And  
16 when it comes into contact with the nerve it presses on it and  
17 it causes pain, irritation, numbness, tingling. A lot of times  
18 you'll hear people say, oh, I have sciatica going down the back  
19 of my leg, that's something common. That's because something's  
20 pressing on a nerve.

21           When you have pain going down one of your legs, one of  
22 your arms, into your hands, and that's what we're going to be  
23 talking about in this case is a disc herniation.

24           And so when the spine is -- when one of the discs is  
25 injured, pain and numbness can be felt down the arms which is

1 exactly what happened in Desire's case.

2           So in our case, we're going to be talking about not  
3 only the disc injury but a soft tissue injury as well. Because  
4 a soft tissue injury after a few weeks or a few months with  
5 conservative physical therapy, chiropractic treatment, that goes  
6 away.

7           What didn't go away for Desire is the ongoing disc  
8 injury, the pain in her arms, both of which ultimately she  
9 underwent surgery for.

10           And how we're going to present our case to you is  
11 through medical evidence, through clinical evidence. And we're  
12 going to use clinical correlation to do that for you. And what  
13 does that mean?

14           The patient history, that's critical as to what  
15 symptoms do you have? When you go to a doctor, how are you  
16 feeling? Why are you here today? How long have you had the  
17 symptoms? When did they start? Where are they at; are they  
18 just in your neck, are they in your back, do they go down your  
19 arms? How about in your hands? They're going to ask about  
20 history from before and after.

21           The doctor after when they first see you and then  
22 after they find out what's wrong with you and why you're there  
23 they get -- they do an examination. So examination findings are  
24 important, and they're going to be important in this case.

25           How you respond to treatment. How do you do after the

1 chiropractic treatment? How do you do after the spine  
2 injections? How did you do after your surgery? All of that is  
3 going to be a critical aspect of you understanding this case.

4 Diagnostic imagine, x-rays, MRIs and other testing.  
5 And in this case, where we talk about today, you're going to  
6 hear from Dr. Jorg Rosler who is a pain management specialist.  
7 He did injections into Desire's spine and he found the source of  
8 her pain. And we're going to be talking about the testing that  
9 he did and her response to that which gave Dr. Garber, and Dr.  
10 Khavkin, the surgeons, the information they needed to make a  
11 surgical recommendation to Desire.

12 So as you're thinking about all the information, all  
13 of the -- their opinions on what caused this, when it all  
14 started, we're going to be using this clinical correlation  
15 evidence for you to prove our case. So it's not just what  
16 Desire has to say, it's what the doctors have to say, it's what  
17 the x-rays and the MRI show, it's what a response to this  
18 overall treatment is, to give you a full complete picture as to  
19 why Desire is entitled to your decision.

20 This accident happened on a Friday, which is October  
21 30th. You're going to learn at the scene Desire didn't feel  
22 that she was hurt, didn't feel any pain at the time. She was  
23 more worried about her kids and taking them to their trick-or-  
24 treating event. The adrenaline took over, didn't feel any pain.

25 She didn't feel any pain until the next morning and

1 then she had severe pain in her neck, her mid back, her low back  
2 and more importantly her arm. But it was Halloween, it was the  
3 weekend. She didn't seek any medical care over the weekend.

4 She did go consult with a lawyer, an attorney, Paul  
5 Powell, on Monday to find out who's going to pay for my car, my  
6 medical expenses, and help her through the process.

7 So she go sees her first chiropractor, goes to her  
8 first chiropractic visit the first thing on Monday. He gave her  
9 the names of several places to go and she [inaudible] one she  
10 lives in North Las Vegas and she chose to go to a facility in  
11 North Las Vegas closer to her.

12 So her first visit was on Monday, the 2nd, but her  
13 symptoms, all of her problems, she woke up on October 31st,  
14 Halloween, she was in severe pain.

15 When she goes to the chiropractor on Monday, November  
16 2nd, she tells the doctor that she has neck pain, shoulder pain  
17 and back pain. It was constant and it was every day. And  
18 importantly, as you can see in this diagram, what we're showing  
19 you on the right, she's diagraming where the pain is.

20 And you can see from day one she is reporting pain  
21 into her arms. And that's a very important -- I want you to  
22 follow the arm pain because the defense's response to this is,  
23 we don't think Desire's hurt at all, number one.

24 But two, oh, it was just a soft tissue injury that all  
25 went away. The arm pain is not a soft tissue injury. It's



1 actually a nerve injury and it's a nerve problem. So be  
2 thinking about the arm pain throughout this case.

3 She talks to the doctor on November 2nd, two -- she  
4 tells them she was pain free before, she has severe pain. She's  
5 now having a hard time taking care of her three daughters and  
6 picking them up and caring for them.

7 She rated her pain as 8 out of 10. It was limiting.  
8 She also had pain in her fingers, she had numbness in her hands.  
9 Once the doctor does an exam, part of this -- part of the exam  
10 findings he does a test where you like press down on the neck  
11 and see if it produces pain.

12 And here it produced pain on the left side. Remember  
13 where she drew her diagram, her pain on her left -- in her left  
14 arm? He reproduced that. He also found that she had decreased  
15 sensation or a problem with her nerve into her left arm. And  
16 you'll see that's a consistent theme throughout this case; every  
17 doctor found that same thing. Everybody had decreased sensation  
18 in her arm consistent with her nerve injury.

19 The chiropractor suspected from the very beginning  
20 that she had a cervical disc disorder with radiculopathy. And  
21 we're going to talk a lot about radiculopathy. And  
22 radiculopathy is the pain, numbness that comes down into your  
23 arm and goes into your hand. And that's going to be a central  
24 aspect of this case.

25 And several weeks into the treatment, the doctor, the

1 chiropractor suspected something more than something simple,  
2 soft tissue injury that's going to go away in a few weeks. He  
3 recommended she go for pain management and an MRI.

4 November 4, patient's feeling sharp pain in her left  
5 shoulder. She continues to feel sore in her neck region. She's  
6 not able to pick up her kids due to the pain in her thoracic and  
7 lumbar region as well.

8 And what I'm showing you here is in addition to the  
9 structural disc injury she has a soft tissue injury to the --  
10 all the neck, mid back and the low back.

11 Well, with time those go away. But the structural  
12 injury it doesn't go away to the disc. And as with many things,  
13 if you just kind of overdo it, and strain your back, you're  
14 moving, you're working in the hard, home projects, athletic  
15 events, exercise, most people don't need anything. They can  
16 just take it easy for a couple days, take an Aleve, take some  
17 Advil and you're fine.

18 Then [inaudible] you'll go for physical therapy, you  
19 go for doctors visits. Even if fewer have to go for like these  
20 spinal injections to find out your -- what the source of the  
21 pain is.

22 And even fewer and a very small percentage like Desire  
23 followed the category where you ultimately need surgical  
24 intervention which is exactly what she had on September 1st,  
25 2016. And so what happens is when you're dealing with a

1 structural spine injury it becomes part of an investigation.

2           These doctors have to find out, where is the pain  
3 coming from. And they have to find out -- use sources of  
4 [inaudible] here the chiropractor referred Desire for an MRI of  
5 her neck. And what they find is, in a 24-year old that she's  
6 got a disc protrusion, a disc herniation of her C6-7 level.  
7 It's to the point where now it's affecting the nerve roots. So  
8 that's objective.

9           So now it's confirming the suspicion of a disc problem  
10 like the chiropractor initially thought. And we're going to  
11 have the doctors come up here but she has a disc herniation.  
12 You can see it protruding back into the spinal canal there when  
13 it's also affecting the nerve roots. You can't see it in that  
14 particular cut, but we're going to have the neurosurgeon explain  
15 that to you, and why they've made recommendations for surgery.

16           And this is our disc model. Once there's a disc  
17 protrusion or herniation the disc material starts to leak out.  
18 The annular part of it, or the steel -- the steel belts  
19 [inaudible] radial tire becomes deformed and it starts pushing  
20 up and pushing on a nerve which is what happened in Desire's  
21 case. She had irritated nerve root disorder radiating down her  
22 left arm from the beginning.

23           And we call cervical radiculopathy pain, numbness  
24 which goes to the shoulder, arm and the hand.

25           But I want to take this a little step further to

1 demonstrate just how significant this collision was. She had  
2 severe pain in her left shoulder. So the doctor ordered an MRI  
3 of her left shoulder.

4 And what did they find? They found a bone contusion  
5 which is a bruise of the bone. And the only way that can happen  
6 is with an impact, blunt trauma, with the door, with the glass,  
7 with the pillar behind her seat.

8 That's -- Desire also is going to tell you that she  
9 had abrasions going across her chest because of her seatbelt,  
10 because as she's turning she's in an awkward position because  
11 she's looking and turning because she's making a right turn  
12 she's a little forward. And you're going to hear the surgeons  
13 talk about the -- what the effect of that body position is in  
14 having a bone contusion in her left shoulder.

15 They said it was a bone contusion what they a left  
16 tuberosity which is kind of the front and the side of your  
17 shoulder. And I'm kind of highlighting in red there the bone  
18 contusion because that's objective, obviously, it was  
19 substantial because it caused some sort of impact with her  
20 inside of the car, resulting in a bone bruise.

21 The defendant -- it's important, because the  
22 defendants are going to say, well, this is nothing more than a  
23 soft tissue injury. Well how do you get -- he'll have no  
24 explanation how you get a bone contusion, because she had no  
25 other trauma, where did the left arm pain come from, and

1 interestingly enough, all of this is on the left side.

2           So the chiropractor after he gets the MRIs referred  
3 her to a specialist, Dr. Jorg Rosler, who's a pain management  
4 specialist. You're going to hear from him today. He's going to  
5 be our first witness. And his job is [inaudible] going to find  
6 out what is the source of the pain, how do we treat this pain.  
7 Number one, where is it coming from.

8           She sees Dr. Rosler on December 16th, 2015. She's  
9 talking about left sided neck pain, left shoulder pain, pain  
10 shooting down her left arm and now it's into her hand. The same  
11 thing she reported the very first day.

12           Here's her pain diagram when she sees Dr. Rosler, it  
13 looks virtually identical to what she showed the chiropractor  
14 the very first day of her treatment. And Dr. Rosler found when  
15 he was doing an examination [inaudible] sensor, a neurological  
16 exam, that she had decreased sensation, like at the C7, the  
17 nerve affecting her C7 disc.

18           Same that the chiropractor found. He's calling it  
19 left upper extremity radiculitis which is the radiculopathy  
20 which we were talking about. And what he scheduled her for was  
21 site specific injections. He wants to schedule these injections  
22 because these injections are very specific and they can help  
23 identify where the pain is coming from and hopefully he'll  
24 understand how to treat it.

25           And in this case, this is what they call a dermatome

1 chart. And every level of the spine where your nerves come out,  
2 if you're having pain, or discomfort or numbness it follows like  
3 a path. It's almost like an index to a book.

4 And so C7, that's the nerve root we're talking about  
5 between disc 6 -- I mean, the vertebra 6 and 7, that nerve root,  
6 follows a path kind of down the back of the shoulder, down into  
7 the forearm and down into the fingers, which is exactly what  
8 Desire had.

9 And there's two goals of these spine injections. One  
10 is, to determine the source of the pain. You're going to hear  
11 about what's called diagnostic injections. Where is the pain  
12 coming from. That's the first. That's the most important  
13 actually.

14 The second part of it is, can we reduce the pain?  
15 Because what they do is here's, they use like a lidocaine, kind  
16 of like when you're trying to numb up your tooth when you go to  
17 the dentist, they shut the nerve off, so they see if it takes  
18 away the pain.

19 They add a steroid to it, because a steroid is longer  
20 acting. And it's an anti inflammatory. All pain is caused by  
21 inflammation. And when you have a disc injury that's irritating  
22 the nerve, the nerve becomes inflamed, the disc is inflamed,  
23 that's what causes the pain in your neck, the pain down your  
24 arms, as well as the numbness and the tingling. So hopefully  
25 with the steroid it can reduce the pain.

1           So it does two things. So they go right to the --  
2 they're going to the nerve and they're going to inject the two  
3 medications, the numbing agent and the steroid, which is exactly  
4 what Dr. Rosler recommended on January 7th, 2016.

5           Here's the diagnostic part. Her pain in her neck when  
6 she got to the surgery center was an 8 out of 10. After she did  
7 the procedure and he injected her with the lidocaine it went  
8 down to zero. That confirms that that C6-7 nerve root, that's  
9 the cause of the pain. He only did that on the left side,  
10 because he's trying to isolate where the problem is coming from.

11           She goes back to see Dr. Rosler on January 14, 2016.  
12 And she said she had great relief from that because by now the  
13 steroids have now kicked in and that's reducing the  
14 inflammation, and her pain went from an 8 and now she was only  
15 down to a 1 or 2 as of January 14th. On December 3rd, the  
16 chiropractor, after about 30 visits, releases her from care  
17 because she's doing well because now she's in pain management  
18 because the chiropractic care is probably not going to help any  
19 further, and releases her into a monthly maintenance plan.

20           So all the doctors are going to clinically correlate  
21 the disc injury and the onset of symptoms to this collision  
22 because she had -- she was pain free to start, the collision  
23 happened, her diagram, she went to the chiropractor with pain in  
24 her neck and left arm, confirmed a C6-7 disc herniation with  
25 MRI, the injections helped, the diagnostic part and the steroid,

1 and it reduced her pain. So all of that, the clinical, that's  
2 the evidence we're relying on to demonstrate to you and prove  
3 our case that this was the only cause of her problems.

4           On February 18th, because the steroids can help reduce  
5 information for weeks and months at a time, she goes back to Dr.  
6 Rosler and says she's pain free, she's doing well. It means  
7 hopefully that nothing comes back. But, unfortunately, as  
8 you're going to learn here, learn this today, once the steroid  
9 starts to wear off, like people who have cortisone shots, when  
10 they get in their shoulder or their knee or their elbows. After  
11 weeks or months, the pain will start to come back, and that's  
12 exactly what happened in Desire's case.

13           But it doesn't fix the underlying problem because she  
14 still has the disc herniation. The steroid in that injection  
15 doesn't cure that, so that still exists. So by -- we still, as  
16 we know from this -- this MRI, she still has the disc herniation  
17 at C6-7. But unfortunately for Desire, by March 29, 2016, her  
18 symptoms come back. She got about four to six weeks of relief,  
19 but now the symptoms are back and now she's right back to where  
20 she started with pain in her neck going into her arm and her  
21 hand with the numbness.

22           So Dr. Rosler, he recommends a repeat injection, and  
23 he wants to verify is that the real cause. He knows that's the  
24 cause, but let's see -- let's see if we can get her a few more  
25 months of a benefit. Because if this doesn't work, her next



1 step is only surgery, and she's only 24 years old, and that's  
2 the last thing you want to offer a 24-year-old is a  
3 reconstructive spine fusion surgery.

4           So he recommends her for another injection, which is  
5 done on April 11, 2016, part of our timeline. She, again, came  
6 into the surgical center with a pain of 8 out of 10, and it  
7 brought her pain down to zero. So we can confirm that's the  
8 source of the pain. By April 26, unfortunately, it didn't have  
9 the same benefit as the last time, so when she came back a  
10 couple of weeks later her pain was back at a 5 out of 10. She  
11 didn't get the four to six weeks pain free that she got the  
12 first time.

13           So now she remains in pain. So now she's exhausted  
14 all of her conservative efforts. She went to the chiropractic  
15 care, she's taken medications, she's taken time, all the while  
16 trying to manage her own day to day affairs with three young  
17 children at home, taking care of herself, her husband, and her  
18 family.

19           She was then sent to a surgeon, Dr. Khavkin, who is a  
20 neurosurgeon who trained at Johns Hopkins in Maryland. And she  
21 sees Dr. Khavkin on May 17, 2016. She's complaining of neck  
22 pain. She told him that after the accident she had pain in her  
23 neck radiating to her shoulder, down her arm, into her hands,  
24 causes her numbness.

25           Dr. Khavkin looks at her MRI results and he sees that

1 there is a disc herniation at C6-7, as well as a problem C5-6.  
2 Actually, she's got two discs. The main disc is C6-7, but  
3 there's actually a problem with two discs. And he recommends,  
4 actually, a surgery. He's actually recommending a two-level  
5 surgery at that point because she's got an ongoing disc issue.

6           What I want to compare is May 17, 2016, the diagnosis  
7 of a displacement of vertebral disc by Dr. Khavkin and what the  
8 initial chiropractor thought was a cervical disc disorder with  
9 radiculopathy. So essentially the same -- using medical terms  
10 it's the same thing. You've got a disc problem causing symptoms  
11 into your arm and how right the chiropractor was on the very  
12 first visit.

13           So Dr. Khavkin recommends to a 24-year-old girl a  
14 two-level neck fusion, and he didn't do that lightly. And as  
15 you're going to hear from Desire and how scared she was when she  
16 heard that her really only option at this point was some kind of  
17 a fusion or surgery. Because first they have to go through and  
18 make an incision into your neck, and Desire has a permanent scar  
19 on her neck about two to three inches long. They open it up and  
20 they remove the disc and they put the hardware in there.

21           And Dr. Khavkin was recommending doing it at two  
22 levels. He was recommending doing it at C5-6 and C6-7. And the  
23 important part of that is that is a very invasive surgery with  
24 many risks, but one of the real risks it starts is it creates a  
25 disease process is that it's going to require additional surgery

1 in the future.

2           So when Dr. Khavkin and Dr. Garber are going to talk  
3 to you about this, they have to educate their patient,  
4 particularly someone in their 20s, that this isn't going to be  
5 the end of the road for you. This is kind of part of the new  
6 beginning. If you want to have this surgery, if you only do it  
7 when you're at wits end, then you're going to have to manage  
8 this issue for the rest of your life and you're going to require  
9 additional surgery and the majority of your spine is going to  
10 end up fused during your lifetime.

11           It's kind of like a domino effect because once you  
12 fuse one, all of the stress and strain that that level would  
13 take, and you're going to learn that C6-7, that's where most of  
14 your motion is, C5-6, C6-7, the base of your spine, cervical,  
15 that's where most of your motion is that creates this adjacent  
16 segment disease because the stress, the strain creates this  
17 process.

18           And what it does is it fixes this in place so this  
19 can't move anymore. And now the disc above it or below it has  
20 to take on all of that stress. So with a two-level fusion,  
21 Desire is going to be at a real risk of adjacent segment disease  
22 and needing another surgery at C4-5 with a certainty during her  
23 lifetime.

24           And this is what a three-level fusion looks like. Now  
25 all of the main motion segments are fused. You can't move,

1 you're going to live a lifetime of pain, and we're going to be  
2 talking about how this pain returns and how -- the cycle of this  
3 pain.

4           So on June 21, 2016, she goes back to Dr. Rosler who  
5 did the injections, the pain physician. Now, I want you to make  
6 -- maybe -- I want you to write this down if you could. I want  
7 you to -- as of June 21, 2016, her pain in her neck was a 9 out  
8 of 10. That's important for you to make a note of. She's  
9 waiting on her surgery with Dr. Khavkin. Obviously, it's a  
10 major decision because lots can go wrong, she has young  
11 children, it's only her and her husband. So she's waiting on  
12 that.

13           On July 10th, she's involved in another motor vehicle  
14 collision. She's stopped at a red light and someone does hit  
15 her from the back, her and her husband, she goes to the hospital  
16 because of this recommendation. She goes by ambulance just  
17 because she had already had a neck injury. Fortunately for her,  
18 they didn't find anything new, nothing changed, and it did cause  
19 a soft tissue injury to her neck and her back and low back.

20           And by -- but the disc issue remained and I wanted to  
21 show you this. July 26, 2016, it says the patient complains of  
22 neck pain 8 to 9 out of 10, so the pain is the same before the  
23 second accident as it is after. They already established her as  
24 surgical. This accident put her in a compromised position in  
25 the first place. It didn't change any of the recommendation and

1 it didn't change any of the treatment. And there's no claim --  
2 she's not making any claim due to the second accident at all  
3 because all the wheels were put in motion by this accident from  
4 October 2015.

5           Desire wants a second opinion, so she goes to see Dr.  
6 Jason Garber who is a neurosurgeon trained at Baylor University  
7 Medical Center in Houston, Texas, which is kind of the UCLA of  
8 the south, if you will. And Jason -- Dr. Garber diagnoses her  
9 as of July 19, 2016, with a C6-7 radiculopathy, the same thing  
10 that Dr. Rosler, Dr. Khavkin, he recommends a single-level  
11 fusion, not a two-level. He's recommending only a single-level  
12 fusion. It's a less invasive surgery.

13           It's a little more conservative approach, but  
14 eventually she's going to have all three levels fused anyway.  
15 He wants to start off with I think most of the pain is coming  
16 from C6-7, let's start there. And so a single-level fusion is  
17 only going to require the hardware to be placed at the bottom  
18 level, which is where she has it now, and her surgery was on  
19 September 1, 2016. And -- at Valley Hospital.

20           Now, I want to set this day up for you so you have --  
21 it was, number one, a major decision for her to undergo that  
22 surgery, and she was at her wits end with pain and limitation.  
23 And her and her husband, they were hardworking, but of modest  
24 means, and they were living with her -- with Jorge's parents at  
25 the time and the kids. And so for Desire, Jorge dropped her off

1 at the hospital, but had to get back home to take care of the  
2 kids and he left here there. She had to be there alone.

3 And you're going to hear her as she's waiting in the  
4 preoperative area she was crying, it was cold, she was by  
5 herself hoping she's going to wake up, hoping she's not  
6 paralyzed, facing the biggest -- the biggest decision she'd ever  
7 made in her life and hoping that nothing goes wrong, she's going  
8 to see her kids. And so she had to face that alone.

9 And she had her surgery that day, and fortunately for  
10 her there were no complications. And, unfortunately, there was  
11 nobody there because Jorge had to work and take care of the kids  
12 and the -- the grandparents, they have jobs. She didn't have  
13 any other family here. She had to wake up alone, too. And  
14 fortunately for her, things did -- the surgery went okay and  
15 there was no complications. But that day she'll never forget.

16 And by mid-October she had improved significantly.  
17 And this kind of goes back to our clinical correlation that the  
18 surgery did help her. A month later it took away a lot of the  
19 pain, the numbness in her arm, and it really improved. So it's  
20 a response to treatment that really helps you understand that  
21 the surgery was not only helpful, but it was indicated and  
22 reasonable.

23 July 2017 she wasn't pain free. She still had some  
24 ongoing pain. She was still having a 1 or 2 out of 10, managing  
25 without medications. But if the neck pain had improved and the

1 arm pain improved that we believe really helps you understand  
2 why the surgery was needed and how it helped her and how it was  
3 caused by this motor vehicle crash and no other reason.

4 But that's not the end of the road for Desire because  
5 we need to talk -- you're going to hear Dr. Garber and Dr.  
6 Khavkin talk about it's kind of like diabetes or some other  
7 medical condition. Once you set this adjacent segment disease  
8 in motion, it doesn't stop. It's because of trauma that  
9 accelerates the changes, it accelerates degeneration, it  
10 accelerates causing pain.

11 And so we can say, not with probability, but with  
12 certainty, with certainty she's going to need at least one more  
13 surgery at C5-6. Because that's already -- the disc already has  
14 been compromised anyway because of this crash, so we know that  
15 she's going to have that in the next 10 to 15 years.

16 Now, I want to share with you, this is the  
17 defendant's, one of their experts, Dr. Jeffery Wang. And I'm  
18 going to prove this using their expert's testimony. I'm long  
19 familiar with Dr. Wang. I've seen him in many cases. He says  
20 if a patient has a cervical fusion, there's a 3 percent chance  
21 every year they're going to require another surgery.

22 What does that mean? Because it's adjacent segment  
23 disease, every year and it keeps adding up. Your chances  
24 increase each year for that period you're going to need another  
25 surgery for the level above. In this case it would be C5-6.

1 After 20 years there's a greater than 50 percent chance of  
2 requiring another surgery. That's using Dr. Wang's testimony  
3 from 2006. So every year it gets worse.

4 And in Desire's case, because C5-6 is already  
5 compromised because of this collision, that's even going to be  
6 a higher rate. So more likely than not. That's our standard.  
7 Even by using their own expert's testimony, more likely than not  
8 she's going to require at least that surgery. So we're saying,  
9 our doctors are saying that's a certainty, not a probability,  
10 it's a certainty. So the question is not if, it's when.

11 And because Desire had a surgery at age 25 and it's  
12 going to be at the 3 percent per year breakdown, by age 45 she's  
13 already at almost 60 percent. And our experts are going to say  
14 because that disc was already compromised, that's even -- may be  
15 even sooner than that. But then once she has that, now she has  
16 two levels fused. Now all that stress is going to go to the  
17 next level, C4-5. It's going to create more pressure.

18 And like so many things in life, when you have  
19 injuries when you're young, as you get into your 40s and your  
20 50s, maybe even older, it gets a little worse because you're not  
21 in good health. So age is kind of like right now working  
22 against her because she seems okay, but she faces this every  
23 year. And so it starts over again. And so by age 65 she's  
24 going to need that surgery again.

25 And so now we're going to get to the three levels at



1 C4-5, it's our belief. Because Desire has a life expectancy of  
2 54 years. She's 28 now. She's going to live until she's about  
3 82 according to governmental statistics. She's otherwise in  
4 great health.

5 But it's important to understand this adjacent segment  
6 disease process because it's -- it's what day? What day? When  
7 does the pain start? When does the pain increase with time?  
8 When does it start affecting sleep? When do your arm and hand  
9 symptoms return? When are you going to -- what is the effect to  
10 your daily activities and the quality of your life again? When  
11 does it require you to go seek medical care?

12 And this process starts all over again. When you have  
13 to read through that bill? When you have to go to the doctor?  
14 When does physical therapy start all over for me again? When do  
15 I have to go to the pain doctor for those injections again?  
16 When do I have to go back to my surgeon and he's going to  
17 recommend I had to finally -- I had to get to the point of being  
18 at wits end. Because the surgeons are going to tell you,  
19 surgery is your last option, and when you're at wits end you  
20 have to pull that trigger.

21 And sadly for Desire, she's got to do all of this.  
22 She's got to get to that place twice in her lifetime. We know  
23 by 45 she's going to require one more surgery, and the cost of  
24 that is about \$280,000 because we know the adjacent segment  
25 disease is going to cause a problem. We know that C4-5, that

1 once you infuse the second level while she's age 45, the C4-5  
2 level now is going to start to break down and that process  
3 starts all over again.

4           And you're going to hear Desire and when she talks  
5 about her fear, while she's physically doing okay in most  
6 things, it still prevents her from doing the things that she  
7 wants to do and the way that she wants to do them. But it's  
8 that fear every day, when does it start, when does it start all  
9 over for me again? Have to modify your activities, avoid  
10 certain things.

11           And by age 65 we'll know more likely than not that  
12 she's going to be surgical again, and now she's going to have  
13 three levels of her spine fused and she's going to have another  
14 almost 20 years to live. So that's what this case is about.

15           What's the response from the defendant, Ms. Tate?  
16 Well, you heard earlier Desire caused all of this. I showed you  
17 the evidence. Desire didn't cause anything. The defendant is  
18 solely responsible for causing this collision. Second, their  
19 doctors are even going to say we're not sure if she was injured  
20 at all. That's one response. We know that's not true.

21           And they're like, well, she was injured, at most she  
22 suffered a soft tissue injury and they cut off all her treatment  
23 after February 15, 2016. Remember, after she had her injections  
24 and was pain free because of the steroid? They want to cut her  
25 off right there but they don't want to account for what happens

1 after that. They don't want to have to hear the whole story.

2 But we know from the beginning she had neck pain that  
3 went down her arm. We know she has a disc herniation at C6-7.  
4 Dr. Rosler confirms a disc herniation at C6-7. Dr. Khavkin, a  
5 neurosurgeon, confirms a disc problem at C6-7. Dr. Garber  
6 confirms this problem is C6-7. So we have the radiologist, pain  
7 management, and two surgeons, four specialists in Nevada  
8 confirming this problem and the need for surgery in Nevada.

9 We know that she had a bone bruise, which confirms the  
10 significance of the collision itself We know her injections, her  
11 pain went from an 8 to a zero, not just once, but twice. And we  
12 know she did great -- did well after the surgery.

13 Let me tell you a little bit about Dr. Wang. Dr. Wang  
14 is a professor at USC, spine surgery. But one of the ways he  
15 makes money is he likes to do -- be an expert witness. And Mr.  
16 Wang was asking a lot about what people's motivations are. And  
17 I'm going to tell you -- I'm going to tell you what Dr. Wang's  
18 motivations are.

19 Dr. Wang's motivations for coming to Las Vegas, he has  
20 no office here, he doesn't treat anybody here, he only comes up  
21 and he does this medical legal work, more often than not for Mr.  
22 Winner's law firm. He's been hired by the Atkin Winner firm  
23 more than 50 times in the last ten years. He's been hired by  
24 three firms who defend these types of cases more than 150 times  
25 in the last ten years, and he's never once testified on behalf

1 of a plaintiff in the State of Nevada in a trial.

2 Before we come to court, we give -- they have to give  
3 these lists. And so he has to tell us who he's -- what court  
4 cases he testified in. He's given us nine trials and an  
5 arbitration, which is like a trial. Seven of those ten times  
6 are from Mr. Winner and his law firm.

7 When he comes to Las Vegas, he charges \$7,500 to come  
8 up and see a patient, just to see the patient. Seven thousand  
9 -- so he sees four in a day, that's a \$30,000 morning. He  
10 doesn't spend more than half an hour with them. And so Dr. Wang  
11 did 11 -- or I don't know how many, 12 reports, I think, charged  
12 money for it. That's how many reports he did in this case.

13 And there's nothing anybody could have said. There's  
14 12 of them. He charged for every one. And there's nothing that  
15 could have -- Desire or her doctors could say or do. No, soft  
16 tissue injury, we don't believe you. And if you think she's a  
17 liar, cheat, and a fraud, then Desire doesn't deserve anything.  
18 But if she's not, then she deserves your consideration and your  
19 consideration of this evidence because this, you want to talk  
20 about somebody's bias and motivation, think about that bias and  
21 motivation. He's not here helping the patient. He's here for  
22 himself and for money and money only.

23 MR. WINNER: That's argument, Your Honor.

24 MR. PRINCE: Well, I believe that's what the evidence  
25 is going to show you. He's here for the money.

1 THE COURT: Keep it to the facts versus --  
2 MR. PRINCE: Okay.  
3 THE COURT: -- the opinion. Sustained.  
4 MR. PRINCE: Okay.  
5 MR. WINNER: Move to strike.  
6 THE COURT: Granted.  
7 MR. PRINCE: Dr. Wang told us --  
8 THE COURT: Disregard that last comment.  
9 MR. PRINCE: -- in this case, I want to compare what  
10 he's told us under oath in Nevada going back to 2006. The risk  
11 of adjacent segment arthritis, which is the disease I told you,  
12 and the need for future surgery is consistent with the natural  
13 progression of arthritis with age and not definitively  
14 associated with a prior fusion. And this kind of happens  
15 naturally, not because of the fusion.  
16 Well, Dr. Wang had told us back in 2006 if you have a  
17 cervical fusion, there's a 3 percent chance every year you're  
18 going to require another surgery. The chances increase 3  
19 percent every year. And after 20 years, this is his testimony,  
20 there's a greater than 50 percent chance you're going to need  
21 another surgery. So that's not the natural progression of this  
22 disease of just general arthritis. So you're going to resolve  
23 in your mind when he testifies how he resolves that conflict.  
24 And they also hired Dr. Joseph Schifini, a pain  
25 management doctor. This is actually a picture of him and his

1 race car, that's on his website, but he -- that's how he -- and  
2 40 or more percent of his practice is dedicated to the same  
3 medical legal work. He's worked for the Atkin Winner firm  
4 dozens and dozens of times over the years. He's paid -- he  
5 makes hundreds of thousands, not even in the seven-figure range,  
6 both of them doing this medical legal work, and he prepared,  
7 what is it, one, two, three, four -- seven reports.

8           And every time he sent all the information, he had to  
9 charge his money. And nothing, no matter what Desire or her  
10 doctors had to say, it doesn't make any difference. And so  
11 that's the response from the defendant. We know it's more than  
12 a soft tissue injury.

13           So we answered the first two questions, but the  
14 question now is how much money is necessary to balance the  
15 harms, the loss, and have a pain suffering limitation. As we  
16 talked about in the voir dire, this case really is about full  
17 accountability with -- respectfully, she has a very -- Desire  
18 has a very loving family. We're not here for your sympathy.  
19 We're here for an accounting, an accounting only based on the  
20 evidence. The damages really are the past medical expenses,  
21 future medical expenses, past pain and suffering, and future  
22 pain and suffering.

23           And the Judge is going to give you some instructions  
24 that says in determining the amount of losses suffered by the  
25 plaintiffs as an approximate result of this motor vehicle

1 collision, you will take into consideration the nature and  
2 extent and duration of the injuries and damage you believe from  
3 the evidence the plaintiffs have sustained and will decide upon  
4 a sum of money sufficient to reasonably and fairly to the  
5 plaintiffs for the following, the past -- reasonable past  
6 medical expenses, which in this case are \$180,617.62, the future  
7 medical expenses, the reasonable medical expenses the plaintiffs  
8 are reasonably certain to incur in the future.

9           Desire has a life expectancy of 54 years. Just doing  
10 one surgery is \$280,000, and we believe she's going to require  
11 a third one for another \$280,000 at some point in her lifetime  
12 because C5-6 a certainty, and they're going to do the C4-5 later  
13 down the road probably in her mid-60s.

14           Past pain and suffering. I'm going to read the jury  
15 instruction to you because I think it's important to have in  
16 mind when you're deciding this case. It says the physical and  
17 mental pain, suffering, anguish, and disability. You'll see the  
18 law provides that it's not just their physical injuries that are  
19 harmful, it's obviously sometimes the emotional ones, the  
20 psychological ones, the anxiety, the fear.

21           And I can submit to you that you're going to learn  
22 from Desire that she not only went through the tremendous amount  
23 in having -- making the decision to have the surgery, but she  
24 has a worry and a fear virtually every day which affects her  
25 activity level even though she still participates because she

1 has to and does her very best to take care of her family and  
2 herself and her kids. But it's the fear and the worrying and  
3 the anguish of when all this is going to start all over again.

4           And so really the question is what is the value of  
5 good health? The law places a high value on that, particularly  
6 when someone takes that away from you and sets in motion a full  
7 50 years of this, something permanent. And so future pain and  
8 suffering allows not only for what happens in the past, but  
9 what's going to happen to mental pain, suffering, and anguish and  
10 disability you're expected to have in the future.

11           And we're only here -- Desire is pregnant right now,  
12 and her baby is going to be -- her new baby is going to be here  
13 within a few weeks, I think maybe next week. And how does the  
14 prospect of picking up, lifting, taking care of that baby is  
15 going to be completely dependent upon her. She's got to put  
16 forth her very best because she's a mother first.

17           How that's going to affect her and how she takes care  
18 of her other kids and how she participates, and we're going to  
19 be talking about a chronic pain cycle. Because what it does is  
20 it affects your sleep, it affects your body, it affects your  
21 outlook, it creates anxiety, it creates depression. And it's --  
22 once you're sleep deprived, the baby is going to cause some sort  
23 of sleep deprivation, obviously, but the pain, it's like your  
24 worrying I don't get to participate, I don't get to go on rides.

25           You're going to hear that when they went to Orlando,



1 Florida and took her family last year, she didn't get to go on  
2 rides at Disney World. She's in her 20s and her kids -- she  
3 isn't going to do that with her kids. She's a young mom. Maybe  
4 when you're older you don't want to do that, but she had that  
5 ability to participate.

6           The price you pay of anything is the amount you've  
7 exchanged, but I submit to you that time is our most precious  
8 resource and being pain free. But really, we have this limited  
9 amount of time. And when you steal somebody's time and their  
10 enjoyment of life, that places a high value. And the  
11 instruction the Court gives you, remember I talked about loss of  
12 enjoyment of life, and here's where I get that from.

13           The loss of enjoyment of life and compensation for  
14 loss of the ability to participate and derive pleasure from the  
15 normal activities of daily life or for the plaintiff's inability  
16 to pursue their talents, interests, hobbies, or avocations. The  
17 law places a high value on that, too. And if someone takes that  
18 away from you, they haven't paid for that. And so what are  
19 Desire's harms and her losses?

20           Well, we know the past and future medical will be more  
21 than \$650,000, and based upon everything she went through,  
22 having to go through the surgery, make that decision, and  
23 understanding that she -- she now has to manage this disease  
24 process and likely go through two more surgeries in her lifetime  
25 and everything -- and that's assuming that everything goes

1 perfectly so there's no complications.

2           Because this is Desire's only chance. She can't come  
3 back. We can't reopen the case after you make a decision. Your  
4 decision is the final decision. We believe the evidence has  
5 demonstrated that she's -- that's going to be more than \$3  
6 million and this is her only chance to present her case to you,  
7 for you to listen to the evidence, and have you make a decision  
8 to hold the defendant accountable.

9           So how much money does necessarily balance out the  
10 harms, losses, for a lifetime of pain, suffering, and  
11 limitation, we think that the evidence is going to support that.  
12 And on behalf of Desire, I want to thank you for your time and  
13 attention and I'm excited to present this case to you and have  
14 you listen to this story. Thank you.

15           THE COURT: Mr. DeGree.

16           Will counsel approach briefly.

17                           (Bench conference)

18           THE COURT: Can you give --

19           MR. PRINCE: He did.

20           THE COURT: Okay. So you're going to start looking  
21 over notes so we don't take --

22           MR. PRINCE: I'm going to look at them right now.

23           THE COURT: -- too long a break. Okay.

24           MR. PRINCE: I'm looking at -- I'm looking it right  
25 now.

1 THE COURT: All right.

2 MR. WINNER: Dennis. [Indiscernible], but the two  
3 future surgeries total 280?

4 MR. PRINCE: No, the -- the 280 is the -- they're  
5 both each 280.

6 MR. WINNER: Well, then I'm going to need to object  
7 to that. All of the future damages alleged before trial were  
8 a total of \$280,000. You can't come in with an additional  
9 280,000 on the first day or trial.

10 MR. PRINCE: Okay. Well, we'll talk about that.

11 MR. WINNER: Huh?

12 THE COURT: We'll talk about it later because you  
13 didn't object to it, so we'll have to figure it out.

14 MR. PRINCE: Okay. Okay.

15 THE COURT: We're going to take some time.

16 THE MARSHAL: Restroom break?

17 THE COURT: What?

18 THE MARSHAL: Restroom break.

19 THE COURT: Do they want one?

20 (End of bench conference)

21 THE MARSHAL: Do you all want a restroom break, or  
22 just one?

23 THE COURT: I anticipate this next argument will be  
24 less than an hour. Do you want to take a quick break right  
25 now?

1 JUROR: That's okay. We can -- we can wait.

2 THE COURT: And then we'll take one before the  
3 defense. Does that work? I don't want to push anybody or  
4 anything.

5 JUROR: No.

6 THE COURT: You're all good? Okay.

7 PLAINTIFF GUADALUPE PARRA-MENDEZ'S OPENING STATEMENT

8 MR. DeGREE: Good afternoon. I'm going to pick up  
9 where Mr. Prince left off, take this opportunity to introduce  
10 you to Guadalupe Parra-Mendez. She was the front seat  
11 passenger in this collision. She's here with us today sitting  
12 right next to Desire's right. I'm going to take this  
13 opportunity to let you know what happened to her as a result  
14 of his collision, the injuries she sustained, how she treated  
15 for those, and how it's affected her life.

16 Before we jump into what's happened with her  
17 injuries, I want to present to you a common theme that you're  
18 going to hear a lot of these doctors testify about for both  
19 sides. What you're going to learn is that everyone is unique.  
20 Everyone has their own unique spine. Different people have  
21 different spines. Everyone has a unique spine. Everyone is  
22 built differently, everyone responds to treatment differently,  
23 and everyone responds to trauma differently.

24 So, for example, in this case when you have two  
25 people in the same car, it doesn't mean that they're going to

1 have the same injury. It doesn't mean that they're going to  
2 respond to the same trauma the exact same. It doesn't mean  
3 that they're going to heal the same. They're very two unique  
4 and different people with two unique and different spines.

5           So who is Guadalupe Parra-Mendez? She's 26 years  
6 old. She was born in California. Moved to Las Vegas in 2001  
7 with her parents and three brothers, so she's been here close  
8 to 19 years. Went to high school here in Las Vegas. Attended  
9 Chaparral High School, and presently works at a call center.  
10 She just got a new job there. Just finished up training and  
11 has been working there for a little bit of time. She's taking  
12 time away from work to be with us here today and present her  
13 claims to you.

14           She's also Desire Evans-Waiiau sister-in-law. They  
15 married brothers. And she enjoys family get togethers, family  
16 barbeques, and one of the biggest joys that she has in life is  
17 being an aunt to Desire's three children, soon to be a fourth  
18 on the way. She's looking forward to that, as well.  
19 Interestingly enough, she's also a violinist in a mariachi  
20 band. That's what she does in her spare time on her off days  
21 from work.

22           The other thing you're going to learn from Guadalupe  
23 is that she's a fault free passenger as a result of this  
24 collision. She was a front seat passenger. Nobody is going  
25 to come in here at any point in time and infer or suggest or

1 insinuate that she did anything at all to cause this  
2 collision. She's a fault-free passenger.

3           The three questions you're going to be asked to  
4 respond to for purposes of Guadalupe's case are the same exact  
5 three questions that you're going to be asked to answer with  
6 respect to Desire's case. Number one, who is at fault. I am  
7 not going to spend any time here explaining to you what  
8 happened. Mr. Prince has done an excellent job of explaining  
9 to you through that diagram exactly what's happened as a  
10 result of this collision and the defendant's response to why  
11 this collision was caused and Guadalupe supports that version  
12 of the events.

13           You're also going to be asked to determine whether  
14 or not she was injured, and you're going to be asked to  
15 determine how much money is necessary to balance the harms and  
16 losses from injury and of pain and suffering that she  
17 sustained.

18           So what are her harms, injuries, and losses? These  
19 are Guadalupe's medical bills. She went to Align  
20 Chiropractic. There she received chiropractic care for  
21 approximately three and a half months. She also underwent an  
22 MRI and those charges are for \$7,890. She also went to North  
23 Las Vegas Pain Management and Urgent Care. She went there on  
24 one occasion, treated with Dr. Ross.

25           What you'll learn is that chiropractors cannot

1 prescribe medication. So if a chiropractor feels that  
2 medication would be beneficial for a patient as they're  
3 treating for the injury, they'll refer them to a medical  
4 doctor who will then manage the medication. So she went there  
5 one time, and she also treated with Dr. Rosler who, as Mr.  
6 Prince explained, that you're going to be hearing from today,  
7 and he's an interventional pain specialist. She went to him  
8 on two separate occasions.

9           Whether her injury is caused as a result of Ms.  
10 Tate's negligence. She had a neck sprain, a mid-back sprain,  
11 a low-back sprain, a lumbar -- excuse me, a lumbar sprain.  
12 These are soft tissue injuries. You've already kind of been  
13 given the description as to what soft tissue injuries are.

14           But just to further elaborate on that a little bit,  
15 what is a sprain-strain? Consider the spinal column and the  
16 vertebrae, the bones that are right there, everything is  
17 connected by a series of soft tissues. Those are muscles,  
18 ligaments, and tendons. Consider it kind of like a big web of  
19 rubber bands kind of holding everything together, allowing for  
20 movement, providing stabilization for everything that we do  
21 and every which way we move.

22           You'll hear sprain-strain often used  
23 interchangeably. The doctors will often refer to them  
24 interchangeably, but there is a difference. A strain involves  
25 a stretching or a tearing of the muscles or tendons. So if

1 you hear strain, that's what it means. As for a ligament,  
2 that is a strain, a stretching or a tearing of the ligament.

3 So when you're hearing about sprain-strain, it's  
4 really just a matter of which rubber bands or what set of  
5 rubber bands were injured as these soft tissues. The reason  
6 they're so often used interchangeably is because the pain  
7 symptoms are very much the same. You'll have pain, you'll  
8 have inflammation, you'll have decreased motion, you'll have  
9 numbness, you can have swelling, and the treatment is the  
10 same.

11 It's often resolved through conservative care via  
12 through chiropractic care for both Guadalupe and Desire for  
13 the soft tissues, and then usually the outcome is the same, so  
14 soft tissues as you've heard where they're typically resolved  
15 in two, three, four months' time through conservative  
16 treatment.

17 Guadalupe was in a collision on October 30, 2015.  
18 She treated up through February 12, 2016. That was the last  
19 day that she received any medical treatment as a result of  
20 this collision, a period of three and a half months. During  
21 that time she had three doctor visits. I've already explained  
22 those to you.

23 There have been two with Dr. Rosler, and one with  
24 Dr. Ross, so there's Ross and Rosler. 23 chiropractic visits  
25 where she received chiropractic manipulation, electrical



1 stimulation, hot/cold packs, and then five x-rays and MRIs.  
2 So she initially, after the first visit, she had an x-ray of  
3 the neck, mid-back, and low back, and then later on had MRIs  
4 of the neck and low back where she was most experiencing the  
5 pain.

6 Starting point for her prior to this collision is  
7 you're going to learn that in the weeks, days, months, years  
8 leading up to this collision, completely pain free. You'll  
9 hear the term asymptomatic, completely without pain, was not  
10 experiencing any of this neck pain, any of this back pain, any  
11 of the sort prior to this collision.

12 So in the initial presentation where you were  
13 explained Desire Evans' injuries, there was discussion of disc  
14 injury versus soft tissue injury. And what we learned, what  
15 the doctors did through clinical correlation, I think as  
16 you've already been explained, they were able to confirm both.  
17 Desire had a disc injury as well as a soft tissue injury.

18 Well, we learned through the same clinical  
19 correlation process, which the doctors will tell you they use  
20 for all their patients, is that through the course of  
21 treatment, through diagnostic imaging, through evaluating the  
22 patient, providing treatment, and evaluating the patient's  
23 response to the treatment, they were able to, for Guadalupe,  
24 rule out the disc injury, and that's what these doctors do.

25 Oftentimes these patients will present on the first

1 day of treatment. There will be an initial diagnosis.  
2 Sometimes it's called a working diagnosis. Sometimes it's  
3 referred to as a differential diagnosis. Because on the first  
4 day of treatment, usually they only have the opportunity to  
5 ask the patient what happened, how are you feeling, what  
6 brought about this pain, what's making it worse. They're  
7 usually able to perform a physical exam, but they don't have  
8 the benefit of monitoring and evaluating the patient of a  
9 series of time.

10 So that's what these doctors do is when they have an  
11 initial diagnosis, they either rule it in or they rule it out  
12 through the same exact process, patient history, examination  
13 findings, how the patient is responding to treatments, is the  
14 chiropractic care helping, what type of relief are you  
15 getting, is it making -- is it making your daily activities  
16 better, what's making it worse, is it sitting, standing?

17 When you're leaving chiropractic care are you  
18 getting relief for a day, are you getting relief for three or  
19 four days? It's a constant monitoring process, diagnostic  
20 imaging and other testing, the pain management and injections.  
21 I'm not going to spend any time there. She didn't have any of  
22 those interventional procedures.

23 Same thing, she was in the crash. It was Friday  
24 night roughly around 6:30 p.m. She was able to finish out the  
25 evening with Desire and her three children. The next day she

1 woke up. That's the first time that she started to experience  
2 significant pain, she did not sleep well. And over the course  
3 of the weekend, she had two bad nights of sleep, attempted to  
4 work. She was a cash counter at the Cromwell down on the  
5 strip at the time.

6           She would work an eight, nine, ten-hour shift  
7 typically, usually on her feet. And over the course of the  
8 two to -- those two days, she was having difficulty getting  
9 through work, had to receive modification, had to sit for  
10 extended periods of time, had to take longer breaks, and  
11 decided to go to the doctor for the very first time, the very  
12 first business day after this collision had occurred from the  
13 prior Friday night.

14           She goes to Align Med. This is November 2, 2015, so  
15 this is the following Monday, following the Friday evening  
16 collision. A patient history is obtained from her. She  
17 reports the motor vehicle collision. She describes how it  
18 happened. She describes having -- experiencing pain the very  
19 next day. She described what she's feeling, she's also having  
20 headaches, she's feeling nauseous throughout the weekend.

21           She hasn't been able to perform her house duties,  
22 and as I kind of mentioned, she was already having  
23 difficulties getting through work at that time. She's having  
24 throbbing pains in the low back and neck. It hurts during the  
25 night, but low back when she's sleeping she's not getting good

1 rest. She started to have severe headaches. I already  
2 mentioned that.

3 And interestingly enough, she's having throbbing  
4 pains in the left side of the neck radiating down into the  
5 left arm and fingers. And that's important because that's  
6 obviously a major concern for all of these doctors. When you  
7 have that radiating pain, there's concern that there's  
8 overlapping symptoms, it could be soft tissue in addition to a  
9 structural disc injury.

10 Dr. Kissling performs a chiropractic exam on her the  
11 first day. The first is a cervical maximum compression test.  
12 That's a neck exam pushing down on the head, rotating it to  
13 try to identify where the pain is coming from and how the pain  
14 is being triggered, a distraction test. Also, a Kemp's test.  
15 That's more of a low back exam. The chiropractor will get  
16 behind you, rotate you similarly, try to identify where the  
17 pain is coming from and what's triggering it.

18 On that first -- that first initial visit of the  
19 initial working or differential diagnosis is cervical disc  
20 disorder with radiculopathy, a sprain of the low back, sprain  
21 of the mid-back, and muscle spasms. So that's the initial  
22 working diagnosis and it's only through time and treatment  
23 that the doctors have to either rule that diagnosis in or rule  
24 that diagnosis out because she has the overlapping symptoms.

25 Now, she has aching, stiffness, throbbing, sharp,

1 and radiating pain still ten days after this collision. Those  
2 are symptoms that are symbolic of a soft tissue injury,  
3 sprain-strain like what we've talked about. But the focus  
4 here is still also the fact that she's having the radiating  
5 pain down into the left arm and hand.

6 At that point in time the chiropractor requests  
7 advanced imaging, wants to take a greater look at it, one more  
8 piece to this overall puzzle, schedules her for a low back MRI  
9 on November 10th. She ultimately has that MRI ten days later  
10 on November 20th.

11 In the meantime, as I mentioned, she went to Dr.  
12 Ross. She was referred to Dr. Ross by the chiropractor on  
13 November 13th. Dr. Ross goes through the same thing, takes a  
14 patient history, gets an understanding for her symptoms. And  
15 Dr. Rosler was mostly there just to manage her medication for  
16 this time while she's treating through chiropractic care.

17 So you have the overlapping symptoms. You had the  
18 physical exams, the response to treatment. She's doing well,  
19 but not as well as they would have liked. You have the MRI  
20 findings and the need there is for further evaluation. So she  
21 goes to -- she's referred to Align Med to Dr. Rosler.

22 The first time she goes to Dr. Rosler is December  
23 18, 2015. She, again, describes the motor vehicle collision,  
24 describes that as having what triggered her pain, describes  
25 how it happened. She's mostly having neck and low back pain

1 at this time. The pain is still aching, tender, and number.  
2 Low back pain is occasional at that point, and rated at 2 to  
3 3. Neck pain is more constant, so the concern for him  
4 initially or early on is more in the neck than the low back.

5 And she denies prior history of similar  
6 symptomatology. She was pain free prior to this collision.  
7 And then she's also reported to Dr. Rosler the intermittent  
8 numbness in the left forearm that goes into her left hand, and  
9 so she's still dealing with that about six weeks after the  
10 collision.

11 The same day, Dr. Rosler, his initial working  
12 diagnosis is a neck sprain-strain and a low back  
13 sprain-strain. He's focused on soft tissue as it pertains to  
14 Guadalupe. He recommends -- he has four recommendations for  
15 her. Number one is you are receiving some benefit from the  
16 chiropractic care, go back, continue with your treatment plan  
17 with chiropractic care, see if you start getting better  
18 long-term benefit from it, and hopefully that will resolve the  
19 injury.

20 He also is concerned about the symptomatology in the  
21 left arm, so he orders an MRI of the cervical spine. Because  
22 of that symptomatology, he thought she might benefit from a  
23 surgical consultation. She never ended up going and doing  
24 that, she ultimately didn't need it, and come back and see Dr.  
25 Rosler if the pain persists.

1           She comes back to Dr. Rosler a month later, so now  
2 we're about two and a half months following the collision,  
3 January 20th of 2016. She's doing well. He recommends  
4 continue with the conservative care. He no longer has a  
5 concern with the findings on the imaging studies. He no  
6 longer has a concern for a surgical consultation. Keep doing  
7 what you're doing with the chiropractic care, and hopefully  
8 things resolve for you and come back and see us if you -- if  
9 the pain persists.

10           That's the last time that she sees Dr. Rosler,  
11 January 20th of 2016. She continues with the chiropractic  
12 care at Dr. Rosler's recommendation. A week later, January  
13 27, 2016, she's doing good, the benefits are lasting longer,  
14 she's responding favorably, she's doing really, really well  
15 through the chiropractic treatment that she's receiving at  
16 Align Med.

17           February 12, 2016, this is the very, very last time  
18 that she receives treatment as a result of the injuries  
19 sustained in this collision. She's reached maximum medical  
20 improvement, which means she's reached the best that they can  
21 do for the type of care that the chiropractor provides. Her  
22 benefits are lasting longer, she's met her goals, she's  
23 tolerated the treatment well, and she's discharged from care.  
24 It's the last time she sees a medical doctor as a result of  
25 this collision.

1           Through clinical correlation, as Dr. Rosler would  
2 tell you, she's involved in a collision, she had a pain, they  
3 obtained MRI imaging studies, she was evaluated and treated  
4 for a period of about three and a half months monitoring her  
5 to see how she does. Ultimately, reduced pain, and recovered  
6 well as a result of the collision. The response from the  
7 defendant is pretty much the same. It's that if Guadalupe was  
8 in -- if she was injured as a result of this collision, she  
9 suffered a soft tissue sprain-strain as a result of the  
10 October 30, 2015 collision.

11           They also hired Dr. Schifini as it pertains to her  
12 claims, too. Paid him a great deal of money to evaluate her  
13 medical records, to offer two reports, paid each time for that  
14 to form his opinions as it pertains to her injuries that she's  
15 claiming as a result of the collision.

16           Dr. Schifini's opinions, he says if she was injured,  
17 all of the treatment was reasonable and necessary. All of the  
18 treatment was appropriate for treating her soft tissue injury.  
19 All of the treatment was directly and causally related as a  
20 result of the October 2015, but that's everything. Every  
21 single chiropractic visit, all three of the visits to the  
22 medical doctors, one for medication, two are for evaluation  
23 from an interventional pain specialist, every last bit of it,  
24 the imaging studies.

25           So who is at fault? We think we're going to show



1 you that that the defendant was 100 percent at fault, that  
2 Guadalupe was injured, that she suffered soft tissue  
3 sprain-strain as a result of this collision, and the question  
4 becomes, similarly, how much money was necessary to balance  
5 the harms and losses for the injury and pain and suffering  
6 that she sustained as a result of this collision.

7           The case is just like Desire's as it is for  
8 Guadalupe's. This is about a full accountability here, as  
9 well. Her damages are for past medical expenses and past pain  
10 and suffering. I emphasize past here because, fortunately for  
11 her, the -- the treatment worked out well for her, she  
12 recovered, she got better. She doesn't have a recommendation  
13 for two future surgeries, she's not going to be dealing with  
14 this for the rest of her entire life, but that doesn't mean  
15 that she didn't sustain an injury.

16           This is a very serious injury. An injury that's one  
17 of the most widely studied injuries amongst medical doctors.  
18 And so she's here to recover for past medical expenses and the  
19 past pain and suffering for the over 100 days that she had to  
20 deal with this following the October 2015 collision.

21           What are the past medical damages? We've already  
22 covered that, \$10,204.18. So what is her past pain and  
23 suffering? She had 3 doctor visits, 23 chiropractor visits,  
24 presentation on 2 separate occasions for a total of 5 imaging  
25 studies, over 100 hours devoted to medical appointments.

1 I bring that up there because this isn't easy for  
2 her in dealing with this for this three and a half months.  
3 It's not like just showing up at the doctor and you're in and  
4 out. She's scheduling appointments, she's scheduling  
5 follow-up appointments, she's making arrangements, she's  
6 taking time off work, she's traveling to the doctor, she's  
7 sitting in the lobby waiting to be called back, she's being  
8 evaluated, treated for 45 minutes to an hour every single  
9 time.

10 These appointments, sitting in the lobby, waiting to  
11 get checked out and back home, and she's doing that over and  
12 over and over again for this three and a half months. She's  
13 on medication, doing her best to try to manage the pain as  
14 she's going through this chiropractic care, limited daily  
15 activities.

16 For this period of three and a half months, she'll  
17 tell you she mostly -- she completely altered her life. She  
18 mostly stayed in the house as much as she could. She  
19 continued to work, she had to, she needed to. But no day for  
20 this three and a half months was the same as day prior to this  
21 October 2015 collision.

22 Before she'd sleep well, no difficulty sleeping, get  
23 up, full night's rest, make herself breakfast, go to work.  
24 Work a full shift, 8, 9, 10 hours, working for the Cromwell,  
25 being a money counter. A lot of time on the feet, a lot of

1 time sitting down, no problems. Go home, make herself dinner,  
2 take her dog to the dog park or for a walk around the  
3 neighborhood. That's how she kind of decompressed after a  
4 full work day. Go to bed and start all over again. On her  
5 off days she enjoyed spending time with Desire and her family,  
6 that was her favorite thing to do, in addition to being a  
7 violinist for the mariachi band at different venues.

8           After this, for that three and a half months, she  
9 was experiencing difficulty sleeping, she's nauseous. From  
10 the very first day after this collision, she's waking up  
11 tired, she has broken sleep, she's not getting the same sleep  
12 as she did before. Gets up, takes medication to get through  
13 the -- through the day, medication makes her tired, she goes  
14 through an entire work day, has to make modification for that  
15 three and a half months at work, sitting for extended periods  
16 of time, standing for extended periods of time to try to  
17 alleviate the pain, goes home.

18           She's now worked an 8, 9, 10 hour day being on  
19 medication. She's tired, she's not taking the dog to the dog  
20 park, she's staying home, she's not seeing Desire and her kids  
21 as much, she's not doing what she enjoyed on the weekend  
22 because she needs to go to bed early. She needs to get as  
23 much sleep as she possibly can, recharge for the next day for  
24 three and a half months, over 100 days.

25           So what are her harms and losses? The past medical

1 expenses we're seeking to recover on her behalf, \$10,204.18,  
2 and past pain and suffering in the amount of \$40,000. We look  
3 forward to presenting her claims as well to you over the next  
4 week or so. Thank you.

5 THE COURT: Okay. Take a recess? Yeah. All right.

6 During the recess you're admonished not to talk or  
7 converse among yourselves or with anyone else on any subject  
8 connected to this trial or read, watch, or listen to any  
9 report of or commentary on the trial of any person connected  
10 with this trial by any medium of information, including,  
11 without limitation, newspapers, television, the Internet and  
12 radio, or form or express any opinion on any subject connected  
13 with the trial until the case is finally submitted to you.

14 As always, we'll plan on 10 and expect 15.

15 (Jury recessed at 2:53 P.M.)

16 THE COURT: Okay. Anything outside the presence?

17 MR. PRINCE: No. Just when we get back, I have some  
18 objections to the -- some of the slides.

19 THE COURT: Well, do you want to do that now?

20 MR. PRINCE: You want to do it now?

21 MR. WINNER: Sure.

22 THE COURT: Okay.

23 MR. PRINCE: What's your preference? You ready?

24 THE COURT: Let's do it so that we -- so we know how  
25 long it's going to take.

1 MR. PRINCE: Okay.

2 THE COURT: Can I have the -- do I have yours yet,  
3 Mr. Winner? I don't think we have any of yours. Do you have  
4 a copy of yours?

5 MR. WINNER: To give you? Yes.

6 THE COURT: Yes, please. Thank you. How many  
7 witnesses do you intend to call today?

8 MR. PRINCE: Just one.

9 THE COURT: Okay. Okay. What's your objection?  
10 Wait, for the record, we're outside the presence of the jury.

11 MR. PRINCE: His -- his pages aren't number, so --  
12 but it's the -- one, two -- the 7th page, a driver shall not  
13 suddenly stop or decrease speed of a vehicle without first  
14 giving appropriate signal. I guess that's a statute. I don't  
15 -- that's really a quoting of a statute.

16 THE COURT: Didn't you have one in yours?

17 MR. WINNER: That wasn't a --

18 MR. PRINCE: No.

19 MR. WINNER: That wasn't an objection.

20 MR. PRINCE: An instruction. You have an  
21 instruction.

22 MR. WINNER: That was an objection posed last time,  
23 which was overruled, that's why I left it in.

24 MR. PRINCE: Anyway, that's one.

25 THE COURT: Okay.

1 MR. PRINCE: Then the next one, this one says  
2 Babylyn Tate, it says plaintiff demanded the police appear for  
3 a report in case she needed it later. Number one, that's  
4 argumentative. Two, we've -- we've briefed this issue. You  
5 are required to call law enforcement, and if she wanted a  
6 report, that's up to her. I mean, they're suggesting that  
7 you're doing something improper. This is -- we did a trial  
8 brief on this exact issue. You're required to go make a  
9 report. I mean --

10 THE COURT: Okay. Well, I think that's all -- I  
11 mean, I think that's argument. I do think the way it's  
12 written here, it's -- it is a fact, and I think it's the same.  
13 I mean, you can say that she was required to, but I'm going to  
14 overrule that. I think it's -- it's one of the facts, and a  
15 lot is --

16 MR. PRINCE: But I mean --

17 THE COURT: It's -- it's gray, actually --

18 MR. PRINCE: Well, the -- we have a --

19 THE COURT: -- what it -- she did what she was  
20 required to do, but she certainly wasn't required to hang  
21 around for an hour. All facts that you can both argue, and  
22 you can argue against it, they can argue for it, so I overrule  
23 that one. What else?

24 MR. PRINCE: The next one is Dr. Khavkin says sign  
25 her up on a litigation lien. I guess that's the statement of

1 a, you know, I guess they treated her on a lien. I mean,  
2 there's nothing wrong with being on a lien. It says signed  
3 her up on a litigation lien.

4 MR. WINNER: Which is --

5 MR. PRINCE: So it's not a litigation lien. He's  
6 using the term litigation, do you have it there?

7 THE COURT: No.

8 MR. PRINCE: Actually, she didn't --

9 THE COURT: Oh, wait. Yeah, there is. Three days  
10 later?

11 MR. PRINCE: Yeah. No. I don't know. It says --

12 THE COURT: It says three days later. It's got a  
13 picture of the chiropractic place.

14 MR. PRINCE: No.

15 MR. WINNER: I said litigation lien there, also.

16 THE COURT: Oh.

17 MR. PRINCE: Right. I guess I'm -- any reference to  
18 a litigation lien, I'm referring -- I'm --

19 THE COURT: Is that a fact?

20 MR. HENRIOD: It is a fact. It is admissible.

21 MR. PRINCE: Well, I don't know. The --

22 MR. HENRIOD: Now, on the clear PowerPoint  
23 presentation, we don't have 100 dollar signs by it to, you  
24 know, really illustrate the point, but it does go to -- to  
25 motive and the bias --

1 MR. PRINCE: No. No, it doesn't.  
2 MR. HENRIOD: -- and it is admissible.  
3 MR. PRINCE: Absolutely does not.  
4 THE COURT: Well I -- I just want to know if it's a  
5 fact.  
6 MR. PRINCE: The court in Cory, said it has marginal  
7 relevance, if any. And you're required to even look at the  
8 lien to determine whether or not if there's any -- if the  
9 plaintiff is required to reimburse what -- depending upon the  
10 outcome of the case or not. So that's an issue for you to  
11 decide whether it's even admissible or not.  
12 MR. WINNER: No, the motion was filed and lost.  
13 MR. PRINCE: Yeah.  
14 MR. WINNER: The lien comes in.  
15 THE COURT: Okay. If -- if that's -- if that's the  
16 case, then I'm going to overrule it. We'll double check.  
17 MR. PRINCE: Why do you call it a litigation lien?  
18 It's not a litigation lien. It's not a litigation lien. If  
19 it's not titled that --  
20 THE COURT: What's it titled?  
21 MR. PRINCE: Lien, medical lien.  
22 MR. WINNER: Lawsuit lien.  
23 MR. HENRIOD: Against what? Against their house?  
24 Isn't it against the proceeds from the lawsuit?  
25 MR. PRINCE: No. You know it --



1 MR. HENRIOD: No? What is it, again?

2 MR. PRINCE: -- doesn't say -- you know for a fact

3 it doesn't say litigation lien. You know it is not even

4 characterized as a litigation lien.

5 THE COURT: What is it? What is a litigation lien?

6 I don't even --

7 MR. PRINCE: No. It's -- wait until you get --

8 MR. WINNER: It's a lien against the proceeds of the

9 lawsuit.

10 MR. PRINCE: No. No.

11 MR. WINNER: Or settlement.

12 MR. PRINCE: It could be a claim, it could be a

13 settlement, most of these cases don't even go to a lawsuit.

14 So it could be any -- any settlement proceeds. So they're

15 going to use the word litigation lien, and that's -- it's not

16 phrased that way at all.

17 THE COURT: But it -- but it's only a lien against

18 the proceeds --

19 MR. WINNER: Right.

20 THE COURT: -- from something that results from

21 litigation, whether its litigation ends in a -- in a --

22 MR. WINNER: Correct.

23 MR. PRINCE: No, no.

24 THE COURT: -- settlement or --

25 MR. PRINCE: Not accurate.

1 THE COURT: -- in a --  
2 MR. WINNER: Or a settlement.  
3 MR. PRINCE: No.  
4 MR. WINNER: Yeah.  
5 MR. PRINCE: No. It could be proceeds of a  
6 settlement. So -- with their -- for which there's no  
7 litigation --  
8 THE COURT: Well, that's litigation, as well. I mean  
9 --  
10 MR. PRINCE: No. It's not.  
11 THE COURT: -- nobody -- well you guys don't settle  
12 until you litigate stuff.  
13 MR. PRINCE: No.  
14 THE COURT: It may not be the full trial --  
15 MR. PRINCE: No. Not true.  
16 THE COURT: -- but you're going to have --  
17 MR. PRINCE: No, not -- people -- people treat  
18 people on a lien, not uncommonly. And what if there's no  
19 lawsuit? There's often that -- what if they go through the  
20 claim and they settle the claim without any lawsuits? So it  
21 is not dependent upon litigation in any way. It's the  
22 characterization of litigation lien. That's not accurate at  
23 all. Because it's -- it's like anticipation of litigation.  
24 THE COURT: So are you saying that it has nothing to  
25 do with the lawsuit being filed?

1 MR. PRINCE: Correct.

2 MR. HENRIOD: We can say claim recovery, if that --

3 MR. PRINCE: No.

4 MR. HENRIOD: -- if he prefers.

5 THE COURT: That's fine.

6 MR. HENRIOD: But I don't think it makes -- I don't

7 think it's a major difference.

8 THE COURT: Does that make it -- does that make it

9 better?

10 MR. PRINCE: Right. I mean the Court -- the problem

11 with the Court is that they're -- they've already said in Cory

12 it has marginal relevance, if any. So --

13 THE COURT: Well, they're telling me --

14 MR. PRINCE: -- they're calling it a litigation --

15 THE COURT: -- it's already been ruled on --

16 MR. PRINCE: -- characterizing --

17 THE COURT: -- and it's coming in.

18 MR. PRINCE: -- it that I was characterizing it that

19 way.

20 THE COURT: Okay. Well, my understanding is it's

21 coming in any way. So would you prefer to say -- I forgot,

22 what did you just say?

23 MR. PRINCE: I guess lien, treat it on a lien basis,

24 or a medical lien.

25 MR. HENRIOD: Or gained from --

1 MR. PRINCE: It's called a medical lien.  
2 MR. HENRIOD: -- claim proceeds.  
3 MR. WINNER: It's a lien against --  
4 MR. PRINCE: No. You know --  
5 MR. WINNER: -- the case or it's a lien against the  
6 proceeds of a settlement or a lien against a verdict.  
7 MR. PRINCE: Well --  
8 MR. WINNER: I don't know what --  
9 MR. PRINCE: -- one issue is not all the doctors  
10 treat it --  
11 THE COURT: Okay.  
12 MR. PRINCE: -- on a lien --  
13 THE COURT: Well it's going --  
14 MR. PRINCE: -- and they know that.  
15 THE COURT: -- to come in, but I'm -- and I'm going  
16 to let them give some modification. How do you want them to  
17 say it, other than just lien?  
18 MR. PRINCE: Lien, just lien.  
19 THE COURT: Proceeds of recovery --  
20 MR. PRINCE: Right. And Dr. Garber, he didn't do  
21 any surgery on a lien. He --  
22 THE COURT: Well this is -- this is talking about  
23 the chiropractor, though.  
24 MR. PRINCE: I know.  
25 THE COURT: I'm sure --

1           MR. PRINCE: But I'm saying as you work through it,  
2 they keep calling it litigation, he did not treat on a  
3 litigation lien.

4           THE COURT: Okay. Well they could argue that as  
5 well. I'm just saying, as to this one --

6           MR. PRINCE: Well, he can't bring up a collateral  
7 source, so how do you do that?

8           MR. WINNER: You already lost this motion. You  
9 tried to --

10          MR. PRINCE: No, no. I was talking --

11          MR. WINNER: -- include the --

12          MR. PRINCE: -- about Dr. Garber. But you're going  
13 to say litigation lien, you're calling it a litigation lien.  
14 The motion the Court granted, which wasn't you, was that --  
15 that they could reference that they treated on a lien basis.  
16 Not a quote -- in quotes, litigation lien, like that's -- like  
17 that's some term of art. There is no such term of art.

18          THE COURT: But what I'm saying is I'm offering you  
19 the opportunity to pick whatever term you want on it.

20          MR. PRINCE: Lien. Just lien. Medical lien.

21          THE COURT: But the jury needs to know, is -- is  
22 going to be entitled ultimately to know what kind of lien.  
23 It's not a lien against --

24          MR. PRINCE: No. It's -- it's a medical; right?  
25 From the proceeds of any judgement or verdict or whatever;

1 right?

2 THE COURT: Okay. You -- you want to say that?

3 MR. HENRIOD: Do you want to say judgement --

4 THE COURT: A lien against any --

5 MR. HENRIOD: -- or verdict?

6 THE COURT: -- judgement or a verdict or a  
7 settlement?

8 MR. WINNER: I'm -- I'm not saying it's a lien  
9 against this litigation on whatever recovery the plaintiff  
10 gets.

11 MR. PRINCE: Fine. Whatever. The --

12 THE COURT: Is that how you want to say that? Okay.

13 MR. PRINCE: Right. I mean I don't agree with it  
14 because the Supreme Court doesn't agree with that analysis  
15 either, but I understand what you're saying. I'm saying pick  
16 out the litigation lien, because it's not called a litigation  
17 lien.

18 THE COURT: Okay. So you don't like the -- where it  
19 sounds like a term of art.

20 MR. PRINCE: Because --

21 THE COURT: So Mr. Winner --

22 MR. PRINCE: Because --

23 THE COURT: -- if you could change that to say a  
24 lien against the proceeds from any judgement, recovery, or  
25 settlement. Is that what you want?

1           MR. WINNER: Can I just say lien against the lawsuit  
2 or any recovery?

3           MR. PRINCE: Against any judgement in the case. You  
4 can't -- can't talk about settlement; right? How can we talk  
5 about settlement?

6           MR. HENRIOD: What --

7           MR. PRINCE: You -- you prevented us from talking  
8 about their insurance.

9           MR. WINNER: We -- you're just trying to reargue  
10 liens --

11          THE COURT: Just --

12          MR. WINNER: -- and that was already lost, and now I  
13 -- I can't talk about liens --

14          MR. PRINCE: Okay.

15          MR. WINNER: -- unless it's with a word that you  
16 like.

17          MR. PRINCE: All right. Yes. That's correct.

18          THE COURT: Okay. So --

19          MR. PRINCE: Right.

20          THE COURT: -- the way I just said, is that how you  
21 want it? Like I said, the word lien is coming in and I just  
22 -- if you don't like it because it makes it sound like  
23 something, although I'm not really sure -- I don't usually --  
24 I don't usually sustain objections to language and word  
25 choices. I let you all --

1 MR. PRINCE: Well like in Khavkin --  
2 THE COURT: -- pick that under --  
3 MR. PRINCE: -- they don't even have a lien in the  
4 file. There's not even a lien -- the lien -- copy lien, it's  
5 not even in their defense exhibits. So where is it?  
6 THE COURT: I don't know.  
7 MR. PRINCE: Right.  
8 MR. HENRIOD: So where are we? Lien against -- I  
9 mean, I think litigation lien is fine, but if you'd feel  
10 better if it is --  
11 MR. PRINCE: Well you don't even have a --  
12 MR. HENRIOD: -- lien against --  
13 MR. PRINCE: -- do we have the lien?  
14 MR. HENRIOD: You'd feel better if it's lien against  
15 a judgment in this case, a judgment or recovery in this case?  
16 MR. PRINCE: I'm saying --  
17 MR. HENRIOD: You like that better than litigation  
18 lien?  
19 THE COURT: Okay. I'm going to overrule it. It's  
20 just another language choice. If -- if in the pretrial  
21 motion --  
22 MR. PRINCE: But they don't even have a --  
23 THE COURT: -- there's been something --  
24 MR. PRINCE: -- lien in the file. They don't even  
25 have a lien as an exhibit, using Dr. Khavkin as an example.



1 It's not even in their exhibit, so --

2 THE COURT: Is there evidence -- has evidence been  
3 produced throughout discovery indicating that --

4 MR. WINNER: I believe that Khavkin was on a lien.

5 MR. PRINCE: And then with Dr. --

6 THE COURT: So now we're going back -- now, Mr.  
7 Prince, you're saying that they will not be able -- they will  
8 not be getting evidence of a lien into the trial?

9 MR. PRINCE: I don't know. They don't have a --  
10 they don't have a lien in here. So number one --

11 THE COURT: Well did you ask that --

12 MR. PRINCE: And then -- and then, for example this  
13 is another thing they saying, plaintiff star witness, Garber,  
14 had her sign a litigation lien. Dr. Garber used health  
15 insurance to -- for the surgery, and that's a fact. So he did  
16 -- he didn't -- so that -- that's false.

17 THE COURT: Did he have her sign a lien?

18 MR. PRINCE: They always do. Just because --

19 THE COURT: Well --

20 MR. PRINCE: Any personal injury case. Doesn't mean  
21 he did it on a lien. So how -- how do I deal with the  
22 collateral source issue then? Like did you -- did you treat  
23 her on a lien or do the surgery on a lien? No. That's a full  
24 signal over insurance; right?

25 THE COURT: I think you can say --

1 MR. WINNER: Well, if he signed her up on a lien  
2 and --

3 MR. PRINCE: He didn't sign her on a lien. Which --  
4 if you're in an accident, Judge, and if you go to see anybody,  
5 even if you're using health insurance, and like copays,  
6 unreimbursed money, they have you sign a medical lien just as  
7 a matter of course.

8 THE COURT: Right. Well why can't you say well yes,  
9 you signed a lien, but isn't it true that you treated her on  
10 insurance?

11 MR. PRINCE: Because it's a -- there's a per se ban  
12 on saying that.

13 THE COURT: Oh.

14 MR. PRINCE: The Proctor case, you can't say that.  
15 I think you maybe need to look at the Cory case and Proctor  
16 case.

17 MR. HENRIOD: Yeah. And the -- I have no problem  
18 with you reading the Cory case.

19 THE COURT: All right. We're -- we're just going  
20 back and reading the order.

21 MR. WINNER: And if, because of a lien, Garber is  
22 getting \$60,000 for four hours work instead of \$7,500, I think  
23 a lien is relevant.

24 MR. PRINCE: Okay.

25 THE COURT: Do you guys have the order in front of

1 you, or do you want to come read it?

2 MR. PRINCE: I don't have it in front of me. What's

3 the order --

4 THE COURT: Yeah. We're going to print it out.

5 MR. PRINCE: -- I'll -- I'll come to you --

6 THE COURT: For you --

7 MR. PRINCE: -- I'll come read it. I'll come read

8 it.

9 THE COURT: -- and for me.

10 MR. HENRIOD: What does it say? What does -- what's

11 the language?

12 THE COURT: It says defendant and her counsel shall

13 be precluded from offering any evidence, statement, argument,

14 or reference related to any payment of plaintiff's medical

15 bills and other expenses from the following collateral

16 sources, Health insurance, Medicare, Medicaid, Obamacare, The

17 Affordable Healthcare Act, Social Security, Disability, Self

18 Funded Employment Health Insurance. Defendant and her counsel

19 shall be precluded from offering any evidence regarding

20 plaintiff's medical provider's right to discounted sales of

21 liens to paying parties, evidence that plaintiff's medical

22 treatment was provided on a lien basis is admissible.

23 MR. PRINCE: Okay. Then take out the litigation;

24 right? You can talk that treatment -- certain treatment was

25 provided on a lien basis. That's the limitation to that

1 order. If you read Cory, they talk about the marginal  
2 relevance of medical liens in the first place, so -- well how  
3 can you --

4 MR. WINNER: And yet it is.

5 MR. PRINCE: Now, they -- and they don't call it a  
6 litigation lien in Cory. They call it -- they talk about how  
7 marginally relevant it even is, even on the concept of bias.  
8 So, for example, using Dr. Garber as one example, he did a  
9 surgery on health -- using health insurance. How does that  
10 establish his bias? Because he had her sign as part of an  
11 intake a medical form. But that's now how the -- the payment  
12 was handled, which is how much, what, two birds are --

13 THE COURT: Well --

14 MR. PRINCE: -- or more than likely --

15 THE COURT: -- at this point, we've -- we haven't  
16 gotten to that one, so what's the other?

17 MR. PRINCE: They're -- they're all called  
18 litigation liens.

19 MR. HENRIOD: Some interest in the outcome of the  
20 case.

21 MR. WINNER: So if he's getting paid more by giving  
22 a causation opinion, favorable to the plaintiff, that's an  
23 interest in outcome of the case.

24 MR. PRINCE: So I'm objecting to all  
25 characterization, like signed her up on a litigation lien.

1 Think about the language you're talking about. I mean he  
2 doesn't even have a lien right now for Dr. Khavkin, so one, we  
3 don't even know the content of the lien and who this -- they  
4 all provide that they're both financially responsible, even if  
5 they don't have any recovery, and that's -- that's -- that's  
6 the unfairness of even referencing a lien. And like signed  
7 her up on a litigation lien. Think about how that sounds and  
8 the pejorative nature of that.

9 THE COURT: Well, I mean, just because evidence is  
10 not good doesn't mean it's not --

11 MR. PRINCE: I think you need to --

12 THE COURT: -- admissible.

13 MR. PRINCE: I think if you read --

14 THE COURT: Both sides have bad evidence, that --  
15 that's just the reality.

16 MR. PRINCE: I think the Corey --

17 THE COURT: They probably you don't like that their  
18 client rear-ended your client, but then you're going to do a  
19 motion to keep out the fact that your client was rear-ended.

20 MR. PRINCE: But I think the lien issue has --

21 THE COURT: I think you've got a ruling on it.

22 MR. PRINCE: I think if you understood the Cory case  
23 has much more limited relevance than -- than we're talking  
24 about here.

25 THE COURT: And -- and that may be, but all I'm

1 looking at -- I'm looking at an order, and medical treatment  
2 was provided on a lien basis is admissible. So it's not a  
3 lien against anything but the lawsuit. So if you -- if  
4 there's a word you like better than litigation, I'll ask them  
5 to substitute it in, but --

6 MR. PRINCE: Why can't you just say treat -- provide  
7 treatment on medical lien? Because that -- because that's  
8 what it's called. If you look at the title of one, typically,  
9 it will say medical lien. That's -- that's all it'll say.  
10 There's nothing --

11 THE COURT: Well I don't --

12 MR. PRINCE: -- illegal about it --

13 THE COURT: -- I don't know what that means.

14 MR. PRINCE: -- nefarious about it, it's  
15 permissible.

16 THE COURT: I get that and that's going to be your  
17 argument. Folks, there's nothing bad about it. It's just  
18 standard.

19 MR. PRINCE: Okay.

20 THE COURT: So I'm -- I'm -- I mean.

21 MR. PRINCE: Well, I guess the -- signed her up on a  
22 litigation lien, I guess that -- the -- the characterization  
23 of that, that's my problem.

24 THE COURT: I understand, but -- but there was a lot  
25 of argument in your opening as well that kind of --

1 MR. WINNER: I --

2 THE COURT: -- made, at least, in -- in my opinion,  
3 that I -- you guys do these more like kind of a combination  
4 opening closing statement, but --

5 MR. WINNER: I have an argument to make on the  
6 record, and this was not in Mr. Prince's screens, or I would  
7 have objected to it more quickly. The plaintiff only  
8 disclosed a grand total of \$280,000 in future medical  
9 expenses. That's all that's ever been disclosed up until two  
10 weeks ago. And I learned that that matter -- or that number  
11 is suddenly doubled on the first day of trial, because they  
12 have a different theory. We went from \$280,000 in future  
13 treatment to \$540,000 in future treatment. And I'm  
14 strenuously objecting to being able to introduce double the  
15 amount of future medical expenses during opening statement on  
16 the first day of trial.

17 MR. PRINCE: Okay. Well --

18 THE COURT: Okay.

19 MR. PRINCE: -- I'm going to -- we'll -- we'll brief  
20 it and deal with it.

21 THE COURT: First -- first of all, I wish you guys  
22 would object more contemporaneously with the --

23 MR. WINNER: I did object when I heard --

24 THE COURT: -- bad stuff coming in.

25 MR. WINNER: -- him say she needed two of these and

1 he's standing -- I mean, he was standing in front of his  
2 screen, but --

3 THE COURT: I didn't hear it until the --

4 MR. WINNER: -- I have to go back.

5 THE COURT: -- end of the --

6 MR. WINNER: I agree.

7 THE COURT: I did not hear it until the end of the  
8 thing.

9 MR. PRINCE: Right.

10 THE COURT: Mr. Prince, do you concede that we came  
11 into the lawsuit last week and you were seeking --

12 MR. PRINCE: Yeah.

13 THE COURT: -- one amount and now you've doubled it?

14 MR. PRINCE: Yeah. [Indiscernible] they're --  
15 they're going to talk about that she's going to need a third  
16 level done, which is the same cost of \$280,000, so we're  
17 adding the second one in, yes. That doesn't by per se make  
18 it --

19 THE COURT: Can you all do that?

20 MR. PRINCE: -- inadmissible. Yes.

21 MR. WINNER: No.

22 MR. PRINCE: Yes, you can. You -- I'll --

23 THE COURT: All right. Well --

24 MR. PRINCE: -- let me -- I'll brief it for you.

25 THE COURT: You're both going to have to --



1 MR. PRINCE: We will.

2 THE COURT: I mean --

3 MR. PRINCE: We will. We will.

4 THE COURT: That doesn't sound --

5 MR. WINNER: Doesn't sound like something they

6 surprisingly figured out the first day of trial.

7 MR. PRINCE: Okay.

8 MR. WINNER: The case is from 2015

9 MR. PRINCE: Okay.

10 MR. WINNER: '16.

11 MR. PRINCE: Well we'll -- we'll brief it. I

12 mean --

13 MR. HENRIOD: And Your Honor, one more thing, I -- I

14 think that the choice was made to open the door during their

15 opening statement and about the facts that the 2010 accident,

16 in particular, the radiculopathy, the symptoms of cervical

17 radiculopathy that were incident and reported following that

18 2010 accident.

19 What we heard during this is the importance of

20 radiculopathy is a telltale sign of a disk injury. It's the

21 kind of thing that doesn't go away, that that was as

22 significant, perhaps the most significant symptom, of an -- as

23 significant as any imaging, and that that is why they

24 performed the surgery. That there's no getting away from the

25 importance of the radiculopathy, but we know that she had that

1 -- those symptoms were reported in 2010. They did go away.

2 Now, if they want to say that issues resolved  
3 following the 2010 accident, I think they're free to say that.  
4 But what's important is she had a -- and she had then symptoms  
5 of radiculopathy that did go away, so it is not the telltale  
6 sign that they're saying it is. At least the evidence --  
7 there is strong evidence that would support an inference that  
8 it is not.

9 And as Mr. DeGree pointed out, yes, you can say that  
10 one person doesn't experience the same type of symptoms as  
11 another, all spines are different, but to the extent that that  
12 is true, we know from her history that she is a person who may  
13 have these type of symptoms, and it does not necessarily  
14 indicate an injury that never goes away.

15 And we -- I made this argument prominently before  
16 the last time we did opening statements, that that presence of  
17 radiculopathy and they're tying so much causation theory to  
18 radiculopathy now makes that last accident in 2010 relevant.  
19 And I think by proceeding with this argument, they've made the  
20 choice for that to be relevant.

21 MR. PRINCE: Your Honor, this is the same argument  
22 we had. You've already ruled it's inadmissible, you've  
23 already excluded it. Not only is it ruled the first time, you  
24 ruled on it two more times and you've excluded it for all  
25 purposes, because their experts don't causally relate any of

1 her symptoms, including the alleged radiculopathy, to the 2010  
2 incident.

3           And that's why I was careful to point out in the  
4 months, the weeks and months, and even a couple of years  
5 before this, so I was in a very tight time frame and we talked  
6 about radiculopathy because that was the clinical indications  
7 for this surgery. And so I kept it very specific, and that  
8 does not open the door to anything, you've already excluded  
9 that under the -- the Williams case, on the FGA Giglio case.  
10 We went through extensive analysis of that. Remember the  
11 trial brief we argued right at the beginning of the last  
12 trial? You've already made this determination and excluded  
13 it.

14           MR. HENRIOD: But --

15           THE COURT: I'll -- I'll go back. I'm going to go  
16 back and read some stuff. I'm not going to let you do it in  
17 your opening if that's what you're asking to do.

18           MR. WINNER: Okay.

19           THE COURT: I'll take a look at everything and see  
20 whether -- I -- I don't necessarily think you open a door in  
21 opening statement. To me, you open it once the evidence, if  
22 he goes down that path, that might be a different issue at  
23 trial, but I'll -- I'll take a look at that.

24           MR. HENRIOD: And just --

25           MR. PRINCE: Okay.

1           MR. HENRIOD: -- just one citation for you, that's  
2 FGA Inc. vs. Giglio. Actually it's one that was talked about  
3 for other purposes earlier on --

4           THE COURT: How do you spell Giglio?

5           MR. HENRIOD: G-I-G-L-I-O. But the aspect that I  
6 would point you to here is about the licensure for gaming, the  
7 unrestricted versus restricted. And what the Supreme Court  
8 said there is once plaintiffs created the impression for the  
9 jury that the property had an unrestricted gaming license,  
10 then it became an abuse of discretion to keep out the contrary  
11 evidence because once it had come in, then you couldn't let an  
12 affirmative misunderstanding like --

13          MR. PRINCE: Okay. Well, I'm not sure about that.

14          THE COURT: Okay. Well, as -- as is my -- my habit,  
15 I'm going to ask you both to do me a -- it doesn't have to be  
16 a long brief, but I want to know exactly what you're saying,  
17 he said it opened the door in what way, and then I want you to  
18 explain why --

19          MR. HENRIOD: Okay.

20          THE COURT: -- and then tomorrow I'll -- I'll figure  
21 out --

22          MR. HENRIOD: All right.

23          THE COURT: -- where I'm going to go with that --

24          MR. WINNER: I'll stay away from it --

25          THE COURT: -- because --

1 MR. WINNER: -- in opening, of course.  
2 THE COURT: Yeah, but I don't want it --  
3 MR. PRINCE: Okay.  
4 THE COURT: -- in opening. My inclination is that  
5 if I decided he didn't open the door, there's was so much  
6 there that I don't know that the jury really -- if I say no,  
7 and he doesn't go down that road in trial, and -- and I shut  
8 you guys down on it, I don't think that the jury has heard  
9 enough that -- that they're going to be prejudiced, but I'll  
10 -- I'll read whatever.  
11 MR. HENRIOD: Thank you.  
12 THE COURT: Thank you. Now is that all you have  
13 now?  
14 MR. PRINCE: Yes.  
15 THE COURT: Are we done? Okay. So there you go.  
16 MR. PRINCE: What is he going to call it, the  
17 litigation lien?  
18 THE COURT: It's going to call it a litigation lien,  
19 unless --  
20 MR. PRINCE: Okay.  
21 THE COURT: -- you give him something quickly that  
22 you like better, but --  
23 MR. PRINCE: I just -- because medical lien --  
24 THE COURT: -- that lets them know what it is.  
25 MR. PRINCE: -- is that what we're doing?

1           THE COURT: Not -- not medical, though. It's got to  
2 be -- it's got to be what it is. It's got to be a lien  
3 against --

4           MR. PRINCE: Well that's what they call them, Judge.  
5 I'm just telling you what they call them.

6           THE COURT: I understand that. Well -- but then he  
7 could say a medical lien, which is a -- a lien against the  
8 litigation. You want them to say that?

9           MR. PRINCE: I'm saying the -- the term of art which  
10 the medical community uses is medical lien.

11          THE COURT: But the --

12          MR. PRINCE: It is not a litigation lien.

13          THE COURT: Okay. But the --

14          MR. PRINCE: It is not that.

15          THE COURT: But the medical community knows what  
16 that means. The lay people do not. So we'll just leave it as  
17 litigation lien, with the understanding that you object to it.

18          MR. PRINCE: Okay. All right. Thank you, Your  
19 Honor.

20               (Court recessed at 3:16 P.M., until 3:31 P.M.)

21               (Outside the presence of the jury)

22          THE COURT: The record will reflect we're back  
23 outside the presence of the jury. What are we doing?

24          MR. PRINCE: I'm ready.

25          THE COURT: Okay. With respect to the issue from

1 earlier --

2 MR. PRINCE: We're ready.

3 THE COURT: Okay. With respect to the issue of

4 earlier, I just want to clarify what are you seeking in future

5 medical?

6 MR. PRINCE: I'm going to be asking for the two

7 future surgeries. We disclosed the cost of one. We're going

8 to -- I guess we'll update our computation of damages, but

9 we're going to be talking about fusing up to three levels.

10 THE COURT: Has that been provided in discovery?

11 Are there reports that include all that information and

12 whatnot?

13 MR. PRINCE: It doesn't --

14 MR. WINNER: Not until today.

15 MR. PRINCE: The cost of that. Only one of the

16 surgeries has. We haven't provided the cost for the second

17 one, which would be the same.

18 THE COURT: But in terms of the potential for it,

19 was that --

20 MR. PRINCE: Dr. Khavkin is going to talk about

21 that, and Dr. Garber is going to talk about that as part of

22 their overall treatment that that would have been something

23 they formulated during the course of their care.

24 THE COURT: So that was provided previously?

25 MR. WINNER: Respectfully, I disagree. Khavkin --

1 not Khavkin, excuse me. Garber wrote a report saying that  
2 over the course of her lifetime she would require one more  
3 based on some statistic. He figured --

4 MR. PRINCE: That that was 100 percent certainty.

5 MR. WINNER: -- and gave the costs. And we informed  
6 our client. Our understanding was it was that \$280,000 was  
7 the cost of the future surgery period.

8 MR. PRINCE: Right. But --

9 THE COURT: And Mr. Prince, when did this come up?  
10 When did it come up that you determined that there was going  
11 to be a second surgery that you were going to be arguing and  
12 asking for?

13 MR. PRINCE: I guess in preparation for the trial  
14 and dealing with Dr. Khavkin and Dr. Garber, that given the  
15 age they were saying that during the course of their care that  
16 they believed that she would ultimately, because of her age,  
17 go on to three levels. We have a cost letter for only one  
18 additional surgery, so I guess we'll supplement. They have  
19 time to have more than a week to deal with the cost part of  
20 that, or even our own expert, and we'll -- we'll give you the  
21 briefing.

22 THE COURT: Well, I mean, there's the cost part, and  
23 then there's a whole other part. I mean --

24 MR. PRINCE: Well, their doctors don't believe there  
25 will be any adjacent segment surgery at all. None. So that



1 is the position.

2 THE COURT: Okay. I --

3 MR. PRINCE: Forget one or two, but they'll have  
4 time to deal with that before they come. They don't need to  
5 write a report. They don't need to -- they can come in and  
6 address it, and there's certainly time to address it. And  
7 we'll deal with that by way of a brief because I think --  
8 yeah, so that's what we'll do. We'll provide a brief on that.

9 MR. WINNER: If we need to write a brief, that's  
10 fine, but obviously part of the reason for requiring the  
11 computation of damages is so the defendant can be informed  
12 about what precise claims are being made and make an  
13 assessment of the risks and the exposure. This has added to  
14 -- this has doubled the --

15 THE COURT: No, I agree.

16 MR. WINNER: -- future costs and has added to the  
17 total costs by -- I can't do math that fast.

18 MR. PRINCE: Well, that's just one aspect of it.

19 MR. WINNER: Something like 40 percent.

20 MR. PRINCE: That's just one aspect of it, just the  
21 cost. I mean, certainly, medically speaking, that goes to  
22 also her pain, suffering, and limitation, which there's no  
23 computation required. Just the costs.

24 THE COURT: I understand that, but we just -- we  
25 just did this a couple of weeks ago and you were asking for

1 one amount of money, and now we are here --

2 MR. PRINCE: Yeah.

3 THE COURT: -- now and you're asking for it. And  
4 I'm not saying you don't have a right to ask for it, but I  
5 just am not sure that defense doesn't have some rights, as  
6 well --

7 MR. PRINCE: Right.

8 THE COURT: -- with respect to that if this --

9 MR. PRINCE: They can be prepared.

10 THE COURT: -- is new information.

11 MR. PRINCE: They don't have to -- their expert is  
12 going to deal with it, and they don't have to prepare a report  
13 on that. They can take a deposition. They can come and there  
14 will be time for them. They don't testify for a week, so --  
15 more than a week. They can address it and just by -- they can  
16 just tell them, hey, this is what he said. It will be a  
17 simple address. They won't even be -- it doesn't require any  
18 additional -- there's no more records to review, there's  
19 nothing, so --

20 MR. WINNER: I think the allegation about, or the --  
21 the rule requiring a computation of damages, which has been in  
22 place for a couple of years now, doesn't have any meaning if  
23 this happens. There's a reason that rule was put in place,  
24 and it was to prevent this.

25 THE COURT: And if I found that, what would be --

1 what remedy is the defense seeking?

2 MR. WINNER: That they are limited to asking for  
3 what they disclosed --

4 MR. PRINCE: Right.

5 MR. WINNER: -- before they closed the discovery.

6 MR. PRINCE: That would only be for the medical  
7 expenses. I'm going to give you the case and just so you  
8 know, Pizarro-Ortega, which during the course of the trial,  
9 before the trial started, the plaintiff had never disclosed  
10 the cost of a future surgery. During the night before their  
11 medical expert went on for Dr. Kaplan, they disclosed the cost  
12 of the future surgery.

13 The court, the Supreme Court said that was  
14 permissible because they had to engage in a Rule 37 analysis  
15 because the defense expert had time to address the cost and  
16 any need for that surgery. They already were addressing the  
17 need for the surgery. So I'm saying now there's more than a  
18 week before Dr. Wang and/or Schifini testify, and so they're  
19 going to have more than sufficient time. The citation is 396  
20 P.3d 783. 396 P.3d 783.

21 THE COURT: All right. Well, like I said, I will  
22 look at it. I think that there's a whole lot more going into  
23 that than just they have the -- they have enough time.  
24 Discovery closed however long ago, and my question for you is  
25 when did -- and which doctor told you specifically?

1 MR. PRINCE: Both Khavkin and Garber.  
2 THE COURT: And who is testifying first?  
3 MR. PRINCE: Garber tomorrow.  
4 THE COURT: Okay. But nobody today?  
5 MR. PRINCE: Dr. Rosler is going to. He's more  
6 about -- he'll talk about adjacent segment, but he won't talk  
7 about the multiple surgeries. He's talking about at least  
8 one, but Dr. Garber and Khavkin will deal with the -- the --  
9 three levels.  
10 MR. WINNER: Is he going to, just so I'm -- if the  
11 Court will permit me to ask counsel, is he going to talk about  
12 the number or just fact of adjacent?  
13 MR. PRINCE: Just the fact of adjunct segment, not  
14 -- not the cost.  
15 MR. WINNER: Okay.  
16 MR. PRINCE: His objection is to the cost issue.  
17 MR. WINNER: He's not going to talk about he needs  
18 two of them. He's just going to say there's a fact of  
19 adjacent segment.  
20 MR. PRINCE: That she'll need that, yeah. At least  
21 one. Yep.  
22 MR. WINNER: Okay.  
23 MR. PRINCE: At least one.  
24 MR. WINNER: I won't object to that. I'm not sure  
25 that was disclosed in his report, but I wouldn't object.

1 MR. PRINCE: Yeah. I mean, Dr. Garber in his report  
2 does talk about the risk of developing adjacent segment  
3 disease is 1 to 4 percent a year. And he says there's a 100  
4 percent chance she needs it at one level. So even using that  
5 -- and her life expectancy is 55 years. So what's more likely  
6 than not? I mean, he just --

7 THE COURT: That's all fine, but --

8 MR. PRINCE: -- gave the cost for one surgery.

9 THE COURT: I mean, if I were sitting there, I would  
10 have felt kind of sandbagged. But after I just heard your  
11 opening a few weeks ago and you said I want, among other  
12 things, \$280,000, and now I want \$560,000, and whereas this  
13 was the treatment before and now this is the treatment, like I  
14 said, I'm not saying you're not entitled to ask for it or do  
15 it, I'm just not sure I'm comfortable with the way it just  
16 happened.

17 And I do think that that would be something that  
18 strategically the defendant might want to know before they  
19 talk to their people and say, okay, now they're seeking half a  
20 million in future meds and they've got people coming in and  
21 saying that, and -- I'll look at the briefs. It just feels --

22 MR. PRINCE: Their issue is that --

23 THE COURT: I think they have multiple issues.

24 MR. PRINCE: -- we're fully -- what's that?

25 THE COURT: I think they said they had multiple

1 issues. They had the issue that their client didn't have  
2 consideration of what we're speaking, their experts didn't  
3 necessarily know what you were talking about.

4 MR. PRINCE: It doesn't change their position.  
5 They've known all along my client is claiming adjacent segment  
6 disease and adjacent segment surgery. They've known that  
7 forever. I've only said because of her age she's now going to  
8 require a third level.

9 THE COURT: But she didn't change age in the last  
10 two weeks. That's --

11 MR. PRINCE: No. I didn't add the cost in  
12 previously. I agree with that. I'm including the --

13 THE COURT: And I -- and that's the problem. I just  
14 don't know what the solution is. So let's go forward while we  
15 have the jury. We've got it at a point right now. Hang on a  
16 minute. Yeah, we're going to take two minutes. I want to  
17 look at something.

18 MR. WINNER: Did you say two minute or ten?

19 THE COURT: I said two.

20 MR. WINNER: Okay.

21 THE COURT: But it might be three.

22 (Court recessed at 3:39 P.M., until 3:52 P.M.)

23 (Outside the presence of the jury)

24 THE COURT: Okay. Mr. Prince, has your client been  
25 still treating -- is still treating with the back doctors?

1 MR. PRINCE: No.

2 THE COURT: None?

3 MR. PRINCE: No.

4 THE COURT: Okay. When was the last time?

5 MR. PRINCE: She saw Dr. Garber recently, just he  
6 wanted to evaluate her just for -- for how she's doing now  
7 before she goes to trial, but she's not actively seeking  
8 medical care, no. So probably 2017 or '18.

9 THE COURT: And Garber is the one that's going to  
10 opine about the two future surgeries required?

11 MR. PRINCE: Both Khavkin because he recommended a  
12 two-level, so his -- his -- it he had done that surgery. 4-5  
13 was a certainty, and Dr. Garber is going to say that she'll  
14 need a second fusion surgery in her -- during her lifetime,  
15 yes. One -- one -- the first surgery is 100 percent certain,  
16 and the other one will be more likely than not during her  
17 lifetime.

18 THE COURT: And those are both treating physicians?

19 MR. PRINCE: They are.

20 MR. WINNER: I don't recall. Respectfully, if I  
21 might ask Mr. Prince to look at back at his notes. I don't  
22 think Dr. -- I don't think Dr. Rosler ever said anything about  
23 adjacent segment breakdown in the future.

24 MR. PRINCE: No, I'm only going to talk to Dr.  
25 Rosler does he treat adjacent segment breakdown. Because he's

1 treated her pre and post operatively, and talking about  
2 treating patients who do develop adjacent segment that that's  
3 something he treats in his practice. He's not going to  
4 comment on the number of surgeries. He's going to talk about  
5 what it is, how he treats it, and how they have to come back  
6 to him and the whole process starts all over again. But he's  
7 not going to talk about the surgical intervention or the  
8 indications for surgery, the surgeon will do that.

9 THE COURT: Okay.

10 MR. PRINCE: So there is some -- a little bit of  
11 overlap, but not when it comes to the formal recommendation.

12 MR. WINNER: I don't want to -- I'm not here to bust  
13 anybody's chops, but if his opinion is limited to that, I'm  
14 not going to object.

15 MR. PRINCE: Yeah, that's what it is.

16 THE COURT: Okay. Bring the jury in, please.

17 (Inside the presence of the jury)

18 THE COURT: Okay. Mr. Winner.

19 MR. WINNER: Thank you, Your Honor.

20 DEFENDANT'S OPENING STATEMENT

21 MR. WINNER: Well, I'd like to commend my colleague  
22 Mr. Prince on the presentation he gave, but as we all heard,  
23 there are sometimes two sides, sometimes more sides to every  
24 story, and every coin has an opposite side. And Babylyn  
25 Tate's view of this case is very different from the



1 plaintiffs' and from Mr. Prince's.

2           Let me tell you a little bit about what we're doing  
3 and why we're here. It is because of a car accident. The  
4 case is Waiau-Evans versus Babylyn Tate.

5           Court's indulgence, Your Honor. I have a slight --

6                       (Pause in the proceedings)

7           MR. WINNER: When I checked a moment ago I promise  
8 it was working. My apologies.

9           As you heard, it was October 30, 2015, okay. It's  
10 the day before Thanksgiving. It's evening time. And Babylyn  
11 Tate was driving west. Here we see the [indiscernible] she's  
12 on Flamingo. You don't see where her car is, but she's  
13 driving west and she's planning to go straight through this  
14 intersection.

15           She -- she had worked the night before and she had  
16 slept all day. She was by herself and she was driving to meet  
17 a friend to -- to see a show. And she's driving west in the  
18 right-hand turn lane. She was not speeding. The speed limit  
19 was 35 miles per hour. She wasn't tired, she wasn't impaired,  
20 she believed she was following cars in front of her at a safe  
21 distance, and she was driving the speed limit.

22           Babylyn will say there's some confusion about what  
23 her testimony was. She at one point said there was a car  
24 length -- a car length's distance between her car and the  
25 front of the -- and the rear of the car in front of her. I

1 think that she will say she's a little confused by distances.

2           What she -- what she will explain is there was  
3 plenty of room between the front of her car and the back of  
4 the car behind her that another car could have moved in and  
5 moved out. There was plenty of room for another car to come  
6 in between her and the other car. And she's driving along,  
7 minding her own business. She was not on her phone. She was  
8 not using her phone. She had no one in the car with her, she  
9 wasn't engaged in conversation, and she wasn't distracted by  
10 anybody in the car. She's just driving.

11           Babylyn slammed on her breaks when she saw  
12 plaintiff's car here abruptly braking in front of her just in  
13 or just past the entrance to the Linq. Now, Babylyn will say  
14 I didn't understand why she was braking. I was surprised by  
15 the braking. She was slamming on her brakes in front of me.  
16 There might have been a car that moved out from in front of  
17 Babylyn that revealed the plaintiff slamming on her brakes  
18 just in front of her, slamming on her brakes and she didn't  
19 know why.

20           Babylyn immediately slammed on her brakes. She  
21 braked as hard as she could. She swerved to the left to avoid  
22 a collision, but there was traffic here and the lanes were  
23 left and she didn't want to cause another accident, and there  
24 was the sidewalk here. So she just braked as well as she  
25 could, and she slammed on her brakes. But the front of her

1 car contacted the back of the plaintiff car.

2 Now, as you can see, Babylyn was driving a small  
3 SUV. It's an Acura model. You can see some of the damage on  
4 this appears to be below what the level of the bumper would  
5 be. Some of here, but it's mostly on the right-hand side.  
6 Babylyn will explain that she -- she braked hard and she was  
7 swerving to the left, and she'll explain that the bumper of  
8 her car appeared to be higher than the bumper on the other  
9 car.

10 The facts of the accident of the abrupt braking as  
11 Mr. Prince told you happened here at the entrance to the Linq.  
12 The plaintiff says -- the plaintiff said later that she was  
13 turning right to go into the Linq and she had stopped for a  
14 pedestrian.

15 Now, at the time this happened, the plaintiff was --  
16 she claimed she was going to take some children  
17 trick-or-treating. There were a couple of three children in  
18 the back of her car, and she had her sister, the other sister  
19 in law, maybe the other plaintiff, sitting in the passenger  
20 seat of her car. And they stopped and were planning to turn  
21 into the Linq. She said that she came to a stop because of a  
22 pedestrian. That's why it came to a stop.

23 But Babylyn has testified under oath, she said it at  
24 the scene, she said it to police officers, she said it to the  
25 911 person, she said it to the plaintiff. I didn't see any

1 pedestrian, I don't know why she was braking, I didn't see any  
2 lights, I didn't see any turn signal. I didn't see a turn  
3 signal. I just saw sudden braking and I braked as quickly as  
4 I could, I did the best I could, and I saw no pedestrians. I  
5 did see some pedestrians and a few of them milling around at  
6 the crosswalk, there were no -- or not in the crosswalk, on  
7 the sidewalk. I saw no pedestrians in or near the crosswalk.  
8 The street was empty.

9           Facts of the accident. Well, as you can see, the  
10 damage here appears to be somewhat below here given that the  
11 -- given the level of the bumper. We can imagine that the  
12 bumper of an SUV would be a little higher than this car might  
13 be and the damage would be to a less degree here.

14           I'm kind of an old-fashioned guy from the Midwest,  
15 but when I was a teenager we used to call these kind of low --  
16 lowriders. I don't think that's what you call them now, but  
17 as you can see it's -- it's a modified vehicle that the  
18 plaintiff have been driving. The wheels seem to be a  
19 different size, there's a spoiler on the back. And as you can  
20 see here, the taillights appear to be aftermarket taillight  
21 that are smoked or blacked out, making them more difficult to  
22 see.

23           The damage appears to be over the bumper and under  
24 the bumper. It does not appear that the bumper of the SUV  
25 contacted the bumper of this Honda Accord right after the

1 bumper came into contact with the taillight. Babylyn braked  
2 hard and no airbag went off. Modest speed. Now, Mr. Prince  
3 told you a little while ago that Babylyn was going 35 miles  
4 per hour at the time of the impact. Babylyn is going to tell  
5 you she's a little bit confused by the questions that were  
6 asked of her.

7           Babylyn is herself an immigrant from the  
8 Philippines. She speaks English perfectly well, but she might  
9 have been a little nervous and confused by depositions the  
10 lawyer was asking her. She believes she was being asked what  
11 the speed limit was and how fast she was going before she  
12 braked. She was going 35 miles an hour before she braked.

13           I would suggest to you that the evidence will show  
14 this contact did not happen in anything close to 35 miles per  
15 hour. No airbags went off, no airbags went off. The impact  
16 did cause some damage here. Babylyn will tell you that she  
17 was carrying her purse on her passenger seat, and the impact  
18 did not cause her purse to move, okay. And she thinks the  
19 impact caused the Honda to move forward maybe a couple of  
20 feet.

21           Babylyn herself was completely uninjured in the  
22 least. As I mentioned here and you can see, the car appears  
23 to be lowered. I'm no expert on Hondas, but I would suggest  
24 to you those do not appear to be stock wheels or stock tires.  
25 They look smaller. It looks lower. There's a spoiler on the

1 back and these are smoked windows and smoked blacked out  
2 taillights.

3 And as I said, Babylyn will testify and she  
4 testified before and she told everyone on the day of the  
5 accident, I didn't see any turn signal, I didn't see any  
6 lights. I don't know why there was a car suddenly stopping in  
7 front of me, and I did my best to avoid it.

8 A driver shall not stop or suddenly decrease the  
9 speed of a vehicle without first giving appropriate signal to  
10 the driver of any vehicle immediate to the rear. After the  
11 accident, Babylyn said I'm so sorry, I'm very sorry. I think  
12 she said I'm sorry, baby or bebe to the plaintiff, Desire.  
13 I'm very sorry. She called 911.

14 The plaintiff said she was fine. She wasn't hurt in  
15 the slightest. Not hurt. The plaintiff said that everyone in  
16 her car was fine. Nobody was hurt. Said it over and over  
17 again. We're all fine. We're completely fine. We're on our  
18 way to go trick or treating. Nobody is hurt, we're fine.

19 The police were called, 911 was called. 911 was  
20 called twice by Ms. Tate and told that an accident had  
21 happened. Both Ms. Tate and both the plaintiff were told that  
22 the police did not want to come and we're not going to come to  
23 a non-injury accident, just exchange whatever necessary  
24 information you have and go on your way.

25 A small description of the accident was given. The

1 police dispatcher said we're very busy, we're very backed up,  
2 you might want to wait there for an hour, hour and a half. A  
3 policeman isn't going to write a report, all he's going to do  
4 is give you two cards to exchange information. You can just  
5 exchange the information. You don't need a police officer to  
6 arrive. You don't need a police officer and we don't want to  
7 come. Both of them were told that. Both Babylyn Tate and the  
8 plaintiff were told that.

9 But the plaintiff insisted she wanted the police to  
10 come anyway in case she needed a report for later. And during  
11 that hour or hour and a half the plaintiff had children  
12 sitting in the backseat of her car. Babylyn wasn't sure about  
13 this because the windows were all blacked out, but she had  
14 children sitting in the back seat of her car waiting to go  
15 trick or treating.

16 The plaintiff, having been told by the police you  
17 don't need to stay there, you can leave, your car is perfectly  
18 driveable, you can leave, there is no reason for you to stay,  
19 go about your business. And the plaintiff having told the  
20 police officer, I am not hurt, nobody in my car is hurt, the  
21 plaintiff waited there for an hour or an hour and a half for a  
22 policeman to show up before she took her children to their  
23 trick or treating thing at the lake.

24 Now, I don't know what happened. I don't know what  
25 happened. But I know Babylyn Tate driving in her car was not

1 on her phone, was completely well rested, was sober, was  
2 driving the speed limit, and proceeding along in the right  
3 lane. And somebody with another person in the car and three  
4 kids in the backseat trying to find the Ling to go trick or  
5 treating, may have slammed on her brakes when she realized, oh  
6 my gosh, this is my turn. And possibly that's when a  
7 collision occurred, but, but, but Babylyn Tate did contact her  
8 car from behind. She did. There's no argument about it. She  
9 admits it. At the scene, Babylyn Tate said over and over  
10 again, I am sorry.

11           Here's what you need to know about Babylyn Tate.  
12 Babylyn Tate who I'm pleased and proud to represent, Babylyn  
13 Tate is a nurse. She is a nurse currently working at  
14 Montevista Hospital. Some of you may have heard of that.  
15 It's a hospital for addictions and for people with emotional  
16 problems and for people with mental problems. That's the work  
17 she does.

18           However, she has in the past worked as an emergency  
19 room nurse, she's worked as a trauma nurse, she has worked  
20 evaluating trauma patients, she has worked examining trauma  
21 patients. She's done what's called triage and trying to  
22 assess what patients are injured and what patients are not.

23           Now, Babylyn Tate did not go through and physically  
24 examine everybody in the other car. But what she will tell  
25 you is that she took a careful look at each of them that she



1 saw, everyone in the car she saw showed no evidence of any  
2 injury. All of them were walking normally. None of them  
3 showed any evidence of discomfort.

4 And all of them said I am completely uninjured, I'm  
5 fine, but I want to wait for the police in case I need a  
6 report for later. Babylyn asked them if they needed medical  
7 attention. They all said no. Babylyn asked if they needed an  
8 ambulance. They all said no. The police asked them don't you  
9 want to leave to go trick or treating? They all said no.

10 Babylyn Tate has worked in a triage ER nurse for  
11 some time. She did not believe it was must of an impact, but  
12 she knew that the front of her car ran into the back of  
13 another car. She knew that she was a car behind and she said  
14 I am sorry, I'm so sorry. And if it becomes necessary you can  
15 listen to the 911 tape. It has both of the parties on it.  
16 Essentially it says Babylyn saying she was sorry. It has the  
17 plaintiff assuring the cops and Babylyn that everybody in her  
18 car was fine and she wanted to go trick or treating, but she  
19 wanted to wait for the cops to come anyway.

20 Babylyn's concern was for everybody else. She  
21 didn't think it was must of an impact. It didn't happen at  
22 highway speeds. It happened at 35. She managed to slam on  
23 her brakes and slow down enough that it caused some damage,  
24 but the other car wasn't pushed forward much. Her concern was  
25 for everyone else. She's a nurse. Is everybody okay? Is

1 everybody okay? Do you want me to get you medical attention,  
2 do you want me to help you, how can I help you? I'm sorry,  
3 how can I help you. And she said she was sorry that it  
4 happened, and she'll tell you today she's sorry that it  
5 happened.

6 She didn't do an exam or an assessment. She didn't  
7 go through and physically examine everybody's bodies, but she  
8 eyeballed everybody. She has training in doing that. She has  
9 a lot of experience in doing that. But she saw no sign of  
10 injury, and every occupant said I'm fine, I'm not injured, no  
11 problem, go home. The plaintiff's husband came to the scene  
12 and in kind of angry words examined the car and was mad saying  
13 somebody was going to have to pay for that. I don't know if  
14 that was before or after Babylyn left.

15 But the plaintiff told her I'm fine, I don't want  
16 any help, everyone in my car is fine, I want to wait an hour,  
17 hour and a half for a cop to arrive, but after that, the kids  
18 I have shoved in the back seat want to go trick or treating,  
19 and she took them trick or treating. Three days later  
20 everybody in the car was fine. Everybody in the car was fine,  
21 uninjured in what appears to be a pretty minor, moderate  
22 traffic accident. Everybody was fine. Everybody.

23 Three days later, the plaintiff and Desire and her  
24 passengers were all referred to a place called Align  
25 Chiropractic by an attorney Paul Powell. Paul Powell sent

1 everyone in the car to go to Align Chiropractic to get checked  
2 out. The chiropractor saw him on a lien, a lawsuit lien, a  
3 litigation lien. What that means is the chiropractor is  
4 waiting until the outcome of the case to get paid.

5 The chiropractor has some financial incentive to  
6 testify favorably for a plaintiff making an injury claim. The  
7 chiropractor has testified in the past that 50 percent of his  
8 work, his office's work, at least, is personal injury  
9 plaintiffs, people involved in compensation claims. Every  
10 second patient he sees is a claimant or a plaintiff.

11 Plaintiff Desire Evans-Waiau referred by her lawyer  
12 to Align. She had -- let's see, the 30th, 31st, 1st, 2nd.  
13 Three days later, she now had head pain, she had arm pain, she  
14 had shoulder pain, she had low back pain, she had middle back  
15 pain, she had neck pain. All symptoms she didn't notice  
16 having the evening accident happened.

17 Both plaintiffs, Guadalupe Parra and Desire  
18 Evans-Waiau were both diagnosed with exactly the same things.  
19 They claim to find pain in the left arm all the way down to  
20 the left hand, neck pain, mid back pain, low back pain. Every  
21 spine is different, but here every diagnosis is exactly the  
22 same. Again, treating on a litigation lien. We'll wait to  
23 get paid until you win your lawsuit or until you settle it.

24 The chiropractor ordered the x-rays of the neck, of  
25 the low back, and the shoulder. I know you're all familiar

1 with x-rays and x-rays were ordered on that first visit. On  
2 the first visit, Ms. Waiiau-Evans said she had 6 out of 10 pain  
3 in her neck, 5 out of 10 pain in her low back, and 5 out of 10  
4 pain in her mid-back. That was three days after the accident.  
5 She also had symptoms in her shoulder, her left shoulder,  
6 that's important, it's her left shoulder, and in her left arm.  
7 Not her right shoulder, her left arm, left shoulder.

8           The first x-ray visit on Align Chiropractic. They  
9 just snapped a picture, snapped an x-ray and looked at it, and  
10 what did they see? This is a neck MRI of Desire Evans.  
11 There's normal alignment and curvature. There are no  
12 fractures or subluxations appreciated. The vertebral bodies,  
13 intervertebral faces, paravertebral soft tissues are all  
14 normal. The adjacent soft tissues are also normal.

15           The cervical spine has maintained that normal  
16 alignment on flexion and extension use. No abnormalities to  
17 the cervical spine. This would have been two days later,  
18 November 4, 2015, an x-ray showing no injury whatsoever to  
19 this woman's neck. None. And, again, normal alignment, no  
20 abnormalities.

21           Well, here we have -- this is a little after three  
22 weeks after the accident. 11/24/2015 there was an MRI at  
23 Align. She was referred by her lawyer to Align, and now she's  
24 at Align Medical MRI Center. And here's what it says. Right  
25 postural lateral disc bulge, not a herniation, a bulge,

1 extruding 1 to 2 millimeters, and to the right, posterolateral  
2 recess. And something else, a protrusion extending 2 to 3  
3 millimeters, okay.

4           There is no significant central spinal canal  
5 stenosis, nor significant neural foraminal encroachment at  
6 C5-6 and C6-7.

7           Now, this -- this MRI was taken at Align MRI; okay?  
8 Dr. Keith Lewis, the radiologist, has testified in the past,  
9 and I believe he'll be showing up here in trial at some point.

10           He's testified in the past that he doesn't like  
11 measuring thee millimeters. He thinks these millimeters are  
12 misleading, they're not helpful and the only reason he does  
13 measure those millimeters, even though they're misleading, is  
14 that certain chiropractors, not this chiropractor in this  
15 case, but certain chiropractors who deal with personal injury  
16 plaintiffs, have asked him to do that.

17           And he has testified in the past that that can be  
18 abusive and lead to abusive medical treatment.

19           Dr. Keith Lewis has also testified under oath in the  
20 past that the 2 to 3 millimeter bulge here, and the 1 to 2  
21 millimeter bulge here, it has something to do with magnets on  
22 the MRI that don't translate into photographs very well. And  
23 he says the margin of error is 2 to 3 millimeters.

24           What does that mean? He says he can see a 2 to 3  
25 millimeter bulge on a bulge that isn't there, on a completely

1 normal MRI he can see a 2 to 3 millimeter bulge, simply  
2 because of the margin of error and because of the machine, and  
3 because of the inherent weaknesses in trying to measure these  
4 millimeters.

5           What's 2 to 3 millimeters? I think I looked it up  
6 and a dime was about 1.3 millimeters so if you imagine the  
7 thickness of a dime, 1 to 2 of those would be 2 millimeters,  
8 that's what we're talking about. A millimeter.

9           This is the actual film of the MRI. I'm not a  
10 radiologist and I don't pretend to be, but these would be the  
11 vertebral bodies, as Mr. Prince pointed out, doctors coming  
12 into court will explain to which is C6, which is C7, explain  
13 where they see the 1 millimeter or the 2 millimeter bulge or  
14 the extrusion. And there's some disagreement here.

15           Despite Keith Lewis having testified in other cases,  
16 there's a 2 to 3 millimeter margin of error. We also have Dr.  
17 Jeff Wang whom you've heard about who is a world renowned  
18 expert on the reading of MRIs.

19           Dr. Wang lectures all over the world on reading  
20 spinal MRIs. Dr. Wang has written medical textbooks on  
21 reading MRIs. Dr. Wang teaches radiologists and neurosurgeons  
22 and spine surgeons how to read MRIs. He lectures all over the  
23 world on the correct way to read spinal MRIs.

24           And what he says here is he cannot find any evidence  
25 of disc injury or protrusion or any problem at all that any

1 24-year old kid shouldn't have. He sees no sign of injury at  
2 all. None. What he does see is a normal MRI for somebody 24-  
3 years old.

4 He will also say on this MRI there are zero signs of  
5 any recent accident. There are no signs of any recent trauma.  
6 There's no bruising of the spinal cord. There's no laxity.  
7 There's no bone marrow edema. There's no bruising in the  
8 bone. There's no bright spots. There is nothing, zero, on  
9 this MRI to suggest that anybody has been in a recent  
10 accident. It just looks like a normal MRI of a 24-year old  
11 girl, woman.

12 And again, the radiologist says there can be a 2 to  
13 3 millimeter margin of error on all MRIs. You will hear from,  
14 I believe, this doctor and at least two others that one doctor  
15 can see a 2 millimeter bulge, one radiologist can see that,  
16 and another radiologist can look at the same MRI and say,  
17 that's not there. I don't see anything there. It's too  
18 subtle. It's too small.

19 So the plaintiff's doctors will agree that these  
20 protrusions or these bulges that you see on MRIs, they're very  
21 common. Even if you're 15-years old, or 20-years old, or 22-  
22 years old, or 24-years old, or over 50-years old, many of us,  
23 if not most of us, have disc bulges, have disc protrusions.  
24 Some of us even have disc herniations. And guess what? Most  
25 of us don't even know it. Most of us don't know we have them.

1 We go through our whole lives walking with a little disc  
2 protrusion or a little disc bulge and it's benign. It's  
3 asymptomatic. It doesn't cause any symptoms. Most disc  
4 bulges mean nothing.

5 The plaintiff's doctors will also agree, and they  
6 have agreed in this case, that a disc protrusion this small  
7 would be very common in a woman in her 20s. It doesn't  
8 necessarily mean anything.

9 And most protrusions, as I say, are very benign and  
10 they don't cause any symptoms and they're nothing to worry  
11 about. They're very common. They usually don't cause any  
12 symptoms. They're usually something that doesn't need any  
13 treatment and they almost never are something that need  
14 surgery; okay?

15 Okay. We have two cervical MRIs. And I think Dr.  
16 Lewis, as you said, have been asked in the past by a  
17 chiropractor who owns a clinic here, not this chiropractic  
18 clinic; I want you to put -- I want you to put millimeters on  
19 these MRIs and I don't want you to say people have  
20 degenerative -- I want you to measure millimeters here. And  
21 he did that.

22 So we had two separate cervical MRIs that were taken  
23 here. We saw this one; 1 to 2 millimeter bulge in the right  
24 recess, 2 to 3 millimeters in the bilateral, [indiscernible]  
25 lateral, no significant nerve neural foraminal encroachment.



1 You saw that.

2 What you might not have known is that they sent the  
3 other plaintiff for the same MRI, and it showed the same thing  
4 there. Central disc protrusions.

5 It also sent somebody for a shoulder MRI. And they  
6 sent somebody for a lumbar MRI. The lumbar MRI they found 6  
7 millimeter protrusions in plaintiff Guadalupe Parra. Align  
8 MRI claimed to find something wrong on every single MRI they  
9 ordered. Everybody [indiscernible] they did an MRI on across  
10 two different plaintiffs they claimed to find something wrong  
11 with. Everyone. However, there were no signs of any recent  
12 trauma on any of them. With the possible exception of a bone  
13 bruise mentioned by Mr. Prince.

14 Doctors will tell you that these findings on MRI  
15 usually mean nothing. It doesn't mean that a surgeon should  
16 scare you into getting surgery. It doesn't mean a pain  
17 management doctor should start shooting you full of steroids.  
18 It means, it usually means nothing. If you have some pain in  
19 your neck, it'll go away with time and it usually means  
20 nothing.

21 Okay. Here's the shoulder MRI. Now, plaintiff  
22 Desire Evans did not notice any symptoms in her shoulder on  
23 the day of the accident either, did she? She certainly didn't  
24 voice any symptoms. She didn't. Then again, she didn't  
25 notice any injury to her neck, didn't notice any injury to her

1 back, didn't notice any injury to her arm, didn't notice any  
2 injury to her low back, and neither did anybody else in her  
3 car. Those were first reported three days later.

4 But a shoulder MRI showed a bone contusion,  
5 something called a shoulder impingement syndrome. It showed  
6 bursitis in the shoulder. I know some of us might have  
7 experienced bursitis. And these were all in the left  
8 shoulder. And I'd like you -- I'm going to ask you please to  
9 take note of that; the left shoulder is where she had the  
10 impingement. It's where she had the bursitis. Impingement  
11 and bursitis. Impingement and bursitis are not caused by a  
12 disc in her neck, and yet it's on the left side where she had  
13 these arm complaints later and they fused her neck; right?

14 Okay. She had steady improvement in her complaints.  
15 Now, her first visit, November 3rd, she had 6 out of 10 pain  
16 in her neck; 5 out of 10 low back and mid back. By the 16th  
17 of December, it was down to 4 out of 10 neck, 3 out of 10 the  
18 low back, the mid back and they said she was improving,  
19 getting better.

20 By 12/30, 3 out of 10 in her neck, 2 of out 10, low  
21 back and mid back, and she is feeling improvement. Steady  
22 improvement. When she went to the chiropractor both of these  
23 plaintiffs were told you're going to need about three months  
24 worth of treatment. In about three months, you'll be feeling  
25 better. Three months.

1           This is a little more than one month. And here  
2 January 4th, 2016, 3 out of 10 now in her neck, 2 out of 10  
3 low back and mid back, and feeling improvement and able to do  
4 more activities. That is a few weeks -- it would be exactly  
5 two months -- two months she was feeling some improvement.

6           January 12th, 2016, down to 2 out of 10 on the neck,  
7 1 out of 10, the low back and the mid back.

8           On January 14th, 2016, we're still under three  
9 months after the accident. She was 1 out of 2 pain in her  
10 neck and she had full range of motion.

11           By 1/18/16, still just under three months, 2 out of  
12 10 in her neck, 1 out of 10, low back, mid back.

13           1/25 of '16, just under three months, 1 out of 10  
14 pain in all areas, and in February of '16 she was discharged  
15 at maximum medical improvement. Full ROM means range of  
16 motion minimal symptoms. Discharged. God bless you, you can  
17 go.

18           February 18th, 2016, she was symptom free; symptom  
19 free. And let's look at this. It was 8 out of 10 for a  
20 little bit up here, but [inaudible] treatment over a week or  
21 two it got steadily better, better, better until you're down  
22 toward the end of the December. It's only 3 out of 10 and  
23 she's talking about improvement.

24           Down to 2 out of 10 here. This might be on the  
25 wrong date. I might have it on the wrong one. She has,

1 despite all these improvements, sent to Dr. Rosler to get an  
2 injection. Whether the injection affected her or not, she  
3 continued improving, just as she had been. By 2/3/16, 1 out  
4 of 10. And I didn't include the last visit where she was  
5 symptom-free.

6           Look at this. They told her it would take about  
7 three months. All the way down to here, activities of daily  
8 living, she's able to do most of her activities. She was not  
9 taking medication anymore. And her symptoms were 1 out of 10  
10 intermittently, occasional.

11           I would say chiropractic treatment worked. It  
12 worked in a little under three months and it worked well. It  
13 didn't work right away, it took six or -- five or six weeks  
14 before it worked well, but it did work. It did work.

15           So Dr. Rosler saw her. She was sent by Align to see  
16 pain management Dr. Rosler. Even though all of her symptoms  
17 were much improved; okay?

18           By the time she was sent to Rosler her symptoms were  
19 down to 2 or 3 out of 10; 2 or 3 out of 10, but you need to go  
20 get really expensive injections from a pain management doctor.  
21 And she was sent by Align Chiropractic. And again, he signed  
22 her up on a litigation lien.

23           He also tested her left shoulder and arm. And I  
24 would like to -- you please to pay attention to this. Her  
25 left shoulder tested positive. He did something called a

1 Hawkins sign and it tested positive for bursitis and bone  
2 contusion all on the left side, the same arm -- the same arm  
3 that they're claiming is causing radiculopathy.

4 Doctors will tell you, I believe, that symptoms from  
5 bursitis and nerve impingement in the left shoulder can cause  
6 pain going down the arm. And cause heaviness in the arm,  
7 sometimes all the way to the hand.

8 He reviewed a report of Align MRI. Didn't look at  
9 the MRI itself or he can't remember if he did, and he did an  
10 injection. The injection contained anesthetic as Mr. Prince  
11 said and a steroid and the pain a hundred percent resolved.

12 What's interesting is when she is sent her, we don't  
13 know why, but when she was sent here to Dr. Rosler on that one  
14 visit to Rosler she said, oh, my pain is 8 out of 10 and then  
15 he did an injection and it was zero out of 10. But she hadn't  
16 had 8 out 10 pain in months. She was 1, 2, 3 out of 10 for  
17 some time before she was sent to Rosler.

18 February of 2016. So we are how many months after  
19 the accident? Four months after the accident. Four months  
20 after the accident. She is discharged by the chiropractor at  
21 maximum medical improvement. She has full range of motion of  
22 her neck. She has full range of motion of her back. Her pain  
23 is rated 1 out of 10.

24 The chiropractor testified the plaintiff responded  
25 very well to treatment. He was very pleased. The

1 chiropractor testified his treatment was very successful.  
2 That she was free to return if she wanted to. She was free to  
3 return as needed. And she never did.

4 February 18th, 2016, four days after her friend was  
5 discharged the patient states she is pain free in her cervical  
6 spine. No tenderness, full range of motion, all negative  
7 orthopedic tests. And now -- now the left shoulder, even  
8 though there was some impingement before, the left shoulder  
9 was within the normal limits. No complaints of any kind for  
10 the following seven weeks. Seven weeks. Seven weeks. That  
11 is 49 days. 49, 24/hour days without complaints, over 200-  
12 some hours.

13 After all of this time, after all of this time, she  
14 was now referred to a surgeon. She's not sure who referred  
15 her to a surgeon, whether it was Align Chiropractic or Dr.  
16 Khavkin, and Dr. Khavkin said he can't remember if he made the  
17 referral, under oath. But she goes to see Dr. Khavkin.

18 Dr. Khavkin, as Mr. Prince told you, is a  
19 neurosurgeon. Now, do you remember seeing the pain complaints  
20 before a week after the accident? She had a little complaint  
21 in the neck, she had some complaint in the shoulder.

22 Here was her pain complaint on May 17th, 2016. We  
23 are six, seven months after the accident. 89 days after  
24 release from chiro she has pain in her low back and pain down  
25 both legs. That's 81 days after she's released from

1 chiropractic with no symptoms at all. No symptoms at all, 89  
2 days after being released with no symptoms at all, she has  
3 symptoms here. She has symptoms down both legs. She hadn't  
4 complained of symptoms down both legs ever since this  
5 accident, 200 days after this accident she has pain down both  
6 her legs; 200 days.

7           Two hundred days after the car accident she has pain  
8 down both legs and pain in her low back. And do you see what  
9 else she has? Pain in her left shoulder and down her left  
10 arm. The right shoulder and right arm pain have disappeared  
11 200 days before -- or I'm sorry -- 800 -- 89 days before and  
12 now they were back along with pain everywhere else on her  
13 body. And this is 200 days; 200 days; 200 days after he one-  
14 second interaction with Babylyn Tate.

15           And they're claiming all of this is Babylyn Tate's  
16 fault. And they should get to bill Babylyn Tate for it.

17           So Dr. Khavkin saw this plaintiff only one time; one  
18 time. So what did the plaintiff tell him? She said, well,  
19 chiropractic failed. Well, that's not what I saw.  
20 chiropractic didn't fail at all. The chiropractor got her  
21 down to zero out of 10, or 1 out of 10, or pain free.

22           And she was that way within two-and-a-half or three  
23 months. Chiropractic failed, she told him. Injections failed  
24 she told him. Signed her up on litigation lane and billed her  
25 to write a letter saying she needed a really expensive surgery

1 at two levels and it should all be billed to this lawsuit,  
2 signed her up on a lien.

3           It should be both this lawsuit and it should be  
4 Babylyn Tate's fault. And that was in his letter. After he  
5 wrote that one letter seeing her one time, the bill is -- I  
6 forget the exact amount -- \$900 something, Dr. Khavkin  
7 communicated regularly with Paul Powell saying, when am I  
8 going to get paid for my \$900 letter I wrote? I want my -- I  
9 want my bill paid for my letter. And Babylyn Tate's being  
10 billed for that letter, too.

11           However, Dr. Khavkin has sworn under oath that,  
12 yeah, I looked at the MRI. I looked at the MRI, I looked at  
13 the report of the MRI, and well, everything on that MRI  
14 could've been there before the car accident happened. I don't  
15 really see trauma on it. It doesn't really look that unusual  
16 for a woman her age. I don't see any obvious signs of trauma  
17 on that MRI.

18           I don't see any signs of a car accident on that MRI.  
19 Maybe I see some bulges, but nothing looks unusual or  
20 alarming. But he was relying on what the plaintiff told him.  
21 And what the plaintiff told him was that chiropractic failed,  
22 injection failed, and that she had had symptoms immediately  
23 after the accident happened.

24           I would suggest to you, I had symptoms immediately  
25 after the accident happened is provably false. Chiropractic



1 failed, is provably false. Injections failed, is false. But  
2 that's what she told him to get him to write a letter saying  
3 she needed a lot of money for a surgery to be paid for by  
4 somebody else.

5 It is not uncommon for a woman the plaintiff's age  
6 to have such an MRI. What about the left arm symptoms? Well,  
7 you remember she had the impingement syndrom? She had the  
8 impingement syndrom, she had the bone bruise in her shoulder?

9 Dr. Khavkin admits that there are many, many, many  
10 conditions, many conditions that could be causing those left  
11 arm symptoms. But he didn't test for any of them. There are  
12 simple inexpensive tests you can do for those symptoms.  
13 They're call EMGs, and NCVs. You can order those tests. And  
14 those tests could rule out whether this was a disc problem.

15 He said these conditions are very common, the  
16 conditions that could be causing these left arm symptoms. He  
17 only saw her once and he didn't test for them. Saw her one  
18 time. His other interactions with the case were with her  
19 lawyer trying to get his \$900 bill paid.

20 He also said the nerve testing was normal. How long  
21 did it take -- how long did it take if you believe the  
22 chiropractic records, how long did it take for Desire Evans to  
23 get over that accident assuming she was injured in October of  
24 2015 with Desire, with Babylyn; how long did it take? It took  
25 about three months. The chiropractor thought it was going to

1 take about three months; right?

2 Well, she had another accident. The next accident  
3 was July 10th of 2016. July 10th of 2016, the plaintiff was  
4 involved in another accident. This accident was different  
5 from the one she was in with Babylyn. How is it different?  
6 Well, she was rear-ended again, but she was taken by ambulance  
7 to Sunrise Hospital and she reported immediate onset of pain;  
8 immediate, to the ambulance people and to the emergency room.  
9 I have immediate pain.

10 That's not what she had in her accident with  
11 Babylyn, was it? She had immediate pain. And she complained  
12 of sudden onset of neck pain. Sudden onset of low back pain.  
13 On the day of that accident, sudden onset.

14 When asked under oath about that, the plaintiff  
15 swore that her left arm, before this accident felt fine. And  
16 her neck still hurt a little bit, she swore her neck had full  
17 motion and full function before this accident, July 10th,  
18 2016.

19 This accident was severe enough to cause her to feel  
20 symptoms immediately, right away, and cause her to take an  
21 ambulance ride to the hospital. And think about the timing  
22 here. Two days later, that was July 10th, two days later she  
23 goes to see a new surgeon, two days after the ambulance ride  
24 and the visit to the ER she saw Dr. Jason Garber. She told  
25 her chiropractic treatment had failed.

1           The injections had failed. He found restricted  
2 range of motion in her neck. Well, the range of motion wasn't  
3 restricted in her neck back in February, was it? But now it  
4 was, two days after she'd been in another accident.

5           He told her she needed surgery. Oh, she also told  
6 Dr. Garber, I've had these symptoms continuously ever since  
7 October 30th, of 2015, and I don't think the other medical  
8 records will support that.

9           He told her she needed surgery. What did Garber do?  
10 Did Garber order a nerve conduction test to check out that  
11 arm? No. Did Dr. Garber order another MRI which an other  
12 doctor suggested maybe he would want to do? No.

13           He accepted what the plaintiff told him. He, again,  
14 had he sign a litigation lien so that the outcome of this, his  
15 income, his fee is going to be dictated by the outcome of this  
16 case and the causation opinion --

17           MR. PRINCE: Objection, Your Honor.

18           MR. WINNER: -- he [inaudible].

19           MR. PRINCE: Dr. Garber did not do any surgery or --  
20 on a lien basis. So that's a misstatement of the facts in  
21 this case. We talked about that before this even started.

22           MR. WINNER: I believe there was --

23           MR. PRINCE: There's no evidence of any lien. No.

24           MR. WINNER: I stand corrected. If I stand  
25 corrected, I believe there is an additional --

1 MR. PRINCE: No, he did not treat -- he did not do  
2 any surgery on a lien basis. That's a fact.

3 THE COURT: That'll be sustained. The jury is  
4 ordered to disregard the last comment.

5 MR. WINNER: If I must -- if I must understood, my  
6 apology to counsel and the Court. He did write a report  
7 blaming Babylyn for his bill.

8 Professor Jeffrey Wang, M.D. Mr. Prince told you  
9 some things about him. He is the chief of the USC Spine  
10 Service. He's the Director of the UCLA Spine Center. He's  
11 been rated one of the top 29 spine surgeons in the world. He  
12 is expensive. He's considered an international authority in  
13 the field of spine medicine and lectures all over the world.  
14 He has written medical textbooks. He has written medical  
15 textbooks on the spine. He has written medical textbooks on  
16 how to read MRI's of the spine. He travels around the country  
17 teaching medical students. He goes around the country  
18 teaching spine surgeons how to operate and how to read MRIs.

19 He has authored textbook chapters specifically on  
20 the reading of MRIs. He lectures around the world about it.  
21 And yes, we did have to pay him, but he agreed, given all of  
22 the claims being made, to collect and review the available  
23 films and records in this case.

24 He closely examined all the MRI films. He looked  
25 all the [indiscernible], he looked at all the treatment notes

1 and he looked at the charts. What he said is, Desire Evans  
2 had really pretty mild, it wasn't very severe, she had very  
3 mild preexisting disc disease in her cervical spine, the  
4 amount you would expect to have.

5           You know, she had done some work in the past and  
6 some of her work was a bit heavy, the plaintiff. But it was  
7 very mild. She didn't have advanced degenerative changes, but  
8 she did have degenerative changes. And he can identify no  
9 sign of injury, no sign of trauma, anywhere on the MRI.

10           She has essentially, in his judgment, a normal MRI  
11 for a woman her age. He will tell you that of his fellowship  
12 spine students, if he showed all of them the MRI of the  
13 plaintiff in this case, and they claimed to find anything  
14 wrong with it, they would get a failing grade.

15           Nothing on the MRI could possibly have been caused  
16 by Babylyn. The only diagnosis possibly -- possibly caused by  
17 this accident with Babylyn would be whiplash. Whiplash only.

18           Dr. Joseph Schifini, he's a local Las Vegas doctor,  
19 he went to school here. He's a pain management physician and  
20 he agreed to look at the medical records also. The plaintiff  
21 has no objective sign of injury. The injections performed by  
22 Dr. Rosler were needlessly expensive. They weren't really  
23 indicated. They had little to no diagnostic value. They're  
24 somewhat controversial.

25           If we believe the plaintiff's story, that she was

1 injured in the accident, she might have had mild whiplash.  
2 And the testing that plaintiff Desire is presenting is  
3 unnecessary, it's exceedingly expensive, they have little  
4 diagnostic value.

5 Other tests would have been far easier to perform  
6 and would have established what was going on. And it has  
7 nothing to do with this or any other car accident. And Babylyn  
8 Tate should not be blamed for it.

9 Really quickly, let's talk about Guadalupe Parra.

10 Guadalupe said she was fine at the scene. She was  
11 seen walking and talking with no discomfort whatsoever. She  
12 was sent by the same attorney to the same chiropractor, Align  
13 Chiropractic. On the same day the other plaintiff was seen,  
14 the Align Chiropractor said Guadalupe had cervical disc  
15 disorder with radiculopathy.

16 Everybody got the same diagnosis.

17 Her pain was down to a 1 out of 10, in two weeks.  
18 I'll show you a record of that in a moment. That did stop  
19 Align from sending her for an MRI. She was discharged by the  
20 chiropractor, I believe, the same day as Desire was, and she  
21 never went back.

22 Two weeks after the accident, look at this. Two  
23 weeks; 11/13/2015, her neck is much improved. She says it's  
24 only a 1 out of 10. 1 out of 10. That was only two weeks  
25 after the accident, and as you've seen, there was months, and

1 months, and months of more testing, more MRIs, more prodding,  
2 more prodding, more medical visits, adding up to a bigger pile  
3 of money. Why? Why? Why?

4 Why does somebody with pain of 1 out of 10 in the  
5 neck two weeks after a small accident need to be sent to get  
6 an expensive MRI so that Babylyn Tate can be given the bill  
7 and saying it's your fault, it was a rear-ender.

8 Look at this. All the way down here, it's down to  
9 2, 1, 1, by 1/12 of '16, it looks like that. If you want to  
10 compare them, if you go back to -- if you go back and compare  
11 them in your exhibit book -- and these will all be in your  
12 exhibits -- you're going to see they both went on the same  
13 days. The same days. The same diagnosis, the same days.  
14 Look at this.

15 What's the difference between Desire Evans-Waiiau and  
16 what's the difference between Guadalupe Parra? Somebody at  
17 Align Chiropractic talked Desire into going to see a pain  
18 management doc, and going to see a surgeon to get more bills.  
19 And Guadalupe Parra said, no, I've had enough, and she didn't  
20 go. Guadalupe didn't go and Desire did.

21 They both got the same advice; you need to go to a  
22 surgeon. You need to go for an MRI. You need to go to a pain  
23 management doc. And everyone of those MRIs claimed to find  
24 something wrong. Guadalupe didn't go. And she's better.

25 The two plaintiffs. Look at the dates. The blue is

1 low back, TS is thoracic spine, CS is cervical spine or the  
2 neck. Look at the dates. And they're all the same. Mostly  
3 the same.

4 Look at this. Cervical disc disorder with  
5 radiculopathy mid cervical range. Sprain of fragments of the  
6 thoracic spine, sprain of lumbar ligaments, initial encounter  
7 muscle spasm of back, all of these diagnoses. Prognosis is  
8 fair. Tolerated treatment well.

9 Guadalupe Mendez. Look at this. Look at this. Two  
10 different spines, two different people, but they're both at  
11 Align Chiropractic, the place their lawyer picked.

12 Cervical disc disorder with radiculopathy, mid  
13 cervical region. Mr. Prince just got done telling you that we  
14 know that she needed surgery because she had radiculopathy.  
15 Guess what? The chiropractor finds radiculopathy apparently  
16 on everybody who comes in.

17 Sprain of lumbar ligaments, initial encounter.  
18 Sprain of the thoracic, muscle spasm of back. Plan of  
19 healing; repair, supportive impression, cervical  
20 strain/sprain, mechanical neck pain, lumbar strain and sprain.  
21 Let's go get her for an MRI and send her to a surgeon.  
22 This is Guadalupe. Align Chiropractic, picked by her lawyer  
23 wants to send her to a surgeon and to get an MRI.  
24 Why? They both have the same symptoms. One of them chose not  
25 to go and got all better. And one of them is trying to stick



1 -- is trying to stick Babylyn Tate with the bill.

2           The medical evidence you're going to hear in this  
3 case is going to be conflicting. It's going to be  
4 conflicting. Babylyn Tate acknowledges and she understands.  
5 She understands that she was in a rear-end accident and she  
6 understands that she came into contact with a car from behind.

7           Babylyn Tate has said from the very beginning, she  
8 said, I saw this car slamming to a stop in front of me. I saw  
9 no pedestrians. I could not see the brake lights. I stopped  
10 as quickly as I could. I was driving carefully. I always  
11 drive carefully. If I answered wrong with about the  
12 distances, I'm sorry. That's my fault.

13           But the evidence in the case is going to show you  
14 that Babylyn Tate's apology that night, Babylyn Tate's apology  
15 to both of them, saying, I want to take care of you, I want to  
16 help you. I will find -- I'm a nurse. I will find medical  
17 help for you. I want to take care of you. I am so sorry,  
18 baby. Are you okay? I am so sorry. I apologize that this  
19 happened and I am sorry. I am sorry.

20           That should not have been a one million dollar  
21 apology. That should not have been a \$500,000 apology,  
22 because she bumped into someone at low speed and she was the  
23 car behind. She was the car behind.

24           After you hear the evidence in this case, we trust  
25 you, we trust you to do what's fair and what's right and

1 what's reasonable. Thank you.

2 THE COURT: Thank you, Mr. Winner.

3 Is the plaintiff ready to call its --

4 MR. PRINCE: We are.

5 THE COURT: -- first witness?

6 Okay. Can we just put this TV -- and do you want --

7 can we -- are we going to take it --

8 MR. PRINCE: I'm going to move it back so we can --

9 so the witness can see it.

10 THE COURT: So a ten-minute potty break?

11 MR. PRINCE: [Inaudible].

12 THE COURT: Okay.

13 MR. PRINCE: Whatever the Court's pleasure, five,

14 ten [inaudible].

15 THE COURT: All right. Strictly just use restrooms;

16 okay?

17 MR. PRINCE: Yes, [inaudible] bathroom, I'll be

18 right back in two minutes. Dr. Rosler is here [inaudible].

19 THE COURT: Okay.

20 MR. WINNER: And I should've -- I apologize. I

21 should have introduced David. He was here to help me with my

22 computer. Thank you, Your Honor.

23 THE COURT: Oh. During the recess, you're

24 admonished not to talk to or converse among yourselves or with

25 anyone else on any subject connected to this trial or read,

1 watch or listen to any report of or commentary on the trial by  
2 any person connected with this trial, by any medium of  
3 information, including without limitation, to newspapers,  
4 television, the Internet and radio, or form or express any  
5 opinion on any subject connected with the trial until the case  
6 is finally submitted to you.

7 THE MARSHAL: All rise for the exiting jury. Ten  
8 minutes.

9 THE COURT: You want to do five minutes?

10 THE MARSHAL: Five minutes.

11 (Pause in the proceedings)

12 (Court recessed at 4:59 P.M., until 5:07 P.M.)

13 (Outside the presence of the jury)

14 THE COURT: Okay.

15 MR. PRINCE: And so we're just going to use -- he's  
16 he's going to be in binder one principally so -- I'm going to  
17 have them both here in case he needs them but he'll be in  
18 binder one.

19 THE COURT: Okay. So I can just leave those there.

20 MR. PRINCE: Yes.

21 THE COURT: Secondarily, the question was you all  
22 put your stipulations on the record with respect to the  
23 admission of these exhibits and binders [inaudible] the last  
24 trial setting. Do we need to be --

25 MR. WINNER: I don't think so.

1 THE COURT: Should we do that?

2 MR. PRINCE: Do you still have your record from

3 that?

4 THE COURT: We're on, right, Yvette?

5 THE COURT RECORDER: We are now.

6 MR. WINNER: Yeah, I believe we [inaudible].

7 THE COURT RECORDER: I just walked in and we were

8 not on.

9 THE COURT: Obviously, when you're not on, we're not

10 on if you're not on.

11 MR. WINNER: Same thing as subject to redaction if

12 we can [inaudible] back before the jury sees it that's

13 [inaudible] yeah.

14 THE CLERK: And I think you guys had a few things

15 were redacted out of there but [inaudible].

16 MR. PRINCE: Well, I think we just changed some

17 redactions. And I think both Exhibit No. 1, there was an

18 objection to. 2, an objection to. 3, we're not offering. So

19 Exhibits 4 through 42 have been stipulated for admission.

20 43, I haven't offered yet. Exhibits 44 through 72,

21 are stipulated for admission.

22 THE COURT: Is everybody watching this?

23 MR. PRINCE: This is what the Court had. This is

24 what we had the last time.

25 Exhibit 73 are the life expectancy tables, there's

1 an objection. I'm going to establish that tomorrow with Dr.  
2 Garber, so that's not admitted yet.

3 72 through 77, we're not offering.

4 78 is the sub rosa video, we have an objection, the  
5 Court hasn't resolved on that.

6 Also, 79, the video of the property damage of my  
7 client's vehicle hasn't been -- there has been objections and  
8 not admitted yet.

9 Exhibit 80, which the full Valley Hospital record,  
10 that has been stipulated for admission.

11 THE COURT: Okay. Defense agree with that?

12 MR. WINNER: I would stipulate that, as I told  
13 Dennis, Mr. Prince, if he wants to avoid filing a CLR I would  
14 stipulate that if called he would causally [inaudible] the  
15 treatments [inaudible] reasonable. Fair enough?

16 MR. PRINCE: Yes. What'd you say? [Inaudible]?

17 THE COURT: I don't know what that meant.

18 MR. WINNER: That Valley Hospital bill I would just  
19 stipulate that if he was called he would relate [inaudible]  
20 stipulate.

21 MR. PRINCE: Okay.

22 MR. WINNER: You understand, I hope.

23 MR. PRINCE: Yeah. But -- so you're stipulating the  
24 Valley Hospital bill. Well, the bills are in evidence. I'm  
25 going to use Dr. Garber to [inaudible] the reasonable he --

1 they're just saying that -- all your [inaudible] coming into  
2 evidence.

3 MR. WINNER: That's fine.

4 (Pause in the proceedings)

5 THE COURT: And I'm happy if we end early, but we  
6 won't go a minute after 7:00. I don't care if like it's mid-  
7 sentence because I did tell them and I think that's kind of  
8 late already.

9 MR. PRINCE: Understood.

10 THE COURT: Okay?

11 (Jury enters at 5:11 P.M.)

12 THE MARSHAL: All present, Your Honor.

13 (Inside the presence of the jury)

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

16 MR. PRINCE: Yes, Judge.

17 THE COURT: Okay. Mr. Prince, call your first  
18 witness.

19 MR. PRINCE: The first witness will be Dr. Jorg  
20 Rosler.

21 THE CLERK: Please raise your right hand.

22 DR. HANS JORG ROSLER, M.D., PLAINTIFFS' WITNESS, SWORN

23 THE CLERK: Please state your first and last name  
24 and spell your full name for the record.

25 THE WITNESS: My full name is Hans Jorg Rosler,

1 R-O-S-L-E-R.

2 MR. WINNER: Excuse me. If it saves the Court time  
3 we can stipulate to the qualifications of Dr. Rosler to  
4 testify in the field of pain management.

5 MR. PRINCE: I appreciate that, but I want the jury  
6 to have a little bit of understanding of Dr. Rosler's  
7 background --

8 MR. WINNER: Of course.

9 MR. PRINCE: -- and medical specialty.

10 DIRECT EXAMINATION

11 BY MR. PRINCE:

12 Q Dr. Rosler, good evening. Thank you for being here  
13 and your patience. What area is your medical specialty in?

14 A Im an anesthesiologist, a medical doctor and an  
15 anaesthesiologist practicing pain medicine.

16 Q Okay. And can you tell us about your area of  
17 practice as a pain management specialist?

18 A My area of pain medicine is specialized in the  
19 diagnosis and treatment of patients with spinal complaints,  
20 complaints emanating from the spine, from the vertebral  
21 column.

22 Q Okay. And as a pain management specialist what type  
23 of clinical problems do you typically evaluate on a routine  
24 and daily basis?

25 A We see patients who come through the door with

1 simple problems, just neck pain, back pain, and pain radiating  
2 down to the arms, down the legs, numbness or tingling  
3 sensations.

4 Q Do you treat patients with chronic spinal pain?

5 A Yes, I do.

6 Q What's considered chronic spinal pain?

7 A The definition of chronic pain is persistent pain  
8 anywhere between 3 to 6 months in duration. Everything that  
9 is more or less shorter is considered acute pain.

10 So we are treating patients that are acute in their  
11 pain but also that have chronic pain. Often the patient has  
12 become chronic and it has been there for many, many years.

13 Q Okay. You can have your water.

14 A Thank you very much.

15 Q And do you treat people who have been injured in  
16 motor vehicle collisions, falls and work-related injuries?

17 A Yes, I do.

18 Q Do you treat people who have just -- have chronic  
19 spinal pain or other chronic diseases that need some type of  
20 ongoing pain management?

21 A Yes, I do.

22 Q And describe the ways that you manage patients which  
23 are in chronic pain.

24 A Well, patients who are in chronic pain are a  
25 challenge because pain has been persistent for many, many