

**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           A     It -- yes, I agree with that.

2           Q     And would you agree that symptomatic degenerative  
3 conditions are even less common than asymptomatic degenerative  
4 conditions?

5           A     I would not say it's less common. Probably equally  
6 common.

7           Q     And you just said -- Mr. Prince asked the question  
8 in kind of a way that I thought we would need to clarify. You  
9 told me a few minute ago on the MRI you saw no disc fragments.  
10 You saw no nuclear disc fragments outside the annulus on any  
11 MRI; correct?

12          A     No. What I said is that I would not use any  
13 terminology that pertains to nucleus or annulus --

14          Q     Okay.

15          A     -- on the MRI description. So we didn't say  
16 anything about fragments. So the disc is bulging out and  
17 sitting in the canal that's causing pressure in the nerves.  
18 When we do surgeries that we usually see disc fragment. So  
19 that's a description, usually interoperative description,  
20 which is what Mr. Garber mentioned when I caught part of his  
21 testimony.

22          Q     And do you only saw the annulus, the annular outer  
23 part of the disc, you only saw that bulging --

24          A     You insist on --

25          Q     -- or excreting past the --

1           A     -- saying annulus.

2           Q     -- disc space; correct?

3           A     Okay. No. There's a bulging disc. So the MRI

4 description is a bulging disc, herniated disc, a protruding

5 disc.

6           Q     Well, now, the MRI description was protrusion and

7 bulge, not herniation; correct?

8           A     It's the same thing. Again, it's the same thing in

9 our terminology.

10          Q     I understand, but we've had different doctors here

11 saying completely different things, and I don't want to

12 confuse the jury.

13          A     Correct. So to clarify for the jury, herniation,

14 bulging, protrusion are used interchangeably by a lot of

15 people. Some people assign a degree of this, more herniation,

16 less herniation, but the commonly used terminology is that on

17 the MRI there's a disc material outside of the disc space, as

18 we saw on the MRI. So bulging -- bulging disc.

19          Q     Disc material, meaning annulus or nucleus; right?

20          A     Disc material means any part of the disc.

21          Q     Okay.

22          A     Bulging into the space where it's not supposed to

23 be.

24          Q     Thank you.

25          A     You're welcome. Now, when we go to surgery, a lot

1 of times what we see is fragments. And that's when we go in  
2 there and we start taking the disc out, and there's pieces of  
3 the disc that we describe as fragments. So when we describe  
4 surgical report, that's what we usually say. And there's  
5 fragment of the disc sitting in the canal or in the foramen.  
6 Now, obviously, I did not need a surgery, so I cannot comment  
7 on that, but that's my understanding what Dr. -- Dr. Garber  
8 saw.

9 Q Okay. And Dr. Garber saw that, he said,  
10 interoperatively; right?

11 A That's what I heard and that would make sense.

12 Q Okay. You did not see for the second time, you did  
13 not see any evidence of nuclear disc material, the center of  
14 the disc going all the way outside the annulus outside the  
15 disc on the MRI; correct?

16 A You cannot differentiate nuclear and annulus  
17 material on an MRI.

18 Q Okay. Thank you. Last, I just want to -- if we  
19 need to mark your deposition we can, but the day is getting  
20 late. Did you indicate at your deposition that if a patient  
21 reports trauma like an MVA, and then reports symptoms come  
22 about after, that is the only basis of your causation opinion,  
23 there are no other factors in giving a causation opinion? Not  
24 diagnosis, causation.

25 A It's a significant part of it. If the patient --



1 24-year-old patient has no symptoms, has a major accident  
2 where a major impact occurs, patient becomes symptomatic after  
3 this, to me, as a professional, it's fairly clear that the  
4 causation is this trauma. Especially in context of the  
5 indication of the [indiscernible] trauma where the bone  
6 contusion and bone marrow abnormality and things like that.

7 Q Do you also agree with Dr. Rosler that MRIs can be  
8 read differently by different radiologists?

9 A Absolutely.

10 MR. PRINCE: Objection. Beyond the scope of my  
11 redirect, Judge. I've kind of allowed all of this without  
12 objection.

13 THE COURT: I'll allow that one question.

14 BY MR. WINNER:

15 Q Do you agree that radiologists can view, in your  
16 experience, two radiologists or two physicians can view the  
17 same MRI of the same person differently?

18 A Sure. Of course.

19 Q Okay. Would you think it unusual for one physician  
20 to see some abnormality or pathology on an MRI that another  
21 physician said --

22 MR. PRINCE: Objection. Asked and answered.

23 BY MR. WINNER:

24 Q -- no, I don't see that there?

25 MR. PRINCE: Asked and answered and beyond the scope

1 of my redirect.

2 THE COURT: Overruled.

3 THE WITNESS: Yeah, I mean, I think people who have  
4 more experience and more expertise, such as fellowship-trained  
5 neurosurgeons usually appreciate abnormality to a greater  
6 extent than someone who does not have as much experience.

7 MR. WINNER: Dr. Khavkin, thank you for your time  
8 today.

9 THE WITNESS: Thank you.

10 THE COURT: Ladies and gentlemen, any questions?  
11 (Bench conference)

12 THE COURT: Juror No. 7, can chiropractic treatments  
13 make an injury of this type worse?

14 MR. WINNER: I guess that's okay.

15 THE COURT: And No. 6, is damage to annulus  
16 cumulative or does it heal over time? If it does not, could  
17 it have been damaged in 2010 and further damage in future  
18 wrecks?

19 MR. PRINCE: Yeah, I guess I'm going to object to  
20 that one. He didn't review all those records, so he doesn't  
21 have enough information.

22 MR. WINNER: That's fine. I agree.

23 MR. PRINCE: Yeah, objection on that one.

24 THE COURT: So not ask it?

25 MR. HENRIOD: Yeah.

1 MR. WINNER: That's fine.  
2 THE COURT: Juror No. 6?  
3 MR. PRINCE: Right.  
4 THE COURT: Do not ask any question of Juror No. 6.  
5 MR. WINNER: I might disagree. I just don't care.  
6 I want to get out of here.  
7 THE COURT: Juror No. 8, would starting with a  
8 two-level fusion be less expensive in the long run in regard  
9 to follow up surgeries than starting with one little fusion?  
10 MR. WINNER: I think that's going to go down a road  
11 I --  
12 MR. PRINCE: I agree with that one.  
13 MR. WINNER: I would disagree with that.  
14 THE COURT: Okay. So based -- based on --  
15 MR. WINNER: She didn't get the two-level fusion,  
16 she got the one-level fusion. And we're going to go down a  
17 road that you already sustained an objection to.  
18 MR. PRINCE: Well, Dr. Garber testified she needs  
19 \$240,000 for the future. So, I mean, to ask him what the cost  
20 would be, the comparative cost.  
21 MR. WINNER: That's going to be a backdoor way of  
22 introducing costs for future surgeries after a double-level  
23 fusion, which you are insisting --  
24 THE COURT: Right. I'm not going to ask that one.  
25 MR. WINNER: -- an objection to. Yeah.

1 THE COURT: I'm asking 8, Juror No. 8's question at  
2 the end. Juror No. 9, can the MRI from the 2010 accident be  
3 presented to compare with the 2015 MRI? There's not one,  
4 so --

5 MR. PRINCE: Don't ask that. We can't ask that.

6 MR. HENRIOD: Oh.

7 MR. WINNER: Yeah, I would want that asked.

8 MR. PRINCE: You can't. You can't because there's  
9 no film to show.

10 THE COURT: Well, I don't know that it's an  
11 appropriate question for this witness.

12 MR. PRINCE: I agree. And he didn't even look at it  
13 anyway.

14 THE COURT: And then the second one is could the  
15 accident of 2010 have any bulging or effects with no symptoms  
16 leading up to the 2015 accident, the accident in 2015.

17 MR. PRINCE: He didn't read any -- he didn't review  
18 those records.

19 THE COURT: Do you all agree that this doesn't come  
20 in?

21 MR. HENRIOD: No.

22 MR. WINNER: That does.

23 MR. PRINCE: No, it doesn't. See, this is what  
24 happens.

25 THE COURT: Okay. Just let me --

1 MR. PRINCE: Excuse me.  
2 MR. WINNER: Go ahead.  
3 THE COURT: Everybody read it first.  
4 MR. PRINCE: They both talk. This is what you both  
5 do consistently, so I have to deal with both of you. You  
6 can't any questions about the 2010. He didn't look at the  
7 records. So now what they want to do is convert the treating  
8 physician at times when it benefits them to look at records.  
9 See, you see how they go beyond the scope of that? However,  
10 before they were --  
11 THE COURT: Do you want to ask all of this?  
12 MR. PRINCE: No, I don't want to ask any of it.  
13 THE COURT: Oh, and you?  
14 MR. WINNER: Yes.  
15 MR. HENRIOD: Yeah. Yeah, because --  
16 THE COURT: Which one? All of it?  
17 MR. HENRIOD: -- because it matters --  
18 MR. WINNER: Yes.  
19 MR. HENRIOD: -- when he's not able to look at --  
20 when -- the he doesn't look at. I mean, if you could say --  
21 MR. PRINCE: [Indiscernible] the question.  
22 MR. HENRIOD: -- that the treating can come in --  
23 THE COURT: [Indiscernible].  
24 MR. HENRIOD: -- [indiscernible] and what he's doing  
25 is he's saying, well, that should [indiscernible] acts in a

1 process of elimination, and then to not be able to ask him  
2 what he didn't look at that does exist?

3 MR. PRINCE: Because nobody can see the film.

4 MR. HENRIOD: To even ask him whether or not he  
5 thinks it's important. I think he has to be able to see to be  
6 able to say, yes, I decided it was this by process of  
7 elimination, but, yes, these are things that I didn't even  
8 look at and he needs to be able to account for whether or not  
9 he looked at them and whether or not he would have thought it  
10 would have been helpful if he were able to see them.

11 MR. PRINCE: Can you compare? Can the MRI from that  
12 accident be presented? The answer is no, so don't ask that  
13 question, the films are gone so that can't happen. And he  
14 didn't -- he wasn't asked to do that. So now they want to  
15 convert him when it's convenient for them to doing something  
16 outside because, oh, it'll show he doesn't -- the things he  
17 doesn't have, so --

18 THE COURT: I think -- didn't I already say we can't  
19 ask this one?

20 MR. HENRIOD: We can't control --

21 MR. PRINCE: No, he hasn't asked.

22 THE COURT: That I don't think this is the right  
23 witness.

24 MR. HENRIOD: The question is whether or not he  
25 thinks it's relevant.

1 MR. PRINCE: I haven't even started talking yet.  
2 Why do you -- you both interrupt so terribly. Did the  
3 accident of 2010 have any bulging and effects with no symptoms  
4 leading up to 2015, and then the accident of 2015 stated --  
5 started radiculopathy.  
6 THE COURT: I don't -- not sure I even understand.  
7 MR. WINNER: I'm -- I'm fine with not --  
8 MR. PRINCE: The MRI is --  
9 MR. WINNER: I'm going to ask Mr. Wang the same  
10 question, so it's fine.  
11 THE COURT: Okay. So none of it?  
12 MR. PRINCE: No, and the third one I just don't  
13 understand. Did you disagree and feel that C5 should have  
14 been taken care of [indiscernible]? It does or doesn't have  
15 [inaudible]. Oh, no, I'm okay with that one. I'm okay with  
16 these two.  
17 MR. WINNER: I'm sorry, Dennis, I can't read it.  
18 MR. PRINCE: Those two, the second two.  
19 THE COURT: So the second two are fine.  
20 MR. PRINCE: Yeah, the second two are fine.  
21 MR. WINNER: I can't read it.  
22 MR. HENRIOD: I don't see a foundation for this.  
23 MR. PRINCE: Now there's foundation for it.  
24 MR. HENRIOD: No. No, no, no. Are you saying that  
25 fusing that would avoid adjacent segment disease as you call

1 it?

2 MR. PRINCE: Yeah.

3 MR. HENRIOD: Of that disc? But certainly of the  
4 discs above it; right?

5 MR. PRINCE: No, he talked about adjacent segment  
6 disease at C4-5.

7 MR. HENRIOD: I thought that it was a --

8 THE COURT: I thought you wanted --

9 MR. HENRIOD: -- process that just started --

10 THE COURT: -- these all in.

11 MR. HENRIOD: -- over and over again.

12 THE COURT: Now you don't want it because he said he  
13 did?

14 MR. WINNER: Well, no, asking a question --

15 MR. HENRIOD: I think [indiscernible].

16 MR. PRINCE: You can't -- you can't do -- you can't  
17 ask the first question because there's no MRI to present.

18 THE COURT: Let me see it.

19 MR. WINNER: Okay. Here's -- here's what I think.  
20 Ask -- asking this question as a yes or no, would that avoid  
21 adjacent segment disease. Ask him yes or no, I don't mind  
22 that. That's fine.

23 MR. PRINCE: Well, ask how however it's phrased.  
24 He's not limited to yes or no answers.

25 MR. WINNER: Because it's do you agree.



1 MR. PRINCE: I think it's do you disagree.  
2 MR. WINNER: Okay.  
3 THE COURT: I don't think any of these witnesses can  
4 do yes or no answers.  
5 MR. PRINCE: What?  
6 THE COURT: I don't think any of these witnesses  
7 ever answer yes or no.  
8 MR. WINNER: Well, then, either none of them are  
9 asked or all of them are asked because --  
10 MR. PRINCE: I agree to -- I agree to two and three,  
11 but you can't -- there's no 2010 film. That's our fault.  
12 They're trying to use that as [indiscernible]. But there's no  
13 film. We don't --  
14 MR. HENRIOD: Would you have found it helpful to  
15 see.  
16 MR. PRINCE: No. That's not -- that's not -- that's  
17 not -- that's not -- oh, don't shake your head like that.  
18 THE COURT: I can ask him if he reviewed an MRI from  
19 2010.  
20 MR. PRINCE: No, Judge, it's not available. How can  
21 you ask him that?  
22 THE COURT: Then he'll say no.  
23 MR. PRINCE: That would be you rephrasing a  
24 question. That would be you --  
25 THE COURT: I know, but I can rephrase the

1 question --

2 MR. PRINCE: You can't rephrase this question.

3 THE COURT: -- if you all agree on it.

4 MR. PRINCE: You can't rephrase -- well, I don't  
5 agree that you rephrase the juror's questions. They want to  
6 compare the film.

7 THE COURT: Well, yeah, that's pretty reasonable;  
8 right?

9 MR. PRINCE: There's no film.

10 THE COURT: I mean, I would want to if I were there.

11 MR. PRINCE: There's no film. We have the reports  
12 as normal.

13 THE COURT: I know. But didn't we talk about that  
14 already?

15 MR. PRINCE: Yes. But he didn't look at those.

16 THE COURT: So are you telling me that the fact that  
17 the MRI doesn't exist is not going to the jury?

18 MR. PRINCE: It doesn't exist.

19 MR. WINNER: It is going to the jury.

20 MR. PRINCE: Well, I don't know. We don't --

21 THE COURT: Okay. Through what witness?

22 MR. HENRIOD: Because I think what it does is it  
23 puts in context how --

24 THE COURT: Well, I'm not saying it doesn't. I'm  
25 asking which witness is bringing it in? When is it coming in?

1           MR. PRINCE: Well, I mean, I think it -- so Wang is  
2 going to --  
3           THE COURT: Did it come in already? Didn't it?  
4           MR. PRINCE: The report is in. They're asking for  
5 the actual film.  
6           MR. WINNER: Yeah.  
7           THE COURT: Well, I know. I would want the actual  
8 film, as well, if I were doing it.  
9           MR. HENRIOD: And the fact that they're not able to  
10 look at the film and this witness has said [inaudible] --  
11           MR. WINNER: We'll have a witness --  
12           MR. HENRIOD: -- [inaudible] --  
13           MR. WINNER: -- saying it was purged.  
14           MR. HENRIOD: -- film.  
15           MR. WINNER: If necessary, we'll have a witness  
16 saying it was purged.  
17           THE COURT: Well, didn't --  
18           MR. HENRIOD: No. No.  
19           THE COURT: -- the first doctor --  
20           MR. HENRIOD: The fact that --  
21           THE COURT: -- already say?  
22           MR. HENRIOD: -- it doesn't exist, that they can't  
23 look at it --  
24           THE COURT: Who was the guy --  
25           MR. HENRIOD: -- is relevant --

1 THE COURT: -- that said he read --  
2 MR. HENRIOD: -- when they're saying --  
3 THE COURT: -- the report?  
4 MR. HENRIOD: -- that nothing happened --  
5 MR. PRINCE: The report is here.  
6 MR. HENRIOD: -- in 2010.  
7 MR. PRINCE: No, the report is here. The report is  
8 here and Dr. Garber --  
9 MR. HENRIOD: The report --  
10 MR. PRINCE: -- commented on it and Dr. Rosler  
11 commented on it.  
12 THE COURT: Did they also --  
13 MR. WINNER: Did Dr. Garber say that the film  
14 doesn't exist?  
15 THE COURT: I think he said he didn't --  
16 MR. WINNER: I'm trying to remember.  
17 THE COURT: -- see it, though; right? Or did he see  
18 it?  
19 MR. WINNER: Did either of your docs say that? I'm  
20 trying to remember.  
21 MR. PRINCE: What are you asking?  
22 MR. WINNER: Did either of your docs say the film  
23 doesn't exist?  
24 MR. PRINCE: Tom, the only one who says that is you.  
25 No one else says that. I have no idea whether the film exists

1 or doesn't exist. We don't have it.

2 MR. WINNER: I thought you said it didn't exist.

3 THE COURT: All right. You know what, this

4 doesn't --

5 MR. HENRIOD: But here's what --

6 THE COURT: -- have to be asked with this witness.

7 MR. HENRIOD: -- what's clear is that --

8 THE COURT: -- I'm going to ask these two.

9 MR. HENRIOD: What's clear is that this witness

10 hasn't seen the film and this witness has said that nothing

11 was there in 2010, he hasn't seen the film, and --

12 MR. PRINCE: No one has seen the film.

13 MR. HENRIOD: -- the point is is that he has said

14 that he always wants to see the film himself and not defer to

15 a radiologist.

16 MR. PRINCE: The film was entirely normal.

17 MR. HENRIOD: The fact that he's discounting what

18 may have been there before 2015 and whether or not it would be

19 helpful to see in 2010 --

20 THE COURT: Here's what I'm doing.

21 MR. HENRIOD: -- I think is pretty important.

22 THE COURT: I'm asking question two and question

23 three.

24 MR. PRINCE: Okay.

25 THE COURT: I'm not going to ask question one. Now,

1 if somebody were to ask question one as a follow up to two and  
2 three, I would suggest that it be asked did you specifically  
3 review the MRI from 2010.

4 MR. PRINCE: Judge, that's not fair because they  
5 know --

6 MR. WINNER: That's fine.

7 MR. PRINCE: -- it doesn't exist. They know it  
8 doesn't exist.

9 THE COURT: Well, of course. It doesn't exist. But  
10 you can't -- you can't benefit from something that doesn't  
11 exist like that.

12 MR. WINNER: Well, I don't know if it doesn't exist.

13 MR. PRINCE: The report --

14 MR. WINNER: I know the doctor can't produce it.

15 MR. PRINCE: The report exists.

16 THE COURT: Well, the only thing that's important --  
17 that's fine.

18 MR. PRINCE: The report exists.

19 THE COURT: And then you can follow up and say did  
20 you review the report, though?

21 MR. PRINCE: Well, I'm going to show it to him if  
22 you ask him that question. I'm going to show it to him.

23 THE COURT: That's fine.

24 MR. PRINCE: Okay.

25 THE COURT: I'm good with that.

1 (End of bench conference)

2 THE COURT: So Question No. 9. We're going to ask  
3 two of them. What did I say about these? I can't even  
4 remember now.

5 Doctor, can chiropractic treatments make an injury  
6 of this type worse?

7 THE WITNESS: How or, I'm sorry, or do they?

8 THE COURT: Can.

9 THE WITNESS: Oh, can.

10 THE COURT: Can chiropractic treatments make an  
11 injury of this type worse?

12 THE WITNESS: Not this kind. I mean, I have a  
13 patient with a core compression with a severe fracture or  
14 dislocation, then, yes, I would not recommend chiropractic  
15 treatment.

16 THE COURT: Okay. Thank you.

17 THE WITNESS: For this kind of injury I think it's a  
18 very reasonable treatment option.

19 THE COURT: Could the accident in 2010 have any  
20 bulging or effects with no symptoms leading up to the 2015  
21 accident and the accident in 2015 started the radiculopathy,  
22 is that how you say that?

23 THE WITNESS: Yeah, that's right. No, because,  
24 first of all, there was an MRI from what I was just told, it  
25 was normal, so obviously we have evidence that

1 radiographically we did not have any bulging at that time,  
2 number one. Number two, her symptoms resolved. Whatever she  
3 had at that time, which I don't know what she had at that  
4 time, but the point is that all her symptoms resolved. And so  
5 she was living a normal life of a young woman without any  
6 symptomatology until this happened. So if this accident in  
7 2015 had not happened, she could have lived another 70 years  
8 of her life never having any problems with her neck.

9 THE COURT: Okay. Do you disagree and feel that C5  
10 should have been taken care of in one setting still even if  
11 Desire doesn't have pain at the time to avoid segment --  
12 what's the word?

13 THE WITNESS: Segment, next segment, segmental  
14 disease.

15 MR. WINNER: Breakdown.

16 THE WITNESS: Yeah.

17 THE COURT: It's to avoid segment --

18 MR. WINNER: Disease?

19 THE COURT: Disease. Yes. Thank you.

20 THE WITNESS: Right. You know, and that's --

21 THE COURT: Sorry. In the rest of her life.

22 THE WITNESS: Right. Yes and no. So that's a great  
23 question. And that's why -- that would be my approach to  
24 address both 6-7 and 5-6. That would not prevent adjacent  
25 level diseases. That's the C4-5. That's the one above. So



1 as I -- as I put this on the piece of paper on the drawing, if  
2 you fuse 5-6 and 6-7, they would address all the existing  
3 pathology, but down the line you still have a 4-5 problem as  
4 an adjacent level pathology.

5 Now, in her case, she has 6-7 addressed, and clearly  
6 got significant relief, but 5-6 is definitely going to become  
7 symptomatic just because it's already bad and it's only going  
8 to be just a matter of time before it needs to be done. Once  
9 that gets done and once the 5-6 is addressed, then she's still  
10 at risk of 4-5 being a problem for the same reason because now  
11 she's going to have two segments fused, and then she's going  
12 to have adjacent level pathology for the C4-C5.

13 So that's -- you know, that would be my approach. I  
14 think what Dr. Garber did is reasonable. He addressed the one  
15 that's worse. The only difference is that now essentially  
16 it's going to be two, potentially three surgeries, versus one  
17 and potentially two surgeries. So if that makes sense.

18 THE COURT: Are we done?

19 MR. PRINCE: Yes.

20 THE COURT: Both sides? Everybody is done?

21 BY MR. WINNER:

22 Q Doctor, do you agree that two radiologists can look  
23 at two MRIs and interpret them different; correct?

24 A Hopefully not, but it can happen, sure.

25 Q You've seen it happen; correct?

1           A     Unfortunately, yes.

2                     MR. PRINCE:  Objection.  Asked and answered.

3   That's --

4   BY MR. WINNER:

5           Q     You've never seen the film of that 2010 MRI?

6           A     I have not.

7           Q     Thank you.

8                     THE COURT:  Thank you.  That's it?

9                     MR. PRINCE:  I just want to do one item quickly.

10                    Brandon, 955.

11                                FURTHER REDIRECT EXAMINATION

12   BY MR. PRINCE:

13           Q     I'm going to hand -- I'm going to put it on the

14   monitor.  Part of Exhibit 81, Bates No. 955.  And that's the

15   July 12, 2010, MRI report.

16           A     Uh-huh.

17           Q     I mean, radiologists, that's a medical specialty;

18   correct?

19           A     Correct.

20           Q     Where they look at x-rays and MRIs every day;

21   correct?

22           A     Correct.

23           Q     Neurosurgeons -- as a neurosurgeon, you probably

24   spend more time because you're focused on the spine day in and

25   day out.  A radiologist is looking at arms, wrists, hands,

1 feet, head, shoulders; right?

2 A That's correct.

3 Q Is there any abnormality seen on that 2010 MRI?

4 A I'll tell you I rarely see these kind of reports  
5 because I never see MRI that's that normal as this one. To  
6 your previous point, if the radiologist can see anything,  
7 anything they can find abnormal, they will indicate this in a  
8 report. I have never seen a radiologist missing something  
9 abnormal. So when the MRI says it's a normal MRI, it is a  
10 normal MRI.

11 Q All right. Thanks.

12 A There's no question about it.

13 Q Thank you.

14 FURTHER RECROSS-EXAMINATION

15 BY MR. WINNER:

16 Q Do you know Dr. Keith Lewis, the radiologist in this  
17 case?

18 MR. PRINCE: Well, objection. That's beyond the  
19 scope of the --

20 THE COURT: Well, I don't know that it is. He's  
21 just -- he's just gone --

22 MR. PRINCE: Well, this isn't read by Dr. Lewis.

23 THE COURT: Overruled.

24 BY MR. WINNER:

25 Q So you know that Dr. Keith Lewis has testified in

1 the past that local chiropractors have told him to try to  
2 measure two to three or measure millimeter bulges in the discs  
3 against his better judgment? Are you aware of that testimony?

4 A I do not know this doctor, no.

5 Q Okay. Does that surprise you to learn that?

6 MR. PRINCE: Objection to relevance. He doesn't  
7 know it.

8 THE WITNESS: I don't know anything about a  
9 doctor --

10 THE COURT: Okay.

11 THE WITNESS: -- and his interactions with  
12 chiropractors.

13 THE COURT: Sustained as to whether he's surprised.

14 MR. WINNER: Thank you.

15 THE COURT: Ladies and gentlemen, you're done?

16 Doctor, you're excused with our thanks. Thank you  
17 so much.

18 THE WITNESS: All right. Thank you very much.  
19 Thank you, Your Honor.

20 THE COURT: Ladies and gentlemen, we're going to  
21 take our evening -- actually, we're taking our weekend recess.

22 So during the recess you are admonished not to talk  
23 or converse amongst yourselves or with anyone else on any  
24 subject connected to this trial, or read, watch, or listen to  
25 any reports of or commentary on the trial of any person

1 connected with this trial by any medium of information,  
2 including, without limitation, newspapers, television, the  
3 Internet, and radio, or form or express any opinion on any  
4 subject connected with the trial until the case is finally  
5 submitted to you.

6 If you all will be ready to take your seats by 1:00  
7 on Tuesday. Okay. Have a great weekend. Be safe.

8 (Jury recessed at 5:01 P.M.)

9 THE COURT: All right. Anything outside?

10 MR. HENRIOD: Yeah. I know you need to get to your  
11 baccalaureate, so --

12 THE COURT: Like a half hour ago.

13 MR. HENRIOD: -- I'll keep it to two minutes, all  
14 right.

15 THE COURT: Is there any reason we can't meet  
16 Tuesday on it?

17 MR. HENRIOD: Well, let me tell you now, I think  
18 we're going to need a curative instruction. This has gone all  
19 day towards where he blurted at the end of the day now he  
20 needs a third surgery. So this is a problem, and I think it's  
21 because we've been pushing the envelope for two days. And I  
22 can ask for a curative instruction. We can handle this --

23 THE COURT: Okay.

24 MR. HENRIOD: -- I guess it's Tuesday morning so  
25 that you can get to your thing. I've got to say, this was not

1 disclosed. I have a hard time believing that this is either  
2 not entirely new, which is why we didn't get notice of this  
3 third surgery, or -- or it was before.

4 But in any case, this motion for sanctions that's  
5 out there because of the mistrial I think should be denied  
6 today. I mean, here we have this exploitation of the extra  
7 time, and this is still hanging over the head. I'm sorry.  
8 I'm a little upset that over a day and a half of a slow burn  
9 we knew exactly where it was going, and it just went there  
10 with him.

11 MR. PRINCE: Well, we didn't --

12 THE COURT: I'm going to have to go --

13 MR. PRINCE: -- have an objection to those  
14 questions.

15 THE COURT: I'm going to have to go listen --

16 MR. HENRIOD: We've been objecting for two days.

17 THE COURT: I'm going to have to go listen to that  
18 again. If you -- if you're looking for something like that, I  
19 need -- can you give me a little memo by sometime? We'll meet  
20 back here at 12:30. 12:45 or 12:30? We better do 12:30.  
21 Okay. Have a good weekend everybody.

22 MR. WINNER: 12:30 Tuesday.

23 THE COURT: Tuesday.

24 MR. WINNER: Enjoy your weekend.

25 MR. PRINCE: Bye, Judge.

26 (Court recessed at 5:03 P.M., until Tuesday,

27 May 28, 2019, at 12:30 P.M.)

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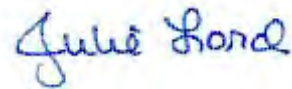
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ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in blue ink that reads "Julie Lord". The signature is written in a cursive, flowing style.

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15

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 28, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
**JURY TRIAL - DAY 9**

APPEARANCES:

|                     |                          |
|---------------------|--------------------------|
| FOR THE PLAINTIFFS: | DENNIS M. PRINCE, ESQ.   |
|                     | JACK F. DEGREE, ESQ.     |
| FOR THE DEFENDANT:  | THOMAS E. WINNER, ESQ.   |
|                     | JOEL D. HENRIOD, ESQ.    |
|                     | CAITLIN J. LORELLI, ESQ. |

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

1                   LAS VEGAS, NEVADA, TUESDAY, MAY 28, 2019

2                   (Case called at 12:56 P.M.)

3                   (Outside the presence of the jury)

4                   THE COURT:   Okay.  Did we have something outside  
5 the presence?

6                   MR. PRINCE:  We do.  Last week Dr. -- during  
7 cross-examination of Dr. Garber by Mr. Winner, Mr. Winner was  
8 asking questions of Dr. Garber about whether he treated and  
9 did the surgery on a lien, and then in response, he said that  
10 he did -- did not do it on a lien, that he utilized her  
11 health insurance.

12                  Obviously, that kind of provoked -- that kind of  
13 question and answer provoked -- that's one reason why the  
14 lien issues are so problematic at times.  But moreover, it  
15 got into an area of collateral source.  So the parties have  
16 agreed to a curative instruction.  I wonder if I could  
17 approach with that --

18                  THE COURT:  Sure.

19                  MR. PRINCE:  -- for you to read to the jury because  
20 of the statement.

21                  THE COURT:  So do I just put this in as one of the  
22 many?

23                  MR. PRINCE:  No, I guess you'd read it now.

24                  THE COURT:  Oh.

25                  MR. PRINCE:  As a curative now.

1 THE COURT: Gotcha. Okay.

2 MR. WINNER: I don't have objection with it.

3 THE COURT: All right.

4 MR. WINNER: I don't think I prompted the answer.

5 He did sign her up at all, but I agree to the instruction.

6 THE COURT: Okay. Is that all?

7 MR. PRINCE: That's all from us.

8 MR. WINNER: We had a -- excuse me, let me shut

9 this off -- a couple of motions for --

10 MR. PRINCE: Oh, yes, I guess I do.

11 MR. WINNER: -- a protective order of a --

12 MR. PRINCE: Go ahead. Yeah, I guess that does one

13 -- I'm sorry. There is one further issue with us. It kind

14 of interrelates to the -- their motion for protective order.

15 At the last trial we subpoenaed documents from

16 Dr. Wang in part related to his reports and hid billing. We

17 have yet to receive those. Today and I -- we -- when this

18 trial started again, we again served through Mr. Winner's

19 office a subpoena requesting a complete copy of, among other

20 things, but we've agreed to limit it to reports and -- and

21 the billing. And we still don't have the billing file. We

22 have no bills.

23 Mr. Winner told me in advance that Dr. Wang has

24 looked at his billing, and he's going to give me -- give us a

25 total of what it may include, not including today, but I

1 wanted to see the statements to verify that.

2 I mean those should be easily produceable, he would  
3 submit invoiced to Mr. Winner's firm, who in turn would  
4 either pay them or forward them to the insurance carrier to  
5 pay those invoices. And so for that reason, we're asking --  
6 I want the actual bills.

7 I want to see how much time was spent, what the  
8 rates were, and how much he charged. I think those are all  
9 relevant to the area of bias.

10 THE COURT: Well, I feel like we're kind of  
11 late-ish. And I thought I said last week or the week before  
12 that service on Mr. Winner's office was not considered  
13 service for the doctor. Did we not --

14 MR. PRINCE: Well, how can they --

15 THE COURT: -- have that conversation?

16 MR. PRINCE: That would be the only way to  
17 effectively serve him. He lives in California. He has been  
18 -- he's an expert witness, and everything is through the care  
19 of their office. So --

20 THE COURT: That --

21 MR. PRINCE: -- you can compel --

22 THE COURT: -- that wasn't the way I read it.

23 MR. PRINCE: You can compel the production of those  
24 documents, and they're easily obtainable. If he went and did  
25 the search, why doesn't he have the papers? Why can't he

1 produce that as part of his file?

2 THE COURT: That -- my question was if Mr. Winner's  
3 office is not an agent for the doctor, I don't know that  
4 service upon a non-agent is effective service. If I'm wrong,  
5 I'm open to hear that.

6 Beyond that, is there something we can resolve,  
7 because obviously, we got a jury coming in in 12 minutes.  
8 Can we agree to whatever we need -- are you saying you don't  
9 want to put him on today or what are we doing?

10 MR. PRINCE: No, no, no. They're going to -- I  
11 have to put Desire on today because she's going to be induced  
12 tomorrow for her baby.

13 THE COURT: That's cutting it close.

14 MR. PRINCE: So -- right, of course. And then so I  
15 agreed how they could -- after we're done with Desire to  
16 Dr. Wang could testify out of order, evening though we're not  
17 done with our case-in-chief.

18 THE COURT: Well, what are you -- I thought you  
19 were done with your case-in-chief?

20 MR. PRINCE: No. I haven't put my clients on. No,  
21 I'm not.

22 THE COURT: I just thought -- for some reason I  
23 thought you were.

24 MR. PRINCE: No, I hadn't put on my clients yet.

25 MR. WINNER: Yeah, I think when we spoke the other

1 week, Mr. Prince thought we would be done by today, which is  
2 why we had Dr. Wang, but now I understand.

3 THE COURT: I thought --

4 MR. WINNER: We -- these questions were -- I know  
5 Mr. Prince didn't have the file from the beginning, but these  
6 -- the questions about Drs. Wang and Schifini were not asked  
7 in discovery. We submitted motions for protective order  
8 about compelling production and all that information during  
9 trial, which is in front of you. We also had a -- a couple  
10 of trial briefs about the business at the impeachment --  
11 supposed impeachment information for when Dr. Wang was  
12 formally at UCLA that we submitted a trial brief about that.

13 There was some opposition to it. We don't believe  
14 that for the reasons set forth in our papers, we don't think  
15 it's probative or relevant. There were no -- there was no  
16 finding of any wrongdoing. Okay.

17 THE COURT: Didn't we already rule on that?

18 MR. PRINCE: No. We haven't even had a discussion  
19 on it.

20 THE COURT: Oh, my goodness. Why are we doing this  
21 now?

22 MR. PRINCE: Because he's ready to testify today.  
23 I think it would be --

24 THE COURT: Well, it's not a surprise.

25 MR. PRINCE: I think it will be simple.

1 THE COURT: Okay.

2 MR. PRINCE: Dr. Wang at one point was a director  
3 of the UCLA Spine Center. During that time period -- he's in  
4 the court. Can you excuse Dr. Wang for now?

5 THE COURT: Sure.

6 MR. WINNER: Well, if Dr. Wang has answers as to  
7 what's being -- he's accused of I don't know why he needs to  
8 being excused.

9 THE COURT: Yeah, well why -- if he's allowed to  
10 allowed to be in here anyway --

11 MR. PRINCE: Well, not during the argument. I'd  
12 ask him to be excused.

13 THE COURT: Actually, you know what, all these  
14 experts should be in all these arguments because maybe they'd  
15 stop volunteering stuff that we had ruled to keep out, but --

16 MR. WINNER: I would like him in.

17 THE COURT: -- what is --

18 MR. WINNER: I'd like him in here for the argument.

19 THE COURT: Yeah, I don't know of any legal reason  
20 to keep him out.

21 MR. WINNER: Okay.

22 THE COURT: And if we have a -- there's no secrets,  
23 right? You filed -- did you file a motion on this one?

24 MR. PRINCE: No. No one filed a motion. They  
25 filed a trial brief, but there's no order on this issue.



1 THE COURT: No, but there --

2 MR. PRINCE: And it goes to credibility and bias.

3 THE COURT: Is it this case or another case? I  
4 know I heard something about there were two different prior  
5 bad acts, impeachment kinds of things against two different  
6 doctors and not sure which is which.

7 So was there something filed in this case  
8 referencing that?

9 MS. LORELLI: Yeah, there'S two trial briefs. One  
10 is addressing the UCLA, and one is addressing a senate  
11 investigation.

12 THE COURT: Thank you.

13 MR. PRINCE: Right. And so Dr. Wang was an  
14 employee of the University of California Los Angeles, and in  
15 that capacity, he a direct of the UCLA spine service. Among  
16 other things, he did research and what they is a principle  
17 investigator, which is a part of somebody who does research.

18 THE COURT: Okay.

19 MR. PRINCE: And in connection with that, he would  
20 receive funding from non-governmental entities. In  
21 connection with that, he was required to file by the State of  
22 California a form known as a 700-U as part of the Fair  
23 Political Practices Commission requirements.

24 He filed that in three different -- three different  
25 matters after having received certain financial benefits from

1 three different companies during -- it prompted an  
2 investigation by the Ethics Review Committee by -- the UCLA's  
3 Conflict of Interest Committee and the Institutional Review  
4 Board.

5           It was determined that he violated the Political  
6 Reform Act by failing to enclose -- disclose a financial  
7 interest in the companies known as Facet Solutions, Inc.,  
8 Physiomed, as well as Medtronics.

9           He entered into a stipulation and order with the  
10 Fair Political Practices Commission regarding those charges  
11 that he failed to disclose those financial -- that financial  
12 benefit, and he ultimately paid a fine. He was thereafter  
13 removed by UCLA as the Director of the UCLA Spine Service.

14           So I think that goes to his bias, it goes to  
15 credibility, it's for the purposes of impeachment, and goes  
16 to his failure to disclose. One of the critical issues  
17 they've been talking about here is my client's failure to  
18 disclose allegedly this 2010 motor vehicle collision and  
19 certain treatment related to her neck.

20           And so I think that goes directly to  
21 qualifications, bias and credibility. Most importantly,  
22 impeaching his credibility.

23           THE COURT: Okay. Mr. Winner.

24           MR. WINNER: As set forth in our brief, it is  
25 debatable whether this is even a prior bad act. There was no

1 finding of wrongdoing, there was no finding of conflict of  
2 interest. The supposed financial irregularity was  
3 self-reported by Dr. Wang. He went to the Committee with it  
4 himself.

5           There was a specific finding that he did not act in  
6 any conflict of interest, that he had not intentionally done  
7 any misdeed. And not only was he not removed from the  
8 position, as Mr. Prince suggests, he was actually promoted to  
9 Vice Chair of the Department afterwards.

10           We don't think that it has any relevance to this  
11 case. There are physicians in this community who were  
12 accused of, as the Court is likely aware, accused of criminal  
13 misconduct and were indicted for criminal misconduct. Those  
14 allegations against those physicians, probably appropriately,  
15 were not allowed in impeachment against those physicians.  
16 There were three of them, as you know, about ten years ago.

17           Once there was a plea reached, the fact of the plea  
18 was allowed by all of the District Court Judges in this  
19 District, but none of the accusations or allegations were  
20 allowed with a finding uniform in this courthouse that those  
21 allegations or those findings or the accusations were  
22 themselves not probative and unfair.

23           MR. PRINCE: Okay. Those issues aren't before you  
24 regarding any other physicians in this community who may have  
25 been charged with a crime or not.

1 Dr. Wang has testified in the case of Simao  
2 S-I-M-A-O, versus Rish, R-I-S-H, in 2011. He testified that  
3 he was charged with violating the Political Reform Act by  
4 failing to disclose his interest in the three companies I  
5 mentioned.

6 He had admitted that he entered into a stipulation  
7 decision and order with the Fair Political Practices  
8 Commission regarding the charges, and he agreed that he  
9 violated the political reform act and paid a resulting fine of  
10 -- by reason of his non-disclosure.

11 So that's under oath testimony he's admitted in  
12 Clark County, Nevada. I have the transcript. I plan to use  
13 it to impeach it for not only this, but other issues if  
14 necessary during the course of this case.

15 But I believe that directly goes to the issue of  
16 bias, failure to disclose, goes to credibility. He pled  
17 guilty to, even though it wasn't a criminal act, it's still  
18 related to ethics, disclosure as a University of California  
19 employee when that occurred. So therefore, I believe it's  
20 relevant on the issue of impeachment and credibility.

21 THE COURT: I don't believe it's relevant to  
22 anything. To the extent it may be marginally relevant, I  
23 find it more prejudicial than probative, so I'm not going to  
24 -- we're not going to go down that road. To me, it's an  
25 omission, it's a non-disclosure, and I don't see on any level

1 that it has anything to do with his medical opinion in this  
2 case. Okay.

3 Anything else?

4 MR. WINNER: We also brought a -- he had a motion  
5 about Dr. Wang's opinions in other cases. I know that  
6 Mr. Prince had referenced Dr. Wang's opinion about adjacent  
7 segment breakdown in a prior case, which may arguably be  
8 relevant to some opinions in this case. So I'm not  
9 addressing that in, particular, but opinions or reports he  
10 has written, you know, on the cases involving my firm.

11 If my firm has retained him in the past. I think  
12 in fairness that's probably fair game for Mr. Prince to ask,  
13 but --

14 MR. PRINCE: Of course, that's bias.

15 MR. WINNER: -- what he might have written in other  
16 cases with a possible exception of the adjacent segment  
17 breakdown, Mr. Prince mentioned the other day, we submitted a  
18 trial brief saying his opinions in other cases would kind of  
19 require mini trials on all those other cases and open some  
20 doors that probably need not be opened.

21 THE COURT: Well, let's see how it goes. We agree  
22 that it may be relevant on some -- some issue to a certain  
23 extent, but at some point it may be too much. Okay?

24 MR. WINNER: Thank you.

25 MR. PRINCE: Right. One of the issues, Your Honor,

1 is that Mr. Winner, and they're going to get into it,  
2 Dr. Wang's qualifications suggesting that he was a director  
3 like, you know, that has on this pedestal at UCLA suggesting  
4 that he's never had any issue.

5 He had a problem at UCLA. He was removed from a  
6 position at UCLA. He's going to be talking about his  
7 qualifications, which include his position at UCLA as a way  
8 to bolster to credibility in front of this jury.

9 So the fact that he was removed by reason of what  
10 they determined to be conflict of interest and/or arguable  
11 misconduct, I mean, that does go to the relevancy of that.  
12 They can't sit here and think, oh, he was -- this -- had this  
13 position at UCLA without any other problems while in that  
14 capacity as a result of a financial interest with his outside  
15 companies.

16 These are monies he received from outside -- he was  
17 given 35,000 from Medtronics, he was given like \$2,500 --  
18 2,500 stock options or maybe -- I think it was 18,000 stock  
19 options in another company.

20 So he did have a financial interest in those  
21 companies, which he failed to disclose, and he was removed  
22 from a position at UCLA for that reason, specific reason,  
23 which he's already admitted to in the Simao versus Rish case,  
24 and I have the transcript here, the lines and pages where  
25 he's admitted exactly what I'm saying to you.

1           MR. WINNER: He was not removed from a position,  
2 and in fact, was promoted to Vice Chair.

3           THE COURT: Okay. Well, this is the same thing I  
4 just ruled on?

5           MS. LORELLI: Correct. Yes.

6           MR. WINNER: Yes.

7           THE COURT: Okay. So it's still --

8           MR. PRINCE: Okay. I'm just making my record.

9           THE COURT: I understand that. That's totally  
10 fine. And I will say Dr. Wang is in the courtroom as was  
11 Dr. Garber or all of your experts, I think, were in the  
12 courtroom when we discussed their stuff, too.

13           So what's the agreement now in terms of who's going  
14 -- so you're allowing Dr. Wang to go today, correct?

15           MR. WINNER: Correct.

16           THE COURT: By agreement?

17           MR. WINNER: Mr. Prince and I had a very pleasant  
18 conversation over the week -- I think it was over the  
19 weekend. He indicated that he his client would probably not  
20 be testifying for very long, but he would like for her to go  
21 first, I think.

22           MR. PRINCE: Well, she has to.

23           MR. WINNER: Yeah.

24           MR. PRINCE: Yeah. She can't come back tomorrow.  
25 She's -- she's --

1 THE COURT: Well --

2 MR. PRINCE: -- delivering a baby in the morning.

3 THE COURT: -- and I don't know what Dr. Wang's

4 schedule is either.

5 MR. PRINCE: I don't know.

6 THE COURT: But if -- my understanding was the

7 agreement was the trial would go as long as Dr. Wang could

8 testify this week. Is that right? Today, I mean. Not this

9 week, today.

10 MR. PRINCE: Well, yeah, but we had other time

11 periods that, you know, were out of people's control and time

12 -- time thing -- parameters change and things come up --

13 THE COURT: No, I understand that.

14 MR. PRINCE: -- during trial.

15 THE COURT: So --

16 MR. WINNER: I'm not blaming Mr. Prince.

17 MR. PRINCE: So -- so I don't know -- I mean, I

18 don't know. I had two of my experts had to come back, so

19 I'm --

20 THE COURT: I understand that. I'm just saying

21 worst case scenario, your -- your client could come back.

22 MR. PRINCE: When? When would she? She's

23 delivering a baby tomorrow morning. When would she come

24 back?

25 THE COURT: Well, not tomorrow morning, obviously.



1 But that's what I'm asking. I don't know whose conflict is  
2 greater. So you guys decide, but --

3 MR. PRINCE: Well, I think delivering a child in my  
4 mind would be a significant hardship, so -- to come back, a  
5 brand new baby.

6 MR. WINNER: If this helps, Your Honor, Mr. Prince  
7 and I had a pleasant conversation in the last few days, in  
8 which he indicated his directed his client would not be very  
9 extensive, my cross is not going to be very extensive, and he  
10 indicated his cross with Dr. Wang will not be --

11 MR. PRINCE: Oh -- oh, I didn't say that.

12 MR. WINNER: Not too long.

13 MR. PRINCE: I -- I expect a -- a good cross of  
14 Dr. Wang.

15 THE COURT: I'm just anticipate ago problem. You  
16 guys are coming in here and you're both saying you have one  
17 witness that's only available today. And we have  
18 traditionally not done this as quickly as I thought it might  
19 have otherwise gone.

20 So bear that in mind. You're all in agreement. So  
21 do what you're going to do, but I can't keep a jury, if a  
22 jury can't stay. I'm willing to stay for a while. I'm just  
23 bringing this up to you now at 1:00 o'clock so that you can  
24 perhaps get your most important stuff out, and I don't -- I  
25 don't think it's going to be fair if the jury can't stay to

1 give the plaintiff until 4:00 o'clock and leave an hour for  
2 Dr. Wang.  
3 So as long as you guys are playing nice, I'm fine.  
4 Okay?  
5 MR. HENRIOD: Your Honor, I have one more.  
6 THE COURT: Somebody wanted a laptop, something?  
7 MR. PRINCE: Oh, I was --  
8 THE COURT: Could you work that out with  
9 Mr. Prince.  
10 MR. WINNER: Dr. Wang, when he was testifying,  
11 wanted to look at the -- the exhibit images just on his  
12 laptop, and I don't know if there's a way to hook that up up  
13 here.  
14 THE COURT: Mr. Prince, do you object to that?  
15 MR. PRINCE: I'm sorry. I didn't understand what  
16 he asked.  
17 MR. WINNER: You know, I didn't even ask you. It  
18 didn't occur to -- do you have any objection if Mr. Wang  
19 looks at the -- the images that are exhibits on his laptop?  
20 MR. PRINCE: I do, because I don't know what those  
21 are. I guess, you had to show me -- if they showed me what  
22 they are --  
23 THE COURT: Okay.  
24 MR. PRINCE: -- then it's --  
25 THE COURT: Yeah.

1           MR. PRINCE: With the imaging, identifying data,  
2 then, I guess, I'd probably wouldn't have an issue, but I'd  
3 just have to look at the content to make sure it's --  
4           MR. WINNER: Yeah, yeah, that's fine. It's --  
5           THE COURT: It's okay if he agrees to it. If he  
6 doesn't, then no.  
7           MR. WINNER: But I'm not sure we're technically  
8 capable of doing it so --  
9           THE COURT: Well, then it may be a non-issue.  
10                   (Pause in the proceedings)  
11           MR. PRINCE: Well, I mean, Joel, can we deal with  
12 this issue later so we can get started today?  
13           MR. HENRIOD: If you agree that we can deal with it  
14 later, we can deal with it later.  
15           MR. PRINCE: Okay.  
16           THE COURT: We have IT right here.  
17           MR. PRINCE: Okay. Great.  
18           THE COURT: But this is a Dr. Wang issue, not a  
19 plaintiff issue, right?  
20           MR. PRINCE: No. That's correct.  
21           MR. HENRIOD: I mean, I think that --  
22           THE COURT: So let's deal with it at the break.  
23           MR. HENRIOD: -- we can deal with this in curative  
24 instructions during jury instructions and argue it then.  
25           MR. PRINCE: Yeah, I'm -- I'm not saying that I'm

1 agreeing to anything. I'm just saying can we just agree not  
2 to do it this minute so we can get started with the  
3 witnesses? We have two witnesses with significant time  
4 limitations today.

5 MR. HENRIOD: Yeah. What we're talking about,  
6 since you mentioned expert's blurting what was said in the  
7 last few minutes on Thursday and how to deal with that, and  
8 if Mr. Prince is happy discussing that later, I can discuss  
9 that later.

10 THE COURT: Okay. We can -- we can -- we did go  
11 back and review everything. It does appear that it was not  
12 at -- nobody goated the witness into it, having said that I  
13 don't know how aware he was. I assume you told him he  
14 couldn't talk about any subsequent surgeries pursuant to our  
15 earlier ruling, and my sense of what he said was a pure  
16 volunteer on the end really nobody to blame but the expert  
17 other than if he wasn't told not to talk about it.

18 MR. HENRIOD: Yeah.

19 THE COURT: But we're not going to deal with that  
20 right now. We're not going to deal with that right now, and  
21 just say nothing. Okay.

22 MR. PRINCE: I mean, you're talking about adjacent  
23 segment disease, just the process for C4-5 and becoming  
24 symptomatic. We're not claiming, obviously, we can't claim  
25 the cost of a future surgery, and she'd have to go through

1 the process.

2 THE COURT: Correct. But he didn't do process. He  
3 second, even third surgery.

4 MR. HENRIOD: [Inaudible] surgery.

5 THE COURT: Clear as a bell, like I said.

6 MR. HENRIOD: Yeah, and --

7 THE COURT: We listened to it over the weekend.

8 MR. HENRIOD: -- and I think there are two aspects  
9 to be dealt. I hate attorney misconduct arguments, I hate  
10 them. So -- so why it was said, whether or not he was told,  
11 all of that, I think, can be dealt with later.

12 The one issue that needs to be dealt with sooner  
13 rather than later is whether the Court strikes that portion  
14 of his testimony, where he blurts that and -- and instructs  
15 the jury to disregard it. But even that, we can do at the  
16 end of the day.

17 THE COURT: Right. And I'm assuming you wouldn't  
18 object to that, Mr. Prince?

19 MR. PRINCE: I want to go back and read the  
20 question and the context of the -- it was from a juror  
21 question.

22 THE COURT: Right. I had to, too. And I'll tell  
23 you, like I said, he had -- it was a yes or no question --

24 MR. PRINCE: Right.

25 THE COURT: -- that he gave a long answer to, and

1 then just when you thought he was done, he took another  
2 breath and said, and if she hadn't had that fusion, she  
3 wouldn't have needed, now she's going to need a second and  
4 even a third surgery.

5 But we'll -- we'll -- can we get him a copy of  
6 that --

7 MR. PRINCE: Well, I mean, because he was --

8 THE COURT: -- or something?

9 MR. HENRIOD: Yeah.

10 MR. PRINCE: We'll deal with that.

11 THE COURT: It was pretty clear.

12 MR. PRINCE: Yeah, let's -- yeah, I just want to --

13 THE COURT: Okay.

14 MR. PRINCE: I think our time parameters today are  
15 such that --

16 THE COURT: That's fine.

17 MR. PRINCE: -- we probably need to get to Desire  
18 and the Doctor.

19 THE COURT: All right. Let's do it.

20 (Pause in the proceedings)

21 THE COURT: Yeah, bring the jury in. I'm going to  
22 take two minutes while you're bringing them in.

23 THE MARSHAL: You said bring them in?

24 THE COURT: Yeah, bring them in.

25 (Pause in the proceedings)

1           THE COURT: We're going to be done Thursday, right,  
2 guys?

3           MR. WINNER: We believe so.

4           THE COURT: You're going to be done Thursday?

5           MR. PRINCE: Well, we need to do --

6           THE COURT: Or let me just rephrase that. Friday  
7 morning at 10:00, I have a criminal evidentiary hearing.  
8 This is their trial week, technically, that you're taking.  
9 We pushed them back a week, but I -- we got to get the  
10 hearing on Friday. So we have to work around that.

11          MR. WINNER: How early can we start tomorrow and  
12 Thursday?

13          THE COURT: Let met check the calendar.

14          THE CLERK: Tomorrow we can start earlier.

15          THE COURT: Okay.

16          THE CLERK: It's a small civil calendar.

17               (Pause in the proceedings)

18          THE COURT: 10:30 tomorrow we could do.

19          MR. WINNER: Okay.

20          MR. PRINCE: Okay.

21          THE COURT: If the jury's okay.

22          THE MARSHAL: All rise for the jury.

23               (Jury enters at 1:08 P.M.)

24               (Pause in the proceedings)

25          THE MARSHAL: Please be seated, come to order.

1           THE COURT: Welcome back. All right. Couple of  
2 questions. Is there anyone not available to go a little late  
3 tonight if we need to?

4           JUROR NO. 8: How late's a little late?

5           THE COURT: How late can you go?

6           JUROR NO. 8: Maybe like 5:30.

7           THE COURT: Okay. Tomorrow morning, is anybody  
8 available to come in a little earlier like 10:30? Anybody  
9 not available to come in 10:30 tomorrow morning, if we needed  
10 to?

11          JUROR NO. 9: I have the interview that I told you  
12 that they scheduled it today for 8:00 o'clock tomorrow. I  
13 don't know how long it's going to take. I'm pretty sure I  
14 can make it by 10:30.

15          THE COURT: Okay. What time is --

16          JUROR NO. 9. It's at -- it's at 8:00 o'clock.

17          THE COURT: Oh, all right, all right.

18          PROSPECTIVE JUROR NO. 9: So I -- I think I should  
19 be okay.

20          THE COURT: Okay. Appreciate that very much.  
21 Anybody else? All right. So 5:30 today, 10:30 tomorrow.

22          MR. PRINCE: Okay. I think we'll be okay today.  
23 We'll see how we do.

24          THE COURT: Okay. Ladies and gentlemen, before you  
25 begin, during certain testimony during this trial, there was



1 evidence about the presence of health insurance. You are to  
2 disregard that information. You are not to discuss or even  
3 consider whether or not the plaintiffs were carrying  
4 insurance to cover medical bills or any other damages they  
5 claimed to have sustained. Whether or not a party was  
6 insured is immaterial and should make no difference in any  
7 verdict you may render in this case. Okay?

8 MR. PRINCE: Ready, Your Honor?

9 THE COURT: Yeah.

10 MR. PRINCE: Your Honor, thank you. Good  
11 afternoon, everyone. Thank you for being here. I'm going to  
12 call our client, Desire Evans-Waiau.

13 DESIRE EVANS-WAIAU, PLAINTIFFS' WITNESS, SWORN

14 THE CLERK: Please state your full name, and spell  
15 your first and last name for the record.

16 THE WITNESS: Desire Kuulei Evans-Waiau,  
17 D-e-s-i-r-e, E-v-a-n-s, hyphen, W-a-i-a-u.

18 THE CLERK: You may be seated.

19 DIRECT EXAMINATION

20 BY MR. PRINCE:

21 Q I know it's Desire, but I call you Desire so  
22 [inaudible]. How old are you, Desire?

23 A 28.

24 Q 28? How are you doing today?

25 A Good.

1 Q Nervous?

2 A Yes.

3 Q Now, I know, the obvious -- the obvious question is

4 when is your -- when are you having your baby?

5 A Tomorrow morning.

6 Q Tomorrow? Tomorrow morning? Are they inducing you

7 tomorrow morning?

8 A Yes.

9 Q Okay. Obviously, the jury's heard quite a bit about

10 what's happened so far, but I'll -- we need to ask you some

11 questions here today, and so we'll just take our time and do

12 that. Okay?

13 A Okay.

14 Q And where were you born?

15 A I'm sorry?

16 Q Where were you born?

17 A Honolulu, Hawaii.

18 Q Okay. When did you move to Las Vegas?

19 A When I was about six years old.

20 Q Okay. So you grew up in Las Vegas?

21 A Yes.

22 Q Okay. What brought you out to Las Vegas?

23 A My mother.

24 Q Your mother? Okay. And are you married or in a

25 relationship?

1           A     Engaged.

2           Q     Engaged?

3           A     Yes.

4           Q     Okay.  And what's your husband's name?

5           A     Jorge.

6           Q     Jorge?  And you told us before you were married.  Do  
7 you tell people that you're married?

8           A     Yes.

9           Q     Okay.  And how long have you been with Jorge?

10          A     In September, it will be ten years.

11          Q     Okay.  How old were you when you got together?

12          A     18.

13          Q     18?  And how many kids do you and Jorge have?

14          A     Altogether?

15          Q     Altogether?

16          A     Four.

17          Q     Four?  Okay.

18          A     Um-h'm.

19          Q     And how many -- the -- how many girls -- how many  
20 girls do you have?

21          A     Three girls.

22          Q     Three girls?  And the two older -- the jury's seen  
23 the pictures of the other kids, and let's look at that  
24 quickly.  And turning to Demonstrative 7.  And I'm kind of  
25 showing you a picture of -- there's two older girls and looks

1 like a younger girl -- daughter?

2 A Yes.

3 Q Okay. And the two older girls, are those your

4 biological daughters?

5 A No.

6 Q Okay. And have you been -- what's been your role in

7 their life since you've been 18?

8 A Their mom.

9 Q Okay. Is there a biological mother actively

10 involved in their life?

11 A It's a touch and go.

12 Q Okay. Who raises them from a mother's standpoint?

13 Do you raise them?

14 A Yes.

15 Q Do they call you mom?

16 A Yes.

17 Q Okay. And the little girl, her name's Mayra?

18 A Yes.

19 Q And how old is Mayra?

20 A Right now she's seven.

21 Q She's seven? Is that your daughter with Jorge?

22 A Yes.

23 Q Okay. And do you know if you're having a boy or a

24 girl?

25 A Boy.

1 Q Boy. Good. What's your son's name going to be?  
2 A Gohan (phonetic).  
3 Q Gohan?  
4 A Um-h'm.  
5 Q And where does Jorge work?  
6 A Right now Cox Communication.  
7 Q And what does he do?  
8 A Inbound sales.  
9 Q Okay. What kind of sales?  
10 A Inbound sales.  
11 Q Inbound sales? And how long has he worked there?  
12 A Coming up year.  
13 Q Yeah? Where did he work before that?  
14 A AT&T.  
15 Q What did he do there?  
16 A Sales.  
17 Q How long did he work for AT&T?  
18 A About a year.  
19 Q And we're talking about, you know, this accident  
20 happened in 2015. Where were you living at the time?  
21 A At 3500 Broadway Avenue.  
22 Q Okay. And who lived there?  
23 A Myself, Jorge, my children, my mother-in-law, and  
24 father-in-law.  
25 Q Okay. Did you live with Jorge's parents?

1           A     Yes.

2           Q     Okay.  Guadeloupe's not here, but what's  
3 Guadeloupe's relationship to you?

4           A     She is my sister-in-law.

5           Q     Okay.  Is she married to Jorge's brother?

6           A     Yes.

7           Q     Tell us a little about what kind of work did you do  
8 before 2015, this collision in 2015?

9           A     I --

10          Q     What kind of job did you have?

11          A     I was doing warehouse jobs.

12          Q     Okay.

13          A     Order pulling, order processing, and cashiering.

14          Q     Okay.  What's your education level?

15          A     High school diploma.

16          Q     Okay.  And when did you get your high school  
17 diploma?

18          A     2015.

19          Q     2015?  What are the kind of -- tell us a little  
20 about you and your family life and things you -- before this  
21 accident, you know, this collision, you did with your family,  
22 your kids and --

23          A     Before the accident --

24          Q     Yes, ma'am.

25          A     -- we were very active.  We would go out to the

1 mountains, swimming, vacations, you know, just out playing at  
2 the park. Just really active.

3 Q Yeah? And how old were you when Mayra was born?

4 A I was 19.

5 Q 19?

6 A Um-h'm.

7 Q So you've been pretty much a mom most of your adult  
8 life?

9 A Yes.

10 Q Virtually, all of it? And did taking care of the  
11 girls and with Jorge and your household, does that take up  
12 most of your time?

13 A Yes.

14 Q Okay. And are you currently working?

15 A No.

16 Q Okay. What do you do? You stay at home with the  
17 kids?

18 A Yes.

19 Q Okay. Are the kids active in any sorts of  
20 activities or sports?

21 A Yes.

22 Q What do they do?

23 A Right before school, and then my two older ones,  
24 they were in a play at school, and my oldest one, she's  
25 involved in jazz.

1 Q Okay. Is that -- who normally takes them and picks  
2 them up and does things like that?

3 A I do.

4 Q You normally take care of that?

5 A Yes.

6 Q When you were working doing warehouse jobs, where  
7 would you work, what companies did you work at?

8 A I worked at Spacecraft Employments.

9 Q Which is what? What do they do there?

10 A They build parts and send parts to -- for planes and  
11 automobiles, and, you know, trains and whatnot.

12 Q Where was that? Was that in North Las Vegas?

13 A Yes.

14 Q Okay. How long did you work there?

15 A Almost three years, I believe.

16 Q Yeah?

17 A Yes.

18 Q And ever -- did you ever injure yourself while  
19 working at Spacecraft?

20 A No.

21 Q Okay. What kind of lifting and sort of things were  
22 you doing there? Any problems with that?

23 A No, no problems.

24 Q What sort of lifting did you do?

25 A I would pick up boxes.



1 Q Okay. What was the weight of the boxes? What did  
2 it range from?

3 A It ranged from anywhere from 5 to 50 pounds.

4 Q Okay. Any limitations in doing that?

5 A No.

6 Q Okay. What other warehouse jobs did you work at?

7 A Bed Bath and Beyond.

8 Q And what did you do at Bed Bath and Beyond?

9 A Order -- order pulling.

10 Q Order pulling? Okay. And how long did you work  
11 there?

12 A Couple months.

13 Q Couple months? Did you ever have any job related --  
14 any work-related injuries while working at Bed Bath and  
15 Beyond?

16 A No.

17 Q Now, did you go to work after this collision?

18 A Yes.

19 Q The one in October? Where did you go to work?

20 A At the Review Journal.

21 Q Okay. How did you go to work there for the Review  
22 Journal?

23 A Times were getting tough.

24 Q Okay. And did Jorge also work at the Review  
25 Journal?

1           A     Yes.

2           Q     What did the two of you do for the Review Journal?

3           A     Delivered newspaper.

4           Q     Okay. And how long did you do that for, Desire?

5           A     About a year, a year or so.

6           Q     Okay. Okay. And who takes care of the kids when

7 you're out -- out of the home working?

8           A     Right now?

9           Q     Yeah, right now or whenever you're working.

10          A     When I was working, Jorge would be -- it would be my

11 mother-in-law --

12          Q     Okay.

13          A     -- and father-in-law.

14          Q     Would you guys have to adjust your schedule so that

15 one could try to be home while the other was working, that

16 sort of thing?

17          A     Yes, of course.

18          Q     And then your family -- and your family members

19 would help you as well?

20          A     Yes.

21          Q     Okay. I want to talk about the collision started

22 sometime October 30, 2015. Okay?

23          A     Okay.

24          Q     In the days, weeks, or months before that, Desire,

25 were you having any pain in your neck?

1           A    No, none.

2           Q    Did you have any pain into your arms?

3           A    None.

4           Q    Okay. In say the two to three or even four years

5 before this collision happened, had you been to the doctor

6 for any neck problems or a problem with your arm or your

7 hand?

8           A    No.

9           Q    Did you have any physical limitations during that

10 time period of any kind?

11          A    No.

12          Q    Did you have to take any pain medication or any

13 prescription medication for any neck or arm pain or any

14 numbness or anything like that?

15          A    No.

16          Q    Okay. We heard a little bit about a 2010 motor

17 vehicle accident you were involved in.

18          A    Yes.

19          Q    Do you remember that? Now, can you tell us a little

20 about what happened in that?

21          A    Myself and my fiancé and my two older girls, we were

22 involved in the accident.

23          Q    Okay. What happened?

24          A    It was a hit-and-run, so the car behind us, there

25 was a car that hit them, and then they hit us.

1           Q    Okay.  And did you go for medical treatment after  
2 that?

3           A    Yes, I did.

4           Q    Okay.  What kind of doctor did you go to?

5           A    A chiropractor.

6           Q    Do you remember the name of the chiropractor at this  
7 point in time?

8           A    I do not.

9           Q    Okay.  I know we have some records from the  
10 chiropractor, but as you sit here right now, do you remember  
11 the name of the doctor who was actually doing the treatments  
12 or anything like that?

13          A    I do not.

14          Q    Okay.  How old were you at the time of that?

15          A    I was 19 -- 18, 19.

16          Q    Was that -- was that before Mayra was born?

17          A    Yes, yes.

18          Q    And did you -- according to the records, there were  
19 some x-rays and MRI done of your neck?

20          A    Yes.

21          Q    Okay.  And I counted up the chiropractic visits, and  
22 there was 14 chiropractic visits up through July 13, 2010  
23 total.

24               Does that sound about right to you in your mind?

25          A    Yes.

1           Q    Do you remember much about the treatment that you  
2 got?

3           A    Just the -- the electro pads, and that's it.

4           Q    Okay. Did your pain in your neck and your back go  
5 away after that?

6           A    Yes.

7           Q    Were you required to see any type of a specialist,  
8 like a -- did you ever go to a -- like a pain management  
9 physician who recommended any type of injections for you?

10          A    No.

11          Q    Did you ever go to a -- were you ever referred to  
12 see a surgeon?

13          A    No.

14          Q    Okay. Were you ever recommended for any type of a  
15 surgery after that?

16          A    No.

17          Q    And most importantly, Desire, did you make a  
18 complete recovery?

19          A    Yes.

20          Q    Okay. Meaning that your symptoms completely went  
21 away?

22          A    Yes.

23          Q    Okay. Now, I want to turn our attention to --

24               MR. PRINCE: Brendon, if you could bring up No. 8,  
25 demonstrative 8.

1 BY MR. PRINCE:

2 Q Okay. I want to focus our time and attention on

3 Friday, October 30, 2015.

4 A Okay.

5 Q Where were you going that night?

6 A To the Linq.

7 Q Okay. Had you ever been to the Linq before?

8 A Yes.

9 Q Okay. And Mr. Winner had suggested during his

10 opening statement that you might have made a quick turn

11 because you didn't know where you were going. Did you know

12 where you were going that night?

13 A I did.

14 Q Had you driven that same route before?

15 A Yes.

16 Q Okay. And also, did Guadeloupe work right there at

17 the Cromwell, which is on the corner of Las Vegas Boulevard

18 and Flamingo Road?

19 A Yes.

20 Q Was she also familiar with where you were going?

21 A Yes.

22 Q Okay. And what were you planning on doing they Linq

23 that night?

24 A Going to an event that they were holding for

25 trick-or-treating.

1 Q Okay. Who was in the car with you?

2 A Myself, my sister-in-law, Guadeloupe, and my three

3 children.

4 Q Okay. Where were the kids sitting?

5 A Sienna, she was sitting behind me. Mayra was

6 sitting in the middle, and Aaliyah was sitting behind Lupe.

7 Q Okay. Were they in car seats?

8 A Yes.

9 Q All three of them?

10 A Yes.

11 Q What kind of car were you driving?

12 A 1998 Honda Accord.

13 Q Okay. Was that -- did you have any other cars in

14 your family or was that your only car at that time?

15 A That was my car.

16 Q That was the car you drove every day?

17 A Yes.

18 Q Okay. And do you remember what your girls were

19 dressed up as?

20 A Yes.

21 Q What were they?

22 A My oldest, Sienna, she was dressed up as a cop.

23 Mayra was dressed as a witch, and Aaliyah was dressed as a

24 butterfly.

25 Q Okay. What was the mood in the car as you're

1 driving to the Linq that night?

2 A Exciting.

3 Q Okay.

4 A Very happy.

5 Q Yeah? Where did --

6 MR. PRINCE: Now, Brendon, can you bring up the --

7 use Demonstrative No. 11.

8 BY MR. PRINCE:

9 Q What street were you on at the time of this

10 collision?

11 A Flamingo.

12 Q Okay. And how long have you been driving -- where

13 did you get on to Flamingo road at?

14 A I was getting on -- I got off the freeway.

15 Q Okay. The US 95 on East Flamingo?

16 A Yes.

17 Q Okay. And did you drive -- stay -- drive west the

18 entire time until you got to the Linq lane?

19 A Yes.

20 Q Okay. What lane were you in at the time of this

21 collision?

22 A The right-hand lane.

23 Q Okay. So what time did the collision happen about?

24 A I can't recall.

25 Q Okay. Early evening?



1           A     Yeah.

2           Q     Was it dark or light?

3           A     It was dark.

4           Q     And what was the traffic like that day?

5           A     It was busy.

6           Q     Okay. You recall it being busy?

7           A     Yes.

8           Q     Okay. And when you pulled up to the intersection,

9 let me see if we can --

10               MR. PRINCE: Let's go to Demonstrative 13.

11 BY MR. PRINCE:

12           Q     Does that look like the intersection to you?

13           A     Yes.

14           Q     Okay. And there's a white van. Do you see the

15 white van right there?

16           A     Yes.

17           Q     Okay. Would that be in the same lane that you were

18 in?

19           A     Yes.

20           Q     The right-hand lane? Okay. And we see some

21 pedestrians in the crosswalk there; do you see that?

22           A     Yes.

23           Q     When you approached Ling Lane going west on Flamingo

24 in the right lane, what color was the traffic light?

25           A     It was red.

1 Q Okay. How many cars were in front of you?

2 A There was one.

3 Q Okay.

4 MR. PRINCE: So if you can, Brendon, pull up

5 Demonstrative 14.

6 BY MR. PRINCE:

7 Q Okay. And I kind of just -- I've created a diagram

8 here, and I have your car as the second car in line behind

9 the -- the first car; do you see that?

10 A Yes.

11 Q Okay. And you were -- did you come to a complete

12 stop behind that car?

13 A Yes.

14 Q Did you have your turn signal on?

15 A Yes.

16 Q Are you certain that you had your turn signal on?

17 A Yes.

18 Q Okay. Mr. Winner had talked about that there was

19 some like aftermarket like smoked out light -- things around

20 your taillights. Do you recall that?

21 A Yes.

22 Q Now, have you ever had any problems, any law

23 enforcement ever stop you saying that was a problem or that

24 your lights were weren't functioning properly?

25 A No.

1           Q    Okay.  How long had you been driving that car,  
2   Desire?  
3           A    Two years, maybe.  
4           Q    Okay.  Did you always have that -- the smoked out  
5   lenses on the back of the car?  
6           A    For the most part, yeah.  
7           Q    Okay.  And so you're there, your -- you recall  
8   pedestrians being on the sidewalk at that -- that location?  
9           A    Yes.  
10          Q    Okay.  It's obviously, a Friday night, so you said  
11   traffic was pretty busy?  
12          A    Yes.  
13          Q    And how -- approximately how long were you at a stop  
14   behind the car in front of you, would you estimate?  
15          A    Not long.  
16          Q    Okay.  And at some point did the car in front of you  
17   move -- start to go?  
18          A    Yes.  
19          Q    What did the car in front of you do?  
20          A    Made a right-hand turn.  
21          Q    Okay.  
22                MR. PRINCE:  So Brendon, let's go to No. 15.  
23   BY MR. PRINCE:  
24          Q    And when the car in front of you made a right turn,  
25   did it make a right turn while the traffic signal was still

1 red?

2 A Yes.

3 Q Okay. What did you do after that car moved up and  
4 made a right turn?

5 A I moved up.

6 Q Okay.

7 A And I stopped to make sure nobody was crossing,  
8 and --

9 Q Okay.

10 A -- then I proceeded to turn.

11 Q Okay.

12 MR. PRINCE: Brandon, let's go to Demonstrative 16.

13 BY MR. PRINCE:

14 Q And after that car made the right turn on to the  
15 Linq, did you pull up to the stop light?

16 A Yet.

17 Q Okay. Did you have -- was your signal still on?

18 A Yes.

19 Q Now, behind you I've put on there as the defendant's  
20 car. She was driving a burgundy or red-ish Acura SUV. Did  
21 you ever see her any time before the collision or ever have  
22 any reason to see her driving behind you?

23 A No.

24 Q Was she ever -- do you remember following her or  
25 passing her at all driving west on Flamingo that day?

1           A     No.

2           Q     Okay. And when you pulled up to the stop line, was  
3 the traffic signal still red?

4           A     Yes.

5           Q     Okay. And what happens next?

6           A     So I'm in the middle of turning, and the light had  
7 turned green and a pedestrian stepped in front of my vehicle.

8           Q     Okay. And so let's going to Demonstrative 17. So  
9 you started your -- did -- just so we're clear, did you start  
10 your turn on the red or green?

11          A     It was on red.

12          Q     Okay. And during the middle of your turn, the light  
13 turned green?

14          A     Yes.

15               MR. PRINCE: Brendon, bring up No. 18.

16 BY MR. PRINCE:

17          Q     And I kind of show a pedestrian coming off of the  
18 sidewalk and into the crosswalk; do you see that?

19          A     Yes.

20          Q     And was your turn signal still on at that point?

21          A     Yes.

22          Q     Okay. And when the pedestrian walked into the  
23 street where she probably was -- he or she was permitted to  
24 do because it was a green now to go west. What did you do?

25          A     I stopped.

1 Q Okay. Did you have to slam on your brakes?  
2 A Yeah, I had to brake, yes.  
3 Q Okay. Yeah. And obviously, you wanted to avoid  
4 hitting the pedestrian.  
5 A Yes.  
6 Q Okay. Did you -- did your car come into contact  
7 with the pedestrian at all?  
8 A No.  
9 Q All right. Now, after you stop -- or I mean, you  
10 stop for the pedestrian, I want you to tell us now what  
11 happens next.  
12 A I felt an impact. Somebody hit my car from the  
13 rear.  
14 Q Okay. Were you stopped or moving at the time?  
15 A I was stopped.  
16 Q Okay. And did you see the defendant's vehicle any  
17 time before the -- the collision happened?  
18 A No.  
19 Q Did you ever hear any screeching of brakes or tires  
20 or anything like that prior to the collision?  
21 A No.  
22 Q Okay. Were you able to brace yourself at all,  
23 prepare yourself for impact?  
24 A No.  
25 Q As you're sitting in your car, Desire, I know you're

1 -- I don't want you to do anything that's uncomfortable --  
2 how were you sitting in the car? I know you were making a  
3 right turn, and is your body looking straight ahead, is your  
4 body -- is your torso kind of turned towards the right? Give  
5 us an idea how your body was positioned.

6 A I was -- yeah, my body was towards -- turning  
7 towards the right because I was making a turn.

8 Q Okay. Did you have your seatbelt on?

9 A Yes.

10 Q Okay. How would -- what did the impact feel like to  
11 you? If you could describe that for us.

12 A It was loud. It was a crash. It was hard.

13 Q Okay. And it was obviously unexpected?

14 A Yes.

15 Q Okay. Okay. And what happened to you? And what do  
16 -- I mean, it's hard to have a recollection when things are  
17 happening so fast, but what do you recall happening to you  
18 inside the car?

19 A I know I moved forward, and I like -- I went back.

20 Q Okay. Does your body hit anything inside the car?

21 A My head hit the headrest, I believe.

22 Q Okay. And you said you had the -- you had your  
23 seatbelt on?

24 A Yes.

25 Q Did your seatbelt leave any marks or abrasions or

1 anything on you?

2 A Yes.

3 Q Where did it leave those?

4 A My left shoulder or towards my collarbone.

5 Q Okay. What was your first reaction after the, you

6 know, the loud noise and feeling the collision?

7 A I was scared.

8 Q Okay.

9 A I didn't know what happened.

10 Q Okay. Were you shook up?

11 A Yes.

12 Q Were you nervous?

13 A I was.

14 Q What was your first concern?

15 A My kids.

16 Q Okay. And when you turned back around and looked --

17 and talked to them, how were they doing?

18 A They were shaken up.

19 Q Okay. Did anybody report that they were hurt or

20 bleeding or have anything like that at that moment?

21 A No.

22 Q Okay. Did you experience any immediate neck pain or

23 arm pain or any back pain, anything -- even at the scene for

24 that matter?

25 A No.



1 Q At some point, did you get out of the car?  
2 A Yes.  
3 Q Okay. Did go back and speak to Ms. Tate, the  
4 defendant?  
5 A Yes.  
6 Q Okay. And when you got out of the car, what did you  
7 say to her?  
8 A I asked her if she was okay.  
9 Q Okay. What did she say?  
10 A And she said she was okay.  
11 Q All right.  
12 A And I asked her if she needed any help.  
13 Q You asked her if she needed help?  
14 A Yes.  
15 Q Did she ask you if you needed help?  
16 A Yes.  
17 Q Did she tell you that she was a nurse?  
18 A Not that I can recall.  
19 Q Okay. And was there anything unusual about your  
20 encounter with her?  
21 A Yes.  
22 Q What was unusual to you?  
23 A When she came out of her car, she had socks on.  
24 Q Like, no shoes?  
25 A No shoes.

1 Q Okay. Did she tell you where she was going?

2 A Not that I can remember, no.

3 Q In the 10, 15 minutes after the collision, when you

4 checked on everybody inside your car, nobody was -- felt

5 anything at least at that point, how are you feeling at this

6 point?

7 A I was still nervous, scared, shaken up. I was --

8 Q Okay. And did you telephone the police?

9 A Yes.

10 Q Did you tell the police if anyone was hurt at all?

11 A Yes.

12 Q What did you say?

13 A I said nobody was hurt.

14 Q Okay. Is that how you felt at the time?

15 A Yes.

16 Q Did you also observe the defendant, Ms. Tate, make a

17 telephone call at the scene?

18 A I did.

19 Q Okay. And did she tell you that she called the

20 police?

21 A Yes.

22 Q Okay. Did she say she knew anybody at Metro that

23 could come help?

24 A She did mention it, yes.

25 Q All right. What happened when you called Metro?

1 Did they say that it was -- whether they would send anybody  
2 out or not? What did they tell you initially?

3 A They said that they -- that if I wanted somebody to  
4 come, I would have to wait --

5 Q Okay.

6 A -- to make a police report.

7 Q Did they tell you that since no -- nobody was hurt,  
8 to just exchange information?

9 A Yes.

10 Q Okay. Why didn't you just want to do that? Why  
11 were you concerned?

12 A I wanted to make sure that, you know, that's -- I  
13 thought that's what you're supposed to do, call the cops and  
14 exchange of information.

15 Q Okay. Is that what you felt was the best thing to  
16 do?

17 A Yes.

18 Q Were you thinking about any kind of lawsuit or  
19 anything at that point in your --

20 A No.

21 Q Were you worried about your car?

22 A Yes.

23 Q Was there damage to your car?

24 A Yes.

25 Q Did the police -- the police eventually arrive at

1 the scene?

2 A Yes.

3 Q Okay. And did you speak with the officer at the  
4 scene?

5 A Yes, I did.

6 Q Okay. Now, did you call your husband from the  
7 scene?

8 A Yes.

9 Q Okay. Jorge? Did -- Mr. Winner said that your  
10 husband came to the scene and told, you know, the defendant  
11 that someone's going to have to pay for all of this. Did  
12 Jorge come to the scene of this collision?

13 A No, he didn't.

14 Q And do you remember when your deposition was taken  
15 in August of 2017?

16 A Yes.

17 Q Do you remember Mr. Winner's law firm asked you if  
18 Jorge came to the scene and you told them no?

19 A Yes.

20 Q And -- and so your husband, he -- so we're all clear  
21 here, he never came to the scene at all, right?

22 A Correct.

23 Q So Mr. Winner's statement, I guess, he -- his  
24 understanding is inaccurate?

25 A Yes.

1 Q And that statement that someone's going to have to  
2 pay for this, that was never made by Jorge at the scene,  
3 correct?

4 A Correct.

5 Q And why didn't you go to the -- go by an ambulance  
6 that night from the scene?

7 A I felt like I didn't need to.

8 Q Okay. And what did you do after the police came and  
9 all the information was exchanged, what did you do then?

10 A I proceeded to take my kids trick-or-treating  
11 because that's why we were there. I didn't want to  
12 disappoint them.

13 Q Okay. Were you able to -- did they eventually go  
14 and do some trick-or-treating at the Linq?

15 A Yes.

16 Q Okay. I want us to kind of shift gears now.

17 MR. PRINCE: Brendon, you can take that down.

18 BY MR. PRINCE:

19 Q And talk about what you -- the first time you  
20 started to feel any pain or discomfort. Okay?

21 A Okay.

22 Q When you got home that night or even after  
23 trick-or-treating, did you feel any neck pain or back pain or  
24 arm pain at all?

25 A No.

1 Q When was the first time that you started feeling  
2 some pain and discomfort?  
3 A The next morning.  
4 Q When? When you woke up?  
5 A Yes.  
6 Q How were you feeling, then?  
7 A I was sore and stiff.  
8 Q Okay. And how would you characterize your pain at  
9 that point?  
10 A It hurt bad. It was -- it -- soreness all through  
11 my left side and my shoulder.  
12 Q Okay. And what did you do for yourself that day?  
13 That's a Saturday.  
14 A I believe I took some Ibuprofen and a warm shower,  
15 and then we just sat in and got the kids ready to go  
16 trick-or-treating.  
17 Q Okay. So did you continue on -- how were you doing  
18 that night through the Halloween and trick-or-treating?  
19 A I was still sore.  
20 Q Okay. And did you try to make -- do the best you  
21 could for your kids?  
22 A Yes.  
23 Q Did you have to trick-or-treat in pain?  
24 A Yes.  
25 Q How did you -- now, the next day, which was Sunday.

1 How were you doing by then?

2 A I was still sore.

3 Q Okay. Had it gotten any better?

4 A No.

5 Q Or worse? Did it stay the same or did it get worse?

6 A Same.

7 Q Same? And why didn't you go to the doctor

8 [inaudible]?

9 A Doctors aren't open on Sundays.

10 Q Okay. Why didn't you just go to the emergency room?

11 Did you feel like you needed to go to the emergency room?

12 A No.

13 Q Okay. So when did you go for medical treatment the

14 first time?

15 A That Monday.

16 Q And before -- before you go on to go to the doctor,

17 to the chiropractor, did you speak with a lawyer, Attorney

18 Paul Powell?

19 A Yes, I did.

20 Q Why did you -- what were your reasons for contacting

21 a lawyer?

22 A I had questions and concerns about my car and the

23 damages that -- that were done to it.

24 Q Okay. Were you worried about how if you went to the

25 doctor, how your medical expenses were going to get paid?

1           A     Yes.

2           Q     Okay. Did you want assistance through this process?

3           A     Yes.

4           Q     How were you doing -- let's talk about Monday

5 morning when you went to -- to the chiropractor. How were

6 you doing?

7           A     I was sore, very sore.

8           Q     Okay?

9                 MR. PRINCE: If we can look at, Brendon, as part of

10 Exhibit No. 44, Bate No. 150.

11 BY MR. PRINCE:

12          Q     Desire, is that in your handwriting?

13          A     Yes.

14          Q     Okay. It looks like you have pain in your neck, on

15 the left side, and your arm, and then down in -- do you see

16 that?

17          A     Yes, I do.

18          Q     And by that point, you also marked on there that you

19 have some numbness and tingling; do you see that?

20          A     Yes.

21          Q     Okay. Where did you have numbness and tingling,

22 Desire?

23          A     I had numbness and tingling down my left arm.

24          Q     Okay. Is that in -- is that in addition to the

25 pain?



1           A     Yes.

2           Q     Okay.  And what sort of treatment did the  
3 chiropractor provide you initially?

4           A     He did adjustments and hot and cold packs.

5           Q     Okay.

6           A     And electro therapy.

7           Q     And how often were you -- did you go to the  
8 chiropractor?

9           A     Regularly.

10          Q     Okay.  Is the chiropractor near your home?

11          A     Yes.

12          Q     Where did you get the name of a chiropractor?

13          A     From my lawyer.

14          Q     Mr. Powell?

15          A     Yes.

16          Q     Did you give you -- how many names did you give, do  
17 you recall?

18          A     He gave me a list.

19          Q     Okay.  Why did you choose Align Chiropractic?

20          A     It was closer to my house.

21          Q     Okay.  And when you would go for your visits, would  
22 you often go there with Guadeloupe at the same time?

23          A     Sometimes.

24          Q     Okay.  Would you ever ride together?

25          A     No.

1 Q Okay. She went to the same place?

2 A Yes.

3 Q Does she live near that -- in North Las Vegas also?

4 A Yes.

5 Q Okay. And when you started your chiropractic  
6 treatment, tell us a little more about your -- your -- this  
7 numbness and the tingling in your hand, how did that feel?

8 A It -- it didn't feel good. It -- it hurt in my  
9 hand.

10 Q Yeah? And I think you described in your deposition,  
11 it felt like putting needles in your finger tips?

12 A Yes.

13 Q Okay. How long did that last for?

14 A A while. A long time.

15 Q Did it last until your surgery?

16 A Yes.

17 Q Did you -- in addition to that, did you have any  
18 difficulty with like gripping things or your hand, depending  
19 on your pain level or the numbness?

20 A Yes.

21 Q And how long did you receive chiropractic treatment?

22 A A few months.

23 Q Do you remember Dr. McCauley from Align Chiropractic  
24 referring you to a Dr. Ross at North Las Vegas Pain  
25 Management?

1           A    Yes.

2           Q    Okay.  What sort of things did Dr. Ross do to you?

3           A    He gave me prescriptions.

4           Q    Okay.

5           A    To help with the pain.

6           Q    Did he give you -- did you also -- in addition to

7 prescriptions, did you also continue going to the

8 chiropractor --

9           A    Yes.

10          Q    -- during that time?

11          A    I did.

12          Q    Did that gave you some relief, the prescriptions and

13 the chiropractic treatment?

14          A    Yes.

15          Q    Was it taking it -- all the pain and the numbness in

16 your neck and in your arm away?

17          A    No.

18          Q    Okay.  At some point, do you recall being referred

19 for an MRI of your neck?

20          A    Yes.

21          Q    Okay.  Why were you told you needed an MRI of your

22 neck?

23          A    Because the pain just wouldn't go away with the

24 chiropractor and the prescriptions.

25          Q    Okay.  Did -- after your MRI, did Dr. McCauley, who

1 was the chiropractor, did he tell you what the MRI showed of  
2 your neck?

3 A Yes.

4 Q What did he say?

5 A There was a bulging disk.

6 Q Okay. And did he refer you to anybody else after  
7 you had your MRI?

8 A Yes.

9 Q Who did you go to?

10 A Dr. Rosler.

11 Q Okay. And what kind of doctor is Dr. Rosler?

12 A He's an interventional pain doctor.

13 Q Okay. Had you ever been to an interventional pain  
14 doctor before?

15 A Not that I can recall.

16 Q Okay. Had you ever had any injections in your spine  
17 before?

18 A No.

19 Q And what did -- obviously, the jury heard last week  
20 from Dr. Rosler on two days. What did Dr. Rosler recommend  
21 to you?

22 A Injections.

23 Q Okay. What kind of injections?

24 A A nerve root block.

25 Q Okay. And the nerve root block was on January 7,

1 2016.

2 MR. PRINCE: That's bate number -- Exhibit No. 47,  
3 199, Brendon. [Inaudible], too.

4 BY MR. PRINCE:

5 Q Desire, do you recall before underwent injections,  
6 did Dr. Rosler instruct you or ask you to go off of your  
7 anti-inflammatory, your pain medication for a few days?

8 A Yes.

9 Q Okay. And what happened when you went off of your  
10 medications?

11 A My pain increased.

12 Q Okay. And after -- how do were you doing after this  
13 -- so your -- before the procedure your pain was an eight out  
14 of ten. And then afterward it went down to zero. What do  
15 you remember of how your pain -- I mean, when your -- got  
16 done with recovery and everything, how were you feeling?

17 A I was feeling good.

18 Q Did you get immediate relief?

19 A Yes.

20 Q Up until that point, give us a little bit of an idea  
21 of the difficulties before January 7th, those two and a half  
22 months, that you were having kind of day-to-day with, you  
23 know, your -- with yourself, with your children and just kind  
24 of dealing with daily life with that kind of pain level.

25 A It was a struggle. Just doing, you know, chores

1 around the house, cleaning, washing dishes, making sure the  
2 kids were okay, getting them up for school. I was in pain.

3 Q How would you feel at the end of the day?

4 A Pain. Just all the way around.

5 Q Did it affect your sleep?

6 A It did.

7 Q What did that do? I mean, the fact that you -- I  
8 mean, obviously, you're a mom and you're busy anyway, but not  
9 -- you know, now you were getting less sleep. How did that  
10 affect your pain levels and discomfort?

11 A It was -- it just made it worse.

12 Q Okay. And before your injection, were you nervous  
13 to have an injection to your spine?

14 A Yes.

15 Q What were your worries?

16 A I was going to get, you know, something could happen  
17 to me. Wrong -- one wrong move could paralyze me, and just  
18 -- just having a needle going into your neck is really scary,  
19 you know. And it made me nervous and I was scared. Yeah.

20 Q All right. And kind of in the -- after this, did  
21 you -- were you hopeful that after this, like, oh, my God, I  
22 feel really good now, the pain went away, I have -- you got  
23 immediate relief?

24 A Yes.

25 Q Okay. How long did you get that relief for, Desire?

1           A     A few months.

2           Q     Okay.  And did Dr. -- before the injection, did

3 Rosler discuss with you that, you know, there's a chance that

4 the pain might come back and the symptoms might come back?

5           A     Yes.

6           Q     What did he -- what do you remember him telling you?

7           A     That it could -- it could help alleviate it, it

8 could just go away, but there is a chance for the pain to

9 come back, and if so, then he would do another set of

10 injections.

11          Q     Okay.  Now, on February 18.

12               MR. PRINCE:  If we could go to that note.  Brendon,

13 that's 47, 204.

14 BY MR. PRINCE:

15          Q     Desire, what I'm showing you is as of February 18th,

16 2016, after you had your injection and had some more

17 chiropractic care, it says:  Desire returned for follow-up

18 visit.  She states that she is symptom free in her cervical

19 spine.

20          Do you see that?

21          A     Yes.

22          Q     Were you -- is that how you felt at the time?

23          A     Yes.

24          Q     Okay.  Were you happy about that at the time?

25          A     I was happy.

1           Q    After February 18th, did the symptoms start to come  
2 back?

3           A    Yes.

4           Q    Can you tell us about that and how did they -- and  
5 was this all in one day, was it kind of a gradual return?  
6 You know, tell us about what you experienced.

7           A    It was gradually. It -- it didn't come back all at  
8 once. It was just, you know, days at a time, and I did  
9 what I could. You know, I -- I took prescription pills to --  
10 I take the prescriptions that I was given, tried to manage  
11 it, and then I went back to the doctor.

12          Q    And what pain started to come back first? What  
13 symptoms came back first?

14          A    My neck.

15          Q    Okay.

16          A    The pain in my neck and then --

17          Q    What about the -- the pain and the numbness in your  
18 arm and your hand --

19          A    Yes.

20          Q    -- did that -- did that come back as well?

21          A    Yes.

22          Q    Was it kind of slow or is it more -- or did it kind  
23 of after a few weeks just come on kind of severe? How did it  
24 -- tell us how it worked.

25          A    It came on --



1 Q I guess gradual -- did it come on gradually?

2 A Yeah, gradually.

3 Q Okay. And at some point, did you decide I need to

4 call Dr. Rosler back?

5 A Yes.

6 Q Why would you feel you needed to call Dr. Rosler

7 back?

8 A Because the pain had came back.

9 Q Did he tell you to call him if the pain came back?

10 A Yes.

11 Q Okay. Did you feel that you could just manage it on

12 your own or just live with it without doing something about

13 it, or did you feel you needed to do something about it?

14 A I felt like I needed to do something about it.

15 Q How was it affecting your day-to-day life, your

16 pain, say from February to March of 2016 that prompted you to

17 make that phone call to Dr. Rosler?

18 A It was just interfering with my life at home.

19 Q In what ways?

20 A Just taking care of the kids, doing daily chores.

21 Just being with my husband.

22 Q Okay. Did it -- but, I mean, I know you and Jorge

23 are in a good place, but did it put stress and strain on your

24 relationship just how you're feeling and dealing with these

25 pain -- these chronic pain related issues?

1           A     Yes.

2           Q     And did you feel, when you made that call to  
3 Dr. Rosler, that I know I'm probably going to have to have  
4 these -- start having another set of these injections?

5           A     Yes.

6           Q     How did that make you feel?

7           A     Still nervous and scared.

8           Q     How old were you?

9           A     At the time, I was 25.

10          Q     Okay. When's your birthday?

11          A     April 17, 1991.

12          Q     1991? Okay. Actually, you were 24.

13               MR. PRINCE: Go to Bate No. 3, 206.

14 BY MR. PRINCE:

15          Q     So when you go back to Dr. Rosler his note is March  
16 29, 2016. It says: She reports a return of her discogenic  
17 cervical symptoms with pain radiating to the left arm, hand  
18 with numbness.

19               Do you see that?

20          A     Yes.

21          Q     Is that how you were feeling at the time?

22          A     Yes.

23          Q     And as of that day, how old were you, 24?

24          A     Yes.

25          Q     At that time, did Dr. Rosler discuss with you the

1 need -- or recommend to you to have additional injections?

2 A Yes.

3 Q Between, you know, February 18th, when Dr. Rosler  
4 said you were pain free and March 29, 2016, did you have any  
5 other -- any injuries or anything happen to you during that  
6 period of time?

7 A No.

8 Q Okay. And was there any -- anything that would  
9 explain these symptoms or were these just the same things you  
10 had before that have just come back now that the injection  
11 wore off?

12 A Same thing as before, the injections had wore off,  
13 so everything came back.

14 Q Okay. And Dr. Rosler did another set of the  
15 injections on April 11, 2016. What's your birthday again?

16 A April 17th.

17 Q So you're just about a week before your 25th  
18 birthday, you're having your second set of spine injections.  
19 And did those -- did those injections provide the same type  
20 of relief?

21 A Temporarily it did.

22 Q How much -- how much relief did you get, Desire?

23 A Maybe a two-week type of relief.

24 Q Okay. And did you go back and tell Dr. Rosler that?

25 A I did.

1 Q Okay. Did he recommend anymore injections?  
2 A No.  
3 Q What did he recommend you do when the symptoms came  
4 back? You only had temporarily relief after a couple weeks.  
5 A He gave me a referral to see a surgeon.  
6 Q Okay. And was it Dr. Khavkin that you initially  
7 saw?  
8 A Yes.  
9 Q Okay. And why did Dr. Rosler -- what did Dr. Rosler  
10 -- explain to us as to why he was send you go to Dr. Khavkin,  
11 who was a spine surgeon.  
12 A He was worried about the numbness and the tingling  
13 going down my left arm and in my hands.  
14 Q Okay. Did he say there was any more injections he  
15 could do to help you?  
16 A No.  
17 MR. WINNER: Object to the hearsay, Your Honor.  
18 THE COURT: Sustained.  
19 BY MR. PRINCE:  
20 Q Did Dr. Rosler offer any additional injections or  
21 any kind of therapy other than going to the surgeon, to you?  
22 A No.  
23 Q Okay. And the records show that you saw Dr. Khavkin  
24 on March 17, 2016. Do you recall seeing Dr. Khavkin?  
25 A Yes.

1                   MR. WINNER: May 17th, excuse me.

2 BY MR. PRINCE:

3           Q     Excuse me May --

4                   MR. PRINCE: Thank you.

5 BY MR. PRINCE:

6           Q     May 17, 2016. And after you saw Dr. Khavkin, what

7 did Dr. Khavkin recommend to you?

8           A     A two-level surgery.

9           Q     Okay. Describe the discussion that Dr. Khavkin had

10 with you at that time about your condition and about the

11 surgery and the risks of that surgery.

12                   MR. WINNER: Object to the hearsay, Your Honor.

13                   THE COURT: Sustained.

14                   MR. PRINCE: It relates to the medical care. That

15 statements -- so anything related to medical care is not

16 considered hearsay.

17                   THE COURT: Well, her statement. Counsel approach.

18                               (Bench conference)

19                   THE COURT: Her statements to the doctor for

20 medical care are covered by the -- but the doctor's statement

21 as to her. Do you have exception?

22                   MR. PRINCE: No, I believe that that exception

23 applies, but I -- I can ask her what was her understanding of

24 the recommendation or what her understanding of the risks

25 were.

1 THE COURT: You can do that. I'm just saying --  
2 MR. PRINCE: Okay.  
3 THE COURT: -- it's made for purposes of diagnosis  
4 of treatment --  
5 MR. PRINCE: I don't object (indiscernible).  
6 THE COURT: -- which aren't from the patient to the  
7 doctor.  
8 MR. PRINCE: Okay. I believe it's broader than  
9 that, but --  
10 THE COURT: That's fine.  
11 (End of bench conference)  
12 BY MR. PRINCE:  
13 Q What was your -- based on your meeting with  
14 Dr. Khavkin, you said he -- he recommended to you a two-level  
15 cervical fusion?  
16 A Correct.  
17 Q C5-6 and C6-7?  
18 A Correct.  
19 Q What was your understanding as to why he was  
20 recommending a two-level fusion of your neck?  
21 A He said that the bulging -- there was a bulging  
22 disk, and that the next level up also had -- it wasn't  
23 normal, and so that's what he recommended to me.  
24 Q Okay. Did you two have a discussion about the risks  
25 of the surgery?

1           A     Yes.

2           Q     Did you have a discussion about potentially needing  
3 surgery in the future?

4           A     Yes.

5           Q     And what was your understanding of the risks of the  
6 surgery and the potentials for future surgery that went into  
7 your decision making to have the surgery or not?

8           A     He told me that it could be risk of infection, I  
9 could be paralyzed, even death, and that scared me.

10          Q     Okay.

11          A     A lot.

12          Q     Did he talk about any -- that you might need  
13 additional surgery in the future?

14          A     Yes.

15          Q     What was your understanding of what potential  
16 surgery you might need in the future based on his  
17 recommendation?

18               MR. WINNER:   Again, object to the hearsay, Your  
19 Honor.

20               MR. PRINCE:   Well, I'm just talking about her  
21 understanding.

22               THE WITNESS:   He said that --

23               THE COURT:    Hang on a second.  I'll overrule as  
24 effect on hearer.

25        //

1 BY MR. PRINCE:

2 Q Go ahead.

3 A He said that once I -- once I would get my neck  
4 fused, that there'd be more as I got older.

5 Q Okay. More surgery?

6 A Yes.

7 Q Okay. When you -- when he told you this, you're  
8 barely 25 years old, it's a month after your birthday --

9 A Um-h'm.

10 Q -- and he's recommending a two-level fusion and all  
11 those risks you talked about; what was your reaction to that?

12 A I was scared. I was stressed.

13 Q What were your biggest fears?

14 A Not being able to take care of my kids the way I  
15 want to and possibly not even waking up from the surgery.

16 Q Okay.

17 A Sorry.

18 Q Okay. We do have a tissue, too. Here Would you  
19 like to take a minute or are you okay?

20 A I was just worried about who's going to take care of  
21 my kids and having to deal with all of that.

22 Q Were you having difficulty -- I mean, I know you  
23 were doing your best, but were you having difficulty taking  
24 care of your kids and just handling day-to-day life by May of  
25 2016?



1           A     Yes.

2           Q     Were you struggling?

3           A     I was.

4           Q     And you had the consultation with Dr. Khavkin, who  
5 recommended a two-level surgery. Did you undergo the surgery  
6 again?

7           A     Not with him, no, I didn't.

8           Q     Did you seek a second opinion?

9           A     I did.

10          Q     Who did you get a second opinion from?

11          A     Dr. Jason Garber.

12          Q     Okay. Is that who did your surgery?

13          A     Yes.

14          Q     Okay. And we talked to Dr. Garber last week, and  
15 based upon your interaction with Dr. Garber, did he make a  
16 different recommendation for surgery?

17          A     He did.

18          Q     What did he recommend?

19          A     Just one -- a one-level surgery.

20          Q     Okay. Did you have a -- and you initially saw  
21 Dr. Garber on July 12, 2016. And did Dr. Garber go over the  
22 risks of surgery with you?

23          A     He did.

24          Q     What sort of risks did -- what did you understand  
25 the risks of surgery to be?

1           THE COURT: Counsel approach. Excuse me just one  
2 academy.

3                               (Bench conference)

4           THE COURT: I just want to make sure that she knows  
5 not to talk about third and fourth potential surgeries or  
6 anything beyond the one surgery. I just don't want any  
7 blurting. I don't want anymore of this.

8           MR. PRINCE: No, I understand. I mean --

9           THE COURT: Okay.

10          MR. PRINCE: I mean --

11          THE COURT: I mean, it's a dangerous question if  
12 she doesn't know the Court ruling.

13          MR. PRINCE: But -- but -- but she can talk about  
14 what effect it's had on her, the impact on her, recommends --  
15 because he does --

16          THE COURT: Of course.

17          MR. PRINCE: -- recommend another surgery and what  
18 -- how it's going to deal with it in her decision-making.  
19 Just because it wasn't disclosed as a cost of medical damage,  
20 doesn't mean that no one can have that discussion with her.

21          THE COURT: I've already ruled though. So if you're  
22 going to -- if it's going there, I don't want it to lead  
23 there.

24          MR. PRINCE: I'm not going. I'm just trying to --

25          THE COURT: If she -- if she wants to say -- that

1 there may -- have this fusion there could be a second  
2 surgery, that's fine. I'm just saying make sure she knows  
3 because if she starts going third and fourth surgeries or  
4 multiple surgeries when I've already ruled against that,  
5 that's not going to be okay.

6 MR. PRINCE: Okay.

7 THE COURT: So --

8 (End of bench conference)

9 BY MR. PRINCE:

10 Q Okay. Desire, we were back at your discussion with  
11 Dr. Garber about the risks of the surgery and your  
12 understanding of those risks?

13 A Yes.

14 Q What did you understand the risks to be after your  
15 discussions with Dr. Garber?

16 A Infection, being paralyzed, and also death.

17 Q Okay. Did you have a discussion with Dr. Garber  
18 about whether you'll need any additional surgery in the  
19 future?

20 A Yes.

21 Q Because of fusing the level it may affect the level  
22 above it?

23 A Yes.

24 Q Did he tell you that you would likely have to have  
25 another surgery?

1           A     Yes.

2           Q     Does that scare you to -- scary to you, based on  
3 your two encounters with --

4           A     Yes.

5           Q     -- Dr. Khavkin and Dr. Garber, kind of were you in  
6 fear of what your future would hold for you?

7           A     Yes.

8           Q     And once you start this process, there's going to be  
9 more in the future?

10          A     Yes.

11          Q     What were your fears in that regard?

12          A     Just my kids and not being able to fully enjoy my  
13 life with my kids and my husband.

14          Q     Were you worried about that even though the surgery  
15 might help, that this -- all these symptoms would come back a  
16 day, and you'll have to go through the whole process again?

17          A     Yes.

18          Q     And there was a discussion about a July 2010 crash.

19          A     Yes.

20          Q     Before that crash, had you already been recommended  
21 for a fusion surgery?

22          A     Yes.

23          Q     Okay. Now, I want to talk about --

24                MR. WINNER: Your Honor, I think we're talking  
25 about the 2016 --

1 MR. PRINCE: I'm sorry, 2016.

2 THE COURT: Yeah.

3 MR. PRINCE: You're correct. Thank you.

4 BY MR. PRINCE:

5 Q Let me restate my question. Before the July 10,  
6 2016 crash, had you already been recommended for a two-level  
7 surgery by Dr. Khavkin?

8 A Yes.

9 Q Okay. Now let's talk about the July 2010 -- or  
10 2016, excuse me, surgery.

11 Before that, were you still experiencing ongoing  
12 pain and symptoms into your arms?

13 A Yes.

14 Q Okay. Dr. Rosler, the last note we have before that  
15 crash was June 21, 2016.

16 MR. PRINCE: It's Exhibit 47, Bate No. 215,  
17 Brendon.

18 BY MR. PRINCE:

19 Q It says -- as of that day it says you returned for  
20 follow up. Patient complains of neck pain, nine out of ten,  
21 and then still has lower back pain at that point. What was  
22 worst? I mean, I know you had ongoing back pain for months  
23 after this. What -- the neck or the low back?

24 A The neck.

25 Q Okay. Was that the main problem, always the main

1 problem?

2 A Yes.

3 Q Did the low back eventually just go away?

4 A Yes.

5 Q Did you make -- has your low back made a complete

6 recovery?

7 A Yes.

8 Q Did you ever have any -- inject any -- any

9 injections or recommended -- or surgery recommended for your

10 lower back?

11 A No.

12 Q Okay. And were you -- when the collision of July

13 2016 happened, were you symptom or pain free?

14 A No.

15 Q Would you have good days and bad days, though?

16 A Yes.

17 Q Okay. Would some days the symptoms in your arm be

18 there or be worse and some days not be there at all?

19 A The pain was still there, but --

20 Q Always there?

21 A And then I could -- I tolerated it as long as I

22 could.

23 Q Okay. Okay. And tell us about the July 10, 2016

24 crash.

25 A Myself and Jorge was on the way to work at the

1 Review Journal. We were at a four-way stop, and a car came  
2 up from behind, and rear-ended us.

3 Q Okay.

4 A And I don't -- I don't think they knew there was --  
5 there was a stop sign there, to be honest.

6 Q And after that crash, did -- did you go by  
7 ambulance?

8 A Yes, I did.

9 Q Where did you go?

10 A I went to Sunrise.

11 Q Okay. Why did you decide to go by ambulance for  
12 that?

13 A Just to make sure that I was okay.

14 Q Okay. Were you okay?

15 A I was.

16 Q Did you have any increase in pain or symptoms?

17 A I -- I did, yes.

18 Q Yeah? Did it change your neck pain or neck symptoms  
19 or arm symptoms?

20 A No.

21 Q So it's remained about the same?

22 A Yes.

23 Q And if we can go back to Dr. Rosler's visit. You  
24 saw him a couple weeks after that July accident.

25 MR. PRINCE: And Brendon, it's 2170.

1           It says, you returned. It's on -- patient complains  
2 of neck pain eight to nine out of a ten. It was about a nine  
3 before. Is that -- in your mind, are you -- from your neck  
4 standpoint, was there any significant change?

5           A     It just -- no, it just aggravated it a little bit.

6           Q     Okay. And it says that it's worse in the lower back  
7 at a ten out of ten. That looks like it's significantly --  
8 the lower back gets worse than it was before.

9           A     Yes.

10          Q     Okay. And was anything new really -- did Dr. Rosler  
11 I mean, recommending MRI for your low back for that, was  
12 anything new recommended for you --

13          A     No.

14          Q     -- for your neck?

15          A     No.

16          Q     Okay. And I want to talk to you now about your  
17 surgery that you had on September 1, 2016.

18                 Where did that surgery take place?

19          A     At Valley Hospital.

20          Q     Okay. And bring us like -- as the days are getting  
21 closer to that surgery, how are you feeling mentally and  
22 physically and emotionally?

23          A     Anxious. I was anxious, scared, depressed. I  
24 didn't want to get the surgery, but I knew I had to. I was  
25 just worried about everything that was going on, and what was



1 going to happen.

2 Q How are you kind of coping and functioning with your  
3 day-to-day life at that point?

4 A I was doing the best that I can.

5 Q Was it hard?

6 A It was.

7 Q Did it -- were you living your life the way you  
8 wanted to?

9 A No.

10 Q Was it affecting the quality of your life?

11 A Yes.

12 Q Could you hold on anymore?

13 A I could not.

14 Q Do you believe you were at your wits end when you  
15 decided to have that surgery?

16 A Yes.

17 Q I want to talk about that day at the hospital. How  
18 did you get to the hospital September 1st?

19 A Jorge dropped -- Jorge took me.

20 Q Where were the kids?

21 A At home with my mother-in-law.

22 Q Okay. Was -- so who -- who went the to the hospital  
23 with you other than Jorge?

24 A Nobody. It was just me and him.

25 Q Okay. And you get there and you get checked in. Is

1 Jorge able to stay with you?

2 A No.

3 Q So you're in the -- you're in the pre-operative  
4 area. Is it cold?

5 A Yes.

6 Q Were you by yourself?

7 A I was.

8 Q What were you -- how were you feeling?

9 A Nervous, scared, just everything was running through  
10 my mind at that point.

11 Q Were you emotional?

12 A Yes.

13 Q Were you crying?

14 A I was. I didn't want to be alone, but I had to.

15 Q How did that make you feel having to deal with all  
16 that?

17 A It didn't feel good at all. I think it just made it  
18 worse.

19 Q What were your biggest fears?

20 A Not waking up. That was my biggest fear. Or if  
21 something goes wrong.

22 Q When you came out of the surgery, I mean, I know  
23 Jorge had to work and has to take care of the kids. Was he  
24 there when you got out of surgery?

25 A No.

1 Q Did he come that day after he had been -- he was  
2 able to?

3 A Yes.

4 Q How did you feel waking up alone?

5 A It's not the greatest feeling in the world.

6 Q Is there any way around that, I mean, your kids and  
7 your family obligations everything else going on?

8 A No. Sorry.

9 Q How did you do after the surgery, Desire?

10 A Good.

11 Q Did it improve? Did your condition improve?

12 A Yes.

13 Q Did you get a -- did you get benefit from the  
14 surgery?

15 A I did.

16 Q And just of the -- I see on your neck you have a  
17 scar. Do you see that?

18 A I do.

19 Q Can you show the jury? Kind of have you lift your  
20 neck up a little bit. Is that -- it's kind of red-ish. Is  
21 it keloided a little bit? Meaning, like it's bumping?

22 A Yes.

23 Q Okay. And that's almost four years ago?

24 A Yes.

25 Q And does it bother you that you have a scar in the

1 middle of your neck?

2 A It did. It did.

3 Q In what way?

4 A Just everybody would stare, nobody would ask me what  
5 happened. Like, it just -- it just affected me emotionally,  
6 you know, because I never had it before, and yeah, it -- it  
7 just made a huge difference in my confidence and for myself.

8 Q Okay. Did you -- because of this accident, this  
9 collision, I wanted to cover this. Did you become less  
10 active?

11 A I did.

12 Q Did you gain weight?

13 A I did.

14 Q And how much weight did you gain, Desire?

15 A 20, 30 pounds.

16 Q Okay. And it looks -- I mean, according to these --  
17 the records, I mean, it looks like you were 145 pounds when  
18 you went to see Dr. McCauley, and then by the time you were  
19 with Dr. Rosler it was 160. Is that -- why do you think that  
20 you have the weight gain, Desire?

21 A Because the -- the prescriptions and not being as  
22 active as I used to be.

23 Q Now, after the surgery, you said the surgery went  
24 well?

25 A Yes.

1 Q And you got a lot of benefit from it?

2 A Yes.

3 Q Okay. And how are you doing now?

4 A I feel good.

5 Q I know you're having the baby. I mean, I know it's

6 -- you have a lot going on right now, but --

7 A Yeah.

8 Q -- of your neck and your arm and I mean, do you

9 still have any problems in your neck or your arm?

10 A When it gets cold, it does hurt, so I always have to

11 wear a scarf or cover my neck.

12 Q Okay.

13 A I do hear clicking in my -- in my neck, but that's

14 normal.

15 Q Do you have any -- do you have neck pain?

16 A Yes.

17 Q How often does that happen?

18 A Not very often.

19 Q Okay. How about your arm? How about your left arm,

20 did the problems go away in your left arm?

21 A Yes.

22 Q Okay. And you heard Dr. Garber talk about this

23 adjacent segment disease and you're going to be needing

24 another surgery.

25 Do you recall that?

1           A     Yes.

2           Q     That this process is going to start all over again.

3           A     Yes.

4           Q     How does that make you feel knowing that at some

5 point you're going to -- the pain's going to come back,

6 you're going to have to go through this process all over

7 again, have another surgery at C5-6?

8           A     It worries me.

9           Q     In what way?

10          A     Because I'm having -- I'm having another baby, so

11 that's going to -- just going to affect how I take care of my

12 -- my child and the rest of my kids.

13          Q     After you have your surgery, did you limit or modify

14 how you do things or interact with your kids and things like

15 that?

16          A     Yes.

17          Q     What things -- how have you modified your lifestyle?

18          A     I didn't pick them up. I didn't pick my -- my

19 little one up. I was scared to. I didn't run with my kids

20 and -- or when I took them to the park, I was very cautious

21 on what I did, and even things at home, just being really

22 cautious.

23          Q     Is there certain things you don't do now or avoid

24 doing?

25          A     Yeah.

1           Q    I guess, maybe -- I mean, do you still do everything  
2 you need to do to take care of your family?  
3           A    Yes.  
4           Q    Okay. But do you ever have to sit some things out  
5 because you want to be -- you don't want to hurt yourself or  
6 reinjure yourself?  
7           A    Yes.  
8           Q    What are the type of thins you have to sit out of  
9 that you don't get to do that you'd like to do?  
10          A    Going hiking with my girls. Or even running with  
11 them.  
12          Q    What are you afraid of?  
13          A    That something's going to happen and I'm going to  
14 hurt myself again.  
15          Q    All right. And I know we were talking last week  
16 when we were getting ready for court, and you were telling me  
17 that your family took a trip to Orlando and went to Disney  
18 World --  
19          A    Yes.  
20          Q    -- last year. Did you get to go on the rides with  
21 your kids?  
22          A    No.  
23          Q    Why didn't you go on the rides?  
24          A    I was too scared to.  
25          Q    Okay. How did it make you feel having to sit out

1 and you're only 28 years old and you're having to sit out?

2 A I spent all that money, and I couldn't go on a ride.  
3 It was kind of disappointing.

4 Q All right. The idea of having to go through all of  
5 this and get to your wits end and maybe have another surgery  
6 at some point down the road, what does that -- do you think  
7 about that?

8 A I do.

9 Q How often do you think about it?

10 A All the time. And even now more that I'm about to  
11 have a baby.

12 Q Are you worried that, you know, the picking, the  
13 bending and lifting, all the things that goes along with, you  
14 know, having a newborn and a toddler -- an infant and a  
15 toddler and that that can cause you to have certain, I mean,  
16 problems again?

17 A Yes, absolutely.

18 Q Are you still going to do everything you can to take  
19 care of your baby?

20 A Of course.

21 MR. PRINCE: Court's indulgence. I'm almost done.

22 THE COURT: Sure.

23 BY MR. PRINCE:

24 Q Did you follow all the recommendations of your  
25 doctors?



1           A     I did.

2           Q     Did you feel comfortable with the medical care that  
3 you received? Were you happy with it?

4           A     Yes.

5           Q     Were you happy with Dr. Garber and his surgery?

6           A     Yes.

7           Q     Or at least it gave you the relief that it did?

8           A     Yes.

9           Q     There's a gentleman in the back of the courtroom.  
10 His name is Dr. Jeffrey Wang. He's from Los Angeles,  
11 California. Do you remember being seen by him?

12          A     Yes, I do.

13          Q     And I know the defense asked you, Mr. Winner is  
14 going to ask you were you seen by him in 2017. Where did you  
15 see him?

16          A     At a clinic.

17          Q     Do you know where?

18          A     I can't recall.

19          Q     Okay. How much time did he spend with you?

20          A     Not long.

21          Q     How much would you estimate?

22          A     Maybe 15 minutes, 20, maybe.

23          Q     So it was brief?

24          A     Yes.

25          Q     Okay. Do you currently take any prescription

1 medications?

2 A No.

3 Q Do you take ever any over-the-counter medications if

4 you're feeling any pain or discomfort in your neck?

5 A Yes.

6 Q What do you take?

7 A Ibuprofen.

8 Q Okay.

9 MR. PRINCE: Desire, thank you for your time. I

10 have nothing further.

11 Oh, I do have something further.

12 BY MR. PRINCE:

13 Q At the scene of the collision, did the defendant

14 ever blame you for causing this, saying, hey, you're at fault

15 for all this?

16 A I don't remember.

17 MR. WINNER: Stipulate.

18 MR. PRINCE: Oh, that she didn't do that?

19 MR. WINNER: No, I don't believe so.

20 MR. PRINCE: Okay. All right.

21 (Pause in the proceedings)

22 MR. WINNER: Exhibit No. 19?

23 MS. LORELLI: 79.

24 MR. WINNER: 79.

25 MS. LORELLI: Yes.

1           MR. WINNER: I'm going to reference Exhibit 70 --  
2   Plaintiffs' Exhibit 79. Why don't you could bring that up.  
3           MR. PRINCE: What exhibit? What exhibit? Hang on  
4   a second, Your Honor. If we could just approach for a  
5   second?  
6           THE COURT: Sure.  
7                       (Bench conference)  
8           MR. PRINCE: It's not admitted into evidence.  
9           THE COURT: What's not?  
10          MR. PRINCE: No. And the defendant objected to it.  
11          THE COURT: This hasn't been admitted yet?  
12          MR. WINNER: Not yet.  
13          THE COURT: Okay. Well, you can't show it to the  
14   jury.  
15          MR. PRINCE: Right.  
16          THE COURT: You've got to lay the foundation, first.  
17          MR. PRINCE: I want to -- I want to look at if  
18   first, so, if you want to cross and do some other things and  
19   then we can look at it.  
20          MR. WINNER: Okay.  
21          THE COURT: You're publishing before it's admitted,  
22   you can't do that.  
23          MR. WINNER: What's that?  
24          THE COURT: You're publishing it before it's been  
25   admitted and we can't do that. I didn't realize it wasn't

1 admitted.

2 MR. WINNER: Okay.

3 THE COURT: Do you have a hard copy that you can  
4 lay a foundation with?

5 MR. PRINCE: No, it's a video. It's a video. I  
6 need to -- I want to look at the video again before I have  
7 any issues with it. Are you trying to use audio with it or  
8 just the video?

9 MR. WINNER: Audio, because [indiscernible] is,  
10 someone's going to have to pay for all of this --

11 THE COURT: Oh, this is --

12 MR. WINNER: -- at the scene, I believe.

13 MR. PRINCE: Okay.

14 THE COURT: What are you doing?

15 MR. PRINCE: Then, no, then I'm not going to  
16 (indiscernible) -- there's go to be a hearsay objection, so  
17 I'm might have to listen to it because there's going to be a  
18 hearsay objection so I want to do it then --

19 THE COURT: Whose car is this?

20 MR. WINNER: Hers.

21 THE COURT: Okay. So --

22 MR. WINNER: She just said that her boyfriend  
23 didn't come -- or she just said her boyfriend didn't come to  
24 the scene and said somebody has to pay for this. My  
25 understanding is she said at her deposition this was taken at

1 the scene unless I'm mistaken as to video [inaudible].

2 MR. PRINCE: I don't know. We have to identified

3 who's saying that because her husband was not at the scene

4 and she said that at her deposition, so.

5 THE COURT: She doesn't have a husband, but that's

6 another issue.

7 MR. WINNER: What's that?

8 THE COURT: I said she didn't have a husband, she

9 has a fiancé.

10 MR. WINNER: The -- the boyfriend or the fiancé.

11 THE COURT: Are you trying to get this picture in?

12 MR. PRINCE: No, the whole video with audio.

13 MR. WINNER: Yeah, that's just a picture of it.

14 It'd be the video and we had started playing the video.

15 MR. PRINCE: And the -- and the audio --

16 THE COURT: Who took the video?

17 MR. WINNER: Her --

18 MR. PRINCE: Well, we have to deal with --

19 MR. WINNER: -- boyfriend [inaudible].

20 MR. PRINCE: -- there's this issue about the

21 speaking on there, so I have no problem with the no audio,

22 but there's audio on there, and I want to hear -- listen to

23 the audio before I agree.

24 THE COURT: Well, I need to -- I can't rule on it

25 until I hear it unless he agrees to it, I've got to listen to

1 it.

2 MR. PRINCE: No, I'm not agreeing to it. That's

3 why I want to listen to the audio.

4 MR. WINNER: Want to take a five minute break?

5 THE COURT: What are you saying -- what are you

6 saying it has in it?

7 MR. WINNER: What's that?

8 THE COURT: What are you saying -- when is it

9 taken?

10 MR. WINNER: Taken at the scene, to my

11 understanding.

12 THE COURT: That's what you're saying. Okay.

13 MR. WINNER: And that's her boyfriend --

14 MR. PRINCE: That's why I want to listen to it. I

15 want to listen to the --

16 THE COURT: Okay.

17 MR. PRINCE: -- the audio.

18 MR. WINNER: Can we take a five-minute break and --

19 THE COURT: Sure.

20 MR. WINNER: -- and we can ask her outside the

21 presence.

22 THE COURT: How long is it?

23 MR. WINNER: Two minutes, three minutes.

24 MR. PRINCE: I don't know.

25 THE COURT: Okay.

1 (End of bench conference)

2 THE COURT: All right. Ladies and gentlemen, I'm  
3 going to take a five-minute recess. We just have to handle  
4 something quick.

5 During the recess, you are admonished not to talk  
6 or converse among yourselves or with anyone else on any  
7 subject connected to this trial or read, watch, or listen to  
8 any report of or commentary on the trial of any person  
9 connected with this trial by any medium of information,  
10 including without limitation to newspapers, television, the  
11 Internet, and radio, or form or express any opinion on any  
12 subject connected with the trial until the case is finally  
13 submitted to you.

14 THE MARSHAL: All rise for the exiting jury.

15 (Jury recessed at 2:18 P.M.)

16 (Outside the presence of the jury)

17 THE COURT: Do all want to -- the record will  
18 reflect we're outside the presence of the jury. Do you all  
19 want to keep the witness here?

20 MR. WINNER: Yes.

21 THE COURT: Are you going to have some voir dire  
22 questions?

23 MR. WINNER: Yes.

24 THE COURT: Okay.

25 MR. WINNER: If we could, Michael, if you cue up

1 and play Plaintiffs' Exhibit 79, please. We need the volume  
2 on.

3 (Pause in the proceedings; setting up video)

4 MR. WINNER: Your Honor, I think the video is only  
5 about two minutes so it shouldn't take long.

6 THE COURT: All right. Are there any questions you  
7 can ask her while you're waiting or not?

8 MR. WINNER: If she can identify her boyfriends or  
9 fiance's voice. I believe she identified that at the  
10 deposition, but --

11 THE COURT: Okay. So nothing until the video is  
12 playing is what --

13 MR. WINNER: Yep.

14 (Pause in the proceedings)

15 MR. PRINCE: Well, here's the issue, Judge. While  
16 they're dealing with this technical issue. There was two  
17 videos; one taken at the scene and one taken at home. He --  
18 the -- I can tell probably by the hand, that person -- her  
19 husband never comes to the scene. He does -- there is a video  
20 taken of it at home. So there's two videos.

21 And he's going to try to use statements made by  
22 Jorge Parra who is not a party to the case. So those  
23 statements are hearsay. She said, came to the scene. This  
24 isn't the video from the scene. And I guess that -- even if  
25 so, it wouldn't even be here all the -- anyway. But



1 nevertheless, hearsay anyway.

2 But this -- this video would be the one taken from  
3 home. And that was page sixty -- 68 of the deposition.  
4 Counsel, Mr. Winner's associate was recapping there's the two  
5 videos, one at the scene, one from home. And so with Mr. --  
6 with Jorge Parra, that is the one from home.

7 And so any statements made in connection with that,  
8 well, any -- both of them are hearsay because he's not a party  
9 to the case.

10 MR. WINNER: Page 66 of her deposition:.

11 These are videos taken at the accident scene?

12 Her answer, Correct.

13 Plural, videos.

14 MR. PRINCE: And then they went off the record. And  
15 they want you guys to watch the videos. And if you go back on  
16 to page 68, you're talking about:

17 Let me just recap, during the break, you have some  
18 pictures from the scene and some videos on your cell phone,  
19 and your husband Jorge just showed me those pictures. And  
20 there were two videos. I might have seen three, maybe it was  
21 two videos. One was taken at the scene and one was taken at  
22 home. I understand your counsel's going to give those to me.

23 So there was a discussion about that topic.

24 MR. WINNER: I see what you mean.

25 MR. PRINCE: And there was one at home and one at

1 the scene. If it's involving the one at home, then that's the  
2 one that the husband's in, making those statements.

3 THE COURT: Are you satisfied with that, or no? You  
4 -- do you want to go -- keep going?

5 MR. WINNER: I guess that's okay. I can --

6 THE COURT: I don't know why you're offering it. I  
7 don't know what you're offering. To the extent that you're  
8 offering it as impeachment that he was --

9 MR. WINNER: Well, I was --

10 THE COURT: -- at the scene, but do you now believe  
11 actually you were mistaken and he was not at the scene?

12 MR. WINNER: Well, I don't know. I guess, I accept  
13 what Mr. Prince says. But I was essentially accused of saying  
14 something that was untruthful in opening statement, when in  
15 one part of her deposition she said the videos were taken at  
16 the scene.

17 I respect what Mr. Prince says, but there was video  
18 of her husband going through all of the property damage in  
19 detail saying, somebody's going to have to pay for this, at  
20 home. If -- whether it was at the scene or at home, if I made  
21 a mistake saying it was at the scene, that happened.

22 THE COURT: No, the statement by Mr. Winner was,  
23 during the opening statement was, In addition to wanting the  
24 police in case you needed a report later, that the husband  
25 came to the scene, was loud and saying, someone's going to

1 have to pay for this, not -- not reflecting the property, like  
2 someone's get -- like almost this whole thing, and injuries,  
3 and I think it had a much broader context than that.

4 But the video he's showing is from the house, and so  
5 his statements are hearsay. That's just an error on Mr.  
6 Winner's part. If he made that statement without knowing  
7 where Mr. Parra was at the time that the statements were made,  
8 then that must be just his own simple error. But it doesn't  
9 get over the hearsay issue at all either.

10 THE COURT: When and where were the statements made?

11 MR. WINNER: I'm sorry?

12 THE COURT: When? How long after the accident?

13 MR. WINNER: My understanding is at the -- at the  
14 scene of the accident but.

15 (Testimony outside the presence of the jury)

16 VOIR DIRE EXAMINATION

17 BY MR. WINNER:

18 Q Ms. Evans, when was the video made, was it made that  
19 night? It's in the dark.

20 A Yes.

21 Q Okay.

22 THE COURT: As soon as you got home?

23 THE WITNESS: Yes, it was.

24 //

25 //

1 VOIR DIRE EXAMINATION

2 BY MR. PRINCE:

3 Q Desire, was the video, the one with Jorge, was it at  
4 home or at the scene?

5 A At home.

6 Q Okay.

7 MR. WINNER: I think I was essentially accused of  
8 saying something that wasn't true during direct, we have a  
9 video produced by the plaintiff of, we believe, Jorge.

10 We should have volume now. I'm going to ask if she  
11 can --

12 VOIR DIRE EXAMINATION

13 BY MR. WINNER:

14 Q On that video, Ms. Evans, is that Jorge's voice?

15 A Yes.

16 THE COURT: Are we playing it?

17 (Plaintiffs Exhibit 79, Video played)

18 BY MR. WINNER:

19 Q Are those other voices your kids?

20 A Yes.

21 THE COURT: All right. Mr. Winner, what's your  
22 response to the hearsay objection?

23 MR. WINNER: I don't think I'm offering anything for  
24 the truth of the matter asserted therein, only to refute the  
25 claim that Jorge did not make such comments at the scene -- or

1 at -- if it wasn't at the scene, it wasn't at the scene.  
2 My understanding of her deposition testimony is that  
3 it had been. If that was taken at home immediately  
4 afterwards, it's not offered for the truth of the matter  
5 asserted.  
6 MR. PRINCE: Oh.  
7 THE COURT: What's it offered for?  
8 MR. WINNER: It's offered to refute the claim that I  
9 said something wasn't true in opening statement --  
10 THE COURT: All right. But --  
11 MR. WINNER: -- and I was just accused of that.  
12 MR. PRINCE: Well, this is the --  
13 THE COURT: Well, I don't know that you can make a  
14 statement and then offer a piece of evidence at trial to make  
15 it look like that you did say it, absent another exception.  
16 It's -- I mean, it's kind of like a consistent -- consistent  
17 with the attorney's argument kind of hearsay thing.  
18 MR. WINNER: Well, I'm not -- I'm not offering the  
19 evidence for the proof that the damage is there. We've  
20 stipulated the damage is there and that's already in evidence.  
21 The fact that her boyfriend or husband is talking  
22 about it, and shooting a video of it --  
23 THE COURT: I'm -- I think the video could probably  
24 come in without the audio if that's --  
25 THE COURT: Okay.

1 MR. PRINCE: Yeah. And because --

2 MR. WINNER: Does the Court believe that's being

3 offered for the truth of the matter asserted in there that

4 that is damage from the accident? Because I think that's

5 agreed to.

6 THE COURT: I don't know what you're saying to me.

7 MR. WINNER: Well, my point being, if we're not

8 offering it for the truth of the matter asserted in it,

9 because that was damage from the accident --

10 THE COURT: Correct.

11 MR. PRINCE: Oh.

12 MR. WINNER: -- it would not be hearsay.

13 THE COURT: Correct. But the audio is not necessary

14 to that. I mean, I get why you want the audio, but I just

15 don't think you have a hearsay objection that you're fitting.

16 So --

17 MR. WINNER: A present sense impression? Excited

18 utterance?

19 THE COURT: No, no, I was listening for excitement.

20 MR. WINNER: Ruling as perpetuities.

21 THE COURT: Yeah --

22 MR. WINNER: Okay.

23 THE COURT: -- I don't think so. You can have the

24 video, but you can't have the audio.

25 MR. PRINCE: Well, we've got to figure out then can

1 they separate the video -- the audio from the video? They  
2 don't -- they haven't offered -- there's no such recording  
3 with no audio.

4 THE COURT: Do you need it? I mean, is -- I'm  
5 guessing --

6 MR. WINNER: No, in fact, I don't.

7 THE COURT: -- you have a million pictures.

8 MR. WINNER: Based on the Court's ruling, what I  
9 will do is I will show that shot, I guess, or we can take that  
10 down and I will ask the plaintiff if there were -- if there  
11 was such a conversation with Jorge after she got home the  
12 evening of the accident.

13 MR. PRINCE: Oh, I mean, that's still a hearsay  
14 issue. You're still coming into a hearsay issue.

15 MR. WINNER: Well, you -- but I -- I --

16 MR. PRINCE: He's still --

17 MR. WINNER: -- it's kind of been waived in the --  
18 the -- Mr. Prince just asked her, did -- did she have that  
19 conversation with Jorge.

20 THE COURT: I didn't hear her -- him say that.

21 MR. PRINCE: No, that -- right. Let me read you  
22 what Mr. Winner said during the opening statement.

23 It says: The Plaintiff's husband came to the scene  
24 in kind of angry words examined the car and was mad saying  
25 somebody was going to have to pay for that.

1           So that didn't happen. He made a statement to the  
2 jury which, unfortunately, the evidence isn't going to  
3 support.

4           THE COURT: Correct.

5           MR. PRINCE: And that happens at times.

6           THE COURT: Well, he made the statement. It's just  
7 not where and when he said it. Had he made it at the scene, I  
8 think the excited --

9           MR. PRINCE: He said -- no, he said -- no, that's  
10 what he said.

11          THE COURT: Excuse me. I think if he had done it at  
12 the scene it would have been more likely an excited utterance  
13 kind of a situation, but he did not. So it -- clearly, he is  
14 incorrect. But it was also a statement that was made. I'm  
15 just saying, the problem is, where and when it was said, I  
16 don't think it comes into evidence. And I don't think you can  
17 ask her either for the same reason that -- because you're  
18 going to get stuck with the same hearsay objection.

19          So unless you've got something else --

20          MR. WINNER: Okay.

21          THE COURT: -- and I don't know why it would be any  
22 different when you said it to her when -- when on the video  
23 it's not coming in.

24          Now, you can go back with her and say, at your  
25 deposition, didn't you say that he came out to the scene at



1 one point, because that's a prior inconsistent, and then you  
2 can clean up the later -- to explain why you were under the  
3 misapprehension that he came to the scene because it --

4 MR. WINNER: That's -- that's --

5 THE COURT: -- the way I understood the --

6 MR. WINNER: -- that's fine.

7 THE COURT: -- testimony or the deposition,  
8 initially, she did say at the scene, and then it was clarified  
9 later by what Mr. Prince said, I think, that it wasn't at the  
10 scene; am I right, Mr. Prince?

11 MR. PRINCE: Yes.

12 THE COURT: I understood -- did I understand that  
13 correctly?

14 MR. PRINCE: Say it one more time.

15 THE COURT: Initially, she did say it might have  
16 been at the scene.

17 MR. PRINCE: No.

18 THE COURT: It sounded like it could have been  
19 interpreted that way.

20 MR. PRINCE: No.

21 THE COURT: And then later you clarified or somebody  
22 clarified.

23 MR. PRINCE: No. He -- she asked in the deposition,  
24 she was asked by mr. Winner's law firm, did Jorge come to the  
25 scene? She said, no, no. Then later they were talking about

1 photographs and video footage, because they took his  
2 deposition. He was there --

3 THE COURT: Correct.

4 MR. PRINCE: -- for the deposition. And there were  
5 determined to be two videos, one that she took at the scene  
6 with her phone, and one that Jorge took when she got home --

7 THE COURT: I understand.

8 MR. PRINCE: -- at home.

9 THE COURT: I understand it was clarified. But my  
10 recollection --

11 MR. PRINCE: Hum-um.

12 THE COURT: -- what I just heard earlier was at some  
13 point in the deposition someone said, and those videos were  
14 taken at the scene or there were videos --

15 MR. PRINCE: That's Mr. Winner's --

16 THE COURT: -- taken at the scene.

17 MR. PRINCE: -- associate saying that.

18 THE COURT: Okay.

19 MR. WINNER: Questioning, and --

20 THE COURT: Whatever.

21 MR. WINNER: -- then she said yes.

22 THE COURT: Well, she said yes.

23 MR. WINNER: Yes.

24 THE COURT: So within in it, it's too inconsistent.  
25 What I'm saying is, I think that it's clear to everybody that

1 one was at the scene and one was not. But I also think that  
2 in her initial deposition -- he's just clearing it up. I  
3 don't know that it matters really --

4 MR. WINNER: And --

5 THE COURT: -- at all.

6 MR. WINNER: -- at no point in the video without  
7 hearing his voice can she establish it was Jorge for the --  
8 the jury also. But I can -- I can ask the question without  
9 discussing what was said.

10 MR. PRINCE: No.

11 THE COURT: Okay.

12 MR. PRINCE: Judge, how do you ask a question about  
13 what her fiancé, whatever his impression was --

14 THE COURT: What are you going to ask --

15 MR. PRINCE: -- of the property damage, or  
16 frustrating, I mean, we need to like foreclose the whole area.  
17 He can't just ask -- what's the relevance of any of it? Was  
18 he upset? Was he made that he -- the issue that -- where Mr.  
19 Winner is stuck is he said in his opening the husband came to  
20 the scene and in kind of angered words examined the car, was  
21 mad saying, somebody's going to have to pay for that. That is  
22 factually wrong.

23 THE COURT: Correct.

24 MR. PRINCE: So he's stuck with that.

25 THE COURT: Well, I mean --

1           MR. PRINCE: You don't get to ask questions like was  
2 your husband upset? She was upset. Everybody was upset about  
3 the property damage. But the statements made by Jorge are  
4 inadmissible and there's no applicable exclusion.

5           THE COURT: I've already said at this point I have  
6 not heard -- they are not admissible absent something that I  
7 don't -- I haven't heard yet. So that's where we are.

8           Are we ready? Do you want to take a two-second --

9           MR. PRINCE: I'm ready to keep going, Judge --

10          MR. WINNER: Yeah.

11          MR. PRINCE: -- and see if we can get through her  
12 and then get to Dr. Wang.

13          MR. WINNER: Okay.

14          THE COURT: All right. Well, bring them in because  
15 I need one minute. I'll be fast though.

16          THE MARSHAL: Are you telling me to bring them in,  
17 Judge?

18          THE COURT: Yeah, you can bring them in.

19               (Pause in the proceedings)

20          THE MARSHAL: All rise for the entering jury.

21               (Jury enters at 2:35 P.M.)

22          THE MARSHAL: Please be seated and come to order.

23          THE COURT: Okay. Back inside the presence of the  
24 jury. Will counsel stipulate to the jury?

25          MR. WINNER: Yes.

1 MR. PRINCE: Yes.

2 THE COURT: And I'll remind you, you're still under  
3 oath; okay?

4 THE WITNESS: Okay.

5 THE COURT: Go ahead. Continue.

6 CROSS-EXAMINATION

7 BY MR. WINNER:

8 Q Really quickly, and I apologize if I misunderstood  
9 something.

10 Outside the jury's presence, we had a conversation.  
11 Your boyfriend or husband, George or Jorge, took some video  
12 that evening after you got home, but it was not at the scene;  
13 is that correct?

14 A Correct.

15 Q Do I understand that correctly?

16 A Yes.

17 Q Okay. And he said some things and took a video.  
18 You were present, but it was not at the scene, it was that  
19 night after you got home?

20 A Correct.

21 Q Okay. Ms. Evans, did you tell Dr. Rosler in  
22 response to his question that you had never in your life had  
23 neck pain before?

24 A I believe so.

25 Q Okay. And was that the truth?

1           A     No.

2           Q     Did you tell the chiropractor, Align Chiropractic,  
3 that you had never had neck pain before in your life?

4           A     I believe so.

5           Q     And was that the truth?

6           A     No.

7           Q     Did you tell Dr. Khavkin that you had never had neck  
8 pain before in your life?

9           A     No.

10          Q     Did you tell him that?

11          A     I believe so, yes.

12          Q     Okay. And was that the truth?

13          A     No.

14          Q     Did you understand that the Doctor -- the  
15 chiropractor and Dr. Rosler and Dr. Khavkin were going to be  
16 asked to write reports for you in support of your personal  
17 injury claim?

18          A     I'm sorry, could you repeat that one more time?

19          Q     Sure. Did you understand that Dr. Rosler, Dr.  
20 Khavkin and Align Chiropractic were going to write reports for  
21 you in support of your personal injury claim?

22          A     I know they were going to write reports.

23          Q     Okay. You saw Dr. Khavkin one time; correct?

24          A     Correct.

25               MR. WINNER: May I have the ELMO, please?

1           This is already in evidence. It's the same one we  
2 already went through. It's Bates-stamp 005. It's the pain  
3 diagram from 5/17 of '16.

4           MR. PRINCE: Okay.

5           MR. WINNER: Okay. Thank you. I can zoom out with  
6 this guy here, right?

7 BY MR. WINNER:

8           Q     So is this the pain diagram you prepared for Dr.  
9 Khavkin on May 17th, of 2016?

10          A     Yes.

11          Q     Okay. And did you report to Dr. Khavkin you had  
12 pain going down both of your legs?

13          A     I believe so.

14          Q     Did you report to Dr. Khavkin you have pain going  
15 all the way down both of your arms?

16          A     Yes.

17          Q     Did you report to Dr. Khavkin you had headaches,  
18 neck pain and mid back pain?

19          A     Yes.

20          Q     And did you report some discomfort in the front of  
21 your legs?

22          A     Yes.

23          Q     Did you tell Dr. Khavkin that you had been  
24 experiencing those symptoms ever since the October 30th, 2015  
25 car accident?

1           A     I told him about the pain in my -- my neck and my  
2 left arm and the --

3           Q     Were you here the other --

4           MR. PRINCE: Hang on, she wasn't quite finished,  
5 counsel.

6           MR. WINNER: Pardon?

7           MR. PRINCE: No, she wasn't -- the witness needs to  
8 be allowed to finish. She wasn't finished with her answer.

9           THE COURT: Were you finished?

10          THE WITNESS: Yeah. Just the pain down my left  
11 side, my arm and tingling.

12 BY MR. WINNER:

13          Q     And did you tell Dr. Khavkin that you had had these  
14 symptoms ever since the 2015 car accident?

15          A     I believe so.

16          Q     Okay. Was that the truth?

17          A     Yes.

18          Q     That you had had pain down the left arm and down  
19 both legs ever since the accident happened?

20          A     The left side, yes. The legs, they came and -- they  
21 came and they were coming and going. And that's how I felt  
22 that day.

23          Q     Okay. Your low -- did you complain of leg pain to  
24 the chiropractor after the accident?

25          A     I believe so.



1           Q     Did you complain to the chiropractor about pain down  
2 your right arm all the way down the hand after the car  
3 accident?

4           A     Not that I can remember.

5           Q     Did you tell Dr. Khavkin that chiropractic treatment  
6 hadn't helped you at all?

7           A     I don't recall saying that.

8           Q     Did you tell Dr. Khavkin that Dr. Rosler hadn't  
9 helped you at all?

10          A     I don't recall saying that.

11          Q     Did you see after giving that pain diagram and  
12 giving what you said to Dr. Khavkin you asked him to write a  
13 letter, which he said was to your lawyer, saying that you  
14 needed a surgery from the October 30th, 2015 accident;  
15 correct?

16          A     Um --

17          Q     Were you here when he testified?

18          A     Yes, I was here.

19          Q     Okay. So you only saw him one line in all -- or one  
20 time and all he did was write a letter to your lawyer after  
21 you told him those things; correct?

22          A     Correct.

23          Q     Who referred you to Dr. Garber?

24          A     I'm sorry?

25          Q     Who referred you to Dr. Garber?

1           A     I can't remember.

2           Q     Were you here the other day when Dr. Garber showed  
3 us your handwriting saying you were referred to him by Paul  
4 Powell, the attorney?

5           MR. PRINCE:  Objection.  Objection, misstates the  
6 evidence and it's not what the document says.  So, foundation.

7           THE COURT:  Overruled.

8           THE WITNESS:  I'm sorry, can you ask that one more  
9 time?

10          BY MR. WINNER:

11          Q     Were you here for Dr. Garber's testimony?

12          A     Yes.

13          Q     Okay.  Did you hear where Dr. Garber showed  
14 paperwork filled out at his office where you indicated you  
15 were sent to Dr. Garber by your lawyer, Paul Powell?

16          A     Yes.

17          Q     Okay.  And is that who referred you to Dr. Garber?

18          A     Yes.

19          Q     You were completely uninjured at the scene; correct?

20          A     I didn't feel no pain at the scene, no.

21          Q     Okay.  And you had one, two, three -- well, they  
22 were kids and step-kids you had in the back seat if I  
23 understood you right?

24          A     Yes, I had three kids in the back seat.

25          Q     Do you remember giving a deposition in this case?

1 MR. WINNER: If we could have the deposition  
2 [inaudible].

3 THE CLERK: The deposition of the plaintiff?

4 MR. WINNER: I'm sorry?

5 THE CLERK: I apologize [inaudible].

6 MR. WINNER: Yeah, can we have the deposition  
7 [inaudible].

8 MR. PRINCE: Your Honor, can we -- I just want to  
9 approach just one -- for one second, Your Honor.

10 THE COURT: Sure.

11 MR. PRINCE: While they're doing that.

12 (Bench conference)

13 MR. PRINCE: I just -- there's an order from the  
14 Court about excluding any injuries to anybody else, including  
15 the minors and so --

16 THE COURT: Okay. I was wondering about that.

17 MR. PRINCE: -- yeah, and so I was making sure  
18 they're not going to open the door on that. I mean, they  
19 didn't report any injury at the scene, that's -- that's no  
20 problem confirming that. But there's already an order in  
21 place having a discussion about injuries to the kids.

22 MR. WINNER: Actually, what the order says is we are  
23 allowed to talk about the injury but not what the injury was  
24 because it shows the injury causing potential.

25 THE COURT: Are you looking for that?

1 MR. WINNER: I'll see if Caitlin can pull it up.  
2 You might be right, but.  
3 THE COURT: Was it -- did you -- did I ask if it was  
4 a plaintiffs' motion or --  
5 UNIDENTIFIED SPEAKER: I [inaudible] stipulated  
6 or --  
7 THE COURT: Does it -- do you guys remember  
8 stipulated, was it plaintiffs' order or was it a --  
9 MR. WINNER: It was a -- it was in a Minute Order  
10 from Judge Villani.  
11 UNIDENTIFIED SPEAKER: The order regarding Defendant  
12 Tate's motion in limine, Your Honor.  
13 MR. PRINCE: Okay.  
14 MR. WINNER: Judge, we'll just --  
15 MR. PRINCE: I think we're good.  
16 MR. HENRIOD: Okay.  
17 MR. WINNER: We missed -- we --  
18 MR. HENRIOD: We'll just stay away from it.  
19 THE COURT: Okay.  
20 (End of bench conference)  
21 BY MR. WINNER:  
22 Q You testified a little while ago that you -- you had  
23 an abrasion on your collar bone, you thought from the  
24 seatbelt?  
25 A Yes.

1 Q Okay. Do you recall testifying at your deposition  
2 that you did not strike your shoulder on anything in the car?  
3 A I believe so.  
4 Q Okay. Do you recall testifying at your deposition  
5 that you -- you and Babylyn Tate both called the police; you  
6 called the police and she called the police; correct?  
7 A Yes.  
8 Q And you were told by the police that they were not  
9 going to respond to a non-injury accident; correct?  
10 A Correct.  
11 Q Isn't that right?  
12 A Yes.  
13 Q You had three kids in the back of the car waiting to  
14 go trick-or-treating?  
15 A Yes.  
16 Q And did you wait at the scene for approximately two  
17 hours for the police to arrive?  
18 A I believe so, yes.  
19 Q Okay. Were your kids in the back of the car that  
20 whole time?  
21 A Yes.  
22 Q And this is despite the fact that the police told  
23 you they did not want to come, and Ms. Tate repeated to you,  
24 the police do not want to come because no one is claiming an  
25 injury?

1           A     Yes.

2           Q     And the police told you they didn't need to come and  
3 there was no requirement that they come; correct?

4           A     Yes.

5           Q     And you waited for two hours so that you could have  
6 a report?

7           A     Yes.

8           Q     You went to the chiropractor for approximately three  
9 months; correct?

10          A     Correct.

11          Q     When you began with the chiropractic office did you  
12 see those records indicating they thought it would take about  
13 three months for you to get better?

14          A     Yes.

15          Q     Do you recall the chiropractor telling you that he  
16 was very pleased and you responded very well to chiropractic  
17 treatment?

18          A     I believe so, yes.

19          Q     I'm sorry?

20          A     Yes.

21          Q     Do you remember the chiropractor saying you're  
22 welcome to come back at anytime for maintenance treatment?

23          A     Yes.

24          Q     Do you recall before going to see Dr. Rosler your  
25 neck symptoms were all the way down to about a 2 or 3 out of

1 10 --

2 A Uh-huh.

3 Q -- before you saw Rosler the first time?

4 A Yes.

5 Q And following your visit with Rosler they went down  
6 to a 2, later to a 1, and a zero with full range of motion?

7 A I believe so.

8 Q Okay. Did you hear Dr. Rosler testify the other  
9 day?

10 A Yes, I did.

11 Q Did Dr. Rosler tell you that -- did Dr. Rosler tell  
12 you that he was recommending you get a second cervical MRI  
13 after the later accident, the July 2016 accident?

14 A I don't think so.

15 Q Do you recall Rosler testifying about that the other  
16 day, you need to go get a new cervical MRI?

17 A I was here, but I don't remember him saying that.

18 Q Did you ever get a second cervical neck MRI before  
19 that July 10, 2016 accident?

20 A No.

21 Q Okay. Can we agree that from the time you began  
22 going to Align Chiropractic after this October 10th, 2015  
23 accident, until your pain scores were down to zero out of 10,  
24 was a period of about three months?

25 A Give or take, yes.

1           Q     Okay. Did you tell Dr. Garber -- well, let me ask  
2 you something else really quickly. Do you recall being asked  
3 about -- do you recall being asked about your symptoms, before  
4 that 2016 accident happened, at your deposition?

5           A     Yes.

6           Q     Okay. And did you say in that deposition that your  
7 neck felt -- before the 2016 accident your neck felt sore but  
8 you have no symptoms of pain in your left arm before that 2016  
9 accident and you had no symptoms of tingling in your left arm  
10 before that 2016 accident?

11          A     No.

12               MR. WINNER: May we have that deposition, please?

13               THE COURT: Would counsel approach, please? Sorry.

14                               (Bench conference)

15               THE COURT: I've never dealt with a sealed  
16 deposition. I'm just asking --

17               MR. PRINCE: Just unseal it and publish it. She'll  
18 stamp it in. She'll open it.

19               THE COURT: Do I say something or does somebody say  
20 something?

21               MR. PRINCE: No, just -- just -- no, she'll just  
22 publish it on her own.

23               THE CLERK: [Inaudible].

24               MR. PRINCE: Yeah. If you like -- we ask you  
25 permission to public deposition and you say "granted" and --



1 THE COURT: Okay.

2 MR. PRINCE: -- to --

3 MR. WINNER: Well, just not published to the jury.

4 It's just -- but it's given --

5 THE COURT: But do I represent that the --

6 MR. WINNER: -- to the witness.

7 THE COURT: -- she's cutting open right now -- I

8 actually am representing because we're on the record -- that

9 she's now cutting open a sealed deposition that's sealed.

10 MR. WINNER: And -- and giving it to the witness,

11 yeah. That's all.

12 THE COURT: I'm going to give it to the witness.

13 Okay.

14 (End of bench conference)

15 MR. WINNER: I'm going to -- may I approach, please,

16 Your Honor?

17 THE COURT: You may.

18 MR. WINNER: Thank you.

19 THE CLERK: You're welcome.

20 BY MR. WINNER:

21 Q So if I ask you about a page, the pages will be here

22 and the line numbers will be here.

23 A Okay.

24 Q Okay?

25 A Okay.

1           Q     Thank you.

2           A     Um-hum.

3           Q     I'm going to ask you to turn to page 116, I believe.

4 I'm going to ask you to look at line 3 of page, I believe it's

5 116, the morning of July 10th, 2016; do you see where I'm --

6           A     Yes.

7           Q     -- referring?

8           A     Yes.

9           Q     July 10, 2016, that was the day you had your next

10 accident; correct?

11          A     Yes, correct.

12          Q     The morning of July 10, 2016, you were asked, "Were

13 you having any difficulty moving your neck or moving your left

14 arm," what was your response?

15          A     I'm sorry, use of my left arm? I said, "Not

16 difficulties, but it did hurt and it did hurt to move my neck

17 to the left and to the right."

18          Q     Okay. And then I said, "Okay." And what did you

19 say next?

20          A     "Just doing simple turns, there was no pain in my

21 arm at that time."

22          Q     Okay. So according to your deposition transcript,

23 there was no pain in your arm the morning of July 10, 2016?

24          A     Correct.

25          Q     Next question was, "When you think back to the

1 numbness and tingling you had previously felt in your left  
2 hand and arm, you weren't having any of that the morning of  
3 July 10th," what was your answer?

4 A "No."

5 Q Okay. It was just turning your head side-to-side  
6 that caused pain? And you nodded?

7 A Yes.

8 Q Okay.

9 A Correct.

10 Q So we know that three -- three car accidents in  
11 which you've -- and you did make an injury claim for the 2016  
12 accident as well, correct?

13 A Correct.

14 Q Was that to your low back, or your neck, or both?

15 A I believe it was both.

16 Q So we know about three accidents; one in 2010, you  
17 told Mr. Prince about one in 2015, and one in two thousand --  
18 July of 2016; correct?

19 A Correct.

20 Q Did you testify at deposition that you have never in  
21 your life been involved in any other car accidents, either as  
22 a driver or a passenger?

23 A I don't recall.

24 Q Is that true?

25 A I did tell -- I did tell -- I did tell the doctors

1 that I was in an accident.

2 Q Okay. So are those three accidents, 2010, 2015,  
3 2016, are those the only accidents you've ever been in as a  
4 driver or a passenger?

5 A Yes.

6 Q Okay. Is it fair to say then every time you've ever  
7 been in a car accident, you've made an injury claim against  
8 someone else?

9 A Yes.

10 Q Just in response to clear up some questions Mr.  
11 Prince asked; you were unemployed on the day this particular  
12 accident happened; right?

13 A Which accident, the two --

14 Q The -- I'm sorry, our accident, 2015.

15 A Correct.

16 Q Okay. And you are not presenting a wage claim of  
17 any kind or a loss of income claim of any kind in our case,  
18 the 2015 accident; correct?

19 A No. Correct.

20 Q Am I correct about that?

21 A Yes, correct.

22 Q At the time the accident happened, you said at the  
23 time you began your turn, there was nobody in the crosswalk?

24 A Correct.

25 Q And then the light turned green?

1           A     Yes.

2           Q     And someone was coming into the crosswalk?

3           A     Yes.

4           Q     Or you believed somebody was going to come into the  
5 crosswalk?

6           A     Somebody stepped out in front of my vehicle.

7           Q     And did you slam on your brakes at that time?

8           A     Yes.

9           Q     How many pedestrians were there?

10          A     Ten or more.

11          Q     Did you say in different medical records and in  
12 answers to interrogatories that there was one pedestrian?

13          A     I did not say that.

14          Q     A pedestrian?

15          A     Yes. It was a pedestrian who walked out in front of  
16 my car.

17          Q     Okay. Did you say to your chiropractor and others  
18 that one pedestrian was there who walked out in front of your  
19 car?

20          A     Yes.

21          Q     And did you say elsewhere in your deposition there  
22 were at least ten pedestrians?

23          A     Yes.

24          Q     Okay. After this accident, this accident on October  
25 30th, 2015, you had three children in the back of the car.

1 You were told by the police there wasn't any reason for them  
2 to come because nobody was injured; correct?

3 A Correct.

4 Q You told them you were not injured, you said your  
5 passenger, Guadalupe Parra, was not injured, and you said the  
6 three kids in the back were uninjured; correct?

7 A Correct.

8 Q And then you waited at the scene for approximately  
9 two hours --

10 A Correct.

11 Q -- correct?

12 A Correct.

13 Q Ten -- it was about a ten minute walk then after  
14 that to the Linq?

15 A Yes.

16 Q And then you rode the, whatever it is, the big  
17 Ferris Wheel?

18 A The High Roller, yes.

19 Q And then you went trick-or-treating with your kids?

20 A Yes.

21 Q The first time you experienced any symptoms you said  
22 was the following morning?

23 A Yes.

24 Q Was it that evening though that there was a  
25 conversation with your boyfriend, or fiancé, or husband, Jorge

1 looking at the damage to your car?

2 A Yes.

3 (Mr. Winner/Mr. Prince conferring)

4 (Bench conference)

5 MR. PRINCE: I guess I don't know what you're --

6 MR. WINNER: We found it.

7 MR. PRINCE: So he can't talk about the injuries, he

8 can't talk about their treatment. I don't know where the

9 relevance of any of this is going, what the foundation was

10 [inaudible] --

11 MR. WINNER: I want to talk about the injury --

12 THE COURT: Hang on.

13 MR. WINNER: -- claims made, but I want to say that

14 they were all sent to Align Chiropractic.

15 MR. PRINCE: No, Judge. That's the irrelevant part.

16 The fact that they were sent to Align Chiropractic, the

17 medical records aren't here, there's no one going to testify

18 to it, about the kids being -- going to the -- being checked

19 out at the chiropractor. Those claims are resolved.

20 THE COURT: Tell me what you're trying to get in.

21 You want to ask what?

22 MR. WINNER: It appears the attorney directed

23 everybody in the car, including three children, to Align

24 Chiropractic.

25 MR. PRINCE: See that -- you can't get into

1 attorney-driven arguments anyway. That's why they're  
2 impermissible. You only can talk about how she was referred.  
3 And he's saying the attorney sent them all them all there and  
4 that's part of that order. He can't be arguing medical  
5 buildup or attorney-driven and that's exactly what that goes  
6 to.

7 MR. WINNER: Well --

8 MR. PRINCE: They're not talk about -- he has -- no  
9 medical records are even being offered into evidence for those  
10 kids. There's nothing here. No one's -- witness is going to  
11 talk about those. Those injury claims have been resolved.

12 MR. WINNER: Are you done? The -- I think it was  
13 Judge Becker -- it was Judge Becker who ruled that I shouldn't  
14 use the words "attorney buildup" and I shouldn't use the words  
15 "attorney-driven" without any facts to support it, but I could  
16 talk about facts and attorney referrals to physicians were  
17 fair game.

18 MR. PRINCE: Well, those -- you've already made the  
19 -- we've already put out there that she was referred and so  
20 was Guadalupe, was referred by the lawyer to the chiropractor  
21 and --

22 THE COURT: Okay. So then --

23 MR. PRINCE: -- you don't need to get into the kids  
24 at all. He's now trying to like, oh, five people were  
25 directed there to suggest like somehow this was all attorney-



1 driven or otherwise.

2 MR. WINNER: I'm not using the words but, yes,  
3 that's what I'm trying to show.

4 MR. PRINCE: Yeah.

5 THE COURT: I mean, I think for the same reasons  
6 it's admissible as to her, it's admissible as to the children,  
7 but --

8 MR. PRINCE: But if he wants --

9 THE COURT: -- so you're basically going to say you  
10 -- that your children were also referred to the chiropractor,

11 MR. WINNER: Were referred to Align Chiropractic.

12 THE COURT: -- and they went to the chiropractor.

13 MR. PRINCE: No, the -- the kids --

14 MR. WINNER: That's all.

15 MR. PRINCE: -- the kids weren't referred. She took  
16 them there with her. The kids weren't referred. He can't --

17 THE COURT: Well, you can ask her that then.

18 MR. WINNER: Okay.

19 THE COURT: Did she -- was -- did she decide to take  
20 them because she -- when --

21 MR. PRINCE: Yeah, but how far does that get to go  
22 in the questioning?

23 THE COURT: I'm thinking it's no further than that  
24 unless there's a problem.

25 MR. PRINCE: So what's -- what's the --

1           THE COURT: Well, I don't -- I don't know whether  
2 the attorney told her to take all the kids or she decided on  
3 her own.

4           MR. PRINCE: But they're not --

5           THE COURT: You can ask her.

6           MR. PRINCE: -- but that part -- that part's not  
7 relevant to her claim, Judge. We're only talking about her  
8 claim. Those kids don't have a claim in this case. So if  
9 they went to the chiropractor for any reason, I mean, but you  
10 can ask if they were hurt or not, did they go to the  
11 chiropractor or not but --

12          THE COURT: Well, the fact of them going to a  
13 chiropractor certainly comes in because it establishes the  
14 severity of the impact, the injury --

15          MR. PRINCE: Okay.

16          THE COURT: -- to children.

17          MR. PRINCE: Right. But not about that there's like  
18 -- just where referred -- there's five people referred by this  
19 lawyer to this chiropractor and that's exactly the  
20 impermissible part of the attorney-driven medical buildup.

21          MR. WINNER: Well, the fact of the referral was  
22 allowed.

23          THE COURT: Right.

24          MR. PRINCE: You've already --

25          MR. WINNER: You --

1 MR. PRINCE: -- but you've --  
2 MR. WINNER: -- [inaudible] isn't it?  
3 MR. PRINCE: -- but you've already made that. We've  
4 already established that.  
5 THE COURT: Right.  
6 MR. PRINCE: We've already done all that.  
7 MR. WINNER: Okay.  
8 MR. PRINCE: So the fact that the kids went doesn't  
9 add more to that discussion --  
10 THE COURT: It doesn't add anything.  
11 MR. PRINCE: -- it doesn't add more to that  
12 relevance.  
13 THE COURT: I mean -- oh, I'm sure --  
14 MR. WINNER: I'm not talking about the specific  
15 injuries to the kids. I am talking about the referral.  
16 MR. PRINCE: No, then we've already -- then that's  
17 asked and answered because we've already talked about multiple  
18 times that she was referred to Align Chiropractic, got the  
19 name from the attorney.  
20 THE COURT: Okay. Well, we're not -- I don't even  
21 know if there's anything pending, but I'm going to allow the  
22 limited question that I think --  
23 MR. WINNER: Okay.  
24 THE COURT: -- has already been ruled on.  
25 (End of bench conference)

1 BY MR. WINNER:  
2 Q Really quickly, you --  
3 THE COURT: The witness needs a break.  
4 MR. WINNER: I'm sorry?  
5 THE COURT: The witness needs a break.  
6 MR. WINNER: I have two minutes and I'm done.  
7 THE COURT: Can you do two minutes?  
8 THE WITNESS: That's fine.  
9 BY MR. WINNER:  
10 Q Really quickly, Doctor -- after speaking with Mr.  
11 Powell, the lawyer, did you -- you and Guadalupe went to Align  
12 Chiropractic?  
13 A Yes.  
14 Q Did you also take all three of the kids in the  
15 backseat to Align Chiropractic?  
16 A Yes.  
17 Q Okay. And without discussing their injuries, have  
18 claims, have claims --  
19 MR. PRINCE: Objection, relevance.  
20 Q -- been made about that?  
21 MR. PRINCE: Judge, objection, relevance to that.  
22 THE COURT: I'm not sure --  
23 MR. WINNER: I'll withdraw the question. That's  
24 fine.  
25 THE COURT: Yeah.

1 BY MR. WINNER:

2 Q Did Dr. Garber also tell you that the surgery he  
3 performed was very common, that you would only need one night  
4 in the hospital?

5 A Um --

6 Q That the success rate is very high, professional  
7 athletes get this surgery?

8 A He did say it was common for older people. But  
9 yeah, he did tell me that.

10 Q You heard him court the other day say that -- I  
11 think he said Tiger Woods, if I'm not mistaken, and Peyton  
12 Manning have had these surgeries and they go back out and  
13 compete and the success rate for the surgery is very high?

14 A I believe so, yes.

15 Q And did he tell you that also?

16 A Yes.

17 Q Okay. We can agree that your treatment -- I got off  
18 track here -- your treatment from the time of the 2015  
19 accident, October 30th, until you were discharged by the  
20 chiropractor with no symptoms and full range of motion, took  
21 about three months; correct?

22 A Correct.

23 Q Okay. And you saw Dr. Garber on July 12th, 2016,  
24 two days after your next accident; correct?

25 A Correct.

1 Q And he did a surgery on you September 1st of 2016?  
2 A Correct.  
3 Q And you told Dr. Garber that you had had those  
4 symptoms continuously back to 2015?  
5 A Correct.  
6 Q So before three months had gone by, after that 2016  
7 accident, you were in getting a surgery from Garber, correct?  
8 A Correct.  
9 MR. WINNER: Nothing further. Thank you.  
10 THE COURT: Can I give her a break?  
11 MR. PRINCE: Yeah, that's -- please.  
12 THE COURT: Thanks.  
13 Ladies and gentlemen, during the recess, you are  
14 admonished not to talk or converse among yourselves or with  
15 anyone else on any subject connected to this trial, or read,  
16 watch or listen to any report of or commentary on the trial,  
17 of any person connected with this trial, by any medium of  
18 information, including, without limitation to newspapers,  
19 television the Internet and radio or form or express any  
20 opinion on any subject connected with the trial until the case  
21 is finally submitted to you.  
22 Is five enough, or do you -- do -- okay.  
23 THE MARSHAL: All rise for the exiting of the jury.  
24 THE COURT: We'll take five.  
25 (Jury recessed at 3:09 P.M.)

1 THE COURT: Okay. We're outside the presence.  
2 Go ahead.  
3 THE WITNESS: Thank you.  
4 THE COURT: We don't have anything, do we?  
5 MR. HENRIOD: Nothing urgent.  
6 THE COURT: What?  
7 MR. HENRIOD: Nothing urgent.  
8 (Pause in the proceedings)  
9 (Court recessed at 3:09 P.M., until 3:18 P.M.)  
10 (Inside the presence of the jury)  
11 THE COURT: Do the parties stipulate to the presence  
12 of the jury?  
13 MR. PRINCE: We do, Judge.  
14 THE COURT: Mr. Prince?  
15 MR. PRINCE: Yes.  
16 REDIRECT EXAMINATION  
17 BY MR. PRINCE:  
18 Q Do you recall when you were -- gave your deposition,  
19 you gave your deposition within August of 2017; okay?  
20 A Okay.  
21 Q And there's a copy in front of you there, sitting  
22 there. And you were asked questions of how your neck pain  
23 was, okay?  
24 A Okay.  
25 Q Before the July 2016 --

1           A     Okay.

2           Q     -- crash; okay?

3           A     All right.

4           Q     And if you can look on page 115 -- well, I'll just  
5 put it on the monitor -- starting at line 10.

6           THE COURT:   Is this in evidence?

7           MR. PRINCE:   It's a deposition.

8           THE COURT:   Is it in evidence?

9           MR. PRINCE:   It's -- we just -- he just used it so I  
10 guess it's --

11          THE COURT:   Okay. Well, he didn't --

12          MR. PRINCE:   It's not technically in --

13          THE COURT:   Counsel approach.

14          MR. WINNER:   Yes. No, we --

15          THE COURT:   Take it down, please.

16          MR. WINNER:   It's down.

17          THE COURT:   Thank you.

18                       (Bench conference)

19          THE COURT:   I don't know if -- is it in evidence?  
20 If it's not in evidence you can't show it --

21          MR. PRINCE:   She published --

22          THE COURT:   -- publish it.

23          MR. PRINCE:   You published it already.

24          THE COURT:   I did?

25          MR. WINNER:   No.



1 MR. PRINCE: Yes --  
2 THE COURT: No, he asked questions about it.  
3 MR. WINNER: I said it's not published to the jury.  
4 THE COURT: Correct.  
5 MR. WINNER: But --  
6 THE COURT: He didn't show it.  
7 MR. PRINCE: No, he -- he used it with her.  
8 THE COURT: You can ask her about it, what she said,  
9 but you just can't show it if it's not evidence.  
10 MR. WINNER: Show her the page and ask her about it.  
11 I don't object. That's fine.  
12 MR. PRINCE: Well, of course I can do that. Why  
13 can't I show it to the jury? The question and answers can be  
14 read to the jury.  
15 THE COURT: Because it can't be published to the  
16 jury unless it's evidence. If it's not in evidence --  
17 depositions don't come in as evidence.  
18 MR. PRINCE: Yes, they --  
19 THE COURT: Parts of them -- well, I don't know. If  
20 you --  
21 MR. PRINCE: I believe they can.  
22 THE COURT: -- guys have stipulated --  
23 MR. WINNER: I said -- I did not stipulate to  
24 publish it the jury and said that plainly -- not to the jury.  
25 THE COURT: Yeah, so it's -- if it's not in evidence

1 you can't publish it. You can ask her about it.

2 MR. PRINCE: Okay. Whatever.

3 (End of bench conference)

4 BY MR. PRINCE:

5 Q Okay. Desire --

6 A Yes.

7 Q -- starting at line 10 -- do you have page 115 in  
8 front of you?

9 A Yes.

10 Q Okay. The question is, "How did your neck and  
11 shoulder feel the morning of July 10th, 2016, before you were  
12 struck from behind?"

13 What was your answer?

14 A I said I was still having pain.

15 Q Okay. This is Mr. Winner's law firm, "If you can  
16 think back that morning can you remember, or can you rate your  
17 neck and shoulder pain on a scale of 1 to 10?"

18 What was your answer?

19 A I said, "Probably between a 7 or 8."

20 Q Okay. Down to line 23, the question was, "So before  
21 you were struck from behind on July 2016, it sounds like you  
22 were in a great deal of pain."

23 What was your answer?

24 A "Yes."

25 Q Now, in response to one of Mr. Winner's questions,

1 you said that morning you weren't having any numbness or  
2 tingling in your hands that day. Had the numbness and  
3 tingling completely gone away or was it just that day it  
4 wasn't really bothering you?

5 A That day it wasn't really bothering me.

6 Q Okay. Did you still experience numbness -- pain and  
7 numbness into the arm and the tingling into the hands?

8 A Yes.

9 Q When did that eventually go away?

10 A After the surgery.

11 Q I mean -- but I mean completely; after the surgery?

12 A Yes.

13 Q Okay. Now, going back to the 2010 collision for a  
14 minute.

15 A Okay.

16 Q Do you remember you told your doctors that you were  
17 involved in a 2010 collision; you told the doctors that --

18 A Correct.

19 Q -- when they asked you?

20 A Correct.

21 Q And did you review -- do you remember much from your  
22 treatment or what your injuries were from 2010?

23 A No, I don't.

24 Q Were you trying to mislead them in any way?

25 A No, of course not.

1           Q     I mean, obviously the record you told about where  
2 you went for treatment and that's how we have the records  
3 because that was figured out. I mean, were you trying to tell  
4 the doctors that -- deceive them or lie to them in some way,  
5 Desire?

6           A     No.

7           Q     Okay. Did you remember much -- anything about your  
8 neck treatment at all from 2010 when this was happening?

9           A     No. I just remember I had pain in my back. I don't  
10 remember about my neck.

11          Q     Right. And the records do show you did have pain in  
12 your back but you also had pain in your neck?

13          A     Yes.

14          Q     And did the chiropractor ever refer you to a pain  
15 management -- sorry --

16               MR. WINNER: No, I'm sorry. Go ahead. I was just  
17 standing up.

18               MR. PRINCE: Oh, I just didn't know why you're  
19 standing. Oh.

20               MR. WINNER: I didn't mean to disrupt you. I'm  
21 sorry.

22               MR. PRINCE: Oh, I didn't know why you stood up. I  
23 don't know. Okay. I thought you were doing something.

24 BY MR. PRINCE:

25          Q     Now, just so that we're clear, did you ever go back

1 to that -- the chiropractor after July 13th 2010 for what  
2 happened in 2010?

3 A No.

4 Q Okay. Now, you went to Dr. Khavkin in May, 2016,  
5 and he recommended a two-level surgery to you; do you remember  
6 that?

7 A Yes.

8 Q What were your medical treatment options as you  
9 understood them, I mean, other than -- other than just living  
10 with it, was there anything other than surgery being offered  
11 to you?

12 A No.

13 Q Regardless, Dr. Rosler thought he referred you to  
14 Dr. Garber and Dr. Garber thought Dr. Rosler sent you --  
15 regardless of who -- how you got there, did you like Dr.  
16 Garber?

17 A I did.

18 Q Were you comfortable with him?

19 A Yes.

20 Q Did he do a good job for you?

21 A Yes, he did.

22 Q Would you go back to him again if you had problems?

23 A Yes, I would.

24 Q If you need -- when you need surgery in the future  
25 will you go back to him?

1           A     Yes.

2           Q     Okay. Now, with regard to the collision, you said  
3 that there was pedestrians. I want to move to -- on -- on the  
4 street. How many were standing on the sidewalk on the corner?

5           A     More than ten.

6           Q     Okay. How many actually walked into the road and  
7 actually went -- forced you to stop?

8           A     One.

9           Q     One. So when you're talking about ten, there's ten  
10 people standing on the corner. One person, while you're  
11 making your turn, he walked out in front of you?

12          A     Correct.

13          Q     Is that -- is that why you had to put on your  
14 brakes?

15          A     Yes.

16          Q     Okay. In that three months that Mr. Winner was  
17 talking about from October to February, he said you got -- you  
18 were pain free in February when you went to see Dr. Rosler; do  
19 you remember that? We -- I showed you that record earlier  
20 today?

21          A     Yes.

22          Q     And in that three months you had that injection. Do  
23 you remember the first --

24          A     Yes.

25          Q     -- injection by Dr. Rosler?

1           A     Yes.

2           Q     Was that a game changer for you, that injection --

3           A     Yes.

4           Q     -- at that point?

5           A     Yes, it was.

6           Q     When you underwent that injection were you following

7 the advice and recommendation of Dr. Rosler, your treating

8 pain physician?

9           A     Yes.

10           MR. PRINCE: Thank you, Desire. I don't have

11 anything further.

12           THE COURT: Mr. Winner, anything else?

13                        RE CROSS-EXAMINATION

14 BY MR. WINNER:

15           Q     The chiropractor told you when you were discharged

16 in February of 2016, did he tell you that you had responded

17 very well to treatment?

18           A     I believe so.

19           Q     And did he tell you, you were welcome to come back

20 at any time?

21           A     Yes.

22           Q     Did he tell you you could come back for monthly

23 maintenance visits if you wanted to?

24           A     Yes.

25           Q     Have you ever been back to his office?

1           A     No.

2           Q     Thank you.

3                 MR. PRINCE: One question.

4                         FURTHER REDIRECT EXAMINATION

5 BY MR. PRINCE:

6           Q     Desire, why didn't you go back if you were being  
7 recommended for surgery, why didn't you go back to the  
8 chiropractor if you were being recommended for surgery?

9           A     There would be no need to.

10          Q     Okay. Is that why you didn't go back?

11          A     Yes.

12          Q     Okay. Thank you.

13                 MR. WINNER: Nothing further. Thank you.

14                 THE COURT: Ladies and gentlemen, any questions?

15 The attorneys are done. Anybody have any questions of this  
16 witness?

17                 Okay. Is she excused then?

18                 MR. PRINCE: Yes.

19                 THE COURT: All right. You're excused.

20                 THE WITNESS: Do you want this?

21                 THE COURT: Um-hum.

22                 THE WITNESS: Thank you.

23                 THE COURT: Thank you.

24                 MR. PRINCE: We just need to approach just one  
25 second just for --



1 THE COURT: Sure.

2 MR. PRINCE: -- housekeeping stuff.

3 I think at this point you need to let them know, let

4 the jury know that we haven't rested our case and we're going

5 to call one witness out of order --

6 THE COURT: We'll do.

7 MR. PRINCE: -- for scheduling purposes.

8 THE COURT: We'll do.

9 MR. PRINCE: Okay.

10 MR. WINNER: Okay.

11 MR. PRINCE: I agree.

12 THE COURT: Okay.

13 (End of bench conference)

14 THE COURT: Ladies and gentlemen, the plaintiffs are

15 not done with their case, but for scheduling purposes the

16 defense is going to call one of their witnesses out of order;

17 okay?

18 Mr. Winner?

19 MR. WINNER: Thank you, Your Honor.

20 If the Court please, we call Dr. Jeffrey Wang to the

21 stand.

22 //

23 //

24 //

25 //

1           JEFFREY CHUN WANG, M.D., DEFENDANT'S WITNESS, SWORN

2           THE CLERK: Please state your full name and spell

3 your first and last name for the record.

4           THE WITNESS: Jeffrey, J-E-F-F-R-E-Y, middle name is

5 Chun, C-H-U-N, last name is pronounced Wang, it's spelled

6 W-A-N-G.

7           THE CLERK: Thank you. You may be seated.

8                         DIRECT EXAMINATION

9 BY MR. WINNER:

10          Q     Thank you, Dr. Wang. I want to run through this

11 quickly if I can, it's getting late in the day.

12                 I told the jury in opening statement that we

13 retained you as an expert. It's my understanding you're an

14 orthopedic spine surgeon?

15          A     Yes.

16          Q     Okay. Tell us where you were born, please. Where

17 did you grow up?

18          A     I was born in Mitchell, South Dakota.

19          Q     Where did you go to college?

20          A     I went to Stanford.

21          Q     Medical school?

22          A     University of Pittsburgh School of Medicine.

23          Q     After four years of medical school did you a

24 residency?

25          A     Yes.

1 Q In what?

2 A Orthopedic surgery.

3 Q And where was that performed?

4 A At UCLA.

5 Q Following your five-year residency in orthopedics,

6 did you do a fellowship?

7 A Yes.

8 Q And where did you do the fellowship?

9 A I did a spine surgery fellowship at Case Western

10 Reserve University Hospitals of Cleveland and the Veterans

11 Administration Spinal Cord Injury Unit.

12 Q Okay. Case Western Reserve, Stanford, Pittsburgh

13 are obviously highly regarded medical institutions in the

14 United States?

15 A I think so.

16 Q Okay. I've reviewed some of your CV. It's kind of

17 thick. I was going to hold it up, but I'm not going to. Have

18 you -- have you been published during your career?

19 A Yes.

20 Q Have you published in peer reviewed medical

21 journals?

22 A Yes.

23 Q How many would you -- have you published over your

24 career would you estimate?

25 A About 460.

1 Q Okay. How many in the past three years?

2 A Probably about a hundred.

3 Q Okay. It's my understanding that physicians take

4 continuing education and practicing physicians in the

5 community go to courses to get updated education from

6 scientifically current physicians. How many of those per year

7 do you teach?

8 A I probably teach 5 to 10 here in the United States

9 and probably 10 to 15 internationally.

10 Q Do you teach spine surgeons how to operate?

11 A Yes.

12 Q Do you teach orthopedic surgeons how to operate?

13 A Yes.

14 Q How many orthopedic surgeons have you trained and

15 graduated that are now practicing?

16 A Probably five to six hundred.

17 Q Okay. And you've also taught medical students, of

18 course?

19 A Yes.

20 Q How many of them over the last decade or so?

21 A Probably four or five hundred.

22 Q Okay. You were at one time at the University of

23 California Los Angeles on the faculty; what was your position

24 there?

25 A Well, I started as an assistant professor and when I

1 left in 2013 I was the Vice Chair of the Department.

2 Q Okay. And you have since moved to the University of  
3 Southern California?

4 A Yes.

5 Q Okay. During your time at UCLA you were affiliated  
6 at the Veterans Hospital treating veterans as well?

7 A Yes.

8 Q Okay. Doctor, is it true that you are editor of  
9 some prominent spine journals?

10 A Yes.

11 Q What does that mean?

12 A So there's an editorial board for scientific  
13 journals and I'm on the editorial board and review for  
14 probably seven or eight journals. I'm the editor in chief for  
15 the Global Spine Journal which is an international spine  
16 surgery journal.

17 Q Okay. Are you affiliated with the North American  
18 Spine Society?

19 A Yes.

20 Q Do you have -- hold any leadership positions in  
21 that?

22 A I'm currently the President of the North American  
23 Spine Society.

24 Q Okay. You've reviewed, I believe, the CV's of Drs.  
25 Khavkin and Garber who are also members of North American

1 Spine Society, I believe?

2 A Yeah, I can't recall.

3 Q Okay. Before I move on, have you published a  
4 textbook -- articles or textbook chapters or articles  
5 specifically with regard to spinal MRIs?

6 A I've published a number of articles on spine MRIs.  
7 We've probably published 50 peer review articles. I can say  
8 that my lab has published more on dynamic MRI of the spine  
9 than any other center in the world.

10 Q Okay. Besides all the academic and professorial  
11 roles in spine and neurosurgery do you still practice and  
12 operate on patients?

13 A Yes.

14 Q Tell us a little about your surgical practice.

15 A Well, I'm currently a professor of orthopedic  
16 surgery and neurosurgery at University of Southern California.  
17 I operate typically on Mondays and Wednesdays. I see patients  
18 in clinic on Tuesdays and Thursdays. And then on Fridays I'll  
19 either do administrative work or I'll put on more patients or  
20 I'll do more surgeries.

21 Q Okay. Do you treat professional athletes?

22 A Yes.

23 Q Do you treat patients who are involved in car  
24 accidents?

25 A Yes.

1 Q Do you treat patients who have spinal discomfort who  
2 have not been in accidents?

3 A Yes.

4 Q Okay. And you still have time to see patients?

5 A Yes.

6 Q On a typical week, how many patients do you see?

7 A Probably 50 or 60.

8 Q I believe I might have mentioned in opening that I  
9 saw an article you were rated one of the top 19 or 29 spine  
10 surgeons in the United States; did I say that correctly?

11 A Yeah, I'm not sure what criteria they use.

12 Q Okay. One more thing; did you invoice us more than  
13 \$10,000 to be here today?

14 A Yes.

15 Q Okay. Why so much?

16 A Well, if I'm not here today, I can't operate, I  
17 can't see patients, so I'm not bringing any income in to the  
18 University or for myself. And so that's to compensate for me  
19 being out of the office.

20 Q While you're out of the office you have a staff  
21 that's working, answering the phone?

22 A Yes.

23 Q You have nurses working, you have PA's working --

24 A Yes.

25 Q -- you have to pay your employees while you're there

1 or --

2 A Yes.

3 Q -- who are there, rather, and you're not there able  
4 to see patients?

5 A Yes.

6 Q Okay. And your office, of course, is still open  
7 today answering the phone?

8 A Yes.

9 Q Okay. Tell me about the American Board of  
10 Orthopedic Surgery.

11 A The American Board of Orthopedic Surgery is the  
12 certifying board for orthopedic surgeons regardless of  
13 speciality; spine, joints, things like that. If you're an  
14 orthopedic surgeon and you want to be board certified you have  
15 to pass a written exam and you have to pass an oral exam.

16 Q Okay. So anybody who claims to be a board certified  
17 orthopedic surgeon has to pass an exam?

18 A That's correct.

19 Q Do you have any role in the American Board of  
20 Orthopedic Surgeons?

21 A Yeah. So I'm one of the five surgeons that writes  
22 the test questions for the certifying exam. And so no one can  
23 be board certified unless they pass that test.

24 Q Okay. Let's discuss quickly -- I'm going to skip  
25 over a bit here -- let's discuss the reason you're here today,



1 your evaluation and opinions of Desire or Desire Evan's  
2 medical claims and how they might relate to an October 2015  
3 car accident.

4           You did an IME and a forensic evaluation. Tell us  
5 what a forensic evaluation consists of.

6           A     Well, how I define it is, basically, I look at all  
7 the records. In this case I was able to do an examination and  
8 talk to the patient, and all the records that are sent to me,  
9 photographs, just analyzing all the information.

10          Q     Did you have an opportunity to review not only her  
11 past medical records, but the post-accident medical records  
12 and the medical records following a subsequent accident?

13          A     Yes.

14          Q     Did you also have a chance to look at all of the  
15 available x-rays and MRI's?

16          A     Yes.

17          Q     Okay. Doctor, do you take this process seriously?

18          A     Yes.

19          Q     Do you believe the jury depends on objective  
20 scientific opinion?

21          A     I would assume so.

22          Q     Okay. Tell us how many times you've been in trial  
23 as an expert, just your best guesstimate.

24          A     I think I've been in trial in my career probably 12  
25 times.

1 Q Okay. Going back how many years?

2 A Twenty years or so.

3 Q Okay. And before Mr. Prince asks you, it was my law  
4 firm -- after the suit was filed my law firm reached out to  
5 you and asked if you'd be willing to look at this cases?

6 A Yes.

7 Q Okay. Are you able to take just any case which is  
8 sent to you to review as an expert or do a forensic review?

9 A Well, I'm always happy to review records and give my  
10 opinions. Whether or not people utilize those opinions, it's  
11 not up to me.

12 Q Okay. In fairness, my firm and I have asked you --  
13 where we were concerned about a case, I've asked you to look  
14 at films or records for us and asked you for opinions and you  
15 have told us that you don't have any opinions that would be  
16 useful or helpful?

17 A Yeah.

18 MR. PRINCE: Objection, leading, Judge.

19 MR. WINNER: I agree, it is leading. I'm trying to  
20 move it along.

21 THE COURT: I mean, it's by way of background. I  
22 don't know that it's --

23 MR. PRINCE: Well --

24 THE COURT: Rephrase.

25 //

1 BY MR. WINNER:

2 Q Doctor, has it happened frequently that I have asked  
3 you to look at a case and you have given me opinions that you  
4 don't think there's anything that -- you think the evidence  
5 supports the case and there's nothing you could help with?

6 A Yeah. I mean, my opinions are my opinions.

7 Q Okay. Give us a brief summary, please, of Desire  
8 Evans' medical care.

9 Q It appears she was in an accident on October 30th,  
10 2015. You've seen a lot of the map and how she was rear-  
11 ended. It sounds like she had no symptoms at the scene, but  
12 she developed symptoms the next morning.

13 I think she first sought evaluation about three days  
14 after the accident with a chiropractor. She treated with a  
15 chiropractor. She had an MRI and x-ray of her cervical spine.  
16 When I reviewed the MRI of the cervical spine I saw no injury.

17 I did not see a herniated disc. If she did have  
18 symptoms following the accident I cannot attribute any  
19 structural injury to the spine. But it's not uncommon to have  
20 a soft tissue strain or a whiplash as many people call it.

21 These typically resolve in 3 to 6 months. She  
22 treated with her chiropractor. I think her pain scores were  
23 improving towards the end of her chiropractic treatment. She  
24 had had a couple injections. And I think around February  
25 there were notes saying that her pain was minimal and that her

1 symptoms were relieved. And I think it's around that time  
2 where her soft tissue strains were likely resolving.

3 Q Assuming there was an injury from this accident,  
4 assuming there was an injury from this accident, would you  
5 limit the injury from this accident to that period you just  
6 told us?

7 A Yes.

8 Q Okay. You mentioned that the MRI was -- showed no  
9 evidence of trauma.

10 A Yes.

11 Q Okay. We also saw and the jury has already seen  
12 these -- their x-ray reports from November 3rd or 4th of 2015  
13 indicating no evidence of trauma also?

14 A Well, I think she had x-rays performed, and I think  
15 the report showed no injuries from that.

16 Q Okay. Let me ask you about the MRIs. Would it be  
17 helpful to -- if we can bring these up --

18 MR. WINNER: Did we ever bring up the images?

19 Court's indulgence a moment, please.

20 (Pause in the proceedings)

21 BY MR. WINNER:

22 Q Dr. Wang, can you tell us what we're seeing here?

23 A This is an MRI of her cervical spine from November  
24 24th, 2015.

25 Q How many -- Doctor, how many MRI's of cervical

1 spines have you reviewed over the course of your professional  
2 career and teaching career and publishing career?

3 A Probably hundreds of thousands.

4 Q Okay. Can you walk us through these MRIs? And if  
5 it would be helpful to come down and tell the jury what you're  
6 seeing, if the Court will permit it.

7 THE COURT: That's fine.

8 BY MR. WINNER:

9 Q What are we seeing on these MRI --

10 A So --

11 Q -- scans here?

12 THE COURT: Just keep the mic near him, Mr. Winner.

13 THE WITNESS: So this is how we typically view MRIs  
14 when we're evaluating our patients because basically if you,  
15 for example, look at this study here, as I scroll through it,  
16 there are many different images just in this one sequence.  
17 And this is what we call a cross section.

18 And so it's impossible to look at just one image and  
19 kind of understand exactly where it's at unless you can  
20 localize it, kind of like GPS so to speak and figure out where  
21 you're at.

22 And so this is looking at her spine from the side.  
23 I think you can sort of see the arrow. These are the square  
24 shaped bones in the neck here, here, here and here. And these  
25 are the discs which are between the bones.

1 BY MR. WINNER:

2 Q What are we seeing on the right side?

3 A This is a cross sectional cut. And so where this  
4 green line is on the left side here, that's exactly where the  
5 cross sectional cut is here.

6 Q Okay. And tell us what you see here, please.

7 A So when I look at this MRI, I do see that there  
8 might be a little darkening of some of the discs. Typically,  
9 the discs which is, for example, here, here and here, there is  
10 a bright signal in the disc. That means the disc is young and  
11 hydrated.

12 When it starts to become arthritic, it starts to get  
13 dark so it loses it's water content. And so what you can sort  
14 of see is that there's some arthritis here at this disc. It's  
15 a little darker than this disc here.

16 This one has some whiteness there but it -- a little  
17 darker maybe. Here there's whiteness. Here it's a little  
18 darker. This is probably the most normal looking disc here  
19 and that's the whiteness there. You can sort of see that.  
20 And that's actually the level that they ended up operating on.  
21 That's C6-7.

22 Q Now, the -- you said some arthritis or degeneration  
23 there -- it's a little darkening. Is that an unusual degree  
24 of degeneration to see in somebody in her mid-20's?

25 A No. I mean, obviously, the younger you are,

1 typically the less arthritis you have. But people get spinal  
2 problems even at young ages. And obviously, I see a skewed  
3 population of patients that have spine problems. I work at  
4 USC which is an undergraduate and graduate university, I see a  
5 lot of students that have these problems.

6 Q Okay. Walk us through what you see on the MRIs,  
7 please.

8 A And so when I look here, at this cross sectional  
9 image, one of the things that I always want to look at is the  
10 -- is the signal here in the disc. And you can see the  
11 whiteness here.

12 Well, when you look here at the cross section, I  
13 don't know if you can sort of see it here on the right side,  
14 but --

15 Q Yes.

16 A -- this is kind of like a jelly donut, so-to-speak,  
17 and when I -- if you can see the arrow here, the jelly which  
18 is the whiteness is actually in the center. And so one of the  
19 problems is, is that you can sort of see, again, look at the  
20 arrow. When this green arrow is in the middle, you can see  
21 the whiteness here in the disc.

22 But when the green line gets off to the side, the  
23 jelly is here in the center, you're missing the jelly so  
24 you're just getting the outer part of it. And you can sort of  
25 see here, these discs all get dark.

1 MR. WINNER: So if I may approach, I'll take the  
2 mic, Judge.

3 BY MR. WINNER:

4 Q What we're seeing here on this screen correlates to  
5 the lines you're seeing on this screen and vice versa?

6 A That's correct.

7 Q Okay.

8 A And what I'm trying to show here is that whiteness  
9 that I showed you in the discs has disappeared. It doesn't  
10 mean that these discs have automatically become arthritic from  
11 the middle of the scan. I mean, obviously, this was done at  
12 the same time. But you get a skewed view, because this green  
13 line tells us where this cut is, and you're cutting through  
14 just the outer part. You're missing the inside of the jelly.  
15 And so what I'm trying to say is if you take one cut, it can  
16 misrepresent what you're looking at in the spine, okay?

17 What I can show you here, this is cut 11 out of 15.  
18 It's my understanding this is the cut that the other doctors  
19 have talked about during this trial.

20 Q I'll --

21 A This is --

22 Q I'll represent to you, Dr. Garber pointed to cut 11  
23 of 15.

24 A Yeah. This is the T2 Sagittal. This is cut 11 out  
25 of 15. And what you can sort of see here is all the discs are



1 dark. But again, you're off to the side. This R means right,  
2 and the L here means left.

3 And on this cut, 11-15, this little bulge you see  
4 here and this little divot here, I guess that's what they're  
5 calling the disc bulge. The thing that doesn't match is this  
6 is on the right side. So the patient's symptoms were on the  
7 left side.

8 Q Would you mind coming down and pointing at what  
9 you're seeing --

10 THE WITNESS: Is it okay?

11 Q -- with the Court's permission?

12 THE WITNESS: I -- is it okay?

13 THE COURT: Oh, yeah. I'm sorry.

14 THE WITNESS: So what I'm trying to say is on this  
15 cross section --

16 THE COURT: Do you have the microphone there just to  
17 make sure she's picking it up.

18 MR. WINNER: I forgot.

19 THE COURT: Thank you.

20 THE WITNESS: So on this -- this cross section  
21 you're looking at this is the right and this is the left. So  
22 this cut is not in the center of the disc. This disc is more  
23 towards the right side. And that's what I was trying to show  
24 you here. These little bulges here, you're cutting -- you're  
25 basically seeing the corner.

1           Now, I'm about to scroll to the other corner. And  
2 you'll see little bulges that go out at almost every level.

3           Q     Now, you're using the word "bulges". Does that mean  
4 you see disc -- actual disc bulges there or is that --

5           A     No. I guess what I'm saying is you can make almost  
6 anything look like a bulge by where you do the image. For  
7 example, I've seen people -- and I'm not saying anyone's did  
8 this -- I've seen people, again, look at this and say there's  
9 arthritis throughout all the discs. I just showed you, when  
10 we were in the mid line and you're cutting through the jelly,  
11 that this was white and actually the whitest disc was the disc  
12 that was actually operated on.

13                But this bulge, 11 out of 15, which the other  
14 doctors, I think, have said this proves there's a disc bulge  
15 or herniation or whatever term, these are on the right side.  
16 That's not where her symptoms were. Her symptoms were on the  
17 left side.

18                The other thing that I think is important to  
19 understand. So this is an area that was not allegedly  
20 injured. This is up at C2-C3. Here's the center spinal  
21 canal. This is the foramen where the nerve exits on the right  
22 side. It's wide open. This is the foramen on the left side.  
23 It's wide open.

24           Q     Tell us what that means, the foramen [inaudible].

25           A     There's no compression on the nerves.

1 Q No compression on [inaudible].

2 A There's absolutely no compression on the nerves.  
3 And I'm going to run through every level, and every level is  
4 going to look exactly like this. There is no compression on  
5 any of the nerves on this MRI scan. This is C2-3. This is  
6 C3-4. I've just come down to here. Wide open, wide open, no  
7 compression.

8 Q So if there was nerve root impingement in the  
9 fingers or in the arm or in the shoulders, would you expect to  
10 see something here?

11 A So if there was a pinched nerve that was the origin  
12 of a patient's symptoms down the arm, this is exactly what we  
13 look for. We look for some compression, whether it's a disc  
14 or a osteophyte which is a bone spur, something pushing from  
15 the front, and this is the back, that's something narrowing  
16 this channel.

17 Okay. This is C3-4. This is C4-5. It's wide open.  
18 You can see the nerve root here which is this dark thing, but  
19 it's wide open, it's wide open.

20 Q Meaning, there's nothing pinching or irritating a  
21 nerve?

22 A Right, right. So I went down one more cut. You can  
23 see the nerve root here on the left side. It's no  
24 compression. This is C5-6 which, again, you can see there's  
25 -- this is wide open, this is wide open. There is no

1 compression.

2 Q Dr. Khavkin indicated there's a slight bulge at  
3 C5-6. Are you able to see that as you look at this?

4 A Yeah. So I'll show you that in a second. But this  
5 is the level where they did the surgery. And it's -- there's  
6 no compression of the nerves.

7 Where I do think there probably -- well, this is  
8 where -- I told you it gets a little odd when you get out to  
9 the side. So this is the cut which is 11 out of 15, which I  
10 think the other doctors have talked about. Again, this is on  
11 the right side. And what happens is, when you get to this  
12 corner, you can get a little optical illusion where there's a  
13 little bit of bulging because you're getting out to the side.  
14 You're getting way out to the side.

15 So if you -- see this little bulge here, see this  
16 little bulge here, maybe here? Now, I'm about to scroll this  
17 to the left side to give you an example. I'm going over to  
18 the left side. And here is where you can sort of see -- is  
19 there a little bulge here, a little bulge here, a little bulge  
20 here, a little bulge here, maybe a little bit of bulge here,  
21 because here's the back of the vertebral body.

22 This is a fact, you're just getting out to the  
23 corner and what you're seeing is this corner.

24 Q Let me make sure I understand. If you decide to  
25 take the sagittal view from way over to the side that you can

1 make every single level look like there's a bulge?

2 A Pretty much.

3 Q Okay. Are there bulges, actual bulges at any of

4 those levels, based on your review of all of the images?

5 A I don't think there's anything abnormal here.

6 Q Okay.

7 A This is the cut -- again 11 out of 15. And what I

8 can show -- this is back to the right side. I just showed you

9 the left side where I showed you all the bulges, you know,

10 this might be what they're talking about here. But you --

11 Q Do you think showing 11 out of 15 is -- could be

12 misleading?

13 A Well, I -- I read this and I put it in the entirety

14 of the context. I don't look at just this one image, I look

15 at -- I ran through all the images and look at the cross

16 section to see whether there's any compression of the nerve.

17 I don't see any compression of the nerve.

18 Q Okay. Tell us what else you see if you could show

19 us the rest of the level that was operated upon.

20 A So this is -- again, looking at it when I first

21 showed you, this is the level they operated on. And again, I

22 think this is more in the midline. It's more representative

23 of a cord compression and I don't see any bulges here. And

24 this looks wider to me than this one, this one and this one.

25 Q I'll represent to you that the radiologist mentioned

1 a 2 to 3 millimeter bulge. Are you able to see a 2 to 3  
2 millimeter bulge at either of those levels?

3 A I think they were talking about a 2 to 3 millimeter  
4 bulge and I think they said on the right side in the report.  
5 And the only thing I can think of is this is the right side.  
6 This is cut 11 out of 15, and they might be reading this as a  
7 bulge.

8 Q Okay. And just so we're clear, a potential bulge on  
9 the right side, looking at 11 of 15, that would be a bulge, if  
10 it were a bulge, you're saying it's not, that would be a bulge  
11 on the right side; correct?

12 A So the answer is, this is a bulge. It's on the  
13 right side. I still do not believe it's causing any  
14 compression of the nerve nor do I think there's any  
15 compression on the left side.

16 Q If it were -- if that bulge that they show was  
17 causing any nerve compression, and you just testified it's  
18 not, but if that bulge were causing any compression of the  
19 nerve it would be on the right, not the left side?

20 A That's correct.

21 Q Okay. And it's not compressing on either side?

22 A I do not see it compressing on either side.

23 Q Do you use the phrases bulge protrusion and  
24 herniation interchangeably? We heard some testimony about  
25 that last week.

1 Q I think people use it differently.

2 A Okay.

3 Q Do you see any evidence of any disc material coming  
4 outside the disc space?

5 A I don't see any disc material. I just showed you  
6 that. I certainly don't see any disc material behind the  
7 posterior longitudinal ligament, which is a ligament that runs  
8 right back here. And so this is a cross section, this is --  
9 this is at the level where they did the surgery, this is at C5  
10 -- I'm sorry -- C6-7, and this is the posterior longitudinal  
11 ligament that I'm drawing right here, and there's no disc  
12 material behind the ligament.

13 Q Okay.

14 A It's all white.

15 Q So there is no disc material behind the ligament.

16 A That's correct.

17 Q Okay. Do you consider yourself -- do others  
18 consider you as author of textbook chapters, lecture,  
19 etcetera, do you consider yourself an expert in reading spinal  
20 MRIs?

21 A I -- yeah, I guess.

22 Q Do you believe you're as qualified as looking at a  
23 spinal MRI as a radiologist would be, if not more so?

24 A I've probably looked at more dynamic spine MRIs than  
25 most radiologists.

1 Q Okay.

2 A But I obviously make decisions for my own patients  
3 and recommend surgery based reading MRIs.

4 Q In your experience, do some radiologists interpret  
5 MRIs differently?

6 A Sure.

7 Q Okay. As you've looked at all of the images of this  
8 November 2015 MRI, would you consider it to be a normal MRI  
9 for someone Ms. Evans' age?

10 A I wouldn't consider this MRI to be abnormal. I did  
11 point out that there is some darkening of some of the discs  
12 which is maybe some early arthritis. So I guess compared to a  
13 completely normal 8 eight-year [sic] old that has no  
14 arthritis, I could say there's a little bit of arthritis here,  
15 but it's not anything abnormal for her age.

16 Q Okay. An age appropriate MRI?

17 A Yes.

18 Q You've seen a report of a 2010 MRI, but you haven't  
19 seen the films of that MRI, just the radiologist's report;  
20 correct?

21 A Yes.

22 Q Do you see any difference between 2010 and 2015?

23 A Well, the report from 2010 says it's normal.

24 Q Okay.

25 A And the report from the 2015 MRI talks about these



1 disc bulges.

2 Q Okay. Of a couple three millimeters?

3 A Yeah.

4 Q Okay. Do you disagree that there is a couple three  
5 millimeter disc bulge?

6 A No, I mean, I'm not arguing with the radiologist. I  
7 guess the only thing that I can think of is when they -- when  
8 they're reading the MRI, I think they're talking about the  
9 right side. And I showed you this cut, which 11 out of 15,  
10 where there is this little bit of, arguably, a bulge, but I  
11 don't think that's anything significant.

12 Q Okay.

13 A It's certainly not an injury.

14 Q I guess -- I guess what I'm asking you is, would any  
15 of the changes between 2010 and 2015 be simply due to -- could  
16 that be simply due to two different radiologists reading the  
17 report?

18 MR. PRINCE: Objection, foundation, speculation.

19 BY MR. WINNER:

20 Q In your experience?

21 THE COURT: Overruled.

22 THE WITNESS: Yes, it could be.

23 BY MR. WINNER:

24 Q Okay. In other words, another radiologist could  
25 look at this report and say it's normal, just like the 2010?

1           A     Sure.

2           Q     Okay. You saw the -- I don't want to spend much  
3 time on this, but you saw the records provided to -- or the  
4 records of the chiropractor and Dr. Rosler. Ms. Evans  
5 indicated that she had not experienced neck pain and didn't  
6 mention the previous MRI to -- to the chiropractor and the  
7 physicians who she began seeing after that accident.

8                     Is that potentially significant and relevant to you?

9           A     It just seems like it's inconsistent with the  
10 previous records.

11          Q     Okay. Does the patient being an accurate historian  
12 play an importance in you arriving at opinions, generally

13          A     Yes.

14          Q     Okay. Does it in this particular case, or no?

15          A     I guess, somewhat. I mean, I formulate my opinions  
16 looking at everything. I need to see evidence, I need to look  
17 at x-rays, MRIs, and see evidence that correlate with  
18 symptoms. So there just appear to be some inconsistencies.

19          Q     You did as part of your medical records review, you  
20 reviewed the transcript of Dr. McCauley, I believe, the  
21 chiropractor?

22          A     Yes.

23          Q     Dr. McCauley indicated that she had responded well  
24 to -- or the treatment had been very effective and she'd  
25 responded very well to chiropractic treatment?

1           A     I think the records show that she responded pretty  
2 well.

3           Q     Okay. When she went to see Dr. Khavkin and Dr.  
4 Garber and told her the chiropractor had not worked, do you  
5 believe that is inconsistent with the medical records that  
6 you've reviewed?

7           A     It appears to be a little inconsistent.

8           Q     Okay. You're aware that she had a subsequent  
9 accident July 10th of 2016?

10          A     Yes.

11          Q     Would you agree that Dr. Rosler, I'll represent to  
12 you that he testified to this the other day and you're aware  
13 from his records that after the July 2016 accident he ordered  
14 a repeat MRI taken; is that correct?

15          A     I think he had asked for one --

16          Q     Yeah.

17          A     -- but I don't think one was performed.

18          Q     Yes.

19          A     Doctor, do you think there's an objective evidence  
20 on the MRI that Ms. Desire Evans suffered a traumatic injury  
21 to any of her cervical discs?

22          A     I don't see any evidence of any trauma to the spinal  
23 structures.

24          Q     Okay. To the contrary, is there evidence that she  
25 had, at most, slight degeneration, age appropriate for someone

1 in her 20's?

2 A Yes.

3 Q Do you see any evidence of a herniated disc?

4 A No.

5 Q If Ms. Evans was truly asymptomatic in her neck and  
6 back during the three years before this car accident and  
7 assuming she was injured in this accident, you indicated it  
8 would be reasonable to diagnose her with a what, a little  
9 whiplash?

10 A I think a soft tissue strain. I think that's  
11 reasonable.

12 Q That did not cause any structural changes to her  
13 cervical spine?

14 A I don't believe there's any structural damage.

15 Q What do you mean by strain/sprain injury to the  
16 neck?

17 A Well, typically, you can strain a muscle, just like  
18 when you're lifting furniture or something like that.

19 Q Okay. Some of us have had the experience of  
20 straining a muscle of lifting something heavy or raking leaves  
21 out in the yard and waking up the next day or the day after  
22 and feeling sore; is that what you mean by a muscle strain?

23 A Yeah, I think that's pretty consistent with what's  
24 going on here. It seems like the symptoms didn't happen at  
25 the time of the accident. But when she woke up the next

1 morning she said she started feeling pain.

2 Q Okay. Doctor, are these opinions based upon a  
3 reasonable degree of medical and scientific probability?

4 A Yes.

5 Q More than that, are they to a reasonable degree of  
6 medical certainty?

7 A Yes.

8 Q You have just told us there is no evidence --  
9 objective evidence of a traumatic disc injury on the MRI?

10 A That's correct.

11 Q In your vast experience, you've treated trauma  
12 patients, car accident patients, severely injured patients,  
13 sports injury patients, you've treated trauma patients over  
14 the last how many years?

15 A Twenty-two.

16 Q Okay. In your experience, do patients -- how do  
17 patients react to an acute traumatic injury of a cervical  
18 disc?

19 A Well, if you injure your disc from a trauma you're  
20 going to have symptoms right away. Typically, these patients  
21 have pain right away. They experience it right away. And you  
22 can see evidence of soft tissue injuries. You know, the disc  
23 is very well protected.

24 We're looking at this MRI scan, and I'm showing you  
25 the bones and the -- the discs. But what we didn't point out,

1 there's a lot of ligaments, there's muscles, there's a lot of  
2 structures all around the disc, around the bones.

3           When we see those traumatic injuries, you know, you  
4 see typically strains, you see tears of those types of  
5 ligaments. When you see something like this and there's no  
6 evidence of any soft tissue swelling or anything like that, it  
7 really can't be traumatic.

8           Q     So typically, somebody who has a traumatic disc  
9 injury, will experience symptoms immediately?

10          A     Yes.

11          Q     Exquisitely painful symptoms immediately?

12          A     Yes.

13          Q     You've seen tennis players, football players,  
14 etcetera, have to be carted off the field after such an  
15 injury?

16          A     Yes.

17          Q     Okay. Was this the case with Ms. Evans?

18          A     No, she was not carted off the field.

19          Q     Okay. And in fact, the first reported complaint of  
20 any symptoms was three days after the accident?

21          A     Well, I think she says she -- says she started  
22 feeling the symptoms the following day.

23          Q     She did.

24          A     But the first documentation, I think is with the  
25 chiropractor which is three days later.

1 Q Okay. Did the x-ray of the spine or the MRI of the  
2 spine show any objective evidence of traumatic injury?

3 A I didn't see any.

4 Q If it had, what would you expect it to show?

5 A Well, I mean --

6 MR. PRINCE: Objection, calls for speculation,  
7 foundation, what's not there.

8 THE COURT: Overruled.

9 THE WITNESS: So with x-rays you're just looking at  
10 the bone, so you would see fractures, you'd see depressions or  
11 changes in the alignment. If you tear a ligament, typically  
12 you won't see a fracture of the bone but you can see some  
13 malalignments in rotation or subluxations. I didn't see any  
14 of that.

15 BY MR. WINNER:

16 Q There was none of that here on the x-rays; correct?

17 A I'm sorry?

18 Q None of that here on the x-rays; correct?

19 A I'm sorry, what -- not that --

20 Q You saw none of that here on the x-rays; correct?

21 A That's correct.

22 Q Okay. What would you expect to see on an MRI if  
23 there was a traumatic disc injury?

24 A Well, I'd expect to see a tear in the annulus. I  
25 mean, you can't injure the disc unless you see some type of

1 traumatic tear. There is a posterior longitudinal ligament  
2 that I talked about here before where I said I didn't see any  
3 disc material below it, but it runs along the entirety of the  
4 spine in the back and there's an anterior and longitudinal  
5 ligament, and even if you just strain that, you will often see  
6 soft tissue swelling and there's no signs of soft tissue  
7 swelling. I mean, if you strain a ligament, there's usually  
8 some swelling, like when you bang your knee or something or  
9 you sprain your ankle there's usually some swelling.

10           And then there's interspinus ligaments here in the  
11 back that go between the spinus processes in the back. A  
12 bunch of stabilizing ligaments. And typically, when I see  
13 disc injuries, I see ruptures of those ligaments, because  
14 those are actually quite strong, and they surround the spine.

15           Q     Okay. With patients who have sudden traumatic disc  
16 injury -- well, and we've heard that minor disc bulges are  
17 present in most of us and are usually benign and they don't  
18 cause symptoms; is that true?

19           A     Yes.

20           Q     Okay. If someone has a traumatic disc injury do they  
21 typically require prescription pain immediately?

22           A     Well, typically, they have pain right away.

23           Q     Typically unable to function at a normal level?

24           A     Yeah. I mean, if you injure your disc, typically  
25 you have the symptoms right away. They don't just come on



1 later.

2 Q And that's not consistent with Ms. Evans, of course,  
3 who didn't go to a medical doctor for some time after the  
4 accident; correct?

5 A That's correct.

6 Q There is claim that a nerve was being compressed  
7 causing symptoms in the shoulder and intermittent symptoms  
8 into the left hand. Are you able to identify anywhere on any  
9 of the images on that MRI that would explain that?

10 A I see no compression of any of the nerves on the  
11 left side, I don't see any compression of the nerve.

12 Q Would the only explanation on the MRI be compression  
13 of the nerves?

14 A Well, typically, that's what you would see on the  
15 MRI.

16 Q Okay. At what level, dermatomal level would you  
17 expect to see symptoms that might go all the way down to the  
18 left hand, cause loss of grip strength, that sort of thing?

19 A We'll typically C5 goes to the shoulder, C6 will go  
20 to the thumb and the first finger. So C6 can cause some  
21 issues there, that would be the C5-6 level. C7 goes to the  
22 middle finger and then C8 typically goes to the ring finger  
23 and T1.

24 Q Loss of grip strength would typically be a C8-T1?

25 A Yeah.

1 Q Or carpal tunnel?

2 A Carpal tunnel can cause that also, yeah.

3 Q Okay. Was any EMG testing done here?

4 A I didn't see any nerve testing.

5 Q What would EMG testing be useful for?

6 A Well, I mean, it's not an absolute, but it can tell

7 you if there's nerve irritation, or damage, or nerve

8 dysfunction. It's an electrical conductivity of the nerve, so

9 it gives you an idea what nerve, if any, is causing the

10 problem. It also sometimes helps us when we're looking at

11 neck problems and they have overlapping carpal tunnel, the EMG

12 can help like distinguish that.

13 Q The EMG is a pretty inexpensive test? It's not

14 invasive?

15 A Well, they have to stick little needles so I guess

16 it's somewhat invasive.

17 Q All right. They're little needles. It's an

18 outpatient thing?

19 A Yes.

20 Q Okay. Less invasive than a cervical injection?

21 A Yes.

22 Q Okay. Less expensive than a cervical injection?

23 A I think so.

24 Q Okay. And it can rule out other potential sources

25 of left arm symptoms?

1           A     Yes.

2           Q     And was one ever even requested here?

3           A     I don't know if it was requested. I know -- I

4     didn't see one was performed.

5           Q     Okay. Did the injection by Dr. Rosler diagnose a

6     traumatic disc injury?

7           A     No.

8           Q     What did it show, if anything, to you

9     diagnostically?

10          A     So, I think he did selective nerve root blocks on

11     the left side at C7.

12          Q     And transforaminal epidurals?

13          A     Yeah.

14          Q     Yeah.

15          A     Those would -- injecting the nerves. For me, I'm

16     not sure it's that diagnostic because basically you're

17     sticking needles in the neck so you have to numb up the skin

18     and the muscles because you're putting the needle down into

19     the spine. So you traverse the skin, you traverse the

20     subcutaneous tissues and you go through the muscles and it can

21     hurt. So you have to take numbing medicine, you have to numb

22     up all that area, including the skin, the fat, and the muscles

23     which have a lot of nerve endings in them.

24                 So you numb up a pretty good area which can -- gives

25     you some relief. You inject numbing medicine and typically

1 some steroid and you can get sort of the steroid effect. You  
2 can get steroid euphoria or sometimes injecting steroids just  
3 make you feel better.

4 And then he injected the C7 nerve root which, again,  
5 I think he was probably trying to correlate it with her  
6 symptoms, I just -- I don't see any compression of that nerve  
7 root on the MRI.

8 Q Dr. Rosler in his last -- maybe it wasn't his last  
9 note -- but in earlier 2016, he indicated that she was not  
10 having any symptoms, full range of motion, symptom-free, but  
11 still had a positive Hawkins sign in the left shoulder; that's  
12 an orthopedic sign, correct?

13 A Yeah, it's for shoulder pathology.

14 Q Okay. Did you see in Ms. -- in Ms. Evans's  
15 deposition she denied striking her shoulder on anything inside  
16 the car?

17 A Yeah, I can't recall.

18 Q Okay. Do you have any explanation for the shoulder  
19 MRI that showed the bruise and the bursitis and the  
20 impingement syndrome?

21 A Yeah, I remember she had an MRI done at the same  
22 time as her neck MRI and it did show, I think, they've talked  
23 about bone contusions and bursitis, some inflammation.

24 Q Okay. Would you relate that to the car accident at  
25 all?

1           A     I don't know. I'm not a shoulder guy, I'm a spine  
2     guy. I guess it's always possible.

3           Q     Okay. Finally, patients -- even patients who do  
4     have a disc injury often get better after a few months and the  
5     disc can resorb or retract and they never require surgery;  
6     correct?

7           A     The vast majority of the people with disc  
8     herniations don't need surgery. I quote my patients only 1 or  
9     2 percent of all people that have herniated discs actually end  
10    up needing surgery. The vast majority get better without the  
11    need for surgery.

12          Q     Okay. Well, one, you said you saw no herniation.  
13    And I'm going to ask you to run through those screens really  
14    quickly again. I think they're on the correct level, and  
15    maybe I'm -- maybe I'm wrong about the level at which surgery  
16    was performed or symptoms were suspected.

17          A     That's the level at C6-7.

18          Q     Okay. Are you able to show the jury where one would  
19    see nerve root compression or any nerve root problem that  
20    would explain?

21          A     So -- yeah, so this is -- on the right side here  
22    this is the cross sectional cut. This dark thing is the  
23    spinal cord. This white space is just extra space around it.  
24    You can see the nerve root here on the left side, which is  
25    where the symptoms were. Here's the nerve root on the right

1 side, it's that dark dot. And this is the channel on the left  
2 side where that nerve root would exit and this is the channel  
3 on the right side.

4 And you can see this is what we would call the disc  
5 here. And there's nothing coming out causing any narrowing.  
6 You can see still -- all see that white space here.

7 Q So if there were nerve root impingement or nerve  
8 root irritation, as another doctor testified, you should be  
9 able to see it here?

10 A It should be right here.

11 Q Okay. And it's not there?

12 A I don't see anything there.

13 Q I told the jury on opening statement that if you  
14 were teaching spine fellows or if you were asking test  
15 questions of persons trying to become board certified in  
16 orthopedic surgery, and you asked them questions about this  
17 MRI, what might you ask them about this MRI?

18 A Well, I would devise a clinical scenario that would  
19 be appropriate with this and test their knowledge and see how  
20 they would manage the patient. But based on this MRI, if they  
21 recommended surgery, I would probably have to fail them.

22 Q You would fail a surgeon who recommended surgery  
23 based on that MRI?

24 A Well, I don't see any indication for surgery.

25 Q Dr. Garber -- you are not accusing Dr. Garber of

1 malpractice necessarily, I don't think --

2 A No.

3 Q -- are you?

4 A No.

5 Q Dr. Garber was given information by the patient that

6 she had had ongoing symptoms ever since an October 30th, 2015,

7 accident that at the time he saw her, July 12th of 2016?

8 A I believe he saw her after the third accident.

9 Q Yeah. And did the medical records support the

10 history that was given to Dr. Garber or are those

11 inconsistent?

12 A I'm not sure I understand your question.

13 Q Ms. Evans' history that she gave Dr. Garber that she

14 had had these -- all of those symptoms ongoing ever since

15 October of 2015, would that be inconsistent with the medical

16 records you reviewed?

17 A Well, yeah, I mean, she may attribute to that's when

18 they started, but there were clearly times where her symptoms

19 got better.

20 Q Okay. Whether there's a herniation or not, patients

21 get better after a few months because, as you said, the disc

22 can retract or resorb and they typically do not need immediate

23 surgery?

24 A Are you talking about patients with disc

25 herniations?

1 Q Yes.

2 A Yeah. So the vast majority don't end up needing  
3 surgery.

4 Q Okay. Dr. Garber testified the other day that he  
5 saw or removed two disc fragments at the level that was  
6 operated upon. We discussed that. Do you see any evidence of  
7 disc fragments here on this November 2015 MRI?

8 A No.

9 Q Okay. A repeat MRI as you mentioned was requested  
10 after the second -- or third accident rather -- in July of  
11 2016, but no MRI was taken after that date?

12 A Yeah, I didn't see another MRI.

13 Q Okay. How might disc fragments have been present in  
14 that -- in Dr. Garber's testimony at the time he --

15 MR. PRINCE: Can we approach, Your Honor, for a  
16 second?

17 THE COURT: Sure.

18 (Bench conference)

19 MR. PRINCE: Do you have a lot more?

20 MR. WINNER: No.

21 THE COURT: Like what's not a lot?

22 MR. WINNER: Eight minutes.

23 THE COURT: Okay.

24 MR. PRINCE: Number one, he's never given an opinion  
25 that the July 2016 collision caused a disc herniation or



1 caused those disc fragments.

2 THE COURT: Who?

3 MR. PRINCE: This doctor, Dr. Wang.

4 THE COURT: Well, he says there is no herniation so  
5 he wouldn't have had to say anything caused it.

6 MR. PRINCE: No, no, no. He -- no, he's talking  
7 about the disc fragments that Dr. Garber removed. Dr. Garber  
8 removed those in September 2016. Those have always been in  
9 his report, his operative note.

10 THE COURT: In Dr. Garber's report?

11 MR. PRINCE: Yes. Dr. Wang has never commented on  
12 those disc fragments in any of his reports --

13 THE COURT: Because I don't think he thinks they  
14 were there or --

15 MR. PRINCE: No, no, no, he's just saying he didn't  
16 see them on the MRI.

17 MR. HENRIOD: He's saying they weren't there --

18 MR. PRINCE: No, hang on.

19 MR. HENRIOD: -- on this MRI.

20 THE COURT: Correct.

21 MR. PRINCE: No, so no --

22 MR. HENRIOD: [Inaudible].

23 MR. PRINCE: -- no he can't -- he's never given the  
24 opinion that the July 2016 caused those disc fragments or any  
25 herniation that Dr. Garber removed. He's never given that

1 opinion ever.

2 THE COURT: Well, I don't think he has that opinion.

3 He's not -- unable to make that opinion.

4 MR. PRINCE: Well, no he -- he's not even allowed

5 to. Your order specifically says --

6 THE COURT: He can't because he didn't see anything.

7 He doesn't have anything to make it.

8 MR. HENRIOD: He's [inaudible].

9 MR. PRINCE: Well, hang on.

10 MR. HENRIOD: -- as to that [inaudible] --

11 MR. PRINCE: I'm not finished --

12 MR. HENRIOD: -- [inaudible].

13 MR. PRINCE: I wasn't finished.

14 MR. WINNER: Okay.

15 MR. PRINCE: Your order says that they cannot cause

16 -- that the 2016 accident, they only can -- they only can --

17 that it's a minor aggravation only. They can't say that that

18 caused a new disc injury not seen before.

19 MR. WINNER: Keep going. Excuse me.

20 MR. PRINCE: So your order is right here, number 14.

21 THE COURT: Which one are we at?

22 MR. PRINCE: They can't say that the disc fragments

23 seen by Dr. Garber interoperatively were caused by the 2016

24 motor vehicle collision. All they can say is it's only a

25 temporary aggravation of symptoms that -- not -- he can't say

1 the disc herniation that he saw, that that was caused by the  
2 July 2016 accident.

3 THE COURT: He didn't see a disc herniation so --

4 MR. PRINCE: No, I know.

5 THE COURT: -- I mean --

6 MR. PRINCE: He's talking about -- but Doctor --  
7 he's being asked right now about Dr. Garber's operative --

8 THE COURT: What's your question?

9 MR. PRINCE: -- findings.

10 MR. WINNER: What's that?

11 THE COURT: What's your question?

12 MR. PRINCE: He's -- he's even asked about Dr.  
13 Garber's operative findings there where two disc fragments  
14 removed. He said he didn't see those on the MRI. Mr. Winner  
15 went back and asked, how might do you think those got there,  
16 now trying to backdoor in that the July 2016 accident somehow  
17 caused or contributed to those disc fragments being removed by  
18 Dr. Garber. That's what he's trying to do.

19 THE COURT: That's not how I'm hearing about it --

20 MR. WINNER: Well, it --

21 THE COURT: -- but go ahead.

22 MR. WINNER: I'm sorry, go ahead, Joel.

23 MR. HENRIOD: His point, right, is why those  
24 operative findings don't contradict the opinion that he's  
25 giving here today. And the explanation for that is that we

1 don't know what may or may not have happened --

2 THE COURT: Right.

3 MR. HENRIOD: -- but that is the plausible

4 explanation [inaudible].

5 MR. PRINCE: But he -- but he didn't give that

6 opinion.

7 THE COURT: I think he's trying to not accuse

8 anybody of medical malpractice.

9 MR. PRINCE: He's never given that opinion though,

10 in his report, ever.

11 THE COURT: But I don't think he's giving an

12 opinion.

13 MR. PRINCE: Yeah, he's giving -- he's being asked

14 that -- that question right now. How might -- how might do

15 you expect they got there? How might do you expect those --

16 THE COURT: I don't think that's -- I don't think

17 that's what he's saying.

18 MR. PRINCE: That's what Mr. Winner's about to ask

19 -- is asking. That's why I approached.

20 THE COURT: Rephrase --

21 MR. WINNER: You're right. I am.

22 THE COURT: Rephrase it.

23 MR. WINNER: You're right, I am, and part of the

24 reason is Dr. Garber said this just proves there was a

25 herniation in my accident because I removed disc material.

1           MR. PRINCE: Correct. But this doctor never -- but  
2 Dr. Garber had that in his operative note and from September  
3 of 2016, from the beginning.

4           THE COURT: Right.

5           MR. PRINCE: This doctor -- this doctor has never  
6 commented on those disc fragments ever in any report, ever.

7           THE COURT: Because he never saw it any of them.

8           MR. PRINCE: No, no, no.

9           THE COURT: Okay. Well, if he says normal --

10          MR. PRINCE: Judge, he read the operative note,  
11 Judge.

12          THE COURT: But if he's saying --

13          MR. WINNER: He did read the operative note but he  
14 didn't read it as proving anything.

15          MR. PRINCE: So he didn't -- he didn't comment on  
16 those -- he didn't comment on at all the operative note of the  
17 disc and the findings by Dr. Garber.

18          THE COURT: Well, what --

19          MR. WINNER: He has not.

20          THE COURT: -- could he possibly have said about it,  
21 if he didn't see anything else? All he can say is there's a  
22 normal thing. I don't know what happened when he went in and  
23 did surgery and found something but I can tell you here it  
24 didn't -- he didn't see it. So --

25          MR. PRINCE: He did not comment at all. Your order

1 makes clear they only can talk about the 2016 accident as  
2 being -- causing a temporary aggravation like a soft tissue  
3 aggravation. They can't say that it brought on the need for  
4 surgery, it brought on the symptoms, anything.

5 THE COURT: I don't know that he did. I still  
6 agree.

7 MR. WINNER: He's not going to say it brought on the  
8 need for surgery.

9 MR. PRINCE: Well, he's going to -- he's going to  
10 comment. They're trying to backdoor in that there's an  
11 explanation --

12 MR. HENRIOD: Well, I mean, I think we're confusing  
13 the standards when it comes to --

14 MR. PRINCE: -- my possible explanation --

15 MR. HENRIOD: -- oppositions.

16 MR. PRINCE: -- excuse me, I'm not -- I'm not done.

17 MR. HENRIOD: Well, let me know when I get to talk.

18 MR. PRINCE: They're trying to somehow use that 2016  
19 as the reason for the fragments found by Dr. Garber during the  
20 course of the surgery. And they're not allowed to do that.  
21 He's not even said that before, ever.

22 THE COURT: I don't think he --

23 MR. PRINCE: Yes, he --

24 THE COURT: -- he isn't and --

25 MR. PRINCE: -- he's getting at that right now.

1 THE COURT: -- he can't. What he's saying is --  
2 MR. PRINCE: Judge, they're getting ready to do it  
3 right now.  
4 THE COURT: -- what he has in front of him,  
5 everything was normal and the surgery shouldn't have been  
6 done. Now, if something happened after that --  
7 MR. PRINCE: If -- he can say that.  
8 THE COURT: Now, if something happened after that,  
9 he can't speak to that. That's all he's saying.  
10 MR. PRINCE: No.  
11 MR. WINNER: Well, he --  
12 MR. PRINCE: I don't agree with [inaudible].  
13 THE COURT: Okay.  
14 MR. PRINCE: That's not what he said.  
15 THE COURT: I could be wrong.  
16 MR. WINNER: He's not giving -- I don't expect him  
17 to give any opinion about whether the 2016 accident caused the  
18 need for surgery. I'm certainly not asking that question.  
19 What he is going to say is this MRI was absolutely completely  
20 normal. You would see disc fragments in it. I saw none.  
21 Which he's already said.  
22 THE COURT: Right.  
23 MR. WINNER: So Dr. Garber just testified that those  
24 disc fragments that he pulled out in 2016, what would explain  
25 that. I expect he's going to say either they were pushed

1 during the surgery or there was a change, but they were  
2 absolutely not there --

3 MR. PRINCE: Well, no, no, --

4 MR. WINNER: -- before that surgery.

5 MR. PRINCE: -- those last -- those first two things  
6 are not in his report.

7 THE COURT: Are not what?

8 MR. PRINCE: They're not in his report. Any of his  
9 eleven reports, or twelve -- excuse me -- twelve reports, that  
10 the disc fragments were either caused during the surgery or  
11 caused by the July 2016 collision. He's never --

12 THE COURT: Is he going to say that?

13 MR. PRINCE: Yeah, he's getting ready to say that.  
14 He just told you that.

15 MR. WINNER: Well, but this is new during -- Garber  
16 is saying --

17 MR. PRINCE: No --

18 MR. WINNER: -- the disc fragments, I pulled out two  
19 disc fragments and that just proves that my accident caused a  
20 herniation.

21 MR. PRINCE: But you --

22 MR. WINNER: That's not in any of his reports.

23 THE COURT: Is that in Garber --

24 MR. WINNER: No.

25 THE COURT: Is that in Garber's report?



1           MR. HENRIOD: And you -- and now you can construe --  
2 and we've been construing reports very liberally for the last  
3 [inaudible].

4           MR. PRINCE: This is in his operative note, Judge.

5           MR. WINNER: It's in his operative note but he  
6 doesn't say it proved anything.

7           MR. PRINCE: He doesn't have to, he's a treating  
8 physician.

9           MR. WINNER: But why did he write an expert report?

10          MR. PRINCE: For the cause letter. Oh my gosh, he's  
11 saying it is a traumatically cause herniation. He has said  
12 that, exactly that.

13          THE COURT: Well, I -- I'm --

14          MR. WINNER: I heard a completely new opinion --

15          THE COURT: -- you guys are going to have to show me  
16 some stuff --

17          MR. WINNER: -- from Dr. Garber.

18          THE COURT: -- because I did not memorize your  
19 reports so.

20          MR. PRINCE: Okay.

21          MR. WINNER: Okay.

22                       (End of bench conference)

23          THE COURT: Ladies and gentlemen, we're going to  
24 take at least five minutes, I'm sure.

25          During the recess, you're admonished not to talk to

1 or converse among yourselves or with anyone else on any  
2 subject connected to this trial or read, watch or listen to  
3 any report of or commentary on the trial by any person  
4 connected with this trial, by any medium of information,  
5 including without limitation to newspapers, television, the  
6 Internet and radio, or form or express any opinion on any  
7 subject connected with the trial until the case is finally  
8 submitted to you.

9 Counsel, find your spots. I'll be right back.

10 All rise for the exiting jury.

11 (Jury recessed at 4:24 P.M.)

12 (Pause in the proceedings)

13 (Court recessed at 4:25 P.M., until 4:26 P.M.)

14 (Outside the presence of the jury)

15 MR. PRINCE: The objection was --

16 THE COURT: Well, first, what's the question to  
17 which your -- the objection has been lodged?

18 MR. WINNER: The -- the question I was to ask is in  
19 its factual -- well, it's an opinion question. Dr. Garber  
20 indicated -- Dr. Garber indicated the fact that there were  
21 disc fragments that he pulled out just proved that there was a  
22 herniation caused by my accident. Dr. Garber wrote a record  
23 review, and wrote a rebuttal report to Dr. Wang, and never  
24 expressed that opinion before that proved anything. He said  
25 based on the MRI she was surgical and, hey, because I pulled

1 out disc fragments that just proves it all more. He said that  
2 yesterday. An expert witness --

3 THE COURT: He said that yesterday?

4 MR. WINNER: Not yesterday. He said it --

5 THE COURT: Whatever day.

6 MR. WINNER: Friday. Thursday. The day he  
7 testified. I apologize. That's Dr. Wang is permitted to  
8 comment on evidence that comes in during the trial and he  
9 didn't specifically comment on that operative report.

10 I suspect Dr. Wang is going to say that doesn't  
11 particularly prove Dr. Garber's point at all. Dr. Garber sat  
12 here and told the jury that just proves it, that just proves  
13 that there was a herniation from this accident because I  
14 removed two disc fragments. That's not in any of his rebuttal  
15 reports to Dr. Wang, and it's not in any of his reports that  
16 it proves anything. It's just a mention.

17 THE COURT: Is that in his -- do you have that, Mr.  
18 Prince, in a report?

19 MR. PRINCE: Yes. So let me -- let me -- I have to  
20 say it in two ways. I don't know. Hang on. Let him finish.

21 MR. WINNER: The -- the point Wang can make is if  
22 disc fragments were found in the surgery, and I think Dr. Wang  
23 is going to say either there had been a change, but those disc  
24 fragments were not present --

25 THE COURT: Okay.

1 MR. WINNER: -- not present after our accident.

2 THE COURT: That's -- that's -- I don't see anything  
3 wrong with that.

4 MR. PRINCE: Well, he's already said that, number  
5 one. But now, Judge -- so Dr. Garber is a treating physician,  
6 so we're starting there. He notes in his operative report  
7 that the anterior cervical discectomy, which means disc  
8 removal, discectomy is disc removal, was performed at C6-7.  
9 Subligamentous, meaning behind the posterior ligament, disc  
10 protrusion was removed in two distinct fragments.

11 THE COURT: Okay.

12 MR. PRINCE: Dr. Garber testified to that as a form  
13 of a disc herniation.

14 THE COURT: Correct.

15 MR. PRINCE: This doctor, Dr. Wang, never even  
16 comments on, in any of his 12 reports, that operative finding.  
17 Dr. Garber, in his December 21, 2017, report, says based on  
18 the medical records that I've reviewed, in addition to his  
19 treatment, it is my expert opinion the patient sustained a  
20 traumatic disc protrusion at C6-7 that now necessitates an  
21 anterior cervical discectomy infusion. It is also my opinion  
22 within a reasonable degree of medical probability that the  
23 second accident of July 10, 2016, has no clinical relevance to  
24 the traumatic disc protrusion at C6-7.

25 He is saying that. Dr. -- this Dr. Wang has never

1 in any report commented on the disc fragments removed by Dr.  
2 Garber. Moreover, he has never indicated that there was a  
3 significant change in clinical presentation after the July 10,  
4 2016, motor vehicle collision. He's never said that the July  
5 10, 2016, collision cause a change in presentation, symptoms,  
6 or findings, even including the operative findings by Dr.  
7 Garber. So he has a complete absence of that. His opinion is  
8 soft tissue injury, and he's out -- she's done by February.

9 THE COURT: Correct.

10 MR. PRINCE: But so now he doesn't -- so now this is  
11 an opinion outside of his report. These opinions have been  
12 known to the defense from at least 2017. First off, they've  
13 had the original surgical reports since the beginning of the  
14 litigation. That's the September 1, 2016, report. The  
15 operative note. And then we had Dr. Garber also review  
16 medical records and respond to Dr. Wang where he calls it a  
17 traumatic disc herniation at the disc protrusion of C6-7.

18 THE COURT: He who?

19 MR. PRINCE: Just so you know -- what?

20 THE COURT: He who?

21 MR. PRINCE: He being Dr. Garber.

22 THE COURT: All right.

23 MR. PRINCE: Dr. Garber specifically called it a  
24 traumatic disc protrusion --

25 THE COURT: Right.

1           MR. PRINCE:  -- which is a form of herniation at  
2 C6-7 for which required the surgery.

3           THE COURT:  Okay.

4           MR. PRINCE:  That's specifically in his report.

5           THE COURT:  That's fine.  So I don't understand what  
6 we're arguing about.

7           MR. PRINCE:  Because he -- he's trying to suggest  
8 now that through Dr. Wang that that's a new finding, that  
9 those fragments could have been caused by the July 2016  
10 incident and not --

11          THE COURT:  Well, he's not going to -- he's not  
12 going to talk about what it could have been caused by, but he  
13 can certainly say I didn't say here, so if it existed and he  
14 saw it, well, then it's new.

15          MR. PRINCE:  That doesn't necessarily --

16          MR. WINNER:  Yeah.

17          THE COURT:  Of course.

18          MR. WINNER:  It's new.

19          THE COURT:  By definition, if it's not here today --

20          MR. PRINCE:  Well, no, that's --

21          THE COURT:  It's either not here tomorrow and Dr.  
22 Garber saw something that --

23          MR. PRINCE:  Oh.  Huh-uh.

24          THE COURT:  -- wasn't there, or it somehow happened  
25 after the fact.  I don't think he's going to --

1 MR. PRINCE: But, Judge.

2 THE COURT: -- mention the -- he's not going to

3 mention causation by a car crash or by anything else.

4 MR. WINNER: And here's -- here's the thing.

5 MR. PRINCE: And you can't always see that.

6 MR. WINNER: This -- this was the area --

7 THE COURT: Well, that's cross-examination for you.

8 MR. WINNER: Here. And --

9 MR. PRINCE: It's a new opinion, though. That's the

10 -- that's why I'm glued to the roof right now over it. It's

11 new. He's never said it ever before.

12 THE COURT: Said what? There's nothing there.

13 MR. PRINCE: But --

14 THE COURT: He says today there's nothing there.

15 MR. WINNER: Excuse me. Garber gave a new opinion.

16 All along Garber was saying, well, I say she was surgical

17 because of a herniation because Khavkin said the same thing

18 before, so nothing changed. Nothing changed. That must mean

19 that there was a protrusion. And by the way, you heard from

20 the three plaintiff doctors, protrusions and herniations, they

21 all have different --

22 THE COURT: Right.

23 MR. WINNER: -- descriptions of it.

24 MR. PRINCE: No, they don't.

25 MR. WINNER: First it was protrusion, later it's a

1 herniation. From the witness stand he's now saying it's a  
2 herniation. And now he said to the jury, by the way, the fact  
3 that I pulled out two disc fragments, that just proves this  
4 was a herniation and it was wrong. That is a brand new  
5 opinion. He never said that proved anything. What he said  
6 before was that Khavkin had already recommended surgery;  
7 therefore, I'm right.

8 THE COURT: I thought you said it was in the  
9 surgical notes.

10 MR. PRINCE: It is in surgical notes.

11 THE COURT: If it's in the surgical notes --

12 MR. WINNER: The surgical notes said he pulled  
13 out --

14 MR. PRINCE: Yes.

15 MR. WINNER: -- two disc fragments. He didn't say  
16 it meant -- he didn't comment on it in any of his reports  
17 saying this meant anything. On the stand he said --

18 MR. PRINCE: No.

19 MR. WINNER: -- this proves this was a herniation.  
20 And Dennis is saying, well, Wang never commented on that, so  
21 now --

22 MR. PRINCE: He didn't.

23 MR. WINNER: -- he can't do it now. Garber just  
24 said --

25 MR. PRINCE: No.



1 MR. WINNER: -- it proves his case. He never said  
2 that in his rebuttal report to Wang. He never said it --

3 MR. PRINCE: He didn't need to.

4 MR. WINNER: -- in his record review. He never said  
5 it anywhere. For the first time from the witness stand,  
6 because they wanted to bolster their case, he gave that  
7 opinion. Find that opinion in any of his reports. And now  
8 we're jumping up and screaming and saying it's so unfair that  
9 Dr. Wang got to -- gets to talk about an opinion given by  
10 Garber for the first time during trial.

11 Every one of Garber's reports, Garber's deposition,  
12 when he said his, I think this is a disc herniation, it's not,  
13 and I think it's a disc herniation because Khavkin had already  
14 recommended surgery. He didn't say anything about his  
15 operative report. He said his operative report proves the  
16 herniation for the first time when he testified in this trial.

17 THE COURT: Mr. Prince, is that anywhere in the  
18 reports that he said that he -- the herniation proves?

19 MR. PRINCE: He says it's my opinion that the  
20 patient sustained a traumatic disc protrusion at C6-7, which  
21 necessitated --

22 MR. WINNER: I agree.

23 MR. PRINCE: -- surgery. He further says, I don't  
24 believe that the July -- the July -- the second accident of  
25 July 10, 2016, has no clinical relevance to the traumatic disc

1 protrusion of C6-7. So, yes, he's saying it. He's using --  
2 he's using his operative findings in addition to -- that is  
3 his opinion that she suffered a traumatic disc protrusion.  
4 That's a fact. He also commented on the interoperative  
5 findings where he removed two fragments.

6           It doesn't always necessarily mean you're going to  
7 -- Dr. Wang will agree to -- well, I don't know what he's  
8 going to agree to, but I'll -- I'll hold off on that. So but  
9 that, in my mind, all of that together, in particular since  
10 he's a treating physician, he is not bound and tethered to  
11 every word in that report. But this doctor, as a retained  
12 expert, is. And he -- they are different standards.

13           THE COURT: I don't see the -- am I missing  
14 something? I don't see that he's deviating from his opinion  
15 in his report.

16           MR. PRINCE: He doesn't even talk about the disc  
17 fragments in any report.

18           THE COURT: Because he didn't see them.

19           MR. PRINCE: What do you mean? He read the  
20 operative note.

21           THE COURT: But I mean --

22           MR. PRINCE: He doesn't even have any comments on  
23 the operative note in the findings by Dr. Garber. Not once.

24           THE COURT: Well, what's he --

25           MR. PRINCE: Not a single time.

1 THE COURT: Is he going to comment on that today?  
2 What's he --

3 MR. PRINCE: He's getting ready to.

4 MR. WINNER: He's going to comment on Garber --  
5 well, the operative notes themselves, Garber testified for the  
6 first time -- and he's a hybrid. He's a treating doctor who  
7 wrote a whole bunch of expert reports at the request of Mr.  
8 Prince.

9 THE COURT: That's my --

10 MR. WINNER: Never said once --

11 THE COURT: That's my next question. What exactly  
12 -- what was --

13 MR. WINNER: Or Mr. Powell.

14 THE COURT: What was the parameters of --

15 MR. PRINCE: Yeah, in your order --

16 THE COURT: Was he -- in the 16.1, what was said  
17 about Dr. Garber?

18 MR. PRINCE: Well, he's a treating physician and an  
19 expert. Both. He has both capacities. He's a hybrid. He  
20 has both capacities. And now you've already entered an order  
21 about what the -- the scope of this can be. He said she had  
22 an increase in symptoms, but that's all. It's all he said in  
23 his report, but he can't give any further opinions. He can't  
24 -- he's never authored in a report that any interoperative  
25 finding was caused by something by the July 10, 2016, motor

1 vehicle collision. He's never authored that, never given that  
2 opinion one time.

3 THE COURT: Okay.

4 MR. PRINCE: And he's had this --

5 THE COURT: Wasn't Garber deposed?

6 MR. PRINCE: Yes.

7 THE COURT: Did he ever opine that the disc  
8 fragmentation was a result of the --

9 MR. PRINCE: That's the disc protrusion.

10 THE COURT: -- 2016 --

11 MR. PRINCE: He's calling that the -- he's calling  
12 that the herniation.

13 MR. WINNER: No. No.

14 MR. PRINCE: He's calling -- it's the herniation.

15 MR. WINNER: What we heard for the first time  
16 yesterday, two things. What we heard from -- not yesterday,  
17 the last trial day. What we heard for the first time from  
18 Garber is those disc fragments prove his case. This -- this  
19 is the key piece of evidence, I removed two disc fragments,  
20 which surprised us to hear.

21 And the rule is not that Dr. Wang is limited to only  
22 the words in his report, he is permitted to comment on medical  
23 trial testimony, and that is trial testimony heard for the  
24 first time. The plaintiff doesn't get to hide that. If he  
25 offers an opinion for the first time that this proves his

1 case, he doesn't get to, by technicality, having not even  
2 deposed Wang, to say you don't get to talk about that evidence  
3 we heard for the first time the other day because I have this  
4 order. Wang is speaking about his order. He is also speaking  
5 about testimony that we heard for the first time on Friday,  
6 that this proves something.

7 MR. PRINCE: So, Your Honor --

8 THE COURT: Okay. Specifically tell me what you  
9 want Dr. Wang to testify to.

10 MR. WINNER: Does the -- does the presence of the  
11 disc fragment, one, is that consistent with the MRI? No.  
12 Were there any disc fragments present at all in November of  
13 2015? Absolutely not. If Dr. Garber testified in court the  
14 other day the presence of disc fragments proved something,  
15 what do they prove? And he will -- he will say either that  
16 was during the surgery, or something changed because they were  
17 not present.

18 MR. PRINCE: That's what he can't do.

19 THE COURT: Okay. Well, why can't he do that?

20 MR. PRINCE: Because he doesn't have something in  
21 his report. A retained, specially retained expert like Dr.  
22 Wang, who does not have the status of Dr. Garber, he does not  
23 have that same status, all of his opinion have to be stated in  
24 his report and the bases for his opinions. That same rule  
25 does not apply to Dr. Garber.

1           For example, let's assume Dr. Garber doesn't prepare  
2 a report, because he's not required to, he can say it's my  
3 opinion she sustained a traumatic disc herniation, it is my  
4 opinion and believe based upon the records I was given as part  
5 of my medical care that the two disc fragments, that's the  
6 disc herniation that I removed that's caused by the trauma  
7 that I saw on the November 2015 MRI. He can do that without  
8 any report.

9           He also, he's a hybrid in the sense we asked him to  
10 review records and respond to Dr. Wang. Now you see how  
11 expensive this litigation truly gets. We had to do that. We  
12 were satisfied with Dr. Wang's reports. I have dozens of  
13 depositions of him. I have dozens of trial testimony from  
14 him. I know what -- that was strategically -- my office  
15 doesn't even take his deposition anymore. We're done with  
16 that. So I don't even need to go there with him.

17           And that can't be held against us that we didn't  
18 take his deposition because his opinions are required to be  
19 outlined in his report. And not in one single report does he  
20 comment on Dr. Garber's interoperative finding, suggest that  
21 that was caused somehow during the course of a surgery. Think  
22 about that statement for a second, that Dr. Garber caused this  
23 during surgery. And secondarily -- which they would buy, too,  
24 because now -- now they would introduce --

25           MR. WINNER: No, no, no.

1 MR. PRINCE: -- the malpractice for that.

2 MR. WINNER: Not malpractice. I'm not claiming  
3 malpractice.

4 MR. PRINCE: No, no, no. You would say caused  
5 during the surgery, then if this collision necessitated that  
6 surgery, if that was a complication, they'd buy that. That's  
7 part of the defendant's obligation.

8 THE COURT: Well, if it's the --

9 MR. WINNER: No, no, no, no.

10 THE COURT: -- medical malpractice --

11 MR. WINNER: We're not claiming malpractice.

12 THE COURT: -- was the surgery was --

13 MR. PRINCE: Oh, no, even a complication.

14 THE COURT: -- inappropriate --

15 MR. PRINCE: What if he was --

16 THE COURT: -- that's a whole different thing --

17 MR. PRINCE: What if it was --

18 THE COURT: -- I would think.

19 MR. PRINCE: Oh, no. Foreseeable malpractice is --

20 MR. WINNER: He's not claiming it's a complication.

21 MR. PRINCE: Oh, no. He's saying that it's caused  
22 during the surgery. That's one issue. That creates a whole  
23 level of speculation and he never once said it.

24 Two, to say that it wasn't there before and the only  
25 thing is something must have happened and the only thing we

1 know about is the July 10, 2006, accident. He never says  
2 that, either. He never says -- attributes anything to that  
3 second accident other than -- let me -- causing -- I'll read  
4 it for you.

5 It says, after reviewing the new records, my  
6 opinions have not changed. The new records document in  
7 greater detail prior MVA where she sustained injuries in 2010.  
8 That's for that accident. Let me go back.

9 THE COURT: Are you reading Dr. --

10 MR. PRINCE: I was --

11 THE COURT: -- Dr. Wang?

12 MR. PRINCE: -- talking about the wrong one. Hang  
13 on. It says it appears -- it does appear that she had an  
14 increase in her symptoms following the MVA of July 10, 2016,  
15 which was likely related to that accident. I did not relate  
16 any ongoing spine symptoms or any future medical care for the  
17 spine to be causally linked to the MVA of 10/30/2015.

18 He also doesn't say --

19 THE COURT: He said that?

20 MR. PRINCE: He says that.

21 MR. WINNER: Yeah.

22 THE COURT: Well, isn't that exactly what we're  
23 talking about?

24 MR. PRINCE: No.

25 MR. WINNER: Yes.



1           MR. PRINCE: He's saying -- no, they're going to say  
2 that the disc fragments potentially were caused by the July  
3 10, 2016, collision. He doesn't say that. He says --  
4           THE COURT: I don't think he's --  
5           MR. PRINCE: -- she had an increase --  
6           THE COURT: -- saying that.  
7           MR. PRINCE: -- in symptoms.  
8           THE COURT: I think he's saying that they weren't  
9 caused by the 2015 because they didn't exist.  
10          MR. HENRIOD: He's saying in this picture.  
11          THE COURT: He didn't see after the fact, so he  
12 can't speak to that.  
13          MR. WINNER: And he's also saying he's not going to  
14 comment on anything not in his report that Dr. Garber said  
15 before Thursday.  
16          MR. PRINCE: Well --  
17          MR. WINNER: He's not.  
18          MR. PRINCE: -- he's going to have --  
19          MR. WINNER: What Garber said for the first time  
20 Thursday is these disc fragments prove my case. And he's not  
21 just a treating physician. They hired him as an expert. They  
22 paid him to write all these reports. He didn't say any such  
23 thing in any of his reports. We heard it for the first time  
24 from the witness stand. And this isn't a 16.1 issue. This is  
25 a statute. Any expert is permitted to talk about opinions

1 given by other physicians during trial. And that was a new  
2 opinion during trial.

3 MR. PRINCE: No. Well, I guess we don't believe  
4 this is a new opinion, Judge. It's part of his --

5 MR. WINNER: 50.285(1), the facts or data in the  
6 particular case upon which an expert bases an opinion or  
7 inference may be those perceived by or made know to the expert  
8 at or before the hearing.

9 MR. PRINCE: Yeah.

10 MR. WINNER: At the hearing.

11 MR. PRINCE: But, Judge, but he's known this  
12 information about the disc fragments from the beginning.

13 THE COURT: Realistically, we're arguing about  
14 things that, in my opinion, factually are already before the  
15 jury.

16 MR. PRINCE: But you're going to endorse it with an  
17 expert who hasn't ever said that before? That's the problem.

18 THE COURT: I'm not endorsing it. I'm allowing more  
19 factual evidence that I think is --

20 MR. PRINCE: No, this is opinion evidence.

21 THE COURT: -- appropriate.

22 MR. PRINCE: This will be opinion evidence.

23 THE COURT: Their doctor has already -- he's going  
24 to say he didn't see it there, and then he's going to say  
25 factually I'm not saying it wasn't there later, it could have

1 been caused by A or B, but as of this date and time, it wasn't  
2 there. Unless I'm mistaken.

3 MR. PRINCE: Well, then we need to get that  
4 malpractice, you know, foreseeable malpractice, complications,  
5 right, surgery, that part of the defendant's allegations.

6 Well, Judge, I don't know. I've made my record on  
7 it.

8 MR. WINNER: Don't misunderstand me. He's not  
9 saying malpractice.

10 MR. PRINCE: No. He doesn't even have to say  
11 malpractice. If he's saying it was caused during the surgery,  
12 they're going to believe -- now they've got to down what they  
13 call an iatrogenic injury, which Dr. Wang knows exactly what  
14 I'm talking about, that that can happen, it could be a natural  
15 part of a complication of any surgery. The necessitation of  
16 this surgery per Dr. Garber --

17 MR. WINNER: He's not saying --

18 MR. PRINCE: -- was disclosed in --

19 MR. WINNER: -- iatrogenic injury.

20 MR. PRINCE: He said it's caused during the surgery  
21 or created during the surgery. Yes, he's going to -- yes,  
22 he's saying that.

23 THE COURT: I think all he can say -- I mean, he can  
24 say potential other causes, I suppose. But what I have here  
25 is he can say it happened after if it existed.

1 MR. PRINCE: He never --  
2 THE COURT: I can't say --  
3 MR. PRINCE: -- gave that opinion.  
4 THE COURT: I can't say that it did because I never  
5 saw anything. But if it exists to the after the fact, he's  
6 now commenting on the expert testimony.  
7 MR. PRINCE: He's what? Why didn't he do that  
8 before? If he thought there was disc fragments or where -- he  
9 saw that in the operative note.  
10 THE COURT: I don't think he saw them.  
11 MR. PRINCE: He saw the operative note. Yes, he  
12 did.  
13 THE COURT: Did you see --  
14 MR. WINNER: He saw the --  
15 THE COURT: -- disc fragments?  
16 MR. WINNER: -- operative note. I mean --  
17 THE COURT: Seeing a note is different from seeing a  
18 fragment.  
19 MR. PRINCE: He saw the operative --  
20 Did you see the operative note where it says disc  
21 fragments when you did your initial --  
22 MS. LORELLI: She's asking if he saw a fragment on  
23 the MRI. He never saw a fragment on the MRI.  
24 MR. PRINCE: He said that already.  
25 THE COURT: Did you see a fragment on the MRI?

1 THE WITNESS: No, there's no fragment.  
2 MR. WINNER: And he did see the operative note.  
3 THE COURT: You saw the operative note?  
4 THE WITNESS: Yes.  
5 MR. WINNER: About what he --  
6 THE COURT: And what did --  
7 MR. WINNER: -- heard for the first --  
8 THE COURT: -- that operative --  
9 MR. WINNER: -- what he heard for the first time is  
10 that Dr. Garber said, oh, the fragments on that operative  
11 note, that proves something. That proved a herniation. That  
12 we heard for the first time Thursday.  
13 THE COURT: Have you heard that before?  
14 MR. WINNER: And Dr. Wang is permitted to talk about  
15 that.  
16 THE COURT: Had you seen that before in his notes?  
17 THE WITNESS: No.  
18 THE COURT: I think it's a new conclusion.  
19 MR. WINNER: Okay.  
20 THE COURT: So --  
21 MR. PRINCE: Oh, wow. Well, I'm not going to be --  
22 we're 15 minutes to 5:00, and I have at least an hour. Both  
23 -- two of my doctors had to come back, so I'll -- he'll have  
24 to be back tomorrow.  
25 MR. WINNER: [Indiscernible].

1 MR. PRINCE: What?

2 THE COURT: My understanding was you all agreed that  
3 he couldn't come back tomorrow.

4 MR. PRINCE: What's that? That wasn't the  
5 agreement. I never agreed to that. I wanted to get him done  
6 today. That's why I agreed he could go out of order. Just  
7 because he's not finished doesn't mean -- I had two doctors  
8 last week that had to come back twice. Two.

9 THE COURT: What was -- this -- he hasn't  
10 particularly, comparatively speaking.

11 MR. PRINCE: But I have the burden of proof.  
12 There's so many things I have to do with my story.

13 THE COURT: I understand, which is --

14 MR. PRINCE: I mean, you can't compare that.

15 THE COURT: -- which is why I, at the very beginning  
16 of this, said where are we going to go when we get to the end  
17 of the day and we're not going to finish? And nobody had an  
18 answer for me. So where are we going?

19 MR. PRINCE: Okay.

20 THE COURT: Doctor, what is your schedule?

21 THE WITNESS: So I have surgery scheduled for  
22 tomorrow. These patients have been scheduled for at least a  
23 couple months.

24 THE COURT: Okay. When would be your next available  
25 date?

1           THE WITNESS: Well, I don't have any free days. I  
2 guess I'd have to cancel something.

3           MR. PRINCE: Remember, my doctors had to do the same  
4 thing. They canceled surgeries and patients to be here.  
5 Both.

6           MR. WINNER: I'm almost finished.

7           THE COURT: Well, Mr. Prince is saying he's got an  
8 hour, and I've got --

9           MR. HENRIOD: Can you stay a little late?

10          THE COURT: I can stay. We planned this week to  
11 stay until it's finished. But I also have a juror that said  
12 5:30 was as late as he can stay. And I don't think it's fair  
13 to tell --

14          MR. HENRIOD: We can ask.

15          THE COURT: We can ask them again. Will you go  
16 ask --

17          THE MARSHAL: Bring them in?

18          MR. WINNER: Let's get through as much as we can.

19          THE COURT: Just go ask this one more guy what he's  
20 got tonight and can he change that.

21          THE MARSHAL: Okay.

22          MR. WINNER: That was the swimmer guy, wasn't it?

23          THE COURT: Yeah.

24          THE MARSHAL: 6:00 would be the absolute latest.  
25 They have dinner reservations at 6:45.

1 MR. WINNER: I'll go quick.

2 MR. PRINCE: But I -- but I'm not going to -- I'm  
3 going to take -- I've got to do what I've got to do, so I'm  
4 not guaranteeing I'm going to be done. I'm going to do my  
5 best, but this is a big important issue, and so --

6 THE COURT: Is this --

7 MR. WINNER: Doctor, I'm going to skip over --

8 THE COURT: -- an anniversary --

9 MR. WINNER: -- a lot of this. We're going to --

10 THE COURT: -- or a birthday or --

11 MR. WINNER: -- get this done fast.

12 THE MARSHAL: It sounds like just a family dinner.  
13 He's here with his significant other. It just sounds like a  
14 family dinner.

15 MR. WINNER: Well, with your permission, Judge,  
16 let's get them in and I'll --

17 THE COURT: Yeah.

18 THE MARSHAL: Bring them in?

19 MR. WINNER: -- I'm crossing out a lot of questions.  
20 I already have crossed out a lot of questions.

21 THE COURT: Bring them in. We'll just go and then  
22 we'll see where we are.

23 MR. WINNER: Okay.

24 THE COURT: I'll be right back.

25 (Pause in the proceedings)



1 (Inside the presence of the jury)

2 THE COURT: All right, Doctor. I'll remind you  
3 you're still under oath.

4 DIRECT EXAMINATION (RESUMED)

5 BY MR. WINNER:

6 Q Okay. Doctor, to reiterate, you see zero evidence  
7 of disc fragments on this MRI; correct?

8 A That's correct.

9 Q We heard on Thursday from Dr. Garber that the disc  
10 fragments that he pulled out in that operative report which  
11 you have seen prove that this accident caused a traumatic disc  
12 herniation. Have you heard that opinion before Thursday?

13 A Yeah.

14 Q Okay. Do you have any comment about that?

15 A So when we see fragments that are below the  
16 ligament, that's a very specific comment, I guess, because  
17 when I was showing you the MRI before, there is this thing  
18 called the posterior longitudinal ligament, which runs right  
19 behind the vertebral bodies. And it only goes -- and if you  
20 can see this cross-section, it only goes from here to here.  
21 It does not go out to the side. So it's only here in the  
22 middle. That ligament is very strong. In order to have disc  
23 material behind that ligament, you have to tear that ligament.  
24 You have to rupture that ligament in order for the disc  
25 material to get there. So if he saw disc material behind that

1 ligament, you would see a tear in the ligament, and you would  
2 see disc material protruding well beyond this margin here that  
3 I've shown from here to here.

4 Q Okay.

5 A I see no evidence of that on this MRI from November  
6 24, 2015.

7 Q Okay. Between -- between this MRI and Dr. -- Dr.  
8 Garber's surgery, there was another accident; correct?

9 A Yes.

10 Q Okay. You also indicated, and I might have  
11 misunderstood you, that because the surgery was done from an  
12 anterior approach, disc fragments can appear, even though the  
13 doctor is not doing anything wrong just simply because of the  
14 approach of the surgery, or did I misunderstand you?

15 A Well, what happens during surgery is you expose the  
16 neck and you're looking at the front of the spine. The disc  
17 herniation is in the back. So what you do is you cut the disc  
18 and you put this little rongeur, it's an instrument to go in  
19 there and grasp it. So you're putting it into the disc as you  
20 grasp it. So it's not uncommon. We all do it. When we're  
21 putting it in there, you exert a little downward pressure on  
22 that. If there is a tear in that ligament, sometimes that  
23 material can -- can scoop through it, but it's just a normal  
24 part of doing the surgery. Because you physically, I mean,  
25 you have to go with this microscopic grasper and grab it, and

1 you stick it in the disc, you grab it and you grab it and  
2 things like that. But I just didn't see it on this November  
3 24, 2015, MRI, and I didn't see a hole in the ligament.

4 Q Okay. Does that presence of a disc fragment, given  
5 what you just described about the physics of the surgery and  
6 given what you see here, do you have any -- those disc  
7 fragments were not caused by the October 2015 accident?

8 A Well, I don't see any disc fragments below the  
9 ligament on this MRI that was done about a month after the  
10 accident in 2015.

11 Q All right.

12 A So --

13 Q Really quickly, we're getting late in the day.  
14 Doctor, when you operate on a patient with a disc injury or  
15 disc disease at a single level in the cervical spine, what is  
16 the outcome?

17 A Typically, very good.

18 Q Is that just n your hands?

19 A No, the reported results are actually very good.

20 Q Do patients usually do very well?

21 A Yes.

22 Q Okay. Tell us about adjacent segment breakdown.

23 A So whenever you do a fusion, we can see arthritis  
24 coming on at the next level. And if you look at studies, it's  
25 about 3 percent per year. So that means of all the people

1 that have surgery this year and have a fusion, 3 percent of  
2 them can have problems at that next level next year, okay,  
3 from arthritis.

4           Now, not all of those people are symptomatic and  
5 they don't all need surgery, but you start to see some  
6 adjacent segment arthritis at that next segment in about 3  
7 percent per year. And so initially when saw that, we said,  
8 hey, when you do a fusion, that causes breakdown at the next  
9 level. But then there are studies that came out, what we call  
10 natural history, so you need a control group.

11           And the control group is they looked at patients  
12 that had cervical problems, but did not have a fusion. And  
13 they found out that they still broke down at the next level  
14 with new arthritis at about 3 percent per year which is the  
15 same incidence of people who have fusions. And so we look at  
16 the data now and we say, hey, there are people that don't have  
17 fusions that have little small microforaminotomies with no  
18 fusions in the neck, and they still get adjacent segment  
19 problems at 3 percent per year.

20           You can do a fusion and you can still get adjacent  
21 segment problems at 3 percent per year. You can do a disc  
22 replacement where you preserve the motion. You still can  
23 break down at the adjacent segment at 3 percent per year, and  
24 then you can take people that have arthritis in the neck and  
25 don't have any surgery. And you follow them out and you do

1 x-rays and they still break down and have new arthritis at  
2 that next level.

3           So it's not conclusive that a fusion causes that  
4 adjacent segment problem. It may contribute to it, but the  
5 incidence is about 3 percent per year up to 10 years. We  
6 don't know what happens after 10 years. The medicine, you  
7 just can't assume something is going to happen until you have  
8 the studies. So we know that at 10 years, about 25 percent of  
9 the people that have had a fusion will break down at the next  
10 segment. It's still an argument whether it's caused by the  
11 fusion, or whether it's just natural history of people just  
12 getting arthritis or it was going to happen anyway.

13           Q     Okay.

14           A     But it's about 25 percent at 10 years.

15           Q     Do the vast majority of patients who have a  
16 single-level -- a single-level fusion in the cervical spine,  
17 do they develop adjacent segment breakdown?

18           A     The vast majority do not develop adjacent segment  
19 breakdown and never need another surgery.

20           Q     Okay. Do you have any opinion based on the  
21 statistics, based on your experience whether this patient --  
22 whether the surgery is related to this accident or not will  
23 require a future surgery?

24           A     Well, I don't think the surgery is related o the  
25 accident.

1 Q Okay.

2 A She may require future surgery, I just can't predict  
3 it.

4 Q Okay. Based on your -- your experience, though, the  
5 majority of patients who have that single-level surgery never  
6 go on to require another one?

7 A That's correct.

8 Q Okay. There was a transforaminal epidural steroid  
9 injection which brought about relief of symptoms per Dr.  
10 Rosler. Do you have any comment to put on that?

11 A I talked about it earlier, you know, you numb up the  
12 area, you numb up the muscles, a lot of people can get some  
13 relief from that.

14 Q Okay. When she saw Dr. Khavkin in May of 2016, she  
15 complained of symptoms in her right arm now. Do you have any  
16 explanation for this?

17 A No. That was kind of a new symptom.

18 Q She complained of symptoms in her low back going  
19 down both legs in May of 2016 when she went to Khavkin to get  
20 the operative -- or to get the surgical cost letter for the  
21 lawyer. Do you have any explanation for all of those new  
22 symptoms down the legs?

23 A No, I looked at her lumbar MRI, I don't see any  
24 nerve compression there.

25 Q Okay. Is it fair to charge this car accident or to

1 charge Babylyn Tate for medical problems she first reported  
2 many months after the October 2015 car accident?

3 A Are you talking about the symptoms in the legs that  
4 came on -- that appeared to come on later with Dr. Khavkin?

5 Q Yeah, the right arm and the low back.

6 A Yeah, they don't appear to be consistent with the  
7 symptoms that she had initially after the accident.

8 Q Okay. Finally, if you went through all of these --  
9 I forgot if they're axial or sagittal images, I can't remember  
10 what you called them. If you randomly went through each of  
11 these levels, doctor, would you even be able to pick out the  
12 one they're claiming was injured?

13 A No, I mean, they all look pretty much the same. So  
14 if you took picture of all the levels that I showed you, mixed  
15 them up and then you showed it, it would be hard to pick out  
16 which one is C6-7.

17 Q Did Ms. Evans-Waiiau injure a cervical disc on  
18 October 30, 2015?

19 A I don't believe she injured her cervical disc.

20 Q Okay. Assuming any injury at all, she had some  
21 whiplash which resolved in three months?

22 A I think she may have sustained a soft tissue strain.

23 Q Okay. Doctor, have the opinions you've given today  
24 been given to a reasonable degree of medical probability?

25 A Yes.

1           Q     More than that, a reasonable degree of medical  
2 certainty?

3           A     Yes.

4           Q     Thank you.

5           THE COURT:   Mr. Prince.

6                               CROSS-EXAMINATION

7 BY MR. PRINCE:

8           Q     Doctor, good afternoon.   We've met each other  
9 numerous times; right?

10          A     A couple times, yeah.

11          Q     Yeah.   I've been to Los Angeles and taken your  
12 deposition, I've taken your deposition here, we've seen each  
13 other in trials; right?

14          A     I don't know if we've seen each other in trial  
15 before.

16          Q     Okay.   But I've met you and I've taken your  
17 deposition numerous times.   Do you remember that?

18          A     I think twice.

19          Q     Okay.   And, anyway, I want to ask you some questions  
20 here.   You've obviously -- you know Mr. Winner; correct?

21          A     Yes.

22          Q     And you've worked with Mr. Winner and his law firm,  
23 the Atkin Winner & Sherrod law firm --

24               MR. PRINCE:   Put that up for me.

25        //