

**Case No. 79424**

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

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

Appellants,

vs.

BABYLYN TATE, individually,

Respondent.

Electronically Filed  
Apr 23 2020 02:31 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

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

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**APPELLANTS' APPENDIX  
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1 BY MR. PRINCE:

2 Q You've worked with that law firm in defense, at  
3 least, as to personal injury cases for more than 10 years;  
4 correct?

5 A Yes.

6 Q And, in fact, it's likely more than 15 years at this  
7 point?

8 A Yeah, I'm not sure.

9 Q But it's definitely more than 10 years; right?

10 A Probably.

11 Q Yeah. Because I have some testimony you gave in  
12 December of 2018, so if I need to refresh your memory, I'll do  
13 that. And one of the things that you do is you went to  
14 medical school to help patients; correct?

15 A Yes.

16 Q Right? And to hopefully improve the health and  
17 quality of people's lives?

18 A Sure.

19 Q Right? And the patient-physician relationship is  
20 very important to you; correct?

21 A Yes.

22 Q And that's one of the things that you do in  
23 California, that's one of the things you treat patients in  
24 California and Los Angeles at USC where you're currently at;  
25 right?

1           A     Yes.

2           Q     Now, you have no office in Nevada; correct?

3           A     That is correct.

4           Q     You are not hired by the Court and appointed by the  
5 Court to serve as an expert witness; correct?

6           A     That's correct.

7           Q     You're not appointed by anybody to serve. You  
8 agreed to be hired by Mr. Winner and his law firm in this  
9 case; correct?

10          A     Yes.

11          Q     You don't do any surgery in the state of Nevada;  
12 correct?

13          A     That's correct.

14          Q     You've never done a surgery in the state of Nevada;  
15 correct?

16          A     That's correct.

17          Q     You don't have any hospital privileges in any area  
18 of Las Vegas hospital; correct?

19          A     That's correct.

20          Q     So you don't treat patients in Las Vegas who live  
21 here in Clark County, Nevada, do you?

22          A     That's correct.

23          Q     The one -- but what you do do is you make yourself  
24 available to lawyers and you have a fee schedule to be an  
25 expert witness in cases; right?

1           A     Yes.

2           Q     Now, over the last 10 years, you've been hired  
3 probably more than 50 times by the Atkin Winner & Sherrod law  
4 firm; correct?

5           A     Yes.

6           Q     In addition to that, you've also worked with another  
7 firm for the defense, the Rogers Mastrangelo firm also for the  
8 defense, and over the last 10 years you've been hired by them  
9 more than 50 times, too, as well; correct?

10          A     Yeah, I haven't added it up, but probably around  
11 that.

12               MR. PRINCE:   Okay.   Put up that thing, Brandon.

13               MR. WINNER:   I would to the relevance about another  
14 firm hiring him.

15               MR. PRINCE:   No, it's just more about him testifying  
16 on behalf of bias and firms he's worked for.   I'm just being  
17 specific about who he's worked for.

18               THE COURT:   Can we approach.   Take down the slide,  
19 please.

20                               (Bench conference)

21               MR. PRINCE:   It's demonstrative.

22               THE COURT:   That's not demonstrative.

23               MR. PRINCE:   What?

24               THE COURT:   That's not demonstrative.

25               MR. PRINCE:   It is demonstrative.

1           THE COURT: Demonstrative evidence is when you say  
2 to the witness would it help you if you were to be able to  
3 draw this or look at that or show this. I don't know what  
4 it's demonstrative to put that up there. If they don't  
5 object, I don't have a problem with it.

6           MR. PRINCE: What's the objection? I'm talking  
7 about specific [indiscernible].

8           THE COURT: You're showing the jury something that's  
9 not in evidence.

10          MR. PRINCE: I'm putting it in evidence right now.

11          THE COURT: Not the slide, you're not. You're  
12 putting the fact of the law firms, and that's fine.

13          MR. PRINCE: Why can't I -- what's the problem with  
14 showing the name of the law firm? I'm going to say the name  
15 of the law firm.

16          THE COURT: You can say the name of the law firm,  
17 but there's a difference --

18          MR. PRINCE: Well, why can't I show the name of the  
19 law firm?

20          THE COURT: Because that's not in evidence. They're  
21 logo that you're throwing up there in front of them is not  
22 evidence.

23          MR. PRINCE: That part is demonstrative, the logo.

24          THE COURT: It's not. Demonstrative evidence is  
25 when a witness said it was how full in order to use this to

1 describe something. You might use your [indiscernible], like  
2 here's some demonstrative stuff --

3 MR. PRINCE: Okay.

4 THE COURT: -- or showing the jury something that's  
5 helpful and insisting, I don't think that that's -- I don't  
6 think you laid the foundation for it. Like I said, I think  
7 the testimony is okay. But if you don't object, I don't care.

8 MR. WINNER: I appreciate it. I agree. But the --  
9 the Rogers Mastrangelo firm, because he -- he testifies for --  
10 I think he has testified for Dan Carvalho. He's all  
11 plaintiff.

12 MR. PRINCE: No, no, he -- no, hang on. Hang on.

13 THE COURT: Well, you can ask on redirect.

14 MR. PRINCE: Hang on. You can do whatever. I have  
15 this [indiscernible] money from your partner from December of  
16 last year who was asking about what other law firm, defense  
17 firms he works for in Las Vegas. He's going to give three  
18 names.

19 MR. WINNER: He does defense work for Rogers, but  
20 you're implying that he only does defense work for that firm.

21 MR. PRINCE: Okay.

22 MR. WINNER: All right.

23 THE COURT: Okay. Whatever. I don't even know if  
24 I'm overruling or sustaining.

25 (End of bench conference)

1 BY MR. PRINCE:

2 Q Are you ready?

3 A Yes.

4 Q In addition to the defendant cases like this with  
5 this connection with Mr. Winner's firm, you've also been hired  
6 by the Rogers Mastrangelo firm which also defense personal  
7 injury cases more than 50 times over the last 10 years;  
8 correct?

9 MR. PRINCE: You can't show that, Brandon.

10 THE WITNESS: Yes.

11 BY MR. PRINCE:

12 Q Okay. In addition to that, you've also worked with  
13 another Nevada based firm in connection with the defense of  
14 these types of cases over the last 10 years, the Wilson Elser  
15 law firm; correct?

16 A I have worked with them.

17 Q And you've worked with them more than 50 times in  
18 the last 10 years; correct? According to your testimony you  
19 gave in December of 2018 in the Borchek (phonetic) case?

20 A Yeah, I'm not quite sure. I haven't really added it  
21 up.

22 Q Okay. It could be 50 or more times, right, in the  
23 last 10 years?

24 A Yeah. 50 seems a little much with that law firm,  
25 but --

1           Q     Don't you remember saying those are the three firms  
2 that you've worked with here?

3           A     I'd be happy to look at that. I don't recall --

4           Q     Yeah, sure.

5           A     -- exactly what you're talking about.

6           Q     Yeah, here, let me give it to you.

7           MR. WINNER: I think, and I don't -- I don't mean to  
8 interrupt, Wilson Elser is also in California, I think.

9 BY MR. PRINCE:

10          Q     Right. The Wilson Elser Las Vegas office hires you  
11 in the defense of these type of personal injury cases;  
12 correct?

13          A     I have been hired them, yes.

14          Q     Yes.

15          MR. PRINCE: Your Honor, if I may approach the  
16 witness with a transcript --

17          MR. WINNER: May I see the transcript?

18          MR. PRINCE: -- to help refresh his recollection.

19          THE COURT: Sure.

20          MR. PRINCE: Yeah, I'll give you copy.

21          THE COURT: What?

22          MR. WINNER: May I see the transcript?

23          MR. PRINCE: Yeah, I'll give you that.

24          THE COURT: Yeah. You're just refreshing  
25 recollection; right?

1 MR. PRINCE: Yeah.

2 MR. WINNER: Where are you looking at, Dennis?

3 MR. PRINCE: I'm getting ready to tell you.

4 BY MR. PRINCE:

5 Q Starting on page 84 and on to 85.

6 A Okay.

7 Q Did you testify that with the Wilson Elser law firm,  
8 does that refresh your recollection that you've testified in  
9 connection with their cases more than 40 to 50 times over the  
10 last ten years?

11 A So I'm just reading my -- this testimony. It says  
12 on page 85, so the question was, sure, I apologize. You  
13 testified that you received -- you have worked on about 40 to  
14 50 cases with this law firm. My question was is that the  
15 biggest firm that you have had, the most cases you have gotten  
16 from any firm in Las Vegas? My answer was, oh, is there any  
17 other firm that has given me that many cases? Question, or  
18 more. Sure, Wilson Elser.

19 Q Yeah.

20 A Well, no, the answer the was sure. Question was,  
21 Wilson Elser? My answer was maybe not them, but probably  
22 Rogers.

23 Q Okay. Well, let's back up a second. Go to page 84.  
24 Let's start there. Here in Las Vegas did you ever see any  
25 more cases from any other law firm than this firm, meaning the

1 Atkins Winner firm?

2 Answer, yes.

3 You have? Which firm?

4 Answer, Wilson Elser Philips something something.

5 So you did -- that's what you told, you testified to

6 during a trial in December of 2018 when asked about do you

7 receive any more cases from any other law firm, and you said

8 the Wilson Elser firm; right?

9 A Well, if you read the whole thing here, and this is

10 just my interpretation of it.

11 Q Well, it's your testimony; right?

12 A Right. So but this is my interpretation of this --

13 of this deposition.

14 Q It's not a deposition. It's actually in front of a

15 jury at a trial in December of 2018.

16 A Sure. So the question was, here in Las Vegas did

17 you ever receive any more cases from any other law firm than

18 this firm?

19 Answer is, yes.

20 You have? Which firm?

21 The answer was, Wilson Elser Philips something

22 something.

23 And the question was, more than 50?

24 And I was clarifying the answer because the answer

25 is, you mean different law firms?

1           Question, no more than 50 cases from that firm.

2           And I answered, I'm sorry, what is the question?

3           Question, sure, I apologize. You testified that you  
4 received, you worked on about 40 to 50 cases with this law  
5 firm. And my question was is that the biggest firm that you  
6 have had the most cases, gotten from any firm?

7           And then my answer was, oh, is there any other firm  
8 that has given me that many cases?

9           Question, or more.

10          Answer, sure.

11          Question, Wilson Elser?

12          I said, answer, maybe not them, but probably Rogers.

13          Q     Right. So those three firms are the firms you get  
14 most of your work on out here; right?

15          A     Probably, yeah.

16          Q     Right. And so you -- you work with those firms  
17 about equally as much on the defense side; correct?

18          A     Well, I do work with them on the defense side, but I  
19 think in this testimony here it -- it brings out the fact that  
20 I probably didn't get that many cases from Wilson Elser, but  
21 probably from Rogers.

22          Q     Right. And it says you don't do any plaintiff work  
23 on the plaintiff side for any of those firms; correct?

24          A     That's correct.

25          Q     And you've never testified in Nevada in connection

1 and support of a patient or a plaintiff like my client, Desire  
2 Evans; correct? In a trial.

3 A In a trial. I had a plaintiff case probably over  
4 ten years ago. I don't -- I can't recall if it went to trial  
5 or not.

6 Q Right. So the question -- look on page 85. It says  
7 have you ever testified in Nevada on a plaintiff case? What  
8 was your answer there?

9 A The answer was no.

10 Q Okay. So the answer is no, but possibly one case  
11 more than ten years ago for a plaintiff?

12 A Yeah.

13 Q Because 90 percent or more of your work doing this  
14 kind of work is all for the defense in the state of Nevada;  
15 correct?

16 A Yes.

17 Q Okay. And so if you're -- and when you're here,  
18 like you have no patient-physician relationship with my  
19 client, Desire Evans; correct?

20 A That's correct.

21 Q And when you come out and do a medical examination,  
22 you're not here to help treat a patient, give a patient advice  
23 or recommendations. You're here just to -- as an expert  
24 witness, hire on behalf of the defense 90 percent or more of  
25 the time and give opinions and a deposition report if

1 necessary?

2 A Yes.

3 Q And for that you charge; correct?

4 A Yes.

5 Q And to come to the state of Nevada, you charge

6 \$7,500 to fly to Nevada to examine somebody; right?

7 A The answer is yes, but that includes --

8 Q That's on your fee schedule; right?

9 A -- that includes the review of records.

10 Q Okay. You charged \$7,500 to come to Nevada to

11 review a case and examine a plaintiff; right?

12 A That's correct.

13 Q This was on your fee schedule [indiscernible];

14 right?

15 A That's exactly right.

16 Q And so when you're -- when you come out here to the

17 state of Nevada to do this expert work, you're not acting on

18 behalf of USC, are you? You're doing this for Dr. Jeffrey

19 Wang, you personally; right?

20 A I'm working for the law firm.

21 Q Right. Because that's who pays you; correct?

22 A Yes.

23 Q You do this because you earn money doing this;

24 correct? That's why you do it?

25 A That's part of it.

1           Q     Yeah, that's the -- that's the primary reason why  
2 you do it; right?

3           A     Well, that's part of it.

4           Q     Right. There's a financial motivation for you to  
5 testify in these types of cases; correct? That's why you do  
6 it.

7           A     Well, there's a financial motivation to do these  
8 cases.

9           Q     Right. That's why you do this type of work is to  
10 make this money separate and apart from the money you earn at  
11 USC; correct?

12          A     Yeah, and that's part of it.

13          Q     So like when you said earlier you're charging --  
14 well, you're actually charging \$12,000 today to be here;  
15 correct?

16          A     That's correct.

17          Q     So we're clear, that money doesn't go to USC. That  
18 goes to Dr. Jeffrey Wang, the \$12,000; right?

19          A     That's correct.

20          Q     So when you said earlier you had to -- you know,  
21 you're not -- you're not at the university treating patients,  
22 doing surgery, billing through USC, this \$12,000 does not go  
23 back to USC, it goes to you personally; right?

24          A     That's correct, but I still have to pay that to USC.  
25 I'm still paying for my people.

1           Q     Right. But the 12,000 goes to your bank account,  
2 not USC's; correct?

3           A     That's correct.

4           Q     Right. Now, in addition to the \$7,500, you also  
5 charge \$1,000 per hour for reviewing medical records; correct?

6           A     Yes.

7           Q     And you authored 12 reports in this case; correct?  
8 The original one plus 11 addendums?

9           A     That's correct.

10          Q     And so you've billed almost \$21,000 before coming  
11 here today; correct?

12          A     That is correct.

13          Q     And so the 12,000 is in addition to the 21, at least  
14 33,000; right?

15          A     Yes.

16          Q     Plus you have other billing you haven't sent out for  
17 your preparation; correct?

18          A     Yes.

19          Q     And what do you estimate your time is for that?

20          A     Probably three or four hours.

21          Q     So that's another 3 to 4,000; right?

22          A     Yes.

23          Q     So by the time you add it in, you're almost, what,  
24 36, 37,000, just shy of \$40,000?

25          A     Sure.

1           Q     Now, when you come to Las Vegas to these exams, you  
2 try to do a few on the same day; correct?

3           A     Yes.

4           Q     And how often do you fly to Las Vegas?

5           A     It averages once every three months or so.

6           Q     And how many do you typically do when you come out?

7           A     It varies. Sometimes I'll do one, sometimes three,  
8 sometimes five.

9           Q     Right. So typically you try to get, what, as many  
10 as you can; right?

11          A     Sure.

12          Q     Right. So if you do four, that's a \$30,000 billing  
13 for you, opportunity; right?

14          A     Sure.

15          Q     And oftentimes if additional records, deposition,  
16 other expert reports become available, then you bill more;  
17 correct?

18          A     Yes.

19          Q     And you actually are earning hundreds of thousands  
20 of dollars per year, if not more, doing this expert witnessing  
21 work, don't you, Dr. Wang?

22          A     Yes.

23          Q     It's very lucrative for you, isn't it?

24          A     Sure.

25          Q     Now, you agree that medicine is an art; correct?

1 It's not pure science?

2 A There is that saying, medicine is art and science.

3 Q You've heard that term used; right?

4 A I have.

5 Q You've heard it used in court proceedings; correct?

6 A Yes.

7 Q And you've had patients in your practice over the

8 last 12 years that have been referred for second opinions;

9 correct?

10 A Yes.

11 Q And just because another doctor has a different

12 opinion doesn't make you wrong and that doctor right; correct?

13 A That's right.

14 Q Some might just have different recommendations and

15 different treatment plans that you're maybe offering a

16 patient; correct?

17 A That's correct.

18 Q All right. Now, do you believe that -- do you agree

19 that cervical spinal injections are reasonable to treat

20 patients with spine related pain; correct?

21 A Well, it depends on the situation, but they are

22 commonly given for patients who report pain.

23 Q Right. You agree that cervical -- in fact, you've

24 authored an article for -- where you said cervical epidural

25 injections appear to be a reasonable part of the non-operative

1 treatment of patients with cervical disc herniations; correct?

2 A Probably. We've authored a lot of articles.

3 Q Well, I'm reading one from 2000 that says results of  
4 cervical epidural injections for cervical radiculopathy. Does  
5 that sound like a finding you've made in the past?

6 A Yes.

7 Q Okay. And when you say yeah, the selective nerve  
8 root block that was given to Desire, that was -- that part --  
9 that a type of epidural steroid injection; correct?

10 A I guess so. I mean, it's -- it's more selective.  
11 It's more focused on the nerve root rather than around the  
12 sort of spinal cord.

13 Q Okay. But it's one -- one treatment option for  
14 nerve root irritation; correct?

15 A It depends on the situation.

16 Q Okay. You know, I want to cover one other thing we  
17 didn't cover before. I have a case list that you've given us.  
18 I just want to go back to testifying in Nevada, okay. And you  
19 keep a case list for all of the depositions and trials and  
20 arbitrations you've done in the last four years; correct?

21 A Yes.

22 Q You maintain that so that you can give that to the  
23 parties so they know where you testified; correct?

24 A Yes.

25 Q Okay. I have a list here of -- I'm going to hand

1 this to you just to refresh your memory. I'm looking at your  
2 trial list and arbitration list. Do you see that?

3 A Yes.

4 Q And you've done nine trials and one arbitration;  
5 correct? So that's 10.

6 A Yes.

7 Q Arbitration is kind of like a trial. It functions  
8 like a trial; right? You come and testify. Instead of it  
9 being a jury, there's an arbitrator there to make a decision?

10 A Yes.

11 Q And of those ten times, you've worked with the Atkin  
12 Winner firm seven of those ten times you testified in Nevada  
13 at a trial, correct, according to that list through February  
14 of 2019 --

15 A Yes.

16 Q -- in the last four years?

17 A Yes.

18 Q All right. So 70 percent of all of the trials in  
19 the last four years have been with this defense, Mr. Winner's  
20 law firm?

21 MR. WINNER: In Nevada.

22 BY MR. PRINCE:

23 Q In Nevada.

24 A Yes.

25 Q Well, that's your -- that's your testimony list, all

1 of your testimony list for all trials in the last four years,  
2 right, whether in Nevada or not? Because you're supposed to  
3 have a complete list.

4 A Yes.

5 Q So the only place you've ever -- you've testified in  
6 the last four years is the state of Nevada at a trial;  
7 correct?

8 A Yes.

9 Q And seven of the ten times have been on behalf of  
10 Mr. Winner's law firm; right?

11 A Yes.

12 Q And every one of those ten have been for the  
13 defense; right?

14 A Yes.

15 Q Okay. Thank you. Now, you agree that -- well,  
16 you're the director of the USC Spine Center; correct?

17 A Co-director.

18 Q Co-director. Okay. And you offer surgical, as well  
19 as non-surgical options to treat patients there; correct?

20 A Yes.

21 Q And one of the non-surgical options you offer or  
22 steroid injections; correct?

23 A Yes.

24 Q And steroid injections are commonly prescribed for  
25 people who have disc injuries; correct?

1           A     Usually not for disc injuries, but disc herniations  
2 or nerve compression, stenosis, yes.

3           Q     Okay. And don't you agree that these steroid  
4 injections are also commonly prescribed for patients with disc  
5 injuries causing nerve root irritation?

6           A     Well, again, a disc injury is typically not  
7 steroids. If there's nerve compression, then, yeah.

8           Q     Now, I'm going to show you a portion of your website  
9 from USC spine center regarding spinal injections, okay?

10          A     Okay.

11          Q     And I'm going to have you go to and read the three  
12 whole pages. Just tell me when you're done.

13               MR. WINNER: Your Honor, I don't -- I don't want to  
14 drag things out, but if it's rebuttal or impeachment evidence,  
15 I don't know that it's been produced.

16               MR. PRINCE: Well, I'm just refreshing his memory  
17 right now.

18               THE COURT: Overruled. What was the question that  
19 we were refreshing?

20               MR. PRINCE: That steroid injections are commonly  
21 given to people with disc injuries.

22               THE WITNESS: Okay. I've read pretty much it.

23 BY MR. PRINCE:

24           Q     Okay.

25           A     Yeah.

1           Q     And according to the website that you're -- the USC  
2 Spine Center, do you agree that it says steroid injections are  
3 commonly given to people with disc injuries causing nerve root  
4 irritation? That's one of the things you say on your website;  
5 right? On page 2 of that document.

6           A     That what it says.

7           Q     Okay. And you agree with that; right? That's the  
8 statement -- that's the position of USC to the world as to  
9 what you offer these steroid injections for; right?

10          A     Well, I typically don't prescribe them for disc  
11 injuries, but if you're using disc injury in synonymous with  
12 like a herniation where there's nerve compression, I commonly  
13 recommend it.

14          Q     USC refers to it as a disc injury; right? I'm not  
15 referring to it as a disc injury.

16          A     That's correct.

17          Q     USC is.

18          A     Yes.

19          Q     Your spine service that you're the director or  
20 co-director of.

21          A     Well, these are the non-operative people that are  
22 part of our spine center, and this is their indication. And  
23 so this is the part that they created.

24          Q     All right. Well, look at the first page. It says  
25 USC Spine Center; right?

1           A     Oh, they're part of our Spine Center.

2           Q     Okay. And you're the co-director of that; right?

3           A     That's correct.

4           Q     Okay. And you agree that epidural steroid

5 injections are often prescribed for patients who have

6 suspected nerve root irritation coming from a disc herniation;

7 correct?

8           A     Yes.

9           Q     Okay. In this case, whether right or wrong, Desire

10 Evans had a suspected disc herniation at C6-7 for which she

11 was prescribed a selective nerve root block; correct?

12          A     Yes.

13          Q     So that would be some steroid injection at C6-7 for

14 a suspected disc condition, herniation, is something you use

15 to treat the disc, as well as any nerve root irritation;

16 correct?

17          A     Well, I wouldn't prescribe it for this patient given

18 the MRI we just reviewed.

19          Q     I'm not asking that. I'm asking that she was

20 suspected to have a disc problem at C6-7; correct?

21          A     On the right side.

22          Q     No, that's not what her doctor said. They suspected

23 that she had a disc problem at C6-7; correct?

24          A     Well, the report said it was on the right side. I

25 did not see a disc herniation on the left side.

1 Q You think the report says the right side?

2 A That's my memory of it.

3 Q Okay. Now, you agree that a disc protrusion is a  
4 type of disc herniation?

5 A There might be some people that use the word  
6 synonymously. I typically don't.

7 Q Okay. You are -- you said to me that you are the  
8 president -- or told us you're the president of the North  
9 American Spine Society; correct?

10 A That's correct.

11 Q And you're also on the editorial board for the Spine  
12 Journal; correct?

13 A That's correct.

14 Q And isn't it true in 2014 the North American Spine  
15 Society came out with a document called Lumbar Disc  
16 Nomenclature to try to clear up any ambiguities in this type  
17 of discussion?

18 A Yes.

19 Q You're aware of that; correct?

20 A Yes.

21 Q Okay. And are you aware -- you've read this 2014  
22 article I'm referring to; correct?

23 A Probably.

24 Q And it says herniated disc may be classified as  
25 protrusions or extrusions based upon the shape of the

1 displaced material. That's what this article says from the  
2 North American Spine Society.

3 A Sure.

4 Q So you agree that a disc protrusion is a type of  
5 herniation?

6 A Well, what I said is that I don't typically use that  
7 term synonymously in my practice.

8 Q Well, I'm asking about -- well, the North American  
9 Spine Society, they do use it that way; correct?

10 A Well, in that article.

11 Q It's not an article. It's a -- it's a peer-reviewed  
12 article, right, with numerous authors who contributed to it.  
13 A lot went into this.

14 A But it is an article.

15 Q What does that -- what's the significance of that?

16 A Well, I'm saying it's an article. It's written by  
17 those authors. It doesn't necessarily mean that everyone  
18 needs to adopt that.

19 Q Okay.

20 A Okay. That's not how I typically use the terms in  
21 my practice. But according to that article, some people that  
22 are, I guess, very detailed on their terminology can say that  
23 it's partly a disc herniation depending on how they describe  
24 it.

25 Q Okay. Now, so if Dr. Garber, who is a fellowship

1 trained neurosurgeon said that disc protrusion is a type of  
2 herniation, he's not wrong, is he?

3 A If he uses that term synonymously, I wouldn't say  
4 he's wrong.

5 Q Well, according to the North American Spine Society,  
6 at least in this article, that a protrusion is a type of disc  
7 herniation. You may not use the terms that way, but --

8 A Yeah, I think my answer was is that he's not wrong.

9 Q Okay.

10 A Right.

11 Q Right. And so if Dr. --

12 A So I don't think we're arguing. I think I agreed  
13 with you.

14 Q Okay.

15 A Yeah.

16 Q All right. So if there was some suggestion that a  
17 protrusion was different than a herniation, but the literature  
18 suggests that a protrusion is a type of herniation; correct?

19 A Based on the article, yes. And some people use the  
20 term synonymously.

21 Q Right. Because some -- some people kind of use  
22 bulging, protrusion, herniation, sometimes all those terms  
23 kind of get used somewhat synonymously and interchangeably  
24 with one another?

25 A Exactly.

1 Q That happens; right?

2 A Exactly. That's correct.

3 Q Okay. Now, you also -- I want to touch on the MRI

4 for a minute. If you look --

5 MR. PRINCE: Brandon, page -- Exhibit 45, Bates No.

6 155.

7 BY MR. PRINCE:

8 Q And this is the report from the radiologist,

9 November 24, 2015. He is not -- he is identifying two

10 abnormalities. One is C5-6; correct?

11 A Yes.

12 Q And you agree that a disc bulge is an abnormal shape

13 of a disc?

14 A True.

15 Q That's what the literature says; right?

16 A Sure.

17 Q Okay. And then it says at C6-7, bilateral. And

18 that means both sides; correct?

19 A Yes.

20 Q Posterolateral disc protrusion extending two to

21 three millimeters into [indiscernible] bilateral

22 posterolateral recess effacing the bilateral C7 nerve roots.

23 Do you see that?

24 A I do.

25 Q Okay. So you indicated earlier when you stated this

1 discussion that you're not arguing or disagreeing with the  
2 radiologist; right? Early in this discussion today.

3 A I'm not disagreeing with the radiologist.

4 Q Okay. You just have a different impression than he  
5 does?

6 A Well, I think I explained it when I showed the MRI.  
7 I went all the way out to the side to show you how someone  
8 could read that as a bulge. But I also see here at the end  
9 here that we didn't -- right after the yellow part, there is  
10 no significant central spinal canal stenosis, nor significant  
11 neuroforaminal encroachment. That means there's no  
12 compression of the nerves.

13 Q Right. It says -- it says bilateral. That means it  
14 comes out both sides; right? You're saying it's protruding on  
15 both sides, correct, going backwards into each side; correct?  
16 That's what that radiologist is saying.

17 A That radiologist is saying that there's bilateral,  
18 posterolateral --

19 Q Right.

20 A -- disc protrusion extending two to three  
21 millimeters into the bilateral posterolateral recesses  
22 effacing the bilateral C7 nerve roots.

23 Q Okay. Now, while there may not be any compression,  
24 you agree that a disc herniation can nerve root irritation;  
25 correct?

1           A     If it's big enough, but this is not causing any  
2 compression.

3           Q     I'm not asking about compression. I'm talking about  
4 irritation. There can be irritation coming from a nerve root,  
5 correct, without compression? Meaning your thumb is on it or  
6 like something is like physically compressing it.

7           A     There's a theory that you can have some chemical  
8 irritation from the disc.

9           Q     That can cause the nerve root to become irritated or  
10 inflamed; correct?

11          A     Sure.

12          Q     Causing pain?

13          A     It can cause symptoms.

14          Q     Cause symptoms down the extremity which could  
15 include pain; correct?

16          A     Sure.

17          Q     It could include numbness?

18          A     Yes.

19          Q     It could include tingling?

20          A     Yes.

21          Q     Radicular symptoms; right?

22          A     Yes. Yeah.

23          Q     Now, you agree that one way that as a spine surgeon  
24 to diagnose a patient who has suspected disc injury or  
25 condition causing symptoms is to refer them to an

1 interventional pain management specialist for the site  
2 specific injections; correct?

3 A I don't agree with that statement.

4 Q You don't? Okay. Do you agree that pain management  
5 physicians play a role, or can play a role, in the diagnosis  
6 of the source of a patient's pain coming from the cervical  
7 spine?

8 A Potentially, yeah. Correct.

9 Q And one of the ways you do that is through the  
10 steroid injections, including selective nerve root blocks;  
11 correct?

12 A Yes.

13 Q Now, when you are recommend -- when patients are  
14 recommended for selective nerve -- site specific selective  
15 nerve root blocks, it's the response, the immediate response,  
16 to the anesthetic which can provide some diagnostic value  
17 determining whether that's a source of the patient's pain or  
18 not; correct?

19 A Yeah, I think we discussed some of that.

20 Q Yeah. And also there's a steroid component which  
21 may provide some sort of lasting relief; correct?

22 A Yes.

23 Q Now, in your paper -- let me find that note. I'm a  
24 little spread out here. Oh, here it goes. And you understand  
25 as a spine surgeon that when a patient undergoes a selective

1 nerve root block or a steroid injection at a specific location  
2 in the spine, that there may be a recurrence of pain or  
3 symptoms; correct?

4 A Are you asking me if the patient gets an injection  
5 can they still have pain?

6 Q No, that the pain can come back.

7 A Sure.

8 Q Right. Just because the pain may go away for days,  
9 weeks, or even a couple of months doesn't mean it may not  
10 reoccur, correct, or come back in the future?

11 A Yeah, injections are typically -- the anesthetic is  
12 temporary.

13 Q Right. But the steroid -- the steroid may provide  
14 some longer benefit, maybe weeks or months; right?

15 A Potentially.

16 Q Usually shorter than that?

17 A Yeah.

18 Q Okay. And so one of the things that you recommend  
19 is that a patient who has undergone a cervical epidural  
20 injection is to follow up with those patients to see how  
21 they're doing following -- to see if there's any therapeutic  
22 benefit to the injection; correct?

23 A I think it's a good idea.

24 Q Right. Because you want them to follow up for up to  
25 a year to determine the length of the relief and determine if  
26 they require surgical intervention. That's one of the reasons

1 why you ask them to follow up; correct?

2 A That's some of the reason, yeah.

3 Q All right. Now, just so we're clear, you used the  
4 word if. You agree more likely than not that my client  
5 sustained an injury to her body in the October 30, 2015, motor  
6 vehicle collision; correct?

7 A Yes.

8 Q You agree to that?

9 A Yes.

10 Q To a reasonable degree of medical probability,  
11 that's your opinion is she suffered an injury?

12 A Yes.

13 Q Okay. So it's not an if anymore. That is your  
14 opinion. I just want to make sure we're clear on that.

15 A Yes.

16 Q All right. Now, you believe that all of the care  
17 that she received up through February 2016, that was  
18 reasonable and appropriate; correct?

19 A Yes.

20 Q You thought the chiropractic care was reasonable and  
21 appropriate, didn't you?

22 A Yes.

23 Q You thought that the referral for an MRI was  
24 reasonable and appropriate; correct?

25 A Yes.

26 Q You also thought that going to see Dr. Ross at North

1 Las Vegas Pain Management for medical support, meaning receive  
2 medication while she was undergoing physical therapy with the  
3 chiropractor, that was also a reasonable management approach;  
4 correct?

5 A Yes.

6 Q It was also reasonable for the chiropractor who  
7 suspected a possible disc issue to refer Desire to the pain  
8 management physician, Dr. Rosler, for an evaluation; correct?

9 A Yes.

10 Q Now, Dr. Rosler made, based on his examination, he  
11 suspected that there was a C6-7 disc problem; correct?

12 A Yeah, I don't have his note in front of me --

13 Q All right.

14 A -- but I'll take your word for it.

15 Q He diagnosed her with left upper extremity  
16 radiculitis and recommended a left C7 selective nerve root  
17 block at the time of his initial evaluation on December 16,  
18 2015. Do you recall that?

19 A I don't have it in front of me.

20 Q Okay.

21 A If that's what the record says, I --

22 Q Yeah.

23 A -- I'll take your word for it.

24 Q Okay. That was reasonable for him to make that  
25 recommendation; correct?

26 A Sure.

1           Q     Because he's trying to find out where the source of  
2 the pain is; correct?

3           A     That would be possibly one reason.

4           Q     And also maybe provide her some benefit, maybe --  
5 maybe the pain -- he can help control her pain and maybe  
6 alleviate the symptoms; right? It would be another potential  
7 benefit; correct?

8           A     Sure.

9           Q     There's a diagnostic aspect of it, and potentially  
10 therapeutic aspect of it; right?

11          A     Typically for the average injection, yeah.

12          Q     Okay. All right. So when Desire agreed to undergo  
13 the left-sided selective nerve root block at the  
14 recommendation of Dr. Rosler, that was reasonable for her to  
15 do that; right?

16          A     Well, I think it's reasonable for him to recommend  
17 it. I wouldn't recommend the injection, but I don't fault  
18 them for doing that.

19          Q     Right. Even though you -- personal preference -- I  
20 mean, a lot of physicians and surgeons have personal  
21 preferences; right?

22          A     Sure.

23          Q     But you agree that Dr. Rosler's recommendation, that  
24 was itself reasonable?

25          A     Yes.

26          Q     Therefore, it was reasonable for Desire, who was 24

1 years old at the time, to follow that recommendation and  
2 undergo the procedure; right? That was a reasonable decision  
3 on her part?

4 A I think that was a reasonable decision.

5 Q You're not critical of her in any way; correct?

6 A No.

7 Q Okay. And you agree that the selective nerve root  
8 block --

9 MR. PRINCE: Brandon, it's 199, Exhibit 47.

10 THE COURT: I'm sorry?

11 MR. PRINCE: I'm going to put a document on this  
12 monitor.

13 THE COURT: Okay.

14 MR. PRINCE: if I can also have the --

15 BY MR. PRINCE:

16 Q Doctor, if you want the actual hard copy, I can  
17 provide you that, as well.

18 A That's fine.

19 Q And on January 7, 2016, it says her pre-operative  
20 score was an 8 out of 10, and her post-operative score was  
21 zero out of 10. Do you see that?

22 A I do.

23 Q Right. And there's diagnostic value in that in the  
24 sense of that's at least indicated that she potentially has  
25 some type of a disc problem at the C6-7 level; correct?

26 A I don't think that's accurate.

1 Q Okay. Well, Dr. Rosler and Dr. Khavkin and Dr.  
2 Garber all explained that selective nerve root blocks like  
3 this assist them in diagnosing a patient's potential problem  
4 and in a patient's spine. Do you disagree with that?

5 A In general I don't disagree with that. But for this  
6 specific case with this pathology, I do.

7 Q Okay. And so the recommendation was made. You said  
8 it was reasonable. Like you said everything up to recovery  
9 was reasonable; right?

10 A Yeah.

11 Q And so that includes this injection; right?

12 A Well, injections are reasonable.

13 Q Okay.

14 A We talked about that. But in this case I personally  
15 would not have prescribed that injection.

16 Q Well, personal -- we're not talking about personal  
17 preferences. You agreed earlier that all the treatment up  
18 through February was reasonable. And you said even including  
19 the injections with Mr. Winner. Do you remember that this  
20 morning, earlier today?

21 A I don't recall mentioning the injections.

22 Q Yeah, my notes indicate that you indicated the  
23 injections. But nevertheless, it was reasonable for him to  
24 make the recommendation. It was reasonable for her to undergo  
25 the procedure; right?

26 A I think we've talked about that.

1           Q     Yeah. And that's fine. And you agree that after  
2 this she did record a significant decrease in her symptoms;  
3 correct?

4           A     That's correct.

5           Q     So there was some response to treatment, this  
6 treatment specifically, right --

7           A     Yes.

8           Q     -- that helped her?

9           A     Well, yeah, and I -- we talked about that earlier,  
10 also.

11          Q     Right. And Dr. Rosler explained to this jury that  
12 before she underwent this procedure, he would have recommended  
13 to her to go off her anti-inflammatory medication and her pain  
14 medications to prevent the possible risk of a bleed during a  
15 procedure.

16          A     Sure, that's pretty common.

17          Q     That's common; right?

18          A     Yeah.

19          Q     So in patients who have had a disc injury or some  
20 other type of injury, when they come off of their meds, their  
21 pain levels likely will go up because that's what helps  
22 control the pain, right, or symptoms?

23          A     That can happen.

24          Q     Right. Right. So now when Desire does well after  
25 that and reports that she has -- her pain level was down to  
26 almost a zero, have that -- she had a favorable response to

1 that; correct?

2 A She did.

3 Q Now, Doctor, you talked a lot about an MRI today;

4 right?

5 A I did.

6 Q And you can't just look at an MRI and determine if

7 someone has pain or not; correct?

8 A That's true.

9 Q Even if someone has a significant disc herniation,

10 it doesn't mean that patient has pain and needs surgery;

11 correct?

12 A That's correct.

13 Q And, in fact, it may mean they may have no symptoms

14 because of a significant disc herniation or problem; correct?

15 A Correct.

16 Q So you have to look at the overall clinical picture;

17 correct?

18 A Yes.

19 Q Do you use clinical correlation in your practice?

20 A I do.

21 MR. PRINCE: Yep, 41.

22 BY MR. PRINCE:

23 Q Now, I've kind of showed you -- I'm showing you like

24 a chart that I built. Patient history, exam findings,

25 response to treatment, imaging and other testing. Do you

26 believe -- that's a fair representation that there is

1 components that go into how a physician would clinically  
2 correlate a patient's symptoms and problems and diagnose this;  
3 correct?

4 A I think it depends on the situation.

5 Q Right. But those are the components; right?

6 A Those are some of the components, but I -- I -- the  
7 pie chart, I wouldn't say that's -- that's for every patient.  
8 I mean, that's -- we would argue probably the representation  
9 of the pie chart.

10 Q You agree patient history is significant; correct?

11 A It can be.

12 Q It's significant in -- well, if in the absence of  
13 someone who has like an obvious fracture or dislocation of  
14 their spine, the case and history is going to be very  
15 important; correct? At least to someone who is involved with  
16 the spine.

17 A Well, it's important, but you have to take  
18 everything into account. I mean, if -- you know, there are --  
19 there are people that have a conversion disorder where their  
20 history is all of it and they have no -- it's a psychological  
21 condition; right? They could be -- you can't say that they  
22 have a problem just because their history is there. So it --  
23 it actually depends on the diagnosis. It depends -- everyone  
24 is different. You can't just say patient history is 50  
25 percent of every single situation. I disagree with this.

26 Q Okay. Well, is patient history a significant part

1 of it at all? It could be 25 percent.

2 A Well, it's a part of it, but it also changes based  
3 on the -- on the situation.

4 Q So let -- let me just do it this way. Patient  
5 history in general is critical to every aspect of medicine;  
6 correct?

7 A It is.

8 Q Whether you're an orthopedist, you're a  
9 cardiovascular surgeon, whether you're an ophthalmologist,  
10 right, it's -- it's important to everything; right? Emergency  
11 room medicine.

12 A Absolutely.

13 Q Right. So patient history is always very important;  
14 correct?

15 A Well, it typically is, but I think when you look at  
16 clinical correlation and you look at different diagnoses, the  
17 patient history can be 80 percent of it. It could also be  
18 minute. It could be 1 percent.

19 Q Right.

20 A I mean --

21 Q If a patient -- if a patient comes to see you at USC  
22 and says, Doctor, I have severe neck pain that's been going on  
23 for about three weeks now, don't you take a detailed history  
24 of that patient?

25 A Well, absolutely. Patient history is important.  
26 But when you say clinical correlation on what the patient has

1 as their diagnosis, again, there are situations I could give  
2 you where the patient history is meaningless, right, and  
3 conversion disorder is one of those.

4 Q I don't even know what conversion disorder is, but  
5 okay. I'm not talking about extreme examples. I'm talking  
6 about a patient that --

7 A I'm not talking about extreme examples. I'm just  
8 saying I think every diagnosis is different, every patient is  
9 different. And, you know, I can't sit there and say with this  
10 pie chart that patient history represents 50 percent of  
11 everything. I mean, if a patient complains -- the example I  
12 always use is, look, if my history is that I'm as good of a  
13 player, basketball player as Michael Jordan, if I don't have  
14 the correlation where I can actually play that basketball,  
15 then it doesn't matter how much my history is or how much I  
16 say that I'm the greatest player in the world, it doesn't --  
17 it doesn't respond. So my -- my history part of it is so  
18 minuscule. I mean, if a patient complains of pain, but none  
19 of these findings correlate with that, then the patient  
20 history is almost minuscule.

21 Q I'm just saying patient history plays a role in  
22 clinical correlation, yes or no?

23 A It does play a role.

24 Q Examination findings, detailed examination findings,  
25 those also play a role; correct?

26 A Yes.

1           Q     Response to treatment, how they responded to  
2 conservative care, how they responded to injection therapy,  
3 how they respond to surgery, that's part of it; isn't it?  
4           A     It's all part of it.  
5           Q     Diagnostic imaging, x-rays, MRI; right?  
6           A     That's included in all --  
7           Q     That's part of it; right?  
8           A     That's everything.  
9           Q     Other testing could be the selective nerve root  
10 block, epidural steroid injections at site specific levels in  
11 the spine; right?  
12          A     Absolutely. All of that.  
13          Q     All of these components play a role in the clinical  
14 correlation process; right?  
15          A     Sure.  
16          Q     The MRIs, you don't just start and stop the analysis  
17 at the MRI. You have to look at everything; correct?  
18          A     You do have to -- that's what correlation means.  
19          Q     Right. Exactly right.  
20          A     Things have to fit together.  
21          Q     All right. So now you have the opportunity to  
22 review my client's medical records related to her 2010 motor  
23 vehicle collision; correct?  
24          A     Yes.  
25          Q     You agree that she saw -- was only seen 14 times by  
26 the chiropractor; correct?

1           A     Yeah, I think she treated for just two months.

2           Q     Right. You agree that she was diagnosed with sprain  
3 and strains; correct?

4           A     I believe so.

5           Q     Right. While one position said that she had  
6 possible radiculopathy, that diagnosis was never confirmed,  
7 correct, based on your review of those records?

8           A     Yeah, I don't even recall that.

9           Q     Right. So you're not here -- you agree that at  
10 least according to the report, the MRI, imaging of her spine  
11 at 19-years-old was pristine and normal at every level?

12          A     Well, it said normal.

13          Q     At every level.

14          A     It said normal. I think it was normal.

15          Q     Right.

16          A     At least that's what the report said.

17          Q     Sure. And there's no documented records that Desire  
18 had any numbness or pain in her arms or her hands following  
19 that 2010 motor vehicle collision, correct, that you reviewed?

20          A     Yeah, I can't recall, but it seems like her symptoms  
21 appeared -- there wasn't very much documentation after she  
22 finished her chiropractic care of any symptoms.

23          Q     Right. And even during the course of the  
24 chiropractic care, there was no documented pain radiating down  
25 her arms, numbness or tingling into her arms or her hand,  
26 correct, according to those records?

1           A     Yeah, I can't recall.

2           Q     If you would have saw that, you would have clearly  
3 documented that in your reports, your 12 reports; correct?

4           A     Probably.

5           Q     And you did not do that in this case, did you?

6           A     I mean, I could look through it, but --

7           Q     Yeah, go ahead.

8                 MR. WINNER:  If this helps, I'll stipulate.

9                 THE COURT:  Okay.

10                MR. PRINCE:  Stipulate to what?

11                THE COURT:  That it's not there.

12                MR. WINNER:  Whether the radiculopathy down the arm  
13 was mentioned in the report pre-accident.

14                THE WITNESS:  Yeah, I just see the note from Dr.  
15 Smith on June 16, 2010.  It said cervical radiculopathy,  
16 post-traumatic headache, and then I don't really see anything  
17 more.

18           BY MR. PRINCE:

19           Q     It actually doesn't say that, does it?  It doesn't  
20 -- you're actually missing a critical word there, aren't you?

21           A     Well, I don't have the original repot in front of  
22 me.

23           Q     Okay.  Well, yeah.  Well, so how does -- tell me how  
24 you documented it.  How did you document it?

25           A     It just says Dr. Smith, MVA, 5/10/10, front seat  
26 passenger in a car, had cervical, thoracic, lumbar x-rays

1 5/26/10 that were negative for fracture, pain in neck and both  
2 shoulders, headaches, smokes, cervical radiculopathy, and  
3 post-traumatic headache.

4 Q Okay. Now, actually the doctor said possible  
5 radiculopathy; right?

6 A If it says that, I wouldn't argue with that.

7 Q Okay. Well, I just want to show you so we're clear.

8 MR. WINNER: I'll stipulate.

9 MR. PRINCE: Exhibit 81, page No. 958.

10 BY MR. PRINCE:

11 Q And so the doctor says possible radiculopathy. That  
12 doesn't establish a diagnosis, does it? It's potentially a  
13 working diagnosis of differential for which she then ordered  
14 an MRI; correct?

15 A Well, I mean, radiculopathy is a symptom. It's not  
16 a finding on MRI. So if he said possible radiculopathy, then  
17 it probably means that there is possible radiculopathy.

18 Q Right. Possible is a list of things that might be  
19 there; correct?

20 A That's correct.

21 Q Might explain it; correct?

22 A Yes.

23 Q And the MRI here was normal after this visit;  
24 correct?

25 A Yes.

26 Q Radiculopathy was never established in 2010;

1 correct?

2 A The only thing that I saw was possible

3 radiculopathy.

4 Q Right. That is not established in a diagnosis of

5 what's the cause of any radiculopathy; correct?

6 A I'm sorry. You're asking me if that's

7 establishing --

8 Q That's not a --

9 A -- a cause of any --

10 Q -- establishing a diagnosis --

11 A -- radiculopathy?

12 Q -- of cervical radiculopathy.

13 A Well, if the patient is diagnosed as possible

14 cervical radiculopathy, that is a diagnosis. Whether or not

15 you found anything on the MRI, which we established is normal,

16 we didn't see anything that would cause a radiculopathy. But

17 radiculopathy is not a radiological finding. It's --

18 Q Right. And so there's no further record after that

19 date that ever discussed radiculopathy; correct?

20 A I don't see any.

21 Q And even her -- on her discharge summary from the

22 chiropractor, cervical radiculopathy or some kind of cervical

23 disk issue was not one of the diagnostic impressions by the

24 chiropractor; correct?

25 A I don't have it in front of me, but if that's what

26 it says, I would -- I would take your word.

1 Q Clearly if it documented a cervical disc issue or  
2 radiculopathy in 2010, I know you would have noted that,  
3 wouldn't you have?

4 A Probably.

5 Q And you didn't here; correct?

6 A I don't believe so.

7 Q All right. Now, in the -- you agree that my client  
8 had no documented neck pain or arm pain for more than five  
9 years before the October 30, 2015, crash; correct?

10 A Yes.

11 MR. PRINCE: Brandon, go ahead and put that up.

12 BY MR. PRINCE:

13 Q And you were specifically looking for anything that  
14 may have predated the October 30, 2015, motor vehicle crash  
15 that could have otherwise explained her symptoms; correct?

16 A I didn't see any pre-incident records other than the  
17 ones we just discussed in the few months after the 2010  
18 accident.

19 Q Right. So for more than five years, there was no  
20 medical evidence of any -- of any -- during that time period  
21 of any pain in the neck or her arms; correct?

22 A That's correct. I did not see any documentation.

23 MR. PRINCE: That's -- how many days is that,  
24 Brandon?

25 BY MR. PRINCE:

26 Q That's more than five years, three months, and 17

1 days, 276 weeks, and 1,935 days.

2 MR. WINNER: Your Honor, this isn't a demonstrative,  
3 and I don't know why it's up here.

4 MR. PRINCE: Well, because --

5 THE COURT: Sustained. Take it down, please.

6 BY MR. PRINCE:

7 Q And so you -- there's nothing -- the 2010 does not  
8 -- motor vehicle collision does not explain her symptoms that  
9 she reported after October 30, 2015; correct?

10 A That's correct.

11 Q That's your opinion to a reasonable degree of  
12 medical probability?

13 A Yes.

14 Q That's medically not significant to this case, is  
15 it, in your opinion?

16 A I don't think it's the cause. I don't think that's  
17 the cause of her symptoms after the 2015 incident.

18 Q Now, you agree that people involved in rear-end  
19 motor vehicle collision can injury their spine as a result of  
20 an impact; correct?

21 A Yes.

22 Q And you agree that many people can have -- can have  
23 a component of disc pain, as well as soft tissue, the muscles  
24 and ligaments; correct? You can have both at the same time?

25 A Sure, you can have anything.

26 Q All right. Do you agree that traumatic disc

1 injuries can occur in rear-end impact collisions; correct?

2 A Sure.

3 Q You've treated patients with dramatically induced

4 discogenic pain in your career from rear-end motor vehicle

5 collision?

6 A Yeah.

7 Q Okay. Now, with regard to Desire, you agree that

8 patients can have disc degeneration and become symptomatic to

9 the point they need surgery even with no trauma; correct?

10 A Are you saying people with arthritis can become

11 symptomatic?

12 Q Yes.

13 A Yes.

14 Q They can develop pain?

15 A That's correct.

16 Q They can -- people with disc degeneration can --

17 that can become painful and they go on to have surgery;

18 correct?

19 A That's correct.

20 Q With or without trauma.

21 A Sure.

22 Q So whether the disc herniation -- in your opinion

23 there's no disc herniation there; right?

24 A That's correct.

25 Q Period. So it wasn't like the disc herniation

26 predated the collision. You're saying it's not -- there's not

1 one there at all.

2 A I don't see one.

3 Q And now Dr. Khavkin, he is a fellowship-trained  
4 board-certified neurosurgeon. And neurosurgeons are trained  
5 differently than orthopedic spine surgeons; correct?

6 A Not when it comes to the spine.

7 Q Well, they spend their whole residence doing spine  
8 and cranium; right? That's what Dr. Khavkin and Garber  
9 testified to.

10 A Yeah, but spine training these days is the same.  
11 For example, our fellowship is orthopedic and neurosurgery,  
12 and I have appointment in both departments. So the spine  
13 training you get is pretty consistent these days.

14 Q Well, orthopedics, when you trained as an orthopedic  
15 surgeon, you have to rotated through wrist and hand, foot and  
16 ankle, knees, shoulders, and also spine, correct, over your  
17 four-year residency?

18 A Yes.

19 Q In order to become -- actually do spine surgery, you  
20 have to go to do the one, your fellowship training, right,  
21 where you focus that one year in disease and disorders of the  
22 spine; correct?

23 A You don't have to, but we recommend it.

24 Q Right. To get hospital privilege in most hospitals,  
25 major hospitals, if you're an orthopedist, you would have to  
26 have the spine fellowship training; correct?

1           A     I'm not sure that's true.

2           Q     Okay.

3           A     I think people can still practice in the specialty  
4 that they were trained in, and with the general orthopedic  
5 residence, you can still do spine. But I think the  
6 recommendation is to do spine training.

7           Q     Right. Whereas a neurosurgeon, they do spines from  
8 the beginning of their residency, correct, throughout the  
9 entirety of their residency? And they don't even need to go  
10 into fellowship training for spine.

11          A     Well, most of them still do if they're going to  
12 practice only spine.

13          Q     Okay. Well, Dr. Khavkin, he testified that he did  
14 his residency training in neurosurgery at University of  
15 Chicago. Are you familiar with University of Chicago?

16          A     Yes.

17          Q     That is a world-class medical school; correct?

18          A     Yes.

19          Q     All right. He said he also did a fellowship year at  
20 Johns Hopkins in spine. Would you agree that that is first  
21 class facility like USC or UCLA; correct?

22          A     Yes.

23          Q     And so these -- also board certified. Dr. Khavkin  
24 says he read the November 24, 2015, and saw a disc protrusion  
25 in C6-7. He's not wrong, is he?

26          A     Well, I think as we talked about, everyone has

1 different opinions. I showed the jury and they showed  
2 everyone in the courtroom my reading of the MRI.

3 Q Right. And Dr. Khavkin, based upon the history, the  
4 failure of conservative care, recurrence of symptoms,  
5 selective nerve root block response, and his own  
6 interpretation of the imaging, he recommended a two-level  
7 surgical spine fusion; right?

8 A He did recommend it. You're right.

9 Q Right. Right. And he did that in May of 2016, two  
10 months before the July 2016, motor vehicle collision; correct?

11 A Yes.

12 Q He also found on his examination, he found a  
13 decreased change in her sensory down her left arm, consistent  
14 with a C7 radiculopathy; correct?

15 A Yes.

16 Q Dr. Rosler found the same thing; correct?

17 A I believe so.

18 Q And Dr. Garber also found changes in the C7  
19 dermatome pattern consistent with a problem at the C6-7 disc.

20 A I believe so.

21 Q Now, so Desire was declared to be surgical even  
22 before the July 10, 2016, motor vehicle collision; correct?

23 A Yes.

24 Q Do you agree that operating at C5 -- C5-6 and C6-7  
25 for a 24-year-old girl, that would be a very invasive  
26 operation with long-term implications.

1           A       Well, you would try not to do it on someone so  
2 young, but it depends on the pathology.

3           Q       Why would you -- why do you -- why would you not  
4 want to do that on someone so young? Why is age such a  
5 factor?

6           A       Well, you just try not to operate on younger people  
7 in general.

8           Q       Why?

9           A       Because they're young.

10          Q       What are the long-term implications of that?

11          A       Well, they've had a surgery. There can be scar  
12 tissue.

13          Q       Oh, there can be more than that. Also the adjacent  
14 segment disease process; right?

15          A       Well, we talked about that.

16          Q       That's also a factor; right?

17          A       Well, we talked about that.

18          Q       Well, I haven't talked to you about it yet, but you  
19 talked to Mr. Winner.

20          A       That's correct.

21          Q       Right. But that will also be a factor. You want  
22 them to hold out as long as possible, correct, to avoid --

23          A       Well, if we're talking --

24          Q       -- before they underwent that surgery.

25          A       -- specifically about adjacent segment disease, what  
26 I mentioned before is that that can still happen whether you

1 do the surgery or not.

2 Q Okay.

3 A So whether or not you do a surgery because of that,  
4 I'm not sure it plays a huge role.

5 Q All right. Now, you agree that C5-6 and C6-7, those  
6 are the two most commonly operated on discs in the cervical  
7 spine.

8 A Yes.

9 Q And, in fact, 80 percent of cervical spine surgery  
10 is at C5-6 and C6-7; correct?

11 A No, it's 92.

12 Q Oh, actually more, 92.

13 A Yeah.

14 Q Okay. And when you operate on one of those levels,  
15 at C6-7, there's even a high -- let's say C6-7 like in  
16 Desire's case, there's even a higher rate or chance that the  
17 C5-6 level will break down at even a faster rate, even faster  
18 than 3 percent; correct?

19 A I wouldn't say it's faster than 3 percent. That's  
20 the rate that is commonly quoted.

21 Q Okay. And that's what you testified to in Nevada  
22 before is 3 percent per year; correct?

23 A Yes.

24 Q And it's 3 percent per year that -- it's 3 percent  
25 meaning that someone is going to become symptomatic to the  
26 point of requiring surgery per year.

1           A     Actually, I think the original study talked about  
2 adjacent segment degeneration, which is a radiographic  
3 finding. I don't think all those patients went on to surgery.

4           Q     But you've testified that 3 percent means -- in  
5 Nevada you've testified that 3 percent per year means someone  
6 who becomes symptomatic to the point of requiring another  
7 surgery. That's how you testified in the state of Nevada  
8 before; correct?

9           A     Yes.

10          Q     All right.

11          A     There's some new data out there, though, that's --

12          Q     Right. But you testified to that in Clark County  
13 courtrooms before; right?

14          A     I have in the past.

15          Q     All right. Now, when we're talking about adjacent  
16 segment issues at C5-6 and C6-7, there's a higher degree  
17 likelihood if you fuse C6-7 that C5-6 will become symptomatic  
18 to the point of requiring surgery, correct, according to the  
19 literature?

20          A     I'm not sure what you mean in comparison to. We  
21 talked about adjacent segment degeneration. It can certainly  
22 happen after a fusion, okay. But it also happens regardless  
23 of a fusion. It can happen with laminotomy, and it can still  
24 happen if you don't do surgery. So if you're saying that C5-6  
25 can break down after a C6-7 more so than C2-3 or C3-4, I would  
26 agree with that.

1 Q Okay. And you agree the reason that C5-6 and C6-7  
2 require significantly more screwing than an other levels  
3 because there's more motion at those two segments than any  
4 other level of the cervical spine; correct?

5 A I mean, that's one of the possible reasons, but,  
6 again, it depends on pathology, it depends on each individual  
7 spine. Not everyone moves the most at that level. Those are  
8 just the two most common levels of natural breakdown.

9 Q Right. And you've testified in the past that from  
10 20 years from date of initial fusion surgery at C5-6 or C6-7,  
11 it is more likely than not that the patient who has had a  
12 surgical fusion will develop adjacent segment breakdown  
13 requiring another surgery; correct?

14 A So the studies only go out to ten years. You'd be  
15 purely extrapolating from the 10-year study.

16 Q Right. And you've testified in the past in Clark  
17 County, Nevada, that after 20 years of date of initial fusion  
18 surgery, it's more likely than not that a patient who has had  
19 a surgical fusion at even a single level will develop adjacent  
20 segment breakdown requiring another surgery; correct?

21 A So I testified to that. There's new data out there  
22 showing that it only goes out to 10 years and we can't predict  
23 beyond 10 years.

24 Q Well, you testified that you predicted beyond 10  
25 years before in the state of Nevada; correct?

26 A Well, medicine changes. There's new research being

1 done all the time, so that was, what, 10 years ago?

2 Q Right. But you've testified to that, haven't you?

3 A 10 years ago, yes.

4 Q All right. Well, anatomy hasn't really changed;

5 correct?

6 A Our science has changed.

7 Q But today you still tell patients that they can

8 expect a 3 percent per year adjacent segment breakdown; right?

9 A Up to 10 years, yes.

10 Q Right. Well, the body is not just going to stop

11 after 10 years. It'll keep going; right?

12 A It could.

13 Q And that's the likelihood, isn't it?

14 A Actually, so I want to make sure this -- get this.

15 And I apologize if we're talking over each other. We can only

16 say after 10 years. Medicine is not at the point where you

17 can sit there and say, oh, this is going to go on for 10, 20,

18 30, 40, 50 years. You have to show that. The human bodies are

19 different. You just cannot extrapolate that out.

20 Q Well, once the adjacent segment disease starts and

21 progresses at 10 years, it's not just going to all of the

22 sudden stop; right? It doesn't just stop, correct, the body

23 will continue?

24 A It can't. So we talked about this. The bottom line

25 is that you can get that adjacent segment breakdown even if

26 you don't do a fusion. So you can make an argument it has

1 nothing to do with the fusion, that if she had not had the  
2 fusion at C6-7 she would have a risk of breaking down at C5-6  
3 anyway, okay. The problem is is that there are things in  
4 medicine that we see that actually occur early. So possibly by  
5 10 years, the people that are prone to getting adjacent  
6 segment disease will get it.

7           Beyond 10 years they may -- actually, it could stop.  
8 It actually could stop and everything beyond that could be  
9 completely unrelated to the -- to the fusion or any effects of  
10 the fusion. We see cervical plates that subside. They always  
11 subside early and we follow them out for five to ten years.  
12 They subside early. If it hasn't subsided by five years, it's  
13 not going to subside. And so there are things in medicine  
14 that stop and so you cannot just assume it's going to happen  
15 at the same rate in perpetuity.

16           Q     Okay.

17           MR. PRINCE: I'm at a good stopping point, Judge.

18           THE COURT: Are you done?

19           MR. PRINCE: No, I'm not.

20           MR. WINNER: Can we approach?

21           THE COURT: Yeah.

22                               (Bench conference)

23           THE COURT: How much more do you have?

24           MR. PRINCE: Probably about 15, 20 minutes.

25           THE COURT: All right. I'm going to keep the jury.

26           It's on you guys.

1 MR. PRINCE: Well, my doctors had to come back two  
2 times. What's the issue? I don't understand what the problem  
3 is.

4 THE COURT: It's been made clear that he couldn't  
5 come back. I mean, he's out of town and I don't think that's  
6 fair to make him come back for 15 minutes. A juror has a  
7 dinner reservation. I normally wouldn't do this, but like I  
8 said, I asked you all to deal with this at 1:00. Nobody did,  
9 so that's what's going to happen. A juror is going to have to  
10 miss his dinner or be late or whatever.

11 MR. PRINCE: Let me -- I do have some more time, so  
12 I don't know -- I don't know what to do. You said we're  
13 stopping at 6:00, so I have a few more questions.

14 MR. WINNER: I -- I kind of cut my direct out by 40  
15 percent --

16 MR. PRINCE: Well --

17 MR. WINNER: -- to get this done.

18 THE COURT: And I assume you're not going to have  
19 many questions?

20 MR. WINNER: Not many, no. Maybe -- I wrote down  
21 three based on Dennis's cross.

22 THE COURT: Let's keep going.

23 MR. WINNER: Okay.

24 (End of bench conference)

25 THE COURT: I apologize. It's going to be another  
26 15 minutes. Does anybody need to make a phone call or

1 anything?

2 BY MR. PRINCE:

3 Q I'm going to try to get you through here as fast as  
4 I can. Now --

5 THE COURT: Hang on, Mr. Prince, I'm giving them the  
6 opportunity if anybody wants --

7 MR. PRINCE: Oh, I'm sorry.

8 THE COURT: -- to step outside and make a phone call  
9 or anything.

10 Are you just texting?

11 JUROR NO. 8: Yes.

12 THE COURT: Are you good? I mean, I know you're not  
13 good, but --

14 JUROR NO. 8: Yeah.

15 THE COURT: Okay.

16 BY MR. PRINCE:

17 Q Now, I'm showing you an x-ray here of Desire's spine  
18 after her surgery with Dr. Garber, okay.

19 A Okay.

20 Q And you agree that Dr. Garber's cervical  
21 recommendation, that was reasonable for Desire to treat her  
22 symptoms; correct?

23 A Do I agree with the recommendation for surgery?

24 Q Yeah, for surgery --

25 A No.

26 Q -- was it reasonable? Just as a form of medical

1 treatment to treat her symptoms of neck pain and pain into her  
2 arm.

3 A Well, I mean, I don't fault him for recommending it.  
4 I just don't see pathology there.

5 Q She had -- she reported significant relief after the  
6 surgery; correct?

7 A Yes.

8 Q That indicates that the surgery helped her; correct?

9 A Yeah, I guess that's one way to look at it.

10 Q Okay. She testified under oath that the surgery  
11 helped her and gave her a great benefit. And you don't have  
12 any reason to not believe her; correct?

13 A No, I don't believe her, but I don't think that disc  
14 was that abnormal. I don't see pathology that correlates with  
15 the symptoms. And I just -- I just don't see how that surgery  
16 would help. I think likely if she got better after the  
17 surgery she would have gotten better without the surgery.

18 Q Well, immediately after the surgery she reported  
19 significant relief; correct?

20 A That's correct.

21 Q All right. And so once she's fused at C6 -- and  
22 you're not critical of Desire for following the treatment  
23 recommendation of Dr. Garber; correct?

24 A I am not critical of him, no.

25 Q In any way; correct?

26 A No.

1 Q And so she behaved as normal -- as a reasonable  
2 patient would, right, following the advice of her doctors;  
3 right?  
4 A Yes.  
5 Q All right. And Dr. Garber, he trained at Baylor.  
6 You would agree that's also a world class medical school?  
7 A Yes.  
8 Q And he -- and he's board certified in neurosurgery.  
9 Now, I've got an arrow there pointing to C5-6. Do you see  
10 that?  
11 A I do.  
12 Q And according to Dr. Garber, Dr. Khavkin, and the  
13 radiologist, C5-6 on MRI imaging they found to be abnormal.  
14 There's at least a disc bulge there; correct?  
15 A That's what they're saying, yes.  
16 Q And even NASS, the North American Spine Society,  
17 considers this bulge to be abnormal. It may not be causing  
18 symptoms, but it's abnormal.  
19 A That's what that article says.  
20 Q Right. And you agree that a -- certain patients  
21 have risk factors for developing adjacent segment disease,  
22 including developing symptoms requiring surgery; correct?  
23 A Sure.  
24 Q And one of those risk factors is if the adjacent  
25 segment has some pathology; correct?  
26 A Yes.

1           Q     For example, if C5-6 has pathology, that disc level  
2 would have increased risk factor for adjacent segment disease  
3 requiring surgery at some point in the future; correct?

4           A     Yes.

5           Q     So assuming what the radiologist, Dr. Khavkin, and  
6 Dr. Garber said is true, assuming there is pathology there,  
7 being a disc bulge which is considered abnormal, that would be  
8 a risk factor which would increase the risk of adjacent  
9 segment disease at C5-6; correct?

10          A     Yes.

11          Q     You would agree with me that if you have a fusion in  
12 the adjacent segment disc next to that fusion is completely  
13 normal, it has a less likely chance of developing adjacent  
14 segment problems; correct?

15          A     Potentially, yes.

16          Q     Right. It's the adjacent level disc that's normal  
17 that typically applies to the 3 percent analysis that we've  
18 been talking -- you talked about earlier, correct, when that  
19 disc level was normal?

20          A     No, that 3 percent encompasses all different types  
21 of pathology.

22          Q     Okay. And you agree that given your testimony that  
23 you've given, including previously in Clark County, Nevada, if  
24 you have -- if the adjacent segment includes C5-6 or C6-7 next  
25 to the fusion level which we have here, the rate of adjacent  
26 segment disease is even higher than 3 percent; right?

1           A     Well, I think the risk factor was 3 percent per  
2 year.

3           Q     Right. So if it's a C5-6, if that is one of the  
4 levels next to the fused level, it's even a higher rate  
5 because that is one of the levels that's supposed to affect it  
6 in the cervical spine; correct?

7           A     It is one of the levels that's most affected. I  
8 just can't say it's more than 3 percent based on the data that  
9 we have now.

10          Q     Okay. Haven't you testified in the state of Nevada  
11 that with regard to adjacent segment disease is about 3  
12 percent, and if there is already preexisting disease at one of  
13 the levels next to the fusion, it could be up to 80 percent.  
14 Remember that testimony you've given in Clark County, Nevada  
15 before?

16          A     I don't. But based on new data since then, I think  
17 we can stick at 3 percent.

18          Q     Okay. But regardless of that, if there's pathology  
19 at C5-6 adjacent to a C6-7 fused level, that disc has a higher  
20 rate of adjacent segment breakdown to the point of becoming  
21 symptomatic and surgery; correct?

22               MR. WINNER: This is cumulative. Asked and  
23 answered, Your Honor.

24               THE WITNESS: It's 3 percent.

25               THE COURT: I'm going -- I'm going to let the answer  
26 stand, but I'm not -- it has been asked and answered.

1 MR. PRINCE: Okay.

2 THE COURT: So no -- no more of that.

3 BY MR. PRINCE:

4 Q You agree that it's typical for spine surgeons to  
5 recommend to patients to live their symptoms until they're at  
6 their wits end before becoming -- before succumbing to  
7 surgery; correct?

8 A Sure.

9 Q Okay. Do you agree that the -- the 3 percent  
10 cumulative rate of adjacent segment disease, that applies to  
11 Desire at the C5-6-7 level; correct?

12 A Yes.

13 Q And you can't rule out that she won't succumb to  
14 surgery at the C5-6 level at some point in her lifetime;  
15 correct?

16 A That's correct.

17 Q Right. According -- under your analysis, she has by  
18 10 years at least a 25 percent chance that she's going to  
19 require surgery at that level, correct --

20 A Yes.

21 Q -- according to literature?

22 A Yes.

23 Q And beyond that you're not sure?

24 A That's correct.

25 Q Okay. And so if she becomes -- once she fuses two  
26 levels, then if she has that two-level surgery, then the

1 adjacent segment disease process would start all over again at  
2 a third level; correct?

3 MR. WINNER: Objection, Your Honor. That's already  
4 been dealt with in your rulings --

5 THE COURT: Sustained.

6 MR. WINNER: -- last week.

7 MR. PRINCE: Thank you. I don't have any additional  
8 questions, Doctor.

9 THE COURT: Mr. Winner.

10 MR. WINNER: Really quickly.

11 REDIRECT EXAMINATION

12 BY MR. WINNER:

13 Q Dr. Wang, is the human spine the same in the state  
14 of California as it is in Nevada to your knowledge?

15 A Sure.

16 Q You've given reports for plaintiffs and you've  
17 actually been asked to look at cases for plaintiffs and  
18 plaintiffs' attorneys in the state of Nevada, correct, whether  
19 you testified at trial or not?

20 A Yes.

21 Q In fact, I think you're currently in a case called  
22 Sevarino (phonetic), I believe, in which you're asking to  
23 write a report on behalf of a plaintiff in which my firm is  
24 involved; correct?

25 A I believe so.

26 Q Is it true that the vast majority of people do not

1 require adjacent segment breakdown surgery based on your  
2 experience?

3 A Yes.

4 Q Okay. Doctor, are your opinions for sale?

5 A No.

6 Q Given your -- given your academic standing, given  
7 your professional standing, given your president of NASS, are  
8 your opinions for sale --

9 A No.

10 Q -- to a Las Vegas lawyer?

11 A No.

12 Q You get paid for your time not your opinion?

13 A I get paid by the hour.

14 Q Okay. Not the outcome?

15 A That's correct.

16 Q Okay. Can we agree that the plaintiff gave  
17 histories to the doctors, including Dr. Khavkin and Dr. Garber  
18 that were inconsistent with the medical records?

19 A There were some inconsistencies in them.

20 Q Mr. Prince just asked you about the word reasonable.  
21 Does that mean that you agree that it was reasonably  
22 necessitated by the 2015 accident?

23 A No.

24 Q Or that it's a free country and that the plaintiff  
25 is free and you don't criticize her for making whatever  
26 choices she made?

1           A     No, I'm not criticizing her.

2           Q     Okay. Mr. Prince just asked you if she got better  
3 after the cervical surgery. You indicated that she did;  
4 correct?

5           A     Yes.

6           Q     The medical records indicate and the testimony of  
7 the chiropractor you've reviewed said she got significantly  
8 better and had significant improvement after three months of  
9 chiropractic treatment; correct?

10          A     Yes.

11          Q     And she had a fusion surgery six weeks after the  
12 second action in 2016 before three months had expired?

13          A     July --

14          Q     September 1, 2016, I believe.

15          A     Yeah, I think the -- the third accident was July  
16 10th.

17          Q     The accident --

18          A     Her surgery was September 1st.

19          Q     Yes. Doctor, thank you for coming today. We  
20 appreciate it.

21               MR. PRINCE: I just have one question.

22                        RE CROSS-EXAMINATION

23 BY MR. PRINCE:

24          Q     In that three months she underwent a selective nerve  
25 root block; correct?

26          A     Yes.

1 Q And you don't do selective nerve root blocks for --  
2 THE COURT: That's' two.  
3 BY MR. PRINCE:  
4 Q -- soft tissue injuries; correct?  
5 MR. PRINCE: Well, I guess I'm just --  
6 THE COURT: You said it was one question. I'm just  
7 saying it was two.  
8 MR. PRINCE: Okay. What's that? I wanted one  
9 follow up, Judge, if I may, just one after that.  
10 BY MR. PRINCE:  
11 Q You don't do --  
12 THE COURT: Okay. Then that's it. Then I'm done.  
13 I'll do jury questions, but we're done with this witness.  
14 MR. PRINCE: That's fine.  
15 BY MR. PRINCE:  
16 Q You don't do selective nerve root blocks for soft  
17 tissue injuries, do you?  
18 A No, I don't -- I don't typically prescribe those  
19 for --  
20 Q Okay.  
21 THE COURT: Ladies and gentlemen of the jury, any  
22 questions? Nobody is going to ask them now, huh?  
23 All right. This witness is excused?  
24 MR. PRINCE: Yes.  
25 THE COURT: Okay. Thank you, Doctor.  
26 THE WITNESS: Glad to meet you.

1 THE COURT: You, too.

2 THE WITNESS: Okay. Thank you.

3 THE COURT: And, ladies and gentlemen of the jury,  
4 we're going to take a recess again. My sincerest apologies.

5 During the recess you are admonished not to talk or  
6 converse among yourselves or with anyone else on any subject  
7 connected to this trial, or read, watch, or listen to any  
8 report of or commentary on the trial, of any person connected  
9 with this trial by any medium of information, including,  
10 without limitation, newspapers, television, the Internet, and  
11 radio, or form or express any opinion on any subject connected  
12 to the trial until the case is finally submitted to you.

13 Everybody is on board with 10:30? Yes? Counsel,  
14 you guys will have somebody here at 10:30?

15 MR. PRINCE: Yes.

16 THE COURT: Okay. I'll see you tomorrow at 10:30.  
17 Be safe.

18 (Jury recessed at 6:14 P.M.)

19 THE COURT: Anything outside the presence?

20 MR. PRINCE: No.

21 MR. WINNER: No, but thank you all for staying late  
22 to accommodate us.

23 MR. PRINCE: Yeah, thank you, Judge.

24 THE COURT: No worries. But, guys, I'm not going to  
25 do it again to this jury, okay. If they're not all on board  
26 to stay later, I'm not messing with them anymore.

1           MR. PRINCE: I don't think we -- we're not going to  
2 have anymore issues with that.

3           THE COURT: Look, I just -- no matter what, if they  
4 raised their hand because they're hungry and they want to  
5 leave, I just -- it's not fair to them.

6           MR. WINNER: We have a -- I guess we don't need to  
7 cover this this minute, but we --

8           THE COURT: Oh. I got time, so if you got  
9 something, let's do it now instead of wasting my -- the jury's  
10 time tomorrow.

11          MR. WINNER: Mr. Prince, I told him we had  
12 subpoenaed Keith Lewis, the radiologist, to appear today.

13          Dennis, have you met Keith Lewis? Do you know what  
14 he looks like?

15          MR. PRINCE: No, I don't.

16          MR. WINNER: I didn't see anybody who appeared to  
17 might be Keith Lewis show up in the courtroom today. My  
18 office tried to call him, Mr. Prince said he wouldn't have a  
19 problem with us doing this, to tell him to come tomorrow or  
20 Thursday and to call us back. He didn't call us back. But he  
21 is violating our subpoena. We will try to touch base with him  
22 tomorrow, and we might ask for some [inaudible].

23          MR. PRINCE: Okay.

24          THE COURT: Okay.

25          MR. PRINCE: Well, I don't know anything about that.  
26 For tomorrow, just so you know, obviously, my plan was to have

1 Jorge -- or Jorge testify, but he's going to be at the  
2 hospital, so he can't go until Thursday. So I have -- then we  
3 will start with the defendant or our plaintiff Guadalupe. So  
4 that will be our witnesses that we have for tomorrow.

5 MR. WINNER: It will be a short day.

6 THE COURT: You put on the defendant?

7 MR. PRINCE: What? What did you say?

8 THE COURT: You put on the defendant?

9 MR. PRINCE: I am going to put on the defendant.

10 THE COURT: Funny.

11 MR. PRINCE: Oh, yeah. In civil cases, oh, yeah,  
12 yeah, yeah. You definitely --

13 MR. WINNER: Do we need to come in at 10:30, then,  
14 if you only have two witnesses?

15 MR. PRINCE: Well [indiscernible].

16 MR. WINNER: Yeah, that means the jury is going to  
17 be done at 1:00. I can't believe --

18 MR. PRINCE: I don't know.

19 MR. WINNER: Okay.

20 THE COURT: Do -- is that too -- do we have -- we  
21 have cells for everybody; right?

22 THE CLERK: Do we what?

23 THE COURT: We have cell numbers for all the jurors?

24 THE CLERK: I think the others do.

25 THE COURT: Is -- is there a question that we're  
26 dragging them in here at 10:30 and then got to cut them loose

1 at 3:00? Is that a potential problem here?  
2 MR. PRINCE: Potentially.  
3 THE COURT: Is -- see if they're still in the  
4 hallway. Or --  
5 THE MARSHAL: No.  
6 THE COURT: -- nobody --  
7 THE MARSHAL: They --  
8 THE COURT: You guys can't.  
9 THE MARSHAL: They're not here.  
10 THE COURT: Do we --  
11 THE MARSHAL: The jurors are gone.  
12 THE COURT: Do we have cell phones for all of them.  
13 THE MARSHAL: Yes, we have the numbers.  
14 THE COURT: All right. Do you see what saying, I  
15 don't want to change them to come in at --  
16 MR. WINNER: Okay.  
17 THE COURT: -- at 10:30 --  
18 MS. LORELLI: Yeah, there's only two tomorrow.  
19 THE COURT: -- and then say, oh, by the way, we're  
20 done with you now, we have --  
21 MR. PRINCE: Well --  
22 THE COURT: -- to come back --  
23 MR. PRINCE: -- Tom told me --  
24 THE COURT: -- on Thursday anyway.  
25 MR. PRINCE: -- that he has Dr. Lewis, so I figured  
26 we'd have a lunch in there, and then we have -- so I don't --

1 I don't know, and that's what my day was because of the trial.  
2 I mean --

3 MR. WINNER: Now, this -- this -- this is what he  
4 actually said; right? Don't --

5 MR. PRINCE: Yeah, yeah. No.

6 MR. WINNER: Don't -- don't do that --

7 MR. PRINCE: No.

8 MR. WINNER: -- to us anymore.

9 MR. PRINCE: No. That's actually -- yeah, sure.

10 THE COURT: So what witnesses do we have tomorrow?

11 MR. PRINCE: As I explained --

12 THE COURT: The defendant --

13 MR. PRINCE: -- the defendant --

14 THE COURT: Jorge --

15 MR. PRINCE: -- and Guadalupe --

16 THE COURT: -- no, not Jorge.

17 MR. PRINCE: -- Parra, the other plaintiff.

18 THE COURT: Okay. That's it?

19 MR. PRINCE: Well -- well, I was going to have  
20 Jorge, but he's going to testify -- he's got to be with his  
21 wife for the birth of the baby.

22 THE COURT: I think that's important.

23 MR. WINNER: Now, what happened to those days when  
24 you would just pace up and down in the waiting room with a  
25 pack of cigarettes?

26 THE COURT: What's the -- what's the next -- what

1 other witnesses are there? Is that it for you, Mr. Prince?

2 MR. PRINCE: Yes.

3 THE COURT: Those three?

4 MR. PRINCE: Yes.

5 THE COURT: Do you all have one you could have ready  
6 out of order tomorrow?

7 MR. WINNER: We are going to call him and see, but  
8 we --

9 MR. PRINCE: Who?

10 MR. WINNER: -- told him -- Joe Schifini. And we  
11 will see about Keith Lewis, but I'm running into trouble with  
12 him. So what we may --

13 THE COURT: What are you --

14 MR. PRINCE: Well, we also have to deal with we have  
15 a trial brief on the Dr. Schifini-Dr. Wang issue. We're  
16 suggesting that they're cumulative -- they're giving the same  
17 opinions about injuries, the extent of injuries, the extent of  
18 treatment is reasonable or similar. So I think they're  
19 cumulative in that respect and we need to decide -- Dr.  
20 Schifini --

21 MR. WINNER: Some of them might be. Okay.

22 MR. PRINCE: And so we need to deal with the  
23 cumulative nature and have you define the scope and the  
24 parameters of what Dr. Schifini can testify to. Okay. So  
25 that's still an issue for you to -- to deal with.

26 THE COURT: Okay.

1 MR. WINNER: And do you want to go after jury  
2 instructions tomorrow afternoon?

3 MR. PRINCE: I can.

4 MR. WINNER: We can do jury instructions and maybe  
5 resolve them and move into closings Thursday after Joe  
6 Schifini, unless you have a rebuttal case. Think we can do  
7 closings?

8 MR. PRINCE: No. I mean, think about it, by the  
9 time we -- I don't want to be -- we'll be late. By the time  
10 we -- Dr. Schifini, by the time he testifies, we do cross and  
11 get through everything, instruct, deal with all that, you're  
12 not going to be until 3:00 or 4:00, about 4:00 in the  
13 afternoon.

14 THE COURT: Let's get Schifini in tomorrow, then.  
15 It'll be great to close this on Thursday.

16 MR. WINNER: If -- if we can.

17 THE COURT: If not --

18 MR. WINNER: We told him it's --

19 THE COURT: -- I'm just saying, if we can, I'd love  
20 to close this case on Thursday.

21 MR. WINNER: I would, too. We -- we -- when we  
22 tried to do this before --

23 MR. PRINCE: But I need to have my jury instructions  
24 settled so I can -- I know what to put in my PowerPoint.

25 MR. WINNER: Okay. We can settle -- you want to  
26 settle those tomorrow evening?

1           MR. PRINCE: Well, maybe we can spend the time until  
2 afternoon, doing the jury instructions.

3           MR. WINNER: Uh-huh.

4           THE COURT: Okay. I just -- I just feel bad that my  
5 jury has changed their schedule for --

6           MR. WINNER: I agree.

7           THE COURT: -- for me to say leave. But on the  
8 other hand, the way you all have been running, the odds of  
9 them getting out of here that early are still slim and so this  
10 way -- but I would like to have an extra witness, if we can,  
11 tomorrow.

12          MR. WINNER: I will try to.

13          THE COURT: And if we bleed into Friday, we're  
14 probably not going to start until 1:00, so it would be like  
15 start closings at 1:00.

16          MR. WINNER: In which case --

17          THE COURT: I've got a whole bunch --

18          MR. WINNER: -- we're in trouble because --

19          THE COURT: -- I've got five cops --

20          MR. PRINCE: No, no, no

21          THE COURT: -- scheduled to come in.

22          MR. PRINCE: Don't -- don't -- the -- the  
23 deliberating over the weekend, that's -- that's a terrible  
24 idea, not deliberating Friday night or Monday.

25          THE COURT: Well, then finish.

26          MR. PRINCE: Huh?

1 THE COURT: Then finish. Do you think it's going to  
2 make a difference if they come in at 10:00?

3 MR. PRINCE: I do, yes. Of course.

4 THE CLERK: [Inaudible] unless we do it on Thursday,  
5 but then it might screw that up because we have an evidentiary  
6 hearing for the trial that's supposed to start on Monday.

7 THE COURT: Yeah, but I don't think -- I don't think  
8 they can do the evidentiary hearing on Wednesday because --

9 They asked for a commitment on the evidentiary  
10 hearing, so I said to them, I said, well, you can do either  
11 Thursday afternoon, because you guys told me you were going to  
12 be done Wednesday, so I told --

13 MR. WINNER: Thursday, yeah.

14 THE COURT: -- them -- that's what you told me.

15 MR. PRINCE: Thursday.

16 MR. WINNER: Yeah.

17 MR. PRINCE: We thought at the earliest, Thursday.  
18 We're close to being on track. We're kind of -- almost  
19 catching back up.

20 THE COURT: I know. I'm just saying -- but we're  
21 going into another one next week and -- and I -- they need to  
22 have an evidentiary hearing that I told them to set for Friday  
23 morning, that worst case scenario, we were going on the civil  
24 trial

25 MR. PRINCE: Yeah, but, Judge, the problem will be  
26 the jury deliberating after -- on Friday night, I think will

1 be a problem. I think if we --

2 MR. WINNER: Well, we told the jury they'd be done

3 by Friday.

4 MR. PRINCE: Yeah.

5 MR. WINNER: Yeah.

6 MR. PRINCE: Possibly bleeding into --

7 THE COURT: Well, that's why I'm bringing them in

8 tomorrow at 10:30. So why don't you all use tomorrow and now

9 do jury instruction issues? We can stay tomorrow after 5:00

10 and do jury instructions. I can stay here until 10:00 if you

11 all want to.

12 MR. WINNER: All right.

13 THE COURT: And if my staff --

14 MR. WINNER: I don't mind --

15 THE COURT: -- whatever they're --

16 MR. WINNER: -- doing this tomorrow.

17 THE COURT: -- willing to do.

18 MR. WINNER: But if Mr. Henriod can deal with jury

19 instructions, that's a great thing.

20 THE COURT: So let's fill tomorrow with testimony.

21 Mr. Prince, maybe -- here -- and do you know how long they're

22 going to keep Desire or Desire in the hospital?

23 MR. PRINCE: I'm assuming a day, but he can come

24 Thursday.

25 THE COURT: Well, I know. But quite frankly, he

26 might be able to come -- I don't -- I don't know what --

1 depending on how things go, I don't know --

2 MR. PRINCE: You -- you mean --

3 THE COURT: Neither day is going to be great to

4 leave his wife, I get that, but in the grand scheme of things,

5 I mean, if it doesn't matter that much, maybe he can come in

6 at -- I can't imagine he's going to be very long; right?

7 MR. PRINCE: True. You want me to try to have him

8 come tomorrow afternoon?

9 THE COURT: I would love that. I'd like to put

10 everything --

11 MR. PRINCE: Let's --

12 THE COURT: -- we can on tomorrow. I know it's --

13 and I don't know how long it takes to induce, mine were all

14 not, but what time is her -- what time is her appointment?

15 MR. WINNER: Yeah, it's not a c-section, it's an

16 induction; right?

17 MR. PRINCE: Yeah. Who knows, Judge?

18 THE COURT: Yeah, they still could -- he may not

19 necessarily be done on Thursday. Just saying.

20 MR. PRINCE: What's that?

21 THE COURT: He may not be there on Thursday. This

22 was really tight scheduling.

23 MR. PRINCE: The afternoon start times are killers.

24 THE COURT: We're going to -- we're going to go and

25 email, try and get a hold of the criminal trial and see if we

26 can agree to do the evidentiary hearing on Monday before the

1 trial. Do you understand what I'm saying, guys?

2 MR. HENRIOD: I don't recall. That -- that's the  
3 conflict with Friday morning?

4 THE COURT: Yes. You hearing me? We will try to  
5 move the evidentiary hearing to before trial. But if they  
6 can't, they can't. So we'll just have to deal with it, okay.

7 MR. PRINCE: Okay.

8 THE COURT: So bring some witnesses tomorrow,  
9 everybody. Anything else? We done? Okay. We'll see you all  
10 at 10:30.

11 MR. WINNER: We have that order to show cause about  
12 that radiologist who was subpoenaed.

13 THE COURT: What do you do with that in a civil  
14 arena? Do I bring him in, do I give you a warrant? What's  
15 the usual?

16 MR. WINNER: I think it's -- do we issue a warrant?

17 MR. PRINCE: No, it would be an order to show cause,  
18 why he shouldn't be held in contempt. It would be an order to  
19 show cause.

20 THE COURT: Not a material witness warrant?

21 MR. PRINCE: Did you serve him?

22 MR. WINNER: Yeah.

23 MR. PRINCE: Not -- did you serve his -- did you  
24 serve him personally at home?

25 THE COURT: If he's already failed to appear, I  
26 mean, if he was served and did not appear at a particular

1 time, then --

2 MR. WINNER: But after talking to Dennis today, I  
3 said I don't know that we'll have time to get to him because,  
4 you know, we're running a little behind. And Dennis said it's  
5 fine to contact him and tell him tomorrow that Thursday is  
6 okay. He didn't reply to my office's message, but if he got  
7 that message, maybe he's showing up tomorrow. I'll find out,  
8 but --

9 THE COURT: Well, like I said --

10 MR. WINNER: -- you never heard back from him and he  
11 didn't show up.

12 MR. HENRIOD: But if not, it would be an option to  
13 issue a very sternly worded -- sternly worded order to show  
14 cause.

15 THE COURT: Well, that doesn't help -- that doesn't  
16 help me with the jury. I'm more inclined to issue a warrant,  
17 if I can, and bring him in here immediately so that he can  
18 testify and our jury can be done. So that's --

19 MR. HENRIOD: Do you have that power?

20 THE COURT: I don't know if I have that power, but  
21 let him know that -- huh?

22 THE CLERK: [Inaudible].

23 THE COURT: I think I do if they shirk you or don't  
24 show up. I don't know why civil would be any different than  
25 criminal. Okay. All right. We are in recess. We're going  
26 off.

27 (Court recessed at 6:25 P.M. until May 29, 2019 at 10:30 A.M.)

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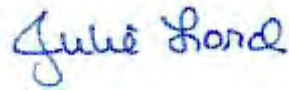
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| <u>DESCRIPTION</u> | <u>ADMITTED</u> |
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(No exhibits admitted)

\* \* \* \* \*

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

A handwritten signature in blue ink that reads "Julie Lord". The signature is written in a cursive style with a large, stylized 'J' and 'L'.

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DESIRE EVANS-WAIAU,  
Plaintiff,  
vs.  
BABYLYN TATE,  
Defendant.

**VS.**

BABYLYN TATE,  
Defer

**RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 10**

For the Plaintiff:

DENNIS M. PRINCE, ESQ.

**For the Defendant:**

JOEL D. HENRIOD, ESQ.  
THOMAS E. WINNER, ESQ.

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|--------------------------|---------------|-----------------|
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None

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None

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Las Vegas, Nevada, Wednesday, May 29, 2019

[Case called at 10:28 a.m.]

THE COURT: Are we on?

MR. WINNER: We don't need to go on. I don't think we need to go on. Dennis and I were just talking that --

THE COURT: We're on, I think.

MR. WINNER: Yeah, that's fine.

MR. PRINCE: Yeah, yeah. I think we have two witnesses today, I think, unless you have the husband.

MR. WINNER: The husband can't come until tomorrow.

MR. PRINCE: Okay.

THE COURT: Has she had the baby yet?

MR. PRINCE: I don't know.

MR. WINNER: No, her water actually broke at 5 this morning.

THE COURT: Oh, yay.

MR. PRINCE: And then -- so they're in labor right now.

MR. PRINCE: Okay. So, we have two witnesses this morning. I predict neither will be very long. I expect my client --

THE COURT: That will be very long or won't be very long?

MR. PRINCE: Won't. My client is at our office and was meeting us over here, so I don't think she will be -- probably a couple minutes behind. We thought this afternoon we could, maybe, argue over jury instructions and the motions we need to about --

THE COURT: Are there a lot of arguments on jury

1 instructions?

2 MR. PRINCE: What's that?

3 THE COURT: Do you -- is there a lot of arguments or do you  
4 have pretty much your stocks that are?

5 MR. PRINCE: I think we proposed principally stock. There's a  
6 few more, but I think -- I think we'll probably be about three to -- about,  
7 approximately, five give or take on or two on each side that are likely  
8 contested. I think that can go -- most of it will go very, very quickly with  
9 the stocks, as you would expect, and then in turn just -- it will only be  
10 relating to the negligence instruction, statutory issues, the duty of the  
11 driver, kind of things like that. That's where you're going to have the  
12 problem. I mean the damage instructions are simple and patterned. So,  
13 I don't think that that's going to be --

14 MR. WINNER: So, before Dr. Schifini tomorrow --

15 MR. PRINCE: Yeah, we have a copy.

16 MR. WINNER: We don't need to be on the record; do we?

17 MR. PRINCE: We're on the record.

18 THE COURT: We're on the record.

19 MR. WINNER: We are. Okay. Before Dr. Schifini tomorrow, I  
20 thought I might have a chance this afternoon, after the jury goes, to have  
21 the arguments that we need to have about that.

22 THE COURT: Have you all talked about the protective order  
23 somewhat? I mean, I assume, a lot of this --

24 MR. PRINCE: We personally served Dr. Schifini.

25 THE COURT: Okay.

1 MR. WINNER: Yeah, he's got personal counsel that wants to  
2 come, so if we can do that this afternoon.

3 MR. PRINCE: It's about the billing records.

4 THE COURT: I just -- I'm trying to figure out -- I mean, a lot of  
5 this stuff, I assume, you already have. A lot of the stuff that even if you  
6 brought it before he testifies, you ain't going to be able to look at it. So  
7 I'm trying to figure out is there something, truly, that we're talking  
8 about?

9 MR. PRINCE: The billing records.

10 THE COURT: For this case?

11 MR. PRINCE: Oh, correct. I'm going to agree to limit it to just  
12 that.

13 MR. WINNER: The billing records for this case?

14 MR. PRINCE: Yeah. Okay.

15 THE COURT: Okay. So then there's no point --

16 MR. PRINCE: I don't understand why they haven't been  
17 produced then. We subpoenaed them the last trial for this, and we  
18 resubpoenaed them for this trial.

19 THE COURT: I know, but you subpoenaed them for the trial  
20 day, and then the trial went away, so there wouldn't have been --

21 MR. PRINCE: True.

22 THE COURT: That's why this should have been done in  
23 discovery, in my opinion, but having said that if you guys have all agreed  
24 you're down to just the billing records and, Mr. Winner, you're fine with  
25 that?

1 MR. WINNER: I am. Let me check with his personal counsel.  
2 I assume he is too, then we can --

3 THE COURT: That seems like it's fair, but -- you know, right  
4 now.

5 MR. PRINCE: Well, it's not a discovery issue and let me say  
6 why, because there are certain financial aspects of the engagement that  
7 may have occurred well after the discovery cutoff.

8 THE COURT: Yeah, but you would update it. You would  
9 have previously, before the discovery cutoff, and then it would be your  
10 duty to update, that's my understanding.

11 MR. PRINCE: I don't know. But under the *Robinson* case,  
12 just as an example, the financial and the -- the financial dealings with the  
13 retained expert are relevant. And so, whatever, they've billed up until  
14 the time they get to the witness stand, that's a relevant issue. So I want  
15 to see the billing. You know, I want to, I guess, trust, but let's verify,  
16 right. Let's just see what the document says.

17 THE COURT: Well, I agree with that. That's fine. So then I'm  
18 going to put this protective motion away, because we resolved it  
19 pending private counsel agreeing, correct?

20 MR. WINNER: Yes, I will --

21 THE COURT: Good.

22 MR. WINNER: -- when we have a break, I will do that.

23 THE COURT: What else can we solve?

24 MR. WINNER: I think Mr. Prince is planning on calling our  
25 client first or second.

1 MR. PRINCE: First.

2 MR. WINNER: So, I have -- my question would be I don't  
3 think Mr. Prince is going to ask all the questions I might ask as part of his  
4 direct. I don't know if counsel or the Court would want me to recall her  
5 in my case-in-chief or if I can just ask her the questions I would ask her  
6 on cross even though they might be outside the scope of his direct, and  
7 it's not very extensive.

8 THE COURT: This is my very, very first time at this. I didn't  
9 even realize he could --

10 MR. PRINCE: I would say, just generally, just for the Court's  
11 edification in a civil case, if an opposing party calls -- like say a Plaintiff  
12 calls a Defendant in to testify, the Defendant will certainly have the right  
13 to be recalled during their case. They could ask questions in terms of a  
14 cross -- "cross-exam." You don't have to be using non-leading  
15 questions. But also, I have no objection if he wants just to do the  
16 entirety of the examination right, you know, after I'm done without  
17 having to call her back. I have no objection to that. I would say most  
18 people probably do it that way. You may recall, if something new comes  
19 up, but I would say that I agree that's the way --

20 THE COURT: Okay. Which brings me to another question.  
21 So, what are the rules on leading and not leading? Because you're  
22 calling her, do you have to use direct or because she's a Defendant you  
23 get to lead?

24 MR. PRINCE: I get to lead because she adverse.

25 THE COURT: Okay. And then when you are crossing her,

1 can you regular cross and lead, or do you have direct, because she's  
2 your client?

3 MR. PRINCE: Well --

4 THE COURT: I apologize, I should have looked this up. I  
5 didn't --

6 MR. PRINCE: In my opinion you have to use -- you have to  
7 direct. You have to use non-leading questions, because it's your client.  
8 You're not adverse. He's going to be asking her questions on her  
9 version of events, so in my belief she can --

10 THE COURT: I mean, I don't know that it's effective to lead  
11 your own client. Probably not all that good in front of the jury if you've  
12 got to lead your own client.

13 MR. WINNER: Okay. The Court does have the discretion to  
14 allow leading questions on cross. I think my questions largely will be  
15 yes or no. I understand Mr. Prince.

16 MR. PRINCE: Yeah, I think it's -- I think it's impermissible.

17 MR. WINNER: And I -- you know, I -- we were --

18 MR. PRINCE: Then I guess object if he needs to call her then.  
19 If he's going to do that, then I have the objection -- I think he needs to ask  
20 the question in the proper format.

21 THE COURT: Wait.

22 MR. PRINCE: And that's how you would direct your --

23 THE COURT: So, you're saying you're going to lead, Mr.  
24 Winner?

25 MR. PRINCE: Yes, he's saying --

1 MR. WINNER: Well --

2 MR. PRINCE: -- maybe in response to some questions he  
3 would ask of my regular --

4 THE COURT: Now leading, in my opinion, it's not a yes or no  
5 question, is fine. It's suggesting the answer. You crashed into her from  
6 behind; didn't you? Not, did you crash into her from behind? One is a  
7 direct question and one is a leading, so.

8 MR. PRINCE: Yeah, we -- I understand. We should be fine.

9 THE COURT: Like I said, I just don't even know -- I don't  
10 know what the rules are, but I will --

11 MR. PRINCE: It would be the same as they were in that  
12 criminal case, except you're allowed to call the Defendant in a civil case.

13 THE COURT: And you're allowed to lead her?

14 MR. PRINCE: Oh, yes. Yes.

15 THE COURT: Okay.

16 [Pause]

17 THE COURT: Oh, the other thing --

18 MR. WINNER: Are we going to give the jury a lunchbreak or  
19 are we just going to --

20 MR. PRINCE: Well, I just want to go until we're done. I don't  
21 expect we're going to be much past 12:30, 1:00 at the latest.

22 THE COURT: That's fine. We may take a quick break.

23 MR. PRINCE: Oh, yeah, of course. Yeah, yeah.

24 THE COURT: Your radiologist, where are we on that?

25 MR. WINNER: Yeah, I was talking to Mr. Prince about that

1 this morning. He was personally served, to my understanding. I talked  
2 to Mr. Prince about contacting him to come back today or tomorrow. My  
3 office tells me that they just left him messages, and he did not respond  
4 to them. That those messages were not, you can come back tomorrow.

5 THE COURT: Who is that guy?

6 MR. WINNER: He's a guy named Keith Lewis.

7 THE COURT: And he's local?

8 MR. WINNER: Yeah.

9 MR. PRINCE: And is he the one, the radiologist from 2010?

10 MR. WINNER: 2015.

11 THE COURT: 2015. And, Mr. Prince, you're not calling this  
12 radiologist guy?

13 MR. PRINCE: No.

14 THE COURT: Do you have --

15 MR. PRINCE: I have never met him or spoken to him.

16 THE COURT: Do you have any contact with him?

17 MR. PRINCE: I have never had contact with him in my career.

18 MR. WINNER: So, the only -- excuse me. Mr. Prince and I  
19 were looking in the courtroom yesterday, and I think between the two of  
20 us we knew everybody, at least when I turned around and looked, that  
21 was in the gallery. I didn't see anybody -- I've never met him either, and  
22 I don't think either of us saw anybody who might be Keith Lewis in the  
23 courtroom.

24 THE COURT: And when was he served?

25 MR. WINNER: You know --

1 UNIDENTIFIED FEMALE SPEAKER: Was it last week or the  
2 first week?

3 THE COURT: All right. So it's not -- it wasn't a 24-hour

4 UNIDENTIFIED FEMALE SPEAKER: It was not.

5 THE COURT: -- last minute thing.

6 UNIDENTIFIED FEMALE SPEAKER: No.

7 MR. WINNER: No, it would have been before the first week  
8 of trial started, I think, or around that time.

9 MR. PRINCE: Where's the proof of service?

10 THE COURT: So what are we going to do about this?

11 MR. PRINCE: Can you get that for us?

12 MR. WINNER: Yeah. Yeah, absolutely.

13 MR. PRINCE: Yeah, let's see the proof of service. And if he  
14 was served, how he was served, where he was served.

15 THE COURT: Well, my thought was --

16 MR. PRINCE: Was he even personally served?

17 THE COURT: -- my thought was to set a show cause hearing  
18 tomorrow morning at 9, during my criminal calendar, and give him an  
19 opportunity to show up and --

20 MR. PRINCE: Well, I guess you need -- first need to find out  
21 when and how he was served.

22 THE COURT: Well, that would be all part of the hearing  
23 tomorrow.

24 MR. PRINCE: Well, how can you have a show cause hearing  
25 if you don't know if he has -- if proper service has been effected. I think

1 you need to know that as an initial starter.

2 THE COURT: Well, there's going to be a double service.

3 There's going to be -- Mr. Winner is representing he's been served. And  
4 I have no reason to disbelieve that.

5 MR. WINNER: Well, I'm getting second hand through my  
6 paralegal talking to her process server.

7 THE COURT: And then, what I'm saying is I would like him  
8 served again today to show up tomorrow to tell me what's going on.

9 MR. WINNER: Will the Court excuse me for two minutes  
10 while I contact my office, and we can get the --

11 THE COURT: And I'm open to suggestions.

12 MR. WINNER: -- service.

13 THE COURT: I don't know how to do this. I usually used to  
14 just send an investigator out, and they would tell him, hey, come to court  
15 right now or there's going to be a witness warrant issued. I don't know  
16 how this works, but I'm not going to hold up a jury. So, if you all really  
17 want him, we need to figure out what we're going to do to get him or --

18 MR. WINNER: Okay. Let me -- if I could excuse myself for  
19 two minutes --

20 THE COURT: You don't think you can just call him?

21 MR. WINNER: -- I'll go make a call.

22 MR. PRINCE: What?

23 THE COURT: You don't think you can call him?

24 MR. PRINCE: I don't have any -- I don't have a contact for  
25 him. I don't have any information for him.

1 MR. WINNER: Yeah, he was before --

2 THE COURT: Oh, oh, oh. Okay.

3 MR. PRINCE: But it has nothing to do with that, Judge. He's  
4 an independent radiology who like works at different facilities, and so it's  
5 not like he's at a facility where I can call. I think he just works out of -- I  
6 think he works out of his house, but I don't know that.

7 THE COURT: Radiologist out of their house?

8 MR. PRINCE: Definitely. Commonly. Because all they're  
9 doing is reviewing imaging. So, if you can have them sent to you  
10 electronically, they don't have to be -- they're not like seeing -- they don't  
11 see patients. They sit in a room and just look at x-rays, MRIs, CT-Scans  
12 all day, but at the hospital --

13 UNIDENTIFIED MALE SPEAKER: I think some of it is done  
14 overseas now too.

15 MR. PRINCE: Yeah, so -- yeah, you don't need to be in a  
16 fixed location. I would say many are not.

17 THE COURT: Wow.

18 THE BAILIFF: Just waiting on the one juror. She's on her  
19 way up now.

20 [Pause]

21 THE BAILIFF: So, Judge, all the jurors are here.

22 THE COURT: Okay. Ready, everybody?

23 MR. PRINCE: Yes.

24 THE COURT: Okay. So, the plan is we're going to probably  
25 do a couple hours. So we will not break for lunch, we'll just break for --

1 MR. PRINCE: Yeah, I mean, we'll the jurors that we're on  
2 pace, that we plan to finish the evidence tomorrow, maybe even argue.

3 MR. WINNER: Can we start a little early tomorrow?

4 THE COURT: I have to wait and see what -- I don't know.  
5 Does anybody know what our crim calendar looks like? We could start at  
6 Noon and tell the jury just to bring a good snack.

7 MR. PRINCE: Well, I don't if we'll finish then because we  
8 have Dr. Schifini. Although I'm going to be more limited, by the time  
9 you do him, do -- do Dr. Schifini, do our client George, which they can  
10 kind of go out of order, that's okay, and then potentially Dr. Lewis, and  
11 instruct.

12 THE COURT: Who's Dr. Lewis?

13 MR. WINNER: The radiologist.

14 THE COURT: Oh.

15 MR. PRINCE: He's the one we've been talking about.

16 THE COURT: Is there some testimony that you all could  
17 agree that.

18 MR. PRINCE: I'm not agreeing to anything.

19 MR. WINNER: I wouldn't either.

20 MR. PRINCE: Because I don't even know if that's true.

21 THE COURT: You can't blame a girl for trying. Okay. Well, it  
22 was just a thought. So, then starting at Noon wouldn't help?

23 MR. WINNER: Starting at Noon would be fine.

24 MR. PRINCE: Yeah, it would help. I think -- let's get through  
25 it, so then if we can start -- we could argue maybe first thing 10:00 on

1 Friday morning. Does that work for you?

2 THE COURT: Well, I believe -- I've got to double check, but I  
3 believe we left a message last night with the DA regarding the hearing  
4 that we had scheduled for 10:00 a.m., so.

5 MR. PRINCE: Okay. I would think Schifini might --

6 THE COURT: It's just those two left?

7 MR. PRINCE: -- my guess is his direct and cross will be  
8 shorter than long.

9 THE COURT: Just those two tomorrow?

10 MR. PRINCE: Yeah.

11 THE MARSHALL: All rise for the jury. All present, Your  
12 Honor.

13 [Inside the presence of the jury.]

14 THE COURT: Welcome back. Okay. Everybody stipulate to  
15 the presence of the jury?

16 MR. PRINCE: Yes.

17 MR. WINNER: Yes, Judge.

18 THE COURT: Mr. Prince.

19 MR. PRINCE: Your Honor, our next witness will be the  
20 Defendant, Ms. Tate.

21 THE COURT: Okay.

22 BABYLYN TATE, DEFENDANT, SWORN

23 THE CLERK: Please state your name and spell your first and  
24 last name for the record.

25 THE WITNESS: Babylyn Tate, B-A-B-Y-L-Y-N T-A-T-E.

1 THE CLERK: You may be seated.

2 MR. PRINCE: Your Honor, before we get started, I'd like a  
3 copy of Ms. Tate's deposition, so she has that available to her.

4 THE COURT: Okay. For the record, it's sealed and being  
5 opened.

6 MR. PRINCE: Yes, and I would like it publish, so -- if I need to  
7 reference it I can.

8 DIRECT EXAMINATION

9 BY MR. PRINCE:

10 Q Ms. Tate, good morning. How are you?

11 A Good morning.

12 MR. PRINCE: Your Honor, may I approach the witness and  
13 hand her the deposition?

14 THE COURT: Of course. Thank you.

15 THE WITNESS: I just want to apologize. I have seasonal  
16 allergies so from time to time, I'm using a tissues. I want to apologize  
17 about that.

18 BY MR. PRINCE:

19 Q Ms. Tate, good morning.

20 A Good morning.

21 Q I have a few questions for you her today, okay?

22 A Yes.

23 Q And you agree that on October 30th, 2015, you crashed into  
24 the back of my client's car on West -- on Flamingo Road near Link Lane,  
25 correct?

1           A     Yes.

2                   MR. WINNER: Object. Object to the word crashed. Form of  
3 the question.

4                   THE COURT: Overruled.

5 BY MR. PRINCE:

6           Q     And you crashed into my client's car going 35 miles an hour.  
7 That was your speed at the time of the impact, correct?

8           A     I was traveling 35 miles an hour, but by the time I applied my  
9 brake, it's probably less than that.

10          Q     Okay. And do you have your deposition there with you?

11          A     Yes.

12          Q     Okay. I want you to turn to -- well, first off, I want you to turn  
13 to this page, page 6 of the deposition. And your deposition was taken on  
14 April 3rd, 2018, correct?

15          A     Yes.

16          Q     And you were represented by one of your lawyers at the  
17 deposition, correct?

18          A     Yes.

19          Q     And you met with your lawyer before the deposition, correct?

20          A     Yes.

21          Q     And you -- one of my associates who worked for my law  
22 firm, he took your deposition that day and asked you a series of  
23 questions. And you provided answers to those questions concerning the  
24 events we're here talking about in court, right?

25          A     Yes.

1 Q And you understood the penalties of perjury that were  
2 explained to you by the lawyer who worked for me, Mr. Troiano, correct?

3 A Yes.

4 Q But he also gave you some additional instruction. And let's  
5 start on page 6, line 14. Mr. Troiano said to you and asked you: It's not  
6 my intention to trick you, however, through the course of an hour or so, I  
7 will ask a bad question. If I do that, just let me know that you don't  
8 understand my question, and I'll do my best to rephrase it. Does that  
9 make sense? What was your answer?

10 A Yes.

11 Q The next question was, if you answer my question without  
12 saying, hey, I don't understand it, we will assume that you understood  
13 the question that was being asked. Does that make sense? What was  
14 your answer?

15 A Yes.

16 Q Okay. So you knew at the time of your deposition, that if  
17 there was anything about the question that was confusing, or you didn't  
18 understand, that you were to let someone know, and he would re-ask it,  
19 so that you did understand before you gave your answer, correct?

20 A Yes.

21 Q Okay. Page 50. Go to page 50, please.

22 A Excuse me, 15?

23 Q 50, yes.

24 A 1-5?

25 Q 5-0.

1           A     Thanks.

2           Q     Okay. Starting at line 1. The question was at line 1, do you  
3 have that in front of you?

4           A     Yes.

5           Q     Okay. Lines 1 through 3.

6           Do you know how fast you were traveling at the time you impacted  
7 the rear of my client's vehicle?

8           You answered I believe it was 35 miles. Do you see that?

9           A     Yes.

10          Q     Okay. You didn't ask that question to be rephrased, correct?

11          A     No, I did not.

12          Q     You understood that question at the time, didn't you?

13          A     Yes, but --

14          Q     And so go onto -- we asked it again, to make sure we  
15 understood. And so this is just for context, let's go ahead and start at  
16 line 6 and go through 13. Okay. Starting at line 6, we asked you:

17                Do you believe that 35 miles per hour was the speed on Flamingo  
18 Road where the accident occurred?

19                Your answer was yes.

20          A     Yes.

21          Q     And let me just ask it again. Do you know how fast you were  
22 traveling when you impacted my client's vehicle.

23                Answer. I believe it was 35 miles an hour. Did you see that?

24          A     Yes.

25          Q     That's what your answer was, correct? Correct?

1 A Yes.

2 Q Okay.

3 MR. WINNER: Could we read the next few lines?

4 MR. PRINCE: You --

5 THE COURT: On cross.

6 BY MR. PRINCE:

7 Q Was that -- now --

8 A Can I explain.

9 Q Your counsel will be able to ask you further questions.

10 A Okay.

11 Q Okay. And your -- well, in the opening statement, Mr.

12 Winner said that English is your second language, and you didn't  
13 understand the question. Do you remember him saying that to this jury?

14 A I did.

15 Q You didn't -- you didn't let us know more than a year ago that  
16 you didn't understand those questions, correct? You didn't tell us that  
17 during the time of your deposition, correct?

18 A I did not, but --

19 Q Okay.

20 A -- also that when I was asked a question, I assume like the  
21 question -- my interpretation would be different.

22 Q So you what -- are you saying now didn't understand the  
23 questions?

24 A I'm not saying that I didn't ask -- I didn't understood the  
25 question, I said my interpretation at the time I was being asked is

1 probably different than looking at it in a -- in a different, you know,  
2 setting.

3 Q Okay. Well, you met with your lawyers before your  
4 deposition was taken, right?

5 A Correct.

6 Q And you prepared, correct? With -- with your lawyers.

7 A But he -- he never asked me to say anything --

8 MR. WINNER: Excuse me.

9 THE WITNESS: -- he just told me to be honest.

10 BY MR. PRINCE:

11 Q You met with your lawyers in advance of the deposition and  
12 they went over -- don't need to tell us what you talked about, but they  
13 explained the deposition process. You understood it was going to be a  
14 question and answer session, and you're going to be under oath, and  
15 you might -- this information might be used at the time of a trial. You  
16 understood that, right?

17 MR. WINNER: May we approach, please?

18 THE COURT: Yes.

19 [Sidebar begins at 10:52 a.m.]

20 MR. WINNER: I don't think Mr. Prince is asking the questions  
21 inappropriately, but my client's a little nervous, and I need to remind her  
22 that she doesn't need to talk about any conversations between her  
23 lawyer and me.

24 MR. PRINCE: I just --

25 MR. WINNER: I don't think that -- I know.

1 MR. PRINCE: You just need to remind her. I think she can --  
2 you can't protect her, except after you cross examine her. She's up here.  
3 If there's an objection to be made, he can make the objection. I said I  
4 didn't want to hear what they talked about. I'm saying she understood  
5 the process. I'm not asking for her communication.

6 THE COURT: Keep going.

7 MR. PRINCE: Okay.

8 THE COURT: I mean if she starts to, make a speaking  
9 objection, if you need to.

10 MR. WINNER: Okay.

11 [Sidebar ends at 10:53 a.m.]

12 MR. PRINCE: Thank you.

13 THE COURT: Uh-huh.

14 BY MR. PRINCE:

15 Q And you knew when you went to that deposition, where you  
16 told us that you were traveling -- in answer to two questions -- going 35  
17 miles an hour at the point of the impact, that you were going to be asked  
18 questions about how the accident occurred, correct?

19 A Yes.

20 Q Okay. You knew questions were going to be asked about  
21 your speed, correct?

22 A Yes.

23 Q All right. Now it is your -- you blame Desire for causing this  
24 accident, correct?

25 A I did not blame her.

1 Q Okay.

2 A I have stated, there's -- I was asked what factors have caused  
3 the accident, which I stated there's a lot of factors that have caused an  
4 accident.

5 Q Okay.

6 A And then they asked me what is it. I told him slamming her  
7 brake in front of me, that's one factor.

8 Q Okay. Okay. Let's go to page 75 of your deposition. Are you  
9 on page 75, Ms. Tate?

10 A Yes.

11 Q I want to go to page -- starting at line 16 through 21.

12 A Yes.

13 Q And it says, who do you think -- line -- are you there? 75.

14 MR. WINNER: I beg your pardon? What line on 75?

15 MR. PRINCE: Starting at line 16.

16 MR. WINNER: Thank you.

17 BY MR. PRINCE:

18 Q And the question was who do you think is to blame for this  
19 accident. Your answer was: Answer. There's a lot of factors that cause  
20 that accident. Okay. What are the factors? Her slamming her brake in  
21 front of me. Do you see that?

22 A Yes.

23 Q That's your statement that you made during the time of your  
24 deposition, correct?

25 A Correct.

1 MR. WINNER: Your Honor, this is not --  
2 MR. PRINCE: And so if you --  
3 MR. WINNER: -- appropriate use of impeachment. She can  
4 be asked to read it and ask if it refreshes her recollection.  
5 MR. PRINCE: No.  
6 MR. WINNER: But showing chunks of the transcript --  
7 MR. PRINCE: Your Honor, that's --  
8 MR. WINNER: -- while asking her is not.  
9 THE COURT: That's correct.  
10 MR. PRINCE: No, no, Judge, hang on a second. If we can  
11 approach.  
12 THE COURT: Approach.  
13 MR. PRINCE: Rule 32 on your computer?  
14 MR. HENRIOD: No. It should be --  
15 [Sidebar begins at 10:55 a.m.]  
16 MR. PRINCE: In a civil case, the deposition of --  
17 THE COURT: Adversary party?  
18 MR. PRINCE: -- can be used for any purpose. I don't even  
19 have to have her called as a witness. I could just read it. We could have  
20 somebody do it without her even being here.  
21 THE COURT: Okay. And then the -- and then the -- that I'm  
22 not sure of.  
23 MR. PRINCE: I'm going to -- I'll show you the language in the  
24 rule --  
25 THE COURT: I know that --

1 MR. PRINCE: -- about how to use a deposition at a trial. And  
2 that language will be -- and I know Mr. Henriod knows this. It's says any  
3 purpose.

4 THE COURT: And apparently, Mr. Winner, you don't?

5 MR. WINNER: Well, I believe it's inappropriate. I have  
6 been --

7 MR. HENRIOD: I mean, if she was on the stand --

8 THE COURT: She is on the stand.

9 MR. HENRIOD: -- I think she should -- yeah. I mean, since  
10 she's on the stand, she ought to be able to comment on it.

11 THE COURT: The depo doesn't come in though, right?

12 MR. PRINCE: Yes.

13 MR. WINNER: No.

14 MR. PRINCE: It does.

15 THE COURT: You can show it, but they don't take it back? Is  
16 that how --

17 MR. PRINCE: Well, the proper use of impeachment of  
18 evidence is to show it to the witness --

19 THE COURT: Right.

20 MR. PRINCE: -- ask the witness again, and if --

21 THE COURT: But it's --

22 MR. PRINCE: -- it refreshes her recollection --

23 THE COURT: But if it's -- if it's an adversary witness, you  
24 don't necessarily impeach them, are you? We don't it comes in as a -- as  
25 an admission by a party opponent versus --

1 MR. PRINCE: It's just part of the record.  
2 THE COURT: -- how they come in -- do you see --  
3 MR. WINNER: Yeah.  
4 THE COURT: -- what I'm saying?  
5 MR. WINNER: No, I'm not saying that's hearsay.  
6 MR. HENRIOD: It's not quite --  
7 MR. WINNER: I'm saying it's not --  
8 MR. HENRIOD: -- an admission, but generally --  
9 THE COURT: But if -- but I --  
10 MR. HENRIOD: But she ought --  
11 THE COURT: But I also thought that somebody did tell --  
12 MR. HENRIOD: -- to be able to comment on it.  
13 THE COURT: -- me that there's something you could do in a  
14 civil case if it's a deposition and it's a party -- adversarial party, then  
15 there's a different rule, but I don't know what it is.  
16 MR. WINNER: And there are exceptions to the rule. It can't  
17 be used for any purpose, for example, a witness who is available, and in  
18 the jurisdiction whose this deposition can't be used.  
19 MR. PRINCE: That's not -- that's an evidentiary rule. So that  
20 has nothing to do with hearsay.  
21 THE COURT: Okay.  
22 MR. PRINCE: So I want to have you -- I'm going to have you  
23 read Rule 32 --  
24 THE COURT: Okay.  
25 MR. PRINCE: -- (a)(3).

1 THE COURT: Whoops. I didn't mean to bang that. It wasn't  
2 like I was anger or anything. It just happened.

3 MR. WINNER: It sounded like a gavel. It sounded  
4 authoritative.

5 THE COURT: I may try it more often then.

6 MR. WINNER: Do you even have a gavel up here?

7 THE COURT: No. I have one that I keep in the back because  
8 it's sentimental, and I'm afraid somebody will steal it --

9 MR. PRINCE: I want you --

10 THE COURT: -- with the kind of people I have in here.

11 MR. PRINCE: I want you to read about using -- 30 -- Rule 32.  
12 It talks about using depositions in court proceedings. I want you to go to  
13 (a)(3). It says,

14 "Deposition of a Party, even a designee. An adverse party  
15 may use for any purpose the deposition of a party or anyone  
16 who, when deposed, was a party's officer, director,  
17 managing agent, or designee under Rule 30(b)(6)."

18 MR. WINNER: I'll withdraw my objection.

19 THE COURT: All right. I love it when everybody gets along.

20 MR. WINNER: You love it when everybody gets along.

21 [Sidebar ends at 10:58 a.m.]

22 THE COURT: Okay.

23 MR. WINNER: Sorry to interrupt. Thank you.

24 THE COURT: The objection's withdrawn. So we --

25 MR. WINNER: Yes --

1 THE COURT: -- can move along.

2 MR. WINNER: -- we will.

3 Q That's what you told --

4 MR. PRINCE: Go back to Defendant's 75.

5 BY MR. PRINCE:

6 Q When we asked you to tell us what the factors were and  
7 it -- for -- and who was to blame for this collision, you indicated that it  
8 was my client, Desire Evans, who slammed on her brakes. That's what  
9 you blamed on causing this collision, correct, in your deposition?

10 A Correct.

11 Q Okay. We also asked you questions -- written questions  
12 under oath, correct?

13 A Yes.

14 Q Those are your answers to interrogatories, correct?

15 A Yes.

16 Q And we asked you in response to interrogatory number  
17 seven and to -- number 11 if you claim that another driver caused or  
18 contributed to the crash. You indicated that the driver of the Plaintiff's  
19 vehicle, meaning Desire Evans, braked hard and abruptly without  
20 signaling that she intended to make a turn, and that's what you blamed  
21 caused crash, correct?

22 A Those -- those are one factors. The other factors.

23 Q Well, those are the only factors respectfully that you ever  
24 cited, was her applying her brakes and your claim that she did not have  
25 her turn signal on, correct?

1 A I have said that, yes.

2 Q All right. You said that you are not a blame for this  
3 crash, correct?

4 A I've never said I'm not to blame.

5 Q All right. Now, you agree, when we focus on your  
6 deposition, it's important for drivers, including yourself to follow the  
7 rules of the road, correct?

8 A Yes.

9 Q Safe driving, you agree, is a life safety issue, correct?

10 A Yes.

11 Q You spent some time as a nurse, as I understand,  
12 working in emergency rooms, correct?

13 A Yes.

14 Q So people who have been involved in motor vehicle  
15 accidents, whether coming immediately from the scene or days later,  
16 have presented themselves to the emergency room claiming injury,  
17 correct?

18 A Yes.

19 Q So you uniquely know that motor vehicle collisions can  
20 cause either minor or serious injuries, correct?

21 A Yes.

22 Q And you agree that part of safe driving, it requires you to  
23 maintain a safe distance from the vehicles in front of you, correct?

24 A Yes.

25 Q Also, safe driving requires you to operate your vehicle at

1 a safe speed for the traffic conditions, correct?

2 A Yes.

3 Q You agree that safe driving also requires you to pay full  
4 attention to the Road in front of you because at times things can happen  
5 fast on busy streets in the middle of our city, correct?

6 A Yes.

7 Q And if you don't drive safely, people can get hurt,  
8 correct?

9 A Correct.

10 Q People's lives can change in the blink of an eye if  
11 someone's not paying full attention, not driving safely, and not keeping a  
12 safe distance, correct?

13 A Yes.

14 Q And you've lived in Las Vegas since 1996, correct?

15 A Yes.

16 Q You have driven on the freeways, correct?

17 A Yes.

18 Q You've driven on Flamingo Road where this collision  
19 happened, correct?

20 A Yes. Multiple times.

21 Q Numerous times, correct?

22 A Yes.

23 Q And you -- you've been involved in situations while  
24 driving where cars have swerved and cut in front of you and you've had  
25 to stop quickly, right?

1 A Yes.

2 Q Okay. And you agree that Flamingo Road near Las Vegas  
3 Boulevard, that's one of the busiest streets we have in the Las Vegas  
4 Valley, to your knowledge?

5 A Yes.

6 Q And that's right adjacent to the resort corridor, correct?

7 A Yes.

8 Q Not only are there lots of cars going east and west on  
9 Flamingo Road at that location, there's also pedestrians in the area, too,  
10 correct?

11 A Yes.

12 Q Now, I want to set the scene for this collision. You -- to  
13 your recollection, it occurred at about 6:30 p.m., correct?

14 A Yes.

15 Q All right. So early evening?

16 A Correct.

17 Q It was a Friday night, correct?

18 A Yes.

19 Q You left your house during rush hour, correct?

20 A Yes.

21 Q And you got onto Flamingo Road and were driving  
22 westbound, correct?

23 A Yes.

24 Q You were going to the strip at night to see a show at The  
25 Venetian Hotel and Casino, correct?

1 A Yes.

2 Q You took the freeway, U.S. 95, on the east side, exited  
3 Flamingo Road, and were driving -- was driving westbound, correct?

4 A Yes.

5 Q And you agree that until right before the point of impact  
6 in this case, you never noticed or saw my client, Desire Evans, driving in  
7 front of you, correct?

8 A I didn't notice her car because there's another car in front  
9 of me.

10 Q Right. So she testified that she got on West Flamingo  
11 Road -- or excuse me -- Flamingo Road also on U.S. 95, since she lives in  
12 North Las Vegas. You never saw her driving in front of you until  
13 immediately before the collision, correct?

14 A Yes.

15 Q Am I correct in that?

16 A Yes.

17 Q Okay. She never cut you off in any way, correct?

18 A No.

19 Q Never swerving and engaged in any erratic driving,  
20 right?

21 A I don't know because the only time I've noticed her car  
22 was when I -- when I hit her.

23 Q So that's the first time you really ever noticed my client's  
24 car was at the point of impact?

25 A Yes, because there is another car in between, between

1 me and her. So the other car in front of me moved to the middle lane.  
2 That's when I noticed her car.

3 Q Okay. Was my client -- was Desire stopped at that point?

4 A No.

5 Q You're not blaming the -- this middle car, right?

6 A No, I'm not.

7 Q Okay. And all you remember is the first -- is that -- the  
8 first time you noticed my client's vehicle, so we're clear, is immediately  
9 before the impact, correct?

10 A Yes.

11 Q Okay. So there's nothing that she did before leading up  
12 to those moments, cut in front of you, or braked in the middle of the  
13 road, anything like that, to cause you any problem with your driving,  
14 correct?

15 A No, because I was --

16 Q Am I correct?

17 A -- traveling -- yes, you are correct.

18 Q Okay. That's fine.

19 A But I was --

20 Q Okay. And to you, this all happened very, very fast,  
21 correct?

22 A Yes.

23 Q It happened -- you -- in fact, you told investigators within  
24 days after this collision it happened because you were traveling so fast,  
25 correct?

1 A Yes.

2 Q And you didn't see Desire stopped there, making a turn  
3 right until at the last minute, correct?

4 A Correct.

5 Q You also didn't see the pedestrians on the street corner  
6 there, correct?

7 A There's people on the corner --

8 Q Right.

9 A -- but I didn't see anyone crossing.

10 Q Okay. So you saw the --

11 MR. PRINCE: Brandon, if we could go to the demonstrative.  
12 Let's start with demonstrative 13. Then we'll go to that.

13 BY MR. PRINCE:

14 Q So I'm showing you here a photograph. It's Exhibit  
15 Number 13, admitted into evidence, or a photograph admitted into  
16 evidence. And you agree that that's a photograph looking west on  
17 Flamingo Road?

18 A Correct.

19 Q At Linq Lane, correct?

20 A Yes.

21 Q And that white van would be in the right travel lane?

22 A Yes.

23 Q And that would be the same lane that both you and  
24 Desire were in, correct?

25 A Yes.

1 Q We also see pedestrians in the sidewalk walking west on  
2 Flamingo, correct, in that photograph?

3 A Yes.

4 Q And as your driving that day, there are --

5 MR. PRINCE: Brandon, can you put that -- that slide back up?

6 BY MR. PRINCE:

7 Q As you're driving --

8 MR. PRINCE: Maybe one more.

9 BY MR. PRINCE:

10 Q As you're driving west on Flamingo, you see pedestrians  
11 along the sidewalk on the north side of Flamingo Road, correct?

12 A Yes.

13 Q Okay. As you know, that area is busy but not only in  
14 terms of cars, it could be locals, tourists, but also pedestrians on the  
15 sidewalk, correct?

16 A Yes.

17 MR. WINNER: Asked and answered.

18 THE COURT: Overruled.

19 BY MR. PRINCE:

20 Q Okay. Now --

21 MR. PRINCE: Brandon, go back a slide.

22 BY MR. PRINCE:

23 Q Desire testified yesterday that she came to a full stop at  
24 the red light. You have no reason to disagree with that, do you?

25 A No.

1 Q And if she said she came to a full stop behind a car in  
2 front of her, you have no reason to disagree with that, do you?

3 A No.

4 Q Okay. And she -- Desire testified that the car in front of  
5 her made a right turn onto Linq Lane. You have no reason to disagree  
6 with that, do you?

7 A No.

8 Q And you heard Desire tell the jury yesterday that she  
9 intended to make a right turn on Linq Lane, also to take her children  
10 trick-or-treating, right?

11 A That's what she said, yes.

12 Q She also told you that that night, after this collision  
13 happened, that she was intended to make a right turn to take her  
14 children and her family to trick-or-treat at The LINQ?

15 A Yes.

16 Q Okay. Now --

17 MR. PRINCE: So if you could go up a couple more slides,  
18 Brandon.

19 BY MR. PRINCE:

20 Q So when Desire said she came to a stop again after the  
21 car in front of her turned before make -- starting her right turn, still at a  
22 red signal, you have no reason to disagree with that, correct? Am I  
23 correct?

24 A Yes.

25 Q Okay. Sometimes -- that was a double negative. I

1 wanted to make sure we're not lost on that.

2 And as you're approaching, you're driving, according to your  
3 testimony, the speed limit, 35 miles an hour, correct?

4 A Yes.

5 Q And as you're approaching, you see the light -- you do  
6 see the light turn green, correct?

7 A Yes.

8 Q And you're intended to go straight through Flamingo to  
9 Las Vegas Boulevard, correct --

10 A Yes.

11 Q -- to make a right turn?

12 MR. PRINCE: Next slide, Brandon.

13 BY MR. PRINCE:

14 Q And did you never saw -- it's your testimony you never  
15 the pedestrians start to walk off of the sidewalk, correct?

16 A I didn't see any pedestrian crossing.

17 Q Okay.

18 MR. PRINCE: Next slide, Brandon.

19 BY MR. PRINCE:

20 Q So if Desire testified --

21 MR. PRINCE: -- well, strike that.

22 BY MR. PRINCE:

23 Q Even at the scene of that crash, Desire told you that a  
24 pedestrian started to walk into the crosswalk as she made a right turn?  
25 She told you that that night, correct?

1 A Yes.

2 Q She also told the jury the same thing yesterday, correct?

3 A Yes.

4 Q You have no reason to disagree with her, correct?

5 A I don't have any reason to.

6 Q Okay. And so, so far as Desire coming to a stop, that's  
7 reasonable for her to do behind the car in front of her, right?

8 A Yes.

9 Q You understand that you can make a right turn when it's  
10 safe to do so on a red light, correct?

11 A Correct.

12 Q And then -- so Desire, when she started to make her turn,  
13 that was reasonable for her to do if the -- if the crosswalk was clear and  
14 there was no cars, right?

15 A Yes.

16 Q Okay. So, so far Desire's done nothing wrong here,  
17 right? Okay.

18 A I don't think so.

19 Q Okay. And so as Desire's starting to make her turn, a  
20 pedestrian -- after the light turns green for east and westbound traffic, a  
21 pedestrian walks out off the sidewalk and into the crosswalk. She  
22 stopped. Applied her brakes quickly to avoid hitting the pedestrian. You  
23 agree that's reasonable to do to avoid hitting somebody, right?

24 A Correct.

25 Q You just didn't see that happen?

1 A I didn't see a pedestrian.

2 Q Right.

3 A When she slammed her brake, that's when I slammed on  
4 my brake as hard as I could.

5 Q Now, when -- Desire also testified that she was stopped,  
6 and she was her turn signal on. You never saw that, did you?

7 A I didn't see any turn signal.

8 Q Right. But isn't it true, according to your testimony, you  
9 didn't notice Desire's vehicle until just almost -- almost immediately  
10 before the impact, correct?

11 A Correct.

12 Q Okay.

13 A Which I would have seen a turn signal. I didn't --

14 Q But you --

15 A -- see any --

16 Q -- would have seen --

17 A -- turn signal.

18 Q -- her car, even if she had no turn signal on, slow down at  
19 a stop, right? You would have been able to see that? Because there was  
20 nothing in between you and Desire's car --

21 A I would --

22 Q -- right?

23 A I would have seen that. But slamming her brake --

24 Q Right.

25 A -- also --

1 Q There was nothing blocking your view of Desire's car at  
2 the intersection of Flamingo and The LINQ, correct?

3 A No, nothing.

4 Q Right. So if you were paying full attention, you would  
5 have been able to see that through your window, right?

6 A Correct.

7 Q You just didn't see it?

8 A I didn't see it.

9 Q Now, your testimony is -- is that once Desire applied her  
10 brakes for the pedestrian, everything for you happened very fast,  
11 correct?

12 A It happened really fast, yes.

13 Q Okay. And isn't it true, you don't even -- you didn't know  
14 why Desire was applying her brakes, correct?

15 A I didn't, no.

16 Q And you even said you really weren't aware because you  
17 were traveling so fast, correct?

18 A I have said that.

19 Q Right.

20 A Meaning speed limit.

21 Q You told an investigator that within days of this collision  
22 -- within three days of this collision, that, "I wasn't really aware because I  
23 was traveling so fast; she slammed on her brakes," right? That's what  
24 you said?

25 A Yes.

1 Q Right.

2 A Meaning speed limit.

3 Q Well, she had been stopped. You just didn't see her  
4 stopped at the traffic light, did you?

5 A I -- all I saw was she slammed on her brake, and then I  
6 slammed on my brake, too, to not hit her --

7 Q Right.

8 A -- but it's unavoidable.

9 Q Right. So you think this was unavoidable on your part?

10 A Yes.

11 Q So you don't think you could have been paying better  
12 attention to the road in front of you?

13 A I always pay attention when I'm driving.

14 Q Okay. My question is, do you feel you could have been  
15 paying more attention?

16 A I could have, but I'm -- I'm really aware what I'm doing  
17 when I get into my vehicle.

18 Q Okay. And in fact, it's your belief that you weren't  
19 traveling too close behind her, correct?

20 A I wasn't traveling too close.

21 Q Okay. And you think, based on your understanding of  
22 the rules of the road, just one car length is a safe distance to drive  
23 behind somebody, right?

24 A It depends on your speed, yes.

25 Q Right. But you -- that's what you've testified to, that you

1 think one car length is a safe distance?

2 A It depends on your speed, sir.

3 Q Right. And you believe that a car length is about six feet?

4 A At the --

5 Q You've told us that in your deposition?

6 A At the time I was asked, I informed Mr. Troiano that I'm  
7 not good on measuring distance. I could measure it by giving you a car  
8 -- like a car length.

9 Q Okay.

10 A I'm not good with measurements.

11 Q Well --

12 A I told him that.

13 Q -- when we asked you in your deposition what could you  
14 have done differently to avoid this accident, could you have kept a -- a  
15 better distance, and you said, "What? Like a whole mile behind her?" Do  
16 you remember telling us that?

17 A I have said that, yes.

18 Q Okay. Was that a joke on your part?

19 A It wasn't. I was merely asking Mr. Troiano. It was a  
20 question to him.

21 Q Okay. Let's look at your deposition on page 76. If we  
22 look at page -- line 17.

23 MR. PRINCE: Go to the end of the page, Brandon, and stop.

24 BY MR. PRINCE:

25 Q We're asking -- I'm saying:

1 "Looking back at the accident, is there anything that you  
2 could have done differently that could have avoided this  
3 accident from happening?"

4 Your answer was, "I don't think so because I follow the rules  
5 of the road."

6 Do you see that.?

7 A Yes.

8 Q We asked you a question.

9 "Do you think if you were further behind her" -- going on to  
10 page 77 -- "vehicle, this accident might not have happened?"

11 Answer, "Maybe. What? A mile away? I don't know."

12 Those were your words, correct?

13 A Yes.

14 Q And the other answer you gave us when we asked you  
15 the question about what could have been -- what do you feel could have  
16 been done differently, we have -- we give you another opportunity to  
17 answer that question on page 78 of your deposition -- it's page -- excuse  
18 me -- 77 again, because we wanted to make sure that we understood  
19 what you were going to tell this jury at some point in the future.

20 MR. PRINCE: Starting at line 14 through 22, Brandon.

21 BY MR. PRINCE:

22 Q "So when we go to trial" -- which is -- we're here now --  
23 "what is your testimony going to be regarding, if anything,  
24 you could have done differently to avoid this accident?"

25 Your lawyers have an objection.

1                   You said, "Well, I could have -- I could have not drove --  
2                   driven that night. I could have avoided the accident. If I  
3                   would have just stayed at home and not go to the show, I  
4                   would have not been there."  
5       Do you see that?  
6                   A    Yes.  
7                   Q    That's what you told us, correct?  
8                   A    Yes.  
9                   Q    You accept no responsibility for causing this collision,  
10       correct?  
11                  A    I've never claimed that, sir.  
12                  Q    Oh. You do accept responsibility for causing this  
13       collision?  
14                  A    I -- I've said -- I've said to the police officer on the scene  
15       as well, I --  
16                  Q    Oh.  
17                  A    -- I've hit her car.  
18                  Q    Oh. Right. So you're -- I mean, you're -- you agree that  
19       you're at fault in causing this crash, right? The impact?  
20                  A    I -- I accept my responsibility, yes.  
21                  Q    Oh, you're accepting that you're in fault?  
22                  A    That I'm responsible. That I hit her car, her vehicle.  
23                  Q    Okay. And that you're -- you were at fault in causing this  
24       collision because you weren't a safe distance and you didn't stop in time,  
25       right? You're accepting that fault now?

1                   MR. WINNER: Object to the form of the question. Misstates  
2 her answer.

3                   THE COURT: Sustained.

4 BY MR. PRINCE:

5           Q     You said you accepted responsibility for hitting her car?

6           A     I have said that I have accepted the responsibility that I have  
7 hit her vehicle. I have said that.

8           Q     Okay. And -- because you should have been able to avoid  
9 this accident. That's why you're accepting that responsibility, correct?

10           MR. WINNER: Misstates her testimony, Your Honor.

11           MR. PRINCE: Well, I'm -- this is cross-examination.

12           THE COURT: It's a question. It's overruled.

13 BY MR. PRINCE:

14           Q     Go ahead.

15           A     I have said that I have accepted the fact that I have hit her  
16 vehicle. I've never avoided that responsibility.

17           Q     Okay. So you're accepting that responsibility, because you  
18 should have been able to stop in time and avoided this crash, right?

19           A     I --

20           MR. WINNER: Same objection.

21           THE COURT: Overruled.

22 BY MR. PRINCE:

23           Q     Go ahead and answer.

24           A     I could have.

25           Q     Okay. And that's not because Desire did any anything

1 wrong, correct? You're not blaming Desire?

2 A I've never blamed anybody for the accident. That's what  
3 accident happens (sic).

4 Q Okay.

5 A You know, there's a lot of factors, like I have said.

6 Q Okay. So number one -- I just want to be clear. You don't  
7 blame Desire for causing this collision, right? She's not at fault, right?

8 A I don't know, sir. It depends on whose eyes is it.

9 Q No, I'm asking your eyes. So in your eyes, since you were  
10 the only person other than her there and Guadalupe and the kids -- in  
11 your eyes, she didn't do anything to cause this crash, right?

12 A Part of it she did be --

13 MR. WINNER: That was asked and answered.

14 THE COURT: Overruled.

15 BY MR. PRINCE:

16 Q Go ahead.

17 A Part it is, slamming her brake. That's one factor. And me  
18 hitting her, that's another factor. And then she stated that a pedestrian  
19 was walking on the side -- the crosswalk. That's another factor. So  
20 there's a lot of factors that could have caused an accident.

21 Q Are you -- you're not blaming the pedestrian, are you?

22 A No, I'm not --

23 Q Okay.

24 A -- sir. I'm just saying that --

25 Q Okay.

1           A     -- those are the little factors that could cause accidents.

2           Q     I understand there's factors. I'm only asking about what you  
3 could control, which was your driving, okay?

4           A     Correct.

5           Q     If you'd have been paying closer attention to the road in front  
6 of you and saw that she was stopped and then in the process of making  
7 a turn, you could have slowed your speed down sooner and avoided  
8 this, correct?

9           A     I could have, yes.

10          Q     Okay. So in your mind, this accident was avoidable, correct?

11          A     It's not avoidable. I tried to swerve to my left, but I could not  
12 avoid it.

13          Q     All right. I know you weren't able to hear, but my point is,  
14 had you been paying closer attention to what was happening in front of  
15 you, saw that Desire was stopped in the process or slowed down  
16 significantly in the process of making a turn and you could have slowed  
17 your vehicle down, had you seen all that and avoided this. You were in a  
18 position to avoid this collision, right?

19          A     I could have avoided --

20          Q     Okay.

21          A     -- but it's unavoidable.

22          Q     Okay. Now, after the accident, you got out of the car,  
23 correct?

24          A     Yes.

25          Q     Okay. You spoke with Desire, correct?

1           A     Correct.

2           Q     And you told her that you were sorry?

3           A     Yes.

4           Q     You asked her if she was hurt?

5           A     Yes, I ask her if she was hurt, if anyone was hurt and then  
6 she said no. I called 911 immediately when I hit her vehicle, because I  
7 don't know if anyone was hurt, so I called 911.

8           Q     Okay. And that's the right --

9           A     And then when she stated that no one was hurt, I took her  
10 word, meaning I believe people that are trustworthy, so I took her word  
11 saying no one was hurt, so I --

12          Q     Okay.

13          A     -- I presumed no one was hurt.

14          Q     You've been -- you're a nurse, right?

15          A     Correct.

16          Q     You're a licensed -- your -- in fact, you're a registered nurse  
17 in the State of Nevada?

18          A     Yes.

19          Q     Okay. And you work in ER settings, right?

20          A     Yes.

21          Q     You have encountered patients in your career had an  
22 accident like one evening or one day and they didn't come to the  
23 emergency room for care of any kind until the next day, right?

24          A     Yes.

25          Q     You've seen that?

1           A     Yes.

2           Q     And they said their symptoms came on hours or even a day  
3 later, right? You've seen that in your career, haven't you?

4           A     I have seen.

5           Q     Okay. So just because someone doesn't report pain or  
6 problems right at the scene of a collision, you understand that it may  
7 take hours or even longer than a day or two before the symptoms start  
8 to be present and a patient can appreciate those. You understand that,  
9 don't you?

10          A     Yes.

11               MR. WINNER: That's asking for an expert opinion. I maybe  
12 I'd object.

13               MR. PRINCE: Okay. Well, I'm asking about her experience as  
14 a nurse. Remember she --

15 BY MR. PRINCE:

16          Q     Mr. Winner told the jury that you've worked in the ER and  
17 you've also done triage in ERs, right?

18          A     Yes.

19               MR. WINNER: Agreed.

20 BY MR. PRINCE:

21          Q     And you've spoke to patients who've been injured, either in  
22 falls or motor vehicle collisions, right?

23          A     I have.

24          Q     Okay. So you understand symptoms may come on hours or  
25 even a day or two later, based on your own education, training and

1 experience working in emergency rooms, right?

2 A They could have, yes.

3 Q Okay. But at the scene, Desire told you nobody felt any  
4 problem, felt any pain at the scene, right?

5 A Well, she -- when I ask her, when I make contact of her, she  
6 said no one was hurt, and I witness her ambulating with a steady gait, so  
7 I took her word as they're okay.

8 Q Right. At the time, that's how she felt, right?

9 A That's what she told me.

10 Q Okay. Now, she also told you that -- because you asked her if  
11 she wanted any medical care or if she needed an ambulance. You asked  
12 her that question, right?

13 A I did.

14 Q All right. And she told you that if she felt any pain or  
15 problems, you know, she would go to the emergency room sometime  
16 over the weekend, if she needed to?

17 A She told me that if I -- we're going to go trick or treating, she  
18 said. I'll just go to the ER tomorrow. That's what she told me.

19 Q If she needed to, right?

20 A I don't remember if she said if she said if she needed to, but  
21 she stated that I will just go to the ER tomorrow.

22 Q Okay. And you didn't do -- obviously -- you just had a brief  
23 encounter, discussion with her after the collision, right?

24 A Correct.

25 Q And you had -- you didn't do a full nursing assessment or

1 anything like that.

2 A I did --

3 Q You just asked her a few brief questions, right?

4 A I didn't do an assessment, but I witnessed her ambulating  
5 with a steady gait and that's -- I -- because for you to do a full  
6 assessment, you have to really go through them from head to toe. I did  
7 not do that.

8 Q All right. Yeah. I just wanted to make sure you weren't  
9 doing a nursing assessment at the scene. You just saw her walking  
10 around and her gait appeared to be steady to you?

11 A Yes. And coherent.

12 Q Okay. You agree that your speed was a factor in causing this  
13 collision, because Desire was stopped and you were going, obviously 35  
14 miles an hour or something close to that and weren't able to stop in  
15 time, so your speed was a factor, right?

16 A That could be one factor.

17 MR. WINNER: Compound and --

18 BY MR. PRINCE:

19 Q And also a factor was you didn't see the pedestrians start  
20 to -- or at least one start to get off of the sidewalk and walk into the  
21 crosswalk, right?

22 A I didn't see anybody.

23 Q And so that would be a factor, right --

24 A That --

25 Q -- that you didn't see that?

1           A     That could be.

2           Q     Okay. And you knew that there was traffic in the lanes next  
3 to you, right?

4           A     Yes.

5           Q     So you weren't able to swerve -- I know you tried to swerve.  
6 It looks like you tried to swerve, correct?

7           A     I tried to swerve to my left, but there's also an incoming car  
8 on my left.

9           Q     Right. And you weren't able to -- so the right front of your  
10 car hit the back of Desire's car, correct?

11          A     On her driver's side, yes.

12          Q     Yeah.

13               MR. PRINCE: Brendan, if you could put up -- it's the one we  
14 used during the opening. Let me get the picture of your car.

15               MR. PRINCE: If we can look at, Brendan, Exhibit Number 7,  
16 Number 11.

17 BY MR. PRINCE:

18          Q     That's a picture of your car after this collision, correct?

19          A     Yes.

20          Q     There was more than \$5,000 worth of damage, correct?

21          A     Yes.

22          Q     And when you saw Desire stopped in front of you, you tried  
23 to swerve and apply your break right almost at the last second, right?

24          A     I applied my brake as soon as I saw her stop.

25          Q     Right. And you weren't sure how much distance there was

1 between the front of your car and the back of her car when you initially  
2 tried to swerve and/or apply your brake, do you?

3 A No, I do not.

4 Q Okay. It was happening all too fast, correct?

5 A Yes.

6 Q You didn't have enough room to brake and bring your  
7 vehicle to a stop, correct?

8 A No, because as soon as I saw her stop, I stopped right away.  
9 I applied my brake right away.

10 Q Yeah, you -- the right front of your car hit the left corner of  
11 the rear of her car, correct?

12 A Yes.

13 Q And you looked at her car at the scene, correct?

14 A Yes.

15 MR. PRINCE: If we can look at, Brendan, Exhibit Number 31.  
16 Actually -- yeah, you can -- that's fine.

17 BY MR. PRINCE:

18 Q And you observed all the damage to the --

19 MR. PRINCE: Is that 31, Brandon? Bate number -- it's Exhibit  
20 27, Bate number 31. Yeah.

21 BY MR. PRINCE:

22 Q You recall that was the damage that you saw to Desire's car  
23 the night of the crash, right?

24 A Yes.

25 Q At the scene. Okay. So there's a good amount of damage to

1 her bumper, her trunk and her quarter panel that you saw that night,  
2 correct?

3 A Yes.

4 Q Okay. Don't you agree that if you'd have just paid more  
5 attention to the road in front of you or going at a slower speed, this  
6 accident could have been avoided. You agree with that, don't you?

7 MR. WINNER: Asked and answered, Your Honor.

8 THE COURT: Sustained.

9 MR. PRINCE: Thank you. I don't have any additional  
10 questions.

11 MR. WINNER: May I approach, Your Honor?

12 THE COURT: Sure.

13 CROSS-EXAMINATION

14 BY MR. WINNER:

15 Q Okay. Mr. Prince asked you just a moment ago, Babylyn,  
16 about an interrogatory answer you gave, okay? And you were asked if  
17 you claim that another driver caused or contributed to the crash, please  
18 state the manner in which and person caused or contributed to the crash.

19 A Yes.

20 Q And the name and address of each person. So he was  
21 asked -- you were asked if anything else contributed to the accident.

22 A Correct.

23 Q Your answer was the driver of the Plaintiff's vehicle braked  
24 hard and abruptly without signaling that she intended to make a turn,  
25 correct?

1 A Yes.

2 Q Okay. You were asked in your deposition about one car  
3 length?

4 A Correct.

5 Q What did you mean by one car length?

6 A Well, meaning that -- because I was asked by Mr. Troiano,  
7 can you tell me how many feet this is from that table to this table? I was  
8 like I can't --

9 Q You're not good at estimating feet.

10 A Yeah.

11 Q I know. What did you mean by one car length?

12 A One car length, it depends on the size of the vehicle.

13 Q One car length. Would another car have had room to come  
14 in and --

15 A Correct.

16 Q Okay.

17 A Which I have stated in my deposition I usually keep a  
18 distance, like most of the time, keep my distance from another vehicle  
19 that's in front of me that if another car would cut me off, I would not  
20 have hit that vehicle that cut me off. That's why -- that's how I explained  
21 it on my deposition.

22 Q Okay. So one car length to you means that there's enough  
23 distance between you and the car in front of you that if another car came  
24 between your two cars, you wouldn't be in danger of hitting anybody?

25 A Correct.

1 Q Okay. And is that how far back you --

2 A I was --

3 Q -- were before all of this happened?

4 A Correct.

5 Q Okay. Let me just ask this. Babylyn, were you born in the  
6 United States?

7 A No. I warehouse born and raised in the Philippines.

8 Q Okay. When did you move to the United States?

9 A I live in the U.S. in 1995.

10 Q And you moved to Las Vegas in '96?

11 A '96.

12 Q Okay. What did you do when you came here?

13 A I was married at an early age, and I was a housewife.

14 Q Okay. How many kids do you have?

15 A I have three girls. One of them is in college and she's in  
16 Reno.

17 Q Okay.

18 A And two -- the middle one is turning 15. She's in 9th grade  
19 and the youngest one is 13th. She's in 8th grade.

20 Q And you used to be a homemaker?

21 A I was a homemaker for many years.

22 Q Okay. What do you do now?

23 A I am a registered nurse. I acquired my Bachelor's Degree in  
24 Nursing in Roseman Used to be University of Southern Nevada, but  
25 they changed their name to Roseman.

1 Q Where do you currently work?

2 A I work currently at a psychiatric facility.

3 Q That's Monte Vista Hospital here?

4 A Correct.

5 Q Right. Okay. You've worked at Monte Vista for the last two

6 years, I think?

7 A Two years now.

8 Q Okay. You were not working at Monte Vista at the time this

9 accident happened?

10 A No. I was working at St. Rose Siena emergency department,

11 and they're also Level 3 trauma.

12 Q They're a Level 3 trauma center?

13 A Correct.

14 Q And you were the shift nurse manager in the emergency

15 department at St. Rose at that time?

16 A Yes.

17 Q Okay. And during time, as Mr. Prince asked you, did you see

18 people come in from traumas?

19 A Correct.

20 Q From car accidents sometimes?

21 A Yes.

22 Q Did you perform triage on those patients?

23 A I do.

24 Q What's triage mean?

25 A Triage means that when a patient was brought in by

1 emerge -- by paramedics, we assess them. It depends on their severity  
2 of level of care. For example, a patient would come in with a heart  
3 attack. That would be a Level 1 triage. Usually, a minor fender-bender  
4 would be a Level 5, because the severity of the chief complaint is not as  
5 bad as it would be as a heart attack.

6 Q Okay. Did you take any training to do triage?

7 A Yes.

8 Q You did a course called ESI, I think?

9 A ESI, yes.

10 Q Okay.

11 A It's emergency severity index.

12 Q You worked at St. Rose until, my notes say 2016?

13 A Yes.

14 Q Okay. And you left because of a family emergency?

15 A Correct.

16 Q Okay. Before that, did you work at the Desert Springs  
17 Emergency Department?

18 A I have worked from (sic) Desert Springs Emergency Hospital  
19 from 2010 until 2014.

20 Q Okay. So your experience is that of a registered nurse,  
21 licensed registered nurse working in emergency departments?

22 A Yes.

23 Q Okay. You got your nursing degree in you said Roseman in  
24 2008?

25 A Yes.

1 Q What's your degree from Roseman?

2 A Bachelor of Science in nursing.

3 Q Okay. As a registered nurses, do you do continuing  
4 education?

5 A Correct.

6 Q Okay. Let me ask you about the accident. You were going  
7 westbound on Flamingo?

8 A Yes.

9 Q What -- you were -- I think you said this already, but you were  
10 originally traveling in the middle lane?

11 A I was originally in the middle lane, and then when I  
12 approached -- I passed Koval Lane. That's when I signaled to go to my  
13 right, because I dislike going in -- knowing if I'm making a turn, I dislike  
14 cutting people off, so I would really prepare myself that I -- actually like  
15 there's a couple lights before Las Vegas Boulevard, so I signaled to go to  
16 my right.

17 Q So you moved to the right, because it was the safe thing to  
18 do?

19 A Correct.

20 Q Okay. You were planning to straight through that link  
21 intersection to go down to Las Vegas Boulevard?

22 A Yes.

23 Q Okay. When you signaled and moved into the right lane on  
24 Flamingo, was Ms. Evans, the Plaintiff, in front of you at that time?

25 A No, there's another vehicle that was in front of me that have

1 moved to the left.

2 Q Okay. You saw her when a car in front of you swerved over  
3 to the left?

4 A Correct.

5 Q Did you ever see the Plaintiff, Ms. Evans, use her turn signal?

6 A I did not see any turn signal.

7 Q Okay. You saw her car not moving in front of you or moving  
8 very slowly?

9 A No. The only time I have noticed was when she slammed  
10 her brake in front of me.

11 Q Okay. Did you think it was odd that the Plaintiff, Ms. Evans,  
12 didn't use a turn signal?

13 A It's odd because when you do take a driving test they ask you  
14 to signal.

15 Q Okay. Do you think it's the safe thing to do to use a turn  
16 signal if you intend to make a right turn?

17 A For me I would.

18 Q Because it signals to the drivers behind you that you --

19 A Behind --

20 Q -- intend to slow --

21 A Behind me --

22 Q -- and stop and make a turn?

23 A Yes. Just letting -- it's courtesy just letting the person behind  
24 you know what you're doing or what you're intending to do.

25 Q Okay. Do you believe it's safe for a driver to come to an

1 abrupt stop driving on a street like Flamingo intending to turn without  
2 signaling for a turn?

3 A It's not safe.

4 Q Did you ever see a turn signal?

5 A I never saw a turn signal.

6 Q Okay. Did you try to avoid coming into contact with the  
7 Plaintiff's car?

8 A I have tried to avoid hitting her by swerving to my left, but I  
9 also noticed a car coming to the left lane. So I would have really caused  
10 two accidents. So I tried to avoid hitting her so.

11 Q Okay. And you slammed on your brakes hard?

12 A As fast as I could; as hard as I could.

13 Q Okay. And you moved somewhat to the left?

14 A Yes.

15 Q Okay. Mr. Prince showed you a section of the deposition --  
16 well, skip that. When the impact happened you weren't going 35 miles  
17 an hour anymore?

18 A Not anymore because I applied my brake. So it's not 35  
19 hitting her car.

20 Q Okay. Did your airbag go off in your car?

21 A Excuse me?

22 Q Did your airbag go off in your car?

23 A No. No airbag. My purse was still actually in the passenger  
24 side. It didn't even move at all.

25 Q So your purse was sitting on the seat?

1 A Correct.

2 Q Did the purse fall off the seat?

3 A No.

4 Q Were you hurt in the accident?

5 A No. I was not.

6 Q So you did try to avoid the impact. You swerved and moved  
7 over to your left?

8 A Correct.

9 Q Okay. Did you move your car from the intersection that the  
10 accident happened?

11 A After I hit her she turn to Linq, and I followed behind her.  
12 And I got out of my car and check on the driver to make sure they are  
13 okay.

14 Q Did you think it was odd that Ms. Evans, the Plaintiff, after  
15 this happened said she had stopped for a pedestrian?

16 A She told me that. I ask her what happened, and she said that  
17 there's a pedestrian crossing the crosswalk, that's why she brake.

18 Q Did you see any pedestrian at the crosswalk?

19 A I did not see anybody crossing. I saw people standing on the  
20 corner, but not crossing.

21 Q Okay. So you moved your car from the intersection, and you  
22 parked on a corner at Linq?

23 A Correct.

24 Q Okay. Did you talk to the Plaintiff, Ms. Evans, after the  
25 impact?

1           A     Yes. That's when I called 911, and then I went to her. She  
2 got out of her car, and I ask her if she's okay.

3           Q     You've already talked to her before you called 911, correct?

4           A     I called 911 first and then I talked to her.

5           Q     Okay.

6           A     And then when she told me that they were okay that's when I  
7 told the 911 operator that they're okay.

8           Q     Okay.

9           A     And I hang up.

10          Q     If the 911 recording indicated that you had already spoken to  
11 the Plaintiff before you called 911 and they were uninjured --

12          A     Yes.

13          Q     -- does that refresh your recollection at all?

14          A     I called 911 twice I believe.

15          Q     Oh, okay.

16          A     So --

17          Q     All right. You spoke to Desire or Desire at the scene and she  
18 told you she was uninjured?

19          A     They told me that they were okay; no one was hurt. That  
20 they're going to go trick or treating, and she'll just go to the doctor --  
21 emergency --

22          Q     Okay.

23          A     -- hospital later.

24          Q     So she told you she was okay?

25          A     Yes.

1 Q Did you know that she had kids in the car?

2 A I noticed it when she told me that they're going trick or  
3 treating. I didn't see the kids actually because the car was dark.

4 Q The windows are dark you mean?

5 A Correct.

6 Q Okay. She told you she was okay, and you believed her?

7 A I believe her because I'm --

8 Q Okay.

9 A -- I'm trustworthy. I believe people are trustworthy. So when  
10 I was told they're okay I didn't have any reason not to doubt her.

11 Q Okay. How about Ms. Parra, did you talk to her at the scene?

12 A I don't know if we spoke. I saw her standing. She had the  
13 door open on the passenger. I don't know if I spoke to her. I don't recall.

14 Q Did the kids get out of the car at all while you waited around?

15 A No.

16 Q The Plaintiff testified yesterday that you and she were at the  
17 accident scene for about two hours; does that sound right?

18 A That's about right.

19 Q Okay. I think you estimated about an hour and a half. She  
20 estimated two hours. It's within that range?

21 A Probably about two hours or hour and a half, I don't know.

22 Q At the time that you were attempting to cross Linq going  
23 west on Flamingo what color was your traffic light?

24 A Green.

25 Q So you had a green light?

1 A Yes.

2 Q And you did not see a turn indication signal by the Plaintiff,  
3 Ms. Evans?

4 A No. I did not.

5 Q And you didn't notice brake lights?

6 A I did not. I just saw a car stop abruptly so I brake as fast as I  
7 could.

8 Q You saw a car, saw they were stopped or slowed in front of  
9 you, you slammed on your brakes and tried to avoid her?

10 A Correct.

11 Q Okay. When you talked to the Plaintiff was she in her car?

12 A Can you repeat that again?

13 Q Yeah. When you talked to Ms. Evans, the Plaintiff, was she in  
14 her car?

15 A No. She got out of the vehicle. She was on the pavement.  
16 She was on her phone. That's when I witnessed her ambulating.

17 Q And for those of us who are not doctors, ambulating means  
18 walking?

19 A Correct.

20 Q Okay. Was her walking impaired?

21 A No. She was walking with a steady gait. And the few words  
22 that we have exchanged she was clear and coherent.

23 Q Okay. Did you ask Ms. Parra if she was okay, the other --

24 A I --

25 Q -- plaintiff?

1           A     I don't recall if we have exchanged any words.

2           Q     But you --

3           A     But I saw --

4           Q     -- you were told she was okay?

5           A     The driver told me that they were okay, and I witnessed the  
6 passenger standing with the door open. So I presumed they're all okay.

7           Q     Did the children ever get out of the vehicle?

8           A     No. They did not.

9           Q     Okay. Did you apologize? Say you were sorry that the  
10 accident had happened?

11          A     Multiple times.

12          Q     In fact, you said that on 911, I'm sorry?

13          A     I have.

14          Q     Okay. Did you ask Ms. Evans if she needed any medical  
15 assistance?

16          A     I did ask her if they need an ambulance to be transported,  
17 and that's when she told me that everyone is okay; no one was hurt.

18          Q     Okay. You also called 911. And the police dispatcher told  
19 you that they didn't want to come to the scene because nobody was  
20 injured?

21          A     Correct.

22          Q     They told you to exchange personal information and no  
23 police officer wanted to come?

24          A     Correct.

25          Q     Okay. Why did you wait for a police officer?

1 A She insisted for a police report.

2 Q Who is she, you mean the Plaintiff?

3 A The driver.

4 Q Okay.

5 A She insisted the police officer will show up because she  
6 wants a police report in case she needs it later.

7 Q You knew that she was going trick or treating after leaving  
8 the scene?

9 A That's what she told me.

10 Q That's what she told you?

11 A Correct.

12 Q And that was after two hours?

13 A Approximately, like two hours, yes.

14 Q With her kids sitting in the back of the car?

15 A Correct.

16 Q Waiting for a police officer to show up?

17 A Correct.

18 Q The police officer who showed up -- well, let me ask this.

19 Why did the police, or why did the dispatcher --

20 THE COURT: Could we approach?

21 MR. WINNER: Yes.

22 [Sidebar begins at 11:45 a.m.]

23 THE COURT: I'm just checking in with you because you're  
24 making me nervous.

25 MR. WINNER: About [indiscernible].

1 THE COURT: Uh-huh.

2 MR. WINNER: Yeah, I know. I thought the same thing. I'll  
3 skip ahead.

4 THE COURT: Do we really need to even go into the police  
5 since they did nothing? Why don't we just --

6 MR. PRINCE: No. There's already a motion for -- you're  
7 right. After the last episode we had with [indiscernible] withdraw that,  
8 he was definitely trying to ask questions about that again. So I think --

9 THE COURT: Well, I don't know if he was, but I don't want  
10 her blurting anything.

11 MR. WINNER: I'm not.

12 MR. PRINCE: You just said you were so --

13 MR. WINNER: I said I was --

14 THE COURT: Anyway, I'm getting nervous. So --

15 MR. WINNER: I think she's nervous enough to blurt  
16 something out. So I'll skip over it.

17 THE COURT: Sua sponte I'm going to ask you to --

18 MR. WINNER: Move on.

19 THE COURT: -- move on please. Thank you.

20 [Sidebar ends at 11:46 a.m.]

21 BY MR. WINNER:

22 Q Ant any time during that two-hour period did Ms. Parra or  
23 did Desire Evans ever report to you in any way that they were injured in  
24 the slightest?

25 A No. They did not.

1 Q At any time during those two hours did anybody tell you that  
2 anybody in that car was injured?

3 MR. PRINCE: Objection; asked and answered.

4 THE COURT: Overruled.

5 THE WITNESS: No. They did not.

6 BY MR. WINNER:

7 Q Okay. When you observed the Plaintiff, Desire Evans at the  
8 scene, what did you see her doing?

9 A She was walking on the sidewalk, and she was on her  
10 telephone and smoking a cigarette.

11 Q And smoking a cigarette?

12 A Correct.

13 Q And on her telephone?

14 A Yes.

15 Q Are you trained as part of your nurses training to, even  
16 though you didn't do a physical exam, are you trained to assess visually  
17 signs of pain, discomfort, injury?

18 A You can tell a lot by a person whey they walk with their gait.  
19 You can tell if they have a limp, you can tell if they're dizzy. Just  
20 assessing them or witnessing them or --

21 Q Sure.

22 A -- assessing a patient just walking towards you, you could  
23 start your assessment right there.

24 Q Was she holding her shoulder?

25 A No. She was holding her telephone --

1 Q Was she holding her neck?

2 A -- like this.

3 Q Did you see her holding her left shoulder?

4 A No. Her left hand was holding her telephone.

5 Q Okay. Did you see her holding her neck, holding her back?

6 A No. She was smoking a cigarette.

7 Q How about the other plaintiff?

8 A Excuse me?

9 Q How about the other plaintiff?

10 A I just saw her standing on the side of the car. I didn't see her.

11 Q Before you slammed on your brakes and tried to swerve,

12 how fast do you believe you were going?

13 A I was doing the speed limit, 35 miles an hour.

14 Q Okay. Do you actually know? Actually know, were you

15 looking at your speedometer? Do you actually know what the speed of

16 your vehicle was at the moment the actual impact happened?

17 A At the moment of the impact, I don't know. I didn't see it.

18 Q Okay.

19 A But I was travelling 35 before the impact.

20 Q Before you slammed on your brakes?

21 A Before I slam on my brake, yes.

22 Q And your airbag did not go off as you said? Were you on

23 your telephone before the impact happened?

24 A No. It's in my purse.

25 Q Okay. Did anything in your car move?

1 A Can you repeat the question?

2 Q You said your purse didn't fall off the seat. Did anything  
3 inside your car move?

4 A No. Nothing. The -- my purse was still in the same position  
5 as it was when I got in the vehicle than when I hit her.

6 Q Did you believe while you were there at the scene that the  
7 Plaintiff was injured?

8 A I didn't have any reason not to believe that she was injured.  
9 She told me no one was hurt so I took her word.

10 Q Okay. Did you believe Ms. Parra was injured or any of the  
11 children were injured?

12 A No. Because she told me everyone was okay.

13 Q And you observed what you observed that led you to that  
14 opinion?

15 A Correct.

16 Q Okay. You were on your way to meet a friend at the  
17 Venetian?

18 A Yes.

19 Q Okay. Were you running late?

20 A At the time, no. I wasn't.

21 Q Okay.

22 A When I was travelling Flamingo going there, I wasn't running  
23 late. I usually leave a lot early when I have to do something.

24 MR. WINNER: Okay. Get the ELMO up please.

25 BY MR. WINNER:

1 Q This is -- this appears to be the Plaintiff's 1998 Accord that  
2 was in front of you?

3 A Correct.

4 Q Okay. And we can see --

5 MR. WINNER: If I may approach, Your Honor?

6 THE COURT: You may.

7 BY MR. WINNER:

8 Q We can see on the left side here that would be where the  
9 damage occurred, correct?

10 A Correct.

11 Q Okay. Do you notice anything about the taillights?

12 A It was really low.

13 Q Do they look darkened, blacked out?

14 A It's -- yeah.

15 Q Did it appear to you that -- you can see the tires are kind of  
16 low. Did it appear to you that the Honda Accord the Plaintiff was driving  
17 was lower than your Acura SUV was?

18 A It's low, yes.

19 Q Okay. Did it appear to you that the impact happened kind of  
20 below your bumper and above her bumper into the trunk lid?

21 A It has because I'm driving an SUV.

22 Q This accident happened in 2015?

23 A Yes.

24 Q When did you learn about this lawsuit?

25 A 2017. Around mid-2017.

1           Q     Did it surprise you that you were being sued for personal  
2 injuries?

3           A     I was shocked. I was like whoa, what happened. It was a  
4 minor fender-bender.

5           Q     And why did it surprise you to learn that you were being  
6 sued for personal injuries?

7           A     I don't believe that the speed that I had hit her vehicle, I  
8 didn't believe that I have caused all that damage. So I --

9           Q     You didn't believe they were hurt?

10          A     That too. I didn't believe because --

11          Q     Okay.

12          A     -- I took her word that no one was hurt. I took her word. And  
13 then when I learn of the lawsuit I was really shock.

14          Q     Okay. Immediately Mr. Prince asked you about the statement  
15 you gave within a few days after the incident to ask what had happened.  
16 Did you say at that time:

17                 "She claimed -- or she slammed on her brake in front of me,  
18 but she never gave her signal. I tried to avoid her. I was  
19 travelling too fast, slammed on my brakes. I would let the  
20 person behind me know hey, I'm making a right turn. I  
21 would put my signal on. But with her she didn't give any  
22 signal. She slammed on the brake, so I hit her."

23          Is that what you said three days after the accident?

24          A     I did.

25          Q     And is that what you've said up through today?

1           A     Yes.

2           Q     Okay. You've been here every day of this trial for about three  
3 weeks. You haven't been able to go to work?

4           A     No. I have missed a lot of hours of work. My husband don't  
5 work, he retired because -- sorry. He had a heart attack so -- sorry.

6           Q     That's okay.

7           A     I'm the only one working, but it's okay. I told my husband  
8 we'll be okay.

9           Q     So you've missed some time from work. I know you do  
10 some volunteer work. Can you tell us about your volunteer work?

11          A     I work four days a week, four 12 hour shifts.

12          Q     At the hospital?

13          A     Yes. And then I explain to my children that I need to  
14 volunteer one day a week. I volunteer my time to hospice. I believe that  
15 people that are in their death bed, they need care as well. So I do that on  
16 my spare time.

17          Q     Ms. Tate, do you believe you were driving as safely as you  
18 could drive on October 30th, 2015?

19          A     I have.

20          Q     Okay.

21          A     I always drive very safe in my opinion.

22          Q     Okay.

23          A     I leave in ample time when I'm going to work. I don't have to  
24 be at work until 9:00 but I leave my house at 8:00 o'clock because of  
25 traffic. I give myself a lot of time.

1 Q Okay. The answers you've given today are the same  
2 answers you gave the day of the accident and three days after the  
3 accident, correct?

4 A It's always been the same; it has never changed.

5 Q Okay. Thank you.

6 A You're welcome.

7 THE COURT: Mr. Prince, anything further?

8 MR. PRINCE: Yeah. Oh, yeah. I'm asking a few more  
9 questions.

10 REDIRECT EXAMINATION

11 BY MR. PRINCE:

12 Q Ms. Tate, I have a few more follow-up questions for you,  
13 okay?

14 A Okay.

15 Q And can we have the aerial? I want to make sure I  
16 understand your testimony.

17 MR. PRINCE: Oh, and we have control on our side, thank  
18 you. Give me the Google Earth, Brandon where you can kind of see  
19 Koval and Linq, okay.

20 BY MR. PRINCE:

21 Q So I want to make sure I'm clear, you're driving west on  
22 Flamingo Road, correct?

23 A Yes.

24 Q And I think now I've heard for the first time that you're -- as  
25 you're approaching Koval you're in the middle lane?

1 A Yes.

2 Q Okay. So just --

3 MR. WINNER: Excuse me; that's not the first time.

4 MR. PRINCE: No.

5 MR. WINNER: She said that in her deposition. That's  
6 misleading.

7 MR. PRINCE: Okay.

8 THE COURT: Sustained.

9 MR. PRINCE: What was sustained about it?

10 THE COURT: Facts not in evidence.

11 BY MR. PRINCE:

12 Q You told us today you were -- well, regardless, you were  
13 driving on West Flamingo in between Koval and Linq you make a lane  
14 change, correct?

15 A After Koval, yes.

16 Q After Koval. So sometime after Koval you move from the  
17 middle lane to the right lane, correct?

18 A Correct.

19 Q Okay. So you effectuate a lane change in that area, right?

20 A Yes.

21 Q Okay. Because you know you're going to make a right turn,  
22 correct?

23 A On Las Vegas Boulevard, yes.

24 Q And then so you -- what, you didn't like the traffic in your  
25 lane, was there already traffic in the middle lane?

1           A     No. I usually -- when I know I'm about to turn and I give  
2 myself time to go into that lane so that I'm not cutting people off.

3           Q     Okay. And so you -- that's actually a fairly short -- there's  
4 one hotel there.

5                   MR. PRINCE: Brandon, can you bring up the, like the ground  
6 view?

7 BY MR. PRINCE:

8           Q     At least when I was a kid it was called the Maxim Hotel. I  
9 don't know what it's called right now. But right there, just before that  
10 corner there's like a hotel on that property, right? Like a -- I don't know if  
11 it's a Wyndham, if it's a timeshare now, but it's something like that,  
12 right?

13          A     Yes.

14          Q     Okay. So that's a short distance between Koval and The  
15 LINQ. That's a pretty short distance, right?

16          A     I don't know by distance. I don't know what you mean.

17          Q     So -- okay. You don't know the distance between Koval and  
18 The LINQ Lane, that's a short -- you agree that's a short distance?

19          A     I don't --

20                   MR. WINNER: Asked and answered.

21                   THE WITNESS: I think so.

22 BY MR. PRINCE:

23          Q     Do you think it's a far distance? I mean, it's only one hotel?

24          A     I don't know in many feet or many miles.

25          Q     Okay.

1           A     I don't know if that light from Linq to Koval, I don't know the  
2 distance.

3           Q     Would you consider that a long distance or a short distance,  
4 just in general?

5           A     It's short.

6           Q     Okay. So you're -- as you're making a lane change, you're  
7 obviously, you've got traffic in front of you that you're looking out for,  
8 right?

9           A     Yes.

10          Q     You're also making sure that the lane is clear to the right --

11          A     Correct.

12          Q     -- correct?

13          A     Correct.

14          Q     So you're -- then you make the lane change, right?

15          A     Yes.

16          Q     And then you said to us that there was one car between your  
17 car and my client's car, right?

18          A     There's a car in front of me.

19          Q     Right. In between --

20          A     Yes.

21          Q     -- the two cars, right?

22          A     Correct.

23          Q     And you're saying at some point that car makes a lane  
24 change from the right to the left, correct?

25          A     Correct.

1           Q     Now I read your deposition in detail many times. And I have  
2 that in front of you. Can you tell me anywhere in your deposition where  
3 you said that there was a car in front of you when you got in the right  
4 lane between your car and my client's car?

5           A     Because at the time of deposition I was asked a specific  
6 question. So I answered that question. So if I'm not asked that question  
7 I will not tell -- I will not --

8           Q     Did you ever say anywhere in that deposition there was a car  
9 between your car and my client's car that made a lane change before  
10 your impact with my client's car? Did you ever say that?

11          A     I did not.

12          Q     Okay. We asked you -- could you turn to page 83? Question,  
13 kind of line a summary question after about an hour or more of  
14 questioning you starting at line 15 through 18.

15          "Q     Is there anything else about this accident we haven't spoken  
16 about that you think is important to let me know?

17          "A     I don't think so. I don't believe so."

18          Was that your answer?

19          A     Yes.

20          Q     So even when Mr. Troiano, at the end of the deposition we  
21 asked you, is there anything else that we didn't know --

22                 MR. WINNER: Excuse me; we need to take that down please.  
23 Thank you.

24                 MR. PRINCE: Why? What's the reason for taking it down?

25                 MR. WINNER: Can we approach?

1 MR. PRINCE: It's her deposition --

2 MR. WINNER: May we approach please?

3 [Sidebar begins at 12:01 p.m.]

4 MR. PRINCE: I'm not accusing you of doing this  
5 intentionally, but right below that it says GEICO in capital letters. On the  
6 next answer, don't leave that up there.

7 MR. WINNER: Okay. I was only --

8 MR. PRINCE: It says GEICO right underneath it. That's --  
9 right underneath the window on the page.

10 MR. WINNER: But she gave the jury instruction.

11 THE COURT: Okay. Well, take --

12 MR. PRINCE: No, no, no, we're not.

13 THE COURT: -- take it down. I don't want to see it again.

14 I still am not sure this is how this goes. I'm letting it go  
15 because you all are not objecting to it, it's not really how I understand it.  
16 I haven't had a chance to completely read this, but I'm not convinced that  
17 this covers publishing directly to the jury, but you guys are letting each  
18 other do it, I'm just kind of letting it go.

19 BY MR. PRINCE:

20 Q Okay. In any event, you never told us, even when Mr.  
21 Troiano asked you a question, is there anything else that we should  
22 know? I'm giving you an opportunity to tell us, you never told us about  
23 the car that was in between your car and the other car, correct?

24 A No, sir.

25 Q Okay.

1           A     Because I was asked a specific question, so I answered their  
2 question.

3           Q     Now, after the collision, you were shaken up, weren't you?

4           A     I was, yes.

5           Q     Yeah. So Desire said she was shaken up, and nervous, and  
6 had anxiety. I mean, nervous. That's okay, right? You'd expect that,  
7 right?

8           A     Correct.

9           Q     Because you felt the same?

10          A     I was, yes.

11          Q     And she was only 24 years old, if she thought the right thing  
12 to do was to wait for the police because she wanted a report because her  
13 car was damaged, that's okay, right?

14          A     That's okay.

15          Q     Okay. Now, you said that you didn't think that they were  
16 hurt, right?

17          A     She -- that's what she told me.

18          Q     Right, right, right. You heard her doctor yesterday, Dr. Wong  
19 (phonetic), your expert, hired by your lawyers. He testified that Desire  
20 was hurt, right? Remember -- did you hear him testify to that yesterday?

21               MR. WINNER: I think that misstates Wong's testimony  
22 slightly --

23               THE WITNESS: I think I already --

24               MR. WINNER: -- and I'll object to that.

25               MR. PRINCE: He had said she was injured.

1 MR. WINNER: He said assuming injury, Your Honor.

2 MR. PRINCE: No, he did not. In response to my --

3 THE COURT: Approach.

4 [Sidebar begins at 12:03 p.m.]

5 MR. PRINCE: He's speaking --

6 MR. WINNER: Speaking objections aren't permissible, but --

7 THE COURT: That's why I said approach. But where is this  
8 going -- what did she hear him say --

9 MR. PRINCE: Because she's saying she's not hurt. She was  
10 shocked that he was hurt -- she was hurt.

11 THE COURT: -- have to do with anything?

12 MR. PRINCE: Because he went into, how would you -- how  
13 did you feel after this?

14 THE COURT: I know, but how does that have to do with --  
15 she was shocked she was hurt back in 2017, right?

16 MR. PRINCE: Right. But, no, I didn't think anybody was hurt,  
17 this is minor fender-bender, but her expert said something totally  
18 different, that she was hurt. Yeah. So I --

19 THE COURT: Well, that's -- I mean, that's for the expert, but  
20 how -- what does it have to do with this witness?

21 MR. PRINCE: But why was she able to ask about her feeling?  
22 Why can't I explore that with her? Like her expert told you she was hurt  
23 in this crash.

24 MR. WINNER: I don't think that's a fair question, and I also  
25 think --

1 THE COURT: Yeah, I don't --  
2 MR. WINNER: -- it misstates Wong's testimony.  
3 THE COURT: I don't understand it.  
4 MR. PRINCE: He said it to a reasonable degree of probability  
5 yesterday, that she -- my client was injured.  
6 THE COURT: Right, but I don't understand ask -- what you're  
7 asking her. I mean, he testified to that.  
8 MR. PRINCE: Yeah, she learned --  
9 THE COURT: She's already said she was surprised.  
10 MR. PRINCE: -- she's learned -- she's learned that she's hurt  
11 now, right? Before, she was like, oh, I'm so shocked, it's such a minor  
12 fender-bender. She's now learned that she was injured. She learned  
13 that during the trial. Why can't I explain that? How can she say, oh, I'm  
14 -- I was shocked by the whole thing, given this inference, like, oh, this is  
15 something so minor, no one could be hurt. That was a clear  
16 indemnification or inference to be drawn from that. She's learned  
17 otherwise now.  
18 THE COURT: But I think it was more than inference. I think  
19 she directly said that it was such a minor thing, she was surprised at the  
20 injury. But I don't know why having -- I mean, you have Dr. Wong's  
21 testimony that she was hurt, to whatever extent, after she -- it was  
22 consistent. I don't know if he actually said she was hurt, but --  
23 MR. PRINCE: Oh, she did.  
24 MR. WINNER: I said it assuming injury, what would be the --  
25 MR. PRINCE: Oh, you said it?

1 MR. WINNER: Yeah.

2 MR. PRINCE: In my cross-examination, she's agreed she's  
3 hurt. We ended that mystery.

4 MR. WINNER: Yeah.

5 MR. PRINCE: So that was over and now you want your Ts for  
6 that. So what's the issue, I can't ask that question?

7 MR. WINNER: I don't -- I'm objecting to it and her comments  
8 of Dr. Wong, I don't think, are really relevant.

9 THE COURT: Yeah, I'm going to sustain that. Pursue it a  
10 different way, maybe.

11 [Sidebar ends at 12:05 p.m.]

12 BY MR. PRINCE:

13 Q Okay. Now, when you made -- crashed into the back of my  
14 client's car, she was in the process of a turn, correct? She wasn't straight  
15 in the lane any longer?

16 A I don't think so.

17 Q You don't know?

18 A I --

19 Q Do you know one way or the other?

20 A I don't think I -- I don't recall if her car was already making  
21 the turn.

22 Q Okay.

23 MR. PRINCE: Brandon, will you put our diagram back up,  
24 with -- the one with the turn?

25 BY MR. PRINCE:

1 Q If she has started her turn and had to stop for a pedestrian,  
2 obviously, she's in the middle -- in the process of a turn, correct?

3 A She said she was making a right turn.

4 Q Right. You didn't see her making a right turn, did you?

5 A No.

6 Q So you didn't even see her -- you didn't even --

7 MR. WINNER: Your Honor --

8 BY MR. PRINCE:

9 Q -- see her start to make the right turn, did you?

10 MR. WINNER: Excuse me, are we suggesting this  
11 demonstrative is -- this was created by counsel. This isn't a photograph  
12 of the scene.

13 THE COURT: Right.

14 MR. WINNER: Is he asking --

15 MR. PRINCE: It's obvious it's --

16 MR. WINNER: -- the witness to agree with that? She just  
17 said she doesn't know, doesn't remember.

18 THE COURT: I'm -- you guys approach.

19 [Sidebar begins at 12:06 p.m.]

20 MR. PRINCE: What's -- I don't know what the objection is.

21 THE COURT: I'm assuming the objection is to putting this up  
22 and representing that this is somehow something more than  
23 demonstrative.

24 MR. PRINCE: I'm not saying --

25 THE COURT: Again, as I said --

1 MR. PRINCE: -- I'm not suggesting it -- I'm not suggesting  
2 that it is --

3 THE COURT: -- many times, demonstrative evidence is  
4 something that the witness says this would help me and explain the  
5 testimony. And then you go around the parameters, but when you  
6 throw up there, I think it makes it look like this is some --

7 MR. WINNER: Photograph of the --

8 THE COURT: -- of the accident --

9 MR. PRINCE: It's not a --

10 THE COURT: -- frankly.

11 MR. PRINCE: -- I've never said that. I used this in opening  
12 without objection.

13 THE COURT: I didn't say -- I didn't say you -- I understand  
14 that, but when they object, there's something -- I would have objected  
15 before, but they didn't. So in opening, you can use demonstrative, you  
16 can use pictures.

17 MR. PRINCE: I used it during -- I've used it even during the  
18 initial of her, so what's the issue?

19 THE COURT: I know, but they didn't object.

20 MR. PRINCE: That's right, so then there's no issue now.

21 THE COURT: That's not true. That doesn't make it -- because  
22 they go -- once they've objected -- and I think now you are representing it  
23 on a different level. I think before, it was little more clear that you were  
24 just showing the position and the area, but now I think you're trying to  
25 make it look like this is actually where the cars were, this is how they

1 were positioned, and I don't think there's any testimony -- well --

2 MR. PRINCE: That's demonstrative. I'm not saying it's to the  
3 scale.

4 THE COURT: Well --

5 MR. WINNER: Well, you're not demonstrating it --

6 THE COURT: -- I'm going to sustain it. I don't care.

7 MR. WINNER: -- you're not demonstrating her testimony.

8 Her testimony is I don't remember that, and I don't --

9 THE COURT: Right.

10 MR. PRINCE: Okay.

11 THE COURT: So --

12 [Sidebar ends at 12:08 p.m.]

13 BY MR. PRINCE:

14 Q I want to ask you a question. When -- you don't recall the  
15 position of Desire's vehicle at the point of impact, whether it was facing  
16 completely straight or in the process of a turn, correct?

17 A I don't know.

18 Q Because if she was in the process of a turn -- that would be  
19 more likely you would hit her on an angle on her bumper, if she was in  
20 the process of a turn, correct?

21 A It could be.

22 Q Okay. And you never saw her start to turn, correct?

23 A No.

24 Q Obviously, if she had to stop for a pedestrian who was  
25 crossing Flamingo Road, that would be in the process of a -- she would --

1 in the turn, right?

2 A It could be.

3 Q It's consistent with somebody being in the process of a turn,  
4 correct?

5 A It could be, yes.

6 Q Now, you indicated that your car -- there was damage to the  
7 bumper of your car, right?

8 A On the passenger.

9 Q On the right front?

10 A In the front, yes.

11 Q Yeah. And if we go to Exhibit Number 7, it's Bate number 11.  
12 There was damage to the front bumper, her front quarter panel, the  
13 hood, the lights, right?

14 A On the passenger side.

15 Q Yeah, on that -- on the right side, that's correct, right?

16 A Yes.

17 Q So you're not suggesting there was no contact with my  
18 client's bumper, right?

19 A Excuse me?

20 Q Are you saying there was no contact between your bumper  
21 and my client's bumper?

22 A I didn't say that, sir.

23 Q Okay. Because there clearly was damage to the front of your  
24 bumper, which collided with my client's bumper, right?

25 A Yes.

1 Q Okay.

2 MR. PRINCE: If I can look at, Brandon, Exhibit Number 13,  
3 Bate number 17. This is actually from the scene? And that's actually the  
4 -- your bumper and even below your bumper, correct?

5 A Correct.

6 Q Right. And my client's -- if you look at Exhibit Number 30.

7 MR. PRINCE: Brandon, Bate number 34.

8 BY MR. PRINCE:

9 Q All the scuffing and the damage to the bunker -- the bumper,  
10 the buckling, that's where your car hit hers, right?

11 A Yes.

12 Q On the bumper, correct?

13 A Yes.

14 Q Also, on the trunk as well, right? Because there's damage to  
15 the trunk.

16 A On the driver's side rear, yes.

17 Q On the driver's side, okay. Okay.

18 MR. PRINCE: Wait one second.

19 [Pause]

20 MR. PRINCE: Your Honor, can we approach? I want to ask  
21 something before I ask my next question.

22 THE COURT: Uh-huh.

23 [Sidebar begins at 12:11 p.m.]

24 MR. PRINCE: She says that she always drives safe and I want  
25 to ask her that she's actually been arrested for driving -- for a DUI and

1 charged with DUI.

2 MR. WINNER: No, it was CL --

3 MR. PRINCE: Well, she says I always drive safe. How do you  
4 -- how do you come around that? How do you -- you opened the door to  
5 unsafe driving.

6 THE COURT: To the extent that that's happened, then I'm  
7 going to find it's more prejudicial than probative.

8 MR. PRINCE: Okay.

9 [Sidebar ends at 12:11 p.m.]

10 MR. PRINCE: Just let me check my notes, Your Honor. I  
11 don't think I have any further questions, but hang on.

12 BY MR. PRINCE:

13 Q And you've been represented throughout this entire lawsuit  
14 by Mr. Winner's firm, correct?

15 A Yes.

16 Q When you answered the interrogatories, Mr. Winner's firm  
17 assisted you, correct?

18 A Yes.

19 MR. WINNER: May we approach, please?

20 THE COURT: Yes.

21 [Sidebar begins at 12:12 p.m.]

22 MR. WINNER: It was transferred from another firm.

23 MR. PRINCE: What?

24 MR. WINNER: Just say she was represented by Defense  
25 counsel.

1 MR. PRINCE: Whatever it is, you were representing her at  
2 the time of her interrogatories. You did.

3 MR. WINNER: Oh, yes, I agree.

4 MR. PRINCE: Yeah, okay.

5 MR. WINNER: But she was -- it was another firm. It was  
6 transferred from a firm.

7 [Sidebar ends at 12:12 p.m.]

8 BY MR. PRINCE:

9 Q Okay. When you answered the questions under oath, you  
10 were represented by Mr. Winner's firm, right?

11 A Correct.

12 Q And when you were at your deposition, you were also  
13 represented by Mr. Winner and his law firm, correct?

14 A Yes.

15 Q Okay.

16 MR. PRINCE: Thank you. I don't have any other questions.

17 THE COURT: Okay. Mr. Winner, anything else? Anything  
18 else, Mr. Winner?

19 MR. WINNER: Yeah. ELMO, please.

20 RECROSS EXAMINATION

21 BY MR. WINNER:

22 Q I'm not going to put the same picture up there. Mr. Prince  
23 showed you damage to the truck lid and bumper and there was some  
24 damage over on the left side. Do you believe her car was lower than  
25 yours was?

1 A Yes.

2 Q Okay. This -- you had never seen her car before, correct?

3 A I've never seen her car.

4 Q You don't know if any of this scuffing or whatever it is on the  
5 bumper was there before the accident, do you?

6 A I don't know.

7 Q Okay. Thank you.

8 THE COURT: Is that it?

9 Ladies and gentlemen, any questions? Okay.

10 UNIDENTIFIED JUROR: Something I didn't hear.

11 THE BAILIFF: Okay. I guess, I can --

12 UNIDENTIFIED JUROR: We stop it, right, and say I didn't  
13 hear it?

14 THE BAILIFF: Yeah, that's fine. You just ask -- whatever you  
15 need to ask in these questions, just write it on here.

16 UNIDENTIFIED JUROR: Well, I'm saying during the  
17 testimony.

18 MR. PRINCE: No, no. I think he's asking, Judge, the juror is  
19 asking if you didn't hear something, can he raise his hands? We can  
20 either repeat the question or repeat the answer.

21 THE COURT: Yeah, when it's going on, but now that you  
22 didn't write it --

23 UNIDENTIFIED JUROR: I didn't do it at that time, so --

24 THE COURT: -- writing -- no, no, no, that's fine, so just write  
25 the note, whatever it is you wanted to hear, okay?

1 [Sidebar begins at 12:14 p.m.]  
2 THE COURT: Perfect. Thank you. I think that's okay.  
3 Okay. Both look okay in light of everything. Am I able to ask  
4 them?  
5 MR. WINNER: Well, I think --  
6 MR. PRINCE: That looks okay.  
7 MR. WINNER: -- I don't agree with that one because she  
8 won't know.  
9 THE COURT: I think it's already come in, hadn't it? Didn't he  
10 just not hear it?  
11 MR. HENRIOD: If it has, it certainly can. So I don't see the  
12 problem.  
13 MR. PRINCE: I don't know what you mean by filed it, but  
14 Plaintiff's filed it.  
15 MR. WINNER: Paul Powell filed it.  
16 MR. PRINCE: No, he did not.  
17 MR. WINNER: Yeah, he did.  
18 MR. PRINCE: No, the Plaintiff's filed it. Why do some  
19 lawyers have to come in every time, Judge? Who does it matter what  
20 the lawyers were?  
21 THE COURT: Well, you guys have been asking the questions,  
22 so --  
23 MR. PRINCE: No, we haven't. No, you've allowed -- I've  
24 objected every time the reference to the lawyers.  
25 THE COURT: Well, I don't know that you did every time, but

1       okay. Whatever, I just don't think --

2                   MR. WINNER: Paul Powell filed it and appeared at -- his  
3       office appeared at her deposition.

4                   MR. PRINCE: Who cares who filed it, I guess, is my --

5                   THE COURT: Well, probably the jury.

6                   MR. PRINCE: Oh.

7                   THE COURT: I don't care. I'll keep out who filed it, but the  
8       first part, I think, is fine.

9                   MR. WINNER: I'm fine with both questions.

10                  MR. PRINCE: Okay.

11                  THE COURT: All right. Well, I won't give it if both don't  
12       agree to it.

13                  MR. PRINCE: Okay.

14                  THE COURT: Okay. But this one has already -- this part has  
15       already come in of number 3.

16                  MR. PRINCE: What?

17                  THE COURT: The month it was filed already came in, so I'm  
18       going to ask that.

19                  MR. PRINCE: When did that happen? Oh, that's fine. I don't  
20       care about that, that's fine.

21                  THE COURT: I won't ask who filed it. And then the other one  
22       is fine, obviously.

23                  MR. WINNER: I need to go look to find it.

24                  THE COURT: Huh?

25                  MR. WINNER: I need to go look to find it when, what month

1 in 2017.

2 THE COURT: Oh, he -- it's not a question for you. It's a  
3 question for her, so if she doesn't know it, she doesn't know it.

4 MR. WINNER: Of course, yes, Your Honor.

5 [Sidebar ends at 12:16 p.m.]

6 THE COURT: But thank you.

7 All right. Ms. Tate, did the car in between you and Ms. Evans  
8 swerve out of the way quickly to avoid hitting Ms. Evans or was it just a  
9 normal lane change?

10 THE WITNESS: No, it was a normal lane change.

11 THE COURT: And what month, in 2017, was the lawsuit  
12 filed?

13 THE WITNESS: I think it was April or May of 2017. I'm not  
14 quite sure, but --

15 THE COURT: Okay.

16 THE WITNESS: -- it was the middle of 2017.

17 THE COURT: As a result of those questions, does anybody  
18 else have any follow up?

19 MR. PRINCE: Nothing, Judge.

20 THE COURT: Okay. Is this witness excused?

21 MR. WINNER: Yes, Your Honor.

22 THE COURT: Subject, I guess, to recall potentially. All right.  
23 Thanks so much for your testimony.

24 Ladies and gentlemen, here's kind of the plan, as I  
25 understand it. I'm going to give you like a ten-minute break and then

1 we're going to come back and we're going to do one more witness. And  
2 then rather than taking a lunch break, we're just going to let you for the  
3 day. Does that work? Yes, no?

4 And just --

5 UNIDENTIFIED JUROR: We're at your mercy.

6 THE COURT: Yeah, I know. I don't actually like it, by the  
7 way, but it is what it is.

8 And then we're looking at maybe tomorrow at noon, if that  
9 will work for everybody? And then Friday, hopefully, at 10 to closing  
10 arguments. Is -- so think about that over the next ten-minute break and --  
11 you have a question?

12 UNIDENTIFIED JUROR: Yeah, for the Friday -- because I have  
13 to -- the note that I wrote you for --

14 THE COURT: Was it 2:00?

15 UNIDENTIFIED JUROR: Yeah, I have to be there in between  
16 2:30 and 3.

17 THE COURT: And for how long?

18 UNIDENTIFIED JUROR: I got to be there from 3 to 9 at night  
19 Friday.

20 THE COURT: I hate to say that, so I'll just keep it in mind.

21 MR. PRINCE: Okay.

22 THE COURT: All right. So during the recess, you're  
23 admonished not to talk or converse among yourselves, or with anyone  
24 else on any subject connected to this trial.

25 Or read, watch, or listen to any report or other commentary

1 on the trial of any person connected with this trial by any medium of  
2 information, including and without limitation to newspapers, television,  
3 the internet, and radio.

4 Or form or express any opinion on any subject connected  
5 with the trial until the case is finally submitted to you.

6 Probably about five or ten, or -- the sooner we get --

7 THE BAILIFF: All rise for the jury.

8 THE COURT: -- back, the sooner we get out, so.

9 [Outside the presence of the jury.]

10 THE COURT: Anything outside?

11 MR. WINNER: No.

12 MR. PRINCE: No, Judge. I do. Yes, I do. I guess there's  
13 been a number of instances where you've asked us to take down like or a  
14 person believed to be a demonstrative slide, one of which I've been -- we  
15 created. I've never once represented it was a photograph. It's clear it's  
16 some sort of -- we created a scene diagram with cars and things like that  
17 and I'm using it to guide a discussion along. I used it in my opening  
18 statement, I used it with Desire yesterday, I used it even during my initial  
19 direct exam of the Defendant without any objection. And then you  
20 sustain an objection.

21 I'm not even sure on the basis -- what the basis was, other  
22 than you said that's not an appropriate use of a demonstrative. I believe  
23 it is a demonstrative. I wasn't project -- I wasn't offering it as a  
24 photograph, a scene photograph. I'm having a discussion, more  
25 because it shows lane configuration, position of vehicles, things of that

1 nature, and I'm trying to guide a discussion using that.

2 It would be the same as if I drew it out myself and I don't --  
3 and just because it's prepared in an electronic format, it doesn't take  
4 away that it's demonstrative. That was something -- it's already part of a  
5 court exhibit, since it's part of the opening statement, the PowerPoint  
6 presentation. So the Court does have a record of that. But I guess I'm  
7 just trying to understand the Court's -- so I have guidance on what's a  
8 demonstrative for your purposes?

9 THE COURT: It --

10 MR. PRINCE: I consider that, clearly, one.

11 MR. WINNER: I might have objected sooner. I think Mr.  
12 Prince was trying to get through an examination and I didn't see any  
13 particular need to interrupt. The way it was phrased at the end, at least  
14 the way I heard it, maybe it wasn't intended that way, was him looking at  
15 the demonstrative saying, well, look, right here, she's turning right, she's  
16 turning right, as if she was being shown a demonstrative that  
17 demonstrated her own testimony and it doesn't. She just answered I  
18 don't know if it was to the right. I don't remember. I can't tell you if it  
19 was turned to the right or not.

20 And Mr. Prince was pointing at his own demonstrative, I thought,  
21 to argue with her that it was. And that was why I waited to object and  
22 that's why I did. It did not demonstrate her own testimony at all. It  
23 demonstrated somebody else's.

24 THE COURT: And here's my position on demonstrative. If  
25 you all agree to it, like it came in, in your opening, and nobody objected

1 to it, all good with me. And I don't think it's necessarily even  
2 inappropriate in an opening. It's a different situation.

3 MR. WINNER: I'm going to have to check that out.

4 THE COURT: But when it comes to anything that goes to the  
5 jury has to be admissible. And so, I don't believe that you can just put  
6 charts, or pictures, or diagrams, or whatever you want without a basis.  
7 Most of the time they didn't object, so I don't care. You guys agree on it,  
8 it's fine with me.

9 MR. WINNER: That's fine.

10 MR. PRINCE: I don't think a demonstrative is, number one --

11 THE COURT: A demonstrative -- you can't just say it's  
12 demonstrative. The -- there's a statue that says a demonstrative  
13 evidence, if a juror -- lay the foundation. The jury -- you show her the  
14 picture and you say, hey, if I allow you to use this, will this help you to  
15 explain to the jury what was going on at the time? And does this fairly  
16 and accurately depict where the streets were. I mean, that's the  
17 technical.

18 You guys -- I get that you do it different and so you kind of  
19 agree to it, but I'm just telling you that that's how -- where I -- my  
20 understanding of the rules of evidence are, that's how you lay the  
21 foundation. And then once the witness says yes, then you say okay,  
22 permission to, you know, publish, and then they go on and the use it. It  
23 doesn't become an exhibit it doesn't go back with them. It just --

24 MR. PRINCE: No, of course, right.

25 THE COURT: -- something they're using for a demonstrative.

1 But it doesn't mean that you can just create it and use it. And I think  
2 there has to be that kind of foundation so that the Defense can say, well,  
3 but that's not exactly where the cars were. This was -- yes, that's what --  
4 anyway. Long story longer --

5 MR. WINNER: And you're correct about the statute. My  
6 belief was -- Mr. Prince put it up on opening. My belief was that his  
7 client was going to say essentially what he was showing in that  
8 demonstrative. I mean, I don't believe he'd put it up there if that weren't  
9 the case. And --

10 THE COURT: And that's fine. And like I said --

11 MR. WINNER: -- so, I mean, the rule is the same. I  
12 wouldn't --

13 THE COURT: But I think towards the end when the objection  
14 came in, I think that, at that point, it was being offered more as an actual  
15 depiction of what was going on at the time. And I don't -- I didn't hear  
16 any testimony, I didn't hear any move to admit it. So in the face of an  
17 objection, that's why I sustained it.

18 MR. PRINCE: Okay.

19 THE COURT: Okay.

20 MR. WINNER: All right.

21 [Recess at 12:23 p.m., recommencing at 12:32 p.m.]

22 [Outside the presence of the jury]

23 THE COURT: Was the missing doctor deposed?

24 MR. PRINCE: No. Okay.

25 MR. WINNER: Sorry, Judge?

1 MR. PRINCE: Your Honor, in --

2 THE COURT: I was asking if the missing -- the missing doctor  
3 had been --

4 MR. PRINCE: -- in response to --

5 THE COURT: -- deposed previously.

6 MR. WINNER: If who was deposed?

7 THE COURT: The missing doctor.

8 MR. WINNER: He was not in this case.

9 THE COURT: I'm sorry. Did you have something?

10 MR. PRINCE: Yes. In response to the juror question, I didn't  
11 ask any follow-ups, but since then I went back and something struck me  
12 from the deposition of the Defendant, and I would like to put her back up  
13 on the stand to deal with the Koval and this lane change by this other  
14 car. I think I have some impeachment evidence that I want to use. Since  
15 she just got off the stand, and we haven't started a new witness, I still  
16 think I would have the ability to do that. I'm asking permission to do  
17 that.

18 MR. WINNER: I would disagree. I don't think she said --

19 THE COURT: Tell me again what you want to say.

20 MR. PRINCE: I want to bring her back on the stand to talk  
21 about this other car. Number 1, her lane change after Koval, and, 2, this  
22 other car that was allegedly between her car and my client's car that  
23 made a lane change. She didn't describe either of those events in her  
24 deposition, and I want to use that to impeach. But after she answered  
25 the question, and on the break, I started looking through my material,

1 and since she just barely got off the stand, I don't think there's any harm  
2 in following up with that juror question since nothing else has happened.

3 THE COURT: And my belief is that testimony has already  
4 come in. She's already clearly acknowledged it wasn't in her deposition.  
5 She said it was because you asked -- they asked pointed questions and  
6 she didn't -- you pointed out the fact that -- you gave her the opportunity  
7 to volunteer if there was something more, and she didn't put it in.

8 So I'm going to deny the request only because I think the  
9 evidence is already in. Normally I would let it go. Okay?

10 MR. PRINCE: Well, I want to make my record.

11 THE COURT: That's fine.

12 MR. PRINCE: I want to reference -- page 57 of the Plaintiffs'  
13 deposition:

14 "You talked about approaching Koval Lane. Do you recall  
15 whether or not you came to a stop at the interception of Koval?

16 "I don't recall.

17 "Do you recall where you were when you first saw the traffic  
18 signal?"

19 She talks about going west on Flamingo. "Traffic is not  
20 heavy, but I noticed her slam on her brakes. There's nobody in front of  
21 us -- in front of me. It was just her."

22 She doesn't talk about making a lane change, nor does she --  
23 anywhere in her deposition, anywhere, nor does talk about -- so that's  
24 one new issue. And, two, she doesn't talk about a car making a lane  
25 change. So those particular facts in response to the last juror question,

1 since all we did was take a break after that, I don't think enough time has  
2 gone by to add any meaningful change of position. Nothing else has  
3 transpired other than me consulting my notes and remembering  
4 something during the five minutes we've been off the record.

5 MR. WINNER: My response would be Mr. Prince asked all of  
6 these questions already.

7 MR. HENRIOD: He certainly could have.

8 THE COURT: Give me the question you want to ask.

9 MR. PRINCE: "You never told us in your deposition you  
10 made a lane change after Koval?" And another thing, you sustained an  
11 objection, actually, that she's testified that in her deposition, and  
12 Mr. Winner said it misstates the evidence, and you sustained that  
13 objection. So it's multifactorial. I went back and checked that. She  
14 never said she made a lane change in her deposition.

15 So I -- that's one, because you sustained my objection  
16 without even seeing the transcript. And then, two, talking about this  
17 other car, now, that we've never heard of before that's made a lane  
18 change between her client and my client -- between their client -- her car  
19 and my client's car.

20 MR. WINNER: She admitted it was not in her depo. Just --

21 THE COURT: Yeah. I'm not sure what --

22 MR. WINNER: She admitted all of this.

23 MR. PRINCE: No, no, no, the lane change. She never -- she  
24 never discussed a lane -- you sustained Mr. Winner's objection when I  
25 said I heard for the very first time in court that you made a lane change --

1 between Koval and the lane. He says, "It's in her deposition. Misstates  
2 the testimony." You sustained that objection.

3 THE COURT: Okay.

4 MR. PRINCE: So that -- that was wrong because that's not --  
5 that is not the case. Have Mr. Winner point that information out in the  
6 deposition. Tell him to give you the page and line where I misstated it,  
7 because now it looks like I'm making a --

8 THE COURT: Well, here's --

9 MR. PRINCE: -- false statement to this jury.

10 THE COURT: Not at all. Here's the question was, did the car  
11 between you and Ms. Evans swerve out of the way. So the only -- or  
12 was it a normal lane change. This has nothing to do with her lane  
13 change. So that wouldn't be followed. That would be well beyond the  
14 scope of everything else.

15 MR. PRINCE: Well, I'm asking permission now for that, also,  
16 then.

17 THE COURT: Oh, I'm going --

18 MR. PRINCE: For both.

19 THE COURT: I'm not going to keep going -- no. We've got a  
20 limited period of time.

21 MR. PRINCE: But, Judge, you sustained an objection --

22 THE COURT: You're not going to re-ask questions that -- no.

23 MR. PRINCE: But how do you sustain an objection for which  
24 it's inaccurate? Have Mister point out -- Mr. Winner, because he said --

25 THE COURT: With what?

1 MR. PRINCE: Mister -- when I said to the witness, "You  
2 testified for the very first time in this trial that you made a lane change  
3 between Koval and Linq." Mr. Winner's objection was, if you want to  
4 play it back, he said, "Objection; misstates her testimony. She testified  
5 to it at her deposition." You sustained that objection. And you weren't  
6 even shown the transcript, and I'm asking you to clear up that record. It  
7 looks like I'm misstating it, and I'm not misstating it.

8 I went back and read the -- have him point out the page and  
9 line where she says it, because you sustained the objection because I  
10 was allegedly misstating her testimony, even though it was a cross-  
11 examination.

12 THE COURT: Well, I don't -- I don't honestly know --  
13 remember exactly what -- is it in there or not in there?

14 So what you're asking to reopen is not -- nothing to do with  
15 the juror question?

16 MR. PRINCE: It's -- well, it's both. It's to two issues, then. I  
17 want to talk about -- we talked about the Koval -- the Koval Lane issue,  
18 because that deals with lane changing, her own lane change, and it also  
19 deals with this other car. So there -- it's two components to it.

20 THE COURT: And why didn't you ask this before you said  
21 you were done?

22 MR. PRINCE: Well, one -- well, one, I went back and checked  
23 my notes on the issue about this other car. It didn't -- I didn't remember  
24 her saying anything about this other car in her deposition at all, and  
25 talking about --

1 THE COURT: That's already happened, though. That -- that I  
2 know is in. You're not going to ask her isn't it true you didn't say  
3 anything about the other car --

4 MR. PRINCE: But, also, the issue about her --

5 THE COURT: -- at your deposition because --

6 MR. PRINCE: -- lane change, too.

7 THE COURT: -- that's already come in.

8 MR. PRINCE: But the issue about her lane change, also.

9 Because I said I heard that for the first time in trial. And so then -- and  
10 you sustained that objection because Mr. Winner said I misstated it, it's  
11 in her deposition, like that's a fact.

12 THE COURT: I don't -- that's not as I understood it. I'm not  
13 saying it's not right. I just didn't understand it to -- I thought there was a  
14 different fact we were talking about.

15 MR. WINNER: Well, when her deposition was taken, nobody  
16 asked her if she made a lane change.

17 MR. PRINCE: Oh.

18 MR. WINNER: I'm hearing something for the first time in  
19 trial, like she's making up a story.

20 MR. PRINCE: That's correct. Yeah, she said -- that's why it  
21 caught me off guard. That's why I said that, because I read the  
22 deposition numerous times, and I went back over it. And the basis of  
23 the objection wasn't foundation. It wasn't anything else. You just said it  
24 misstated something, and nothing has even happened -- there's nothing  
25 we can --

1 THE COURT: I have -- we have to go back -- I got to hear --

2 MR. PRINCE: -- misstate.

3 THE COURT: -- that.

4 MR. WINNER: She said on the stand it's not in her  
5 deposition.

6 MR. PRINCE: No, she didn't. She talked about --

7 THE DEFENDANT: I did.

8 MR. PRINCE: -- the other car. The other car's lane change at  
9 her deposition.

10 THE COURT: Correct.

11 MR. PRINCE: Not her lane change.

12 THE COURT: What does her lane change have to do with  
13 anything?

14 MR. PRINCE: I think it --

15 THE COURT: I mean, clearly, she like changed lanes --

16 MR. PRINCE: I think distraction --

17 THE COURT: -- before back in the day. I mean --

18 MR. PRINCE: But that's a very short distance. I mean,  
19 obviously, she's not -- our theory is she's not paying full attention to the  
20 road in front of her. She's effectuating some kind of a lane change. She  
21 doesn't see my client's car --

22 THE COURT: That was back before Koval, right?

23 MR. PRINCE: No, after Koval. West of Koval, before this  
24 intersection. And it's a very -- it's only a few hundred yards. It's not very  
25 far.

1 THE COURT: Okay. So you have the testimony now, right?

2 THE DEFENDANT: Yes.

3 THE COURT: So why don't -- why don't --

4 MR. PRINCE: No. I want -- no, you sustained an objection  
5 that I misstated testimony.

6 THE COURT: All right. I need to hear -- can you find --  
7 Yvette, can you try and find what I sustained and why I said and what the  
8 question was?

9 MR. WINNER: I sustained the -- well, I didn't sustain. I made  
10 an objection because, "I'm hearing this for the first time" --

11 MR. PRINCE: This is --

12 MR. WINNER: -- "today," like she's making up a story.

13 MR. PRINCE: She is.

14 MR. WINNER: Look at her deposition.

15 MR. PRINCE: I did, and it's not there. Have him point it out  
16 to you.

17 MR. WINNER: She's making up a story. Look at her  
18 deposition. Nobody asked her if she made a lane change, and this is  
19 unfair that you didn't ask, and now you hear it today.

20 THE COURT: All right. Here's what I'm going to do. Here's  
21 what I'm going to do. I'm going to let you ask that question. One  
22 question, that, "In your deposition, this is the first time you've ever seen  
23 it?" And then, Mr. Winner, you can follow up with, "Nobody ever asked  
24 you?"

25 MR. WINNER: Fine.

1 THE COURT: I'm done. Okay? That gets it out there and you  
2 don't look like you were making something up, and --

3 MR. PRINCE: Well, yeah, but, Judge, I think it's --

4 THE COURT: I'm not re-opening it -- that limited. That's it.

5 MR. PRINCE: It's more contextual than that because we were  
6 asking about Koval, what she did after Koval --

7 THE COURT: No. No more. That's all. That's -- this jury.  
8 We're done. I'm going to give you those questions. I don't think I need  
9 to. I'm going to do it, just trying to be accommodating, and, frankly,  
10 trying to avoid having to look through this record. So that -- that's the  
11 ruling.

12 MR. WINNER: Okay.

13 THE COURT: Okay.

14 MR. PRINCE: Okay. Yeah, can we just have the witness, I  
15 guess, Ms. Tate, come back on the stand?

16 THE COURT: Sure.

17 MR. WINNER: Yeah, why don't you just come back up.  
18 That's fine.

19 MR. PRINCE: Two questions?

20 THE COURT: One each.

21 THE BAILIFF: All rise for the members of the jury.

22 [Inside the presence of the jury.]

23 THE BAILIFF: Present, Your Honor.

24 THE COURT: Do the parties stipulate to the presence of the  
25 jury?

1 MR. PRINCE: We --

2 MR. WINNER: Yes.

3 MR. PRINCE: We do.

4 THE COURT: Ms. Tate, you understand you're still under  
5 oath. There's just a couple more questions.

6 THE WITNESS: Okay.

7 THE COURT: Two more questions.

8 Mr. Prince.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. PRINCE:

11 Q Ms. Tate, when your deposition was taken on April 3rd, 2018,  
12 when you were asked questions about the road you were traveling on  
13 and passing Koval Lane leading up to the collision at the Linq, you never  
14 said -- or testified that you made a lane change from the center lane to  
15 the right lane, correct?

16 A Yes.

17 Q Okay. Thank you.

18 THE COURT: Mr. Winner.

19 FURTHER RECROSS-EXAMINATION

20 BY MR. WINNER:

21 Q When Mr. Prince's office asked you questions at that  
22 deposition; did anyone ever ask you if you had made a lane change?

23 A No one have asked me if I made a lane change, so I did not  
24 say that in the deposition.

25 THE COURT: Okay.

1 MR. WINNER: All right. Okay. Thank you.

2 THE COURT: Thank you. I assume there's nothing from the  
3 jury as a result of those?

4 Okay. Ms. Tate, have a seat.

5 And, Mr. Prince, if you want to call your next witness.

6 MR. PRINCE: It's -- Mr. Degree is going to --

7 MR. DEGREE: We're calling --

8 MR. PRINCE: -- handle the next witness.

9 MR. DEGREE: -- Guadalupe Parra-Mendez.

10 GUADALUPE PARRA-MENDEZ, PLAINTIFF, SWORN

11 THE COURT: Please state your full name and spell your first  
12 and last name for the record.

13 THE WITNESS: Guadalupe Parra-Mendez;

14 G-U-A-D-A-L-U-P-E P-A-R-R-A M-E-N-D-E-Z.

15 THE CLERK: You may be seated.

16 DIRECT EXAMINATION

17 BY MR. DEGREE:

18 Q Good afternoon, Guadalupe. How you doing?

19 A I'm good.

20 Q Okay. I under -- Desire testified yesterday that she was going  
21 to be induced at 8 a.m. this morning. Have you had an opportunity to  
22 speak with her or the family since --

23 A I have.

24 Q -- since then?

25 A Her water did break at 5 in the morning, so she's currently in

1 the hospital. She's eight centimeters as of right now.

2 Q Okay.

3 A Yes.

4 Q All right. How old are you now?

5 A Twenty-six.

6 Q Okay. Where were you born?

7 A '92, December 23.

8 Q Where were you born?

9 A Oh, where? Sorry. Montebello.

10 Q That's in California?

11 A California, yes.

12 Q When did you relocate to Las Vegas?

13 A In 2001.

14 Q Was that with your family?

15 A Yes.

16 Q What brought your family out to Las Vegas in 2001?

17 A Better housing, I believe, at the time for my parents.

18 Q Do you still have family here in town?

19 A Yes.

20 Q Your father is here in town?

21 A Yes.

22 Q Any brothers or sisters?

23 A Just my two older brothers.

24 Q Where did you attend high school?

25 A I attended at Chaparral High School, and then I also went to

1 Cowan Sunset Academy for one year.

2 Q Okay. Did you graduate?

3 A Yes.

4 Q Are you currently married?

5 A Yes.

6 Q Did you get a job right after finishing high school?

7 A Yes.

8 Q Why don't you kind of describe for us some of the jobs that  
9 you've held since finishing school, and what your title was, who you  
10 worked for, and briefly describe some of your duties?

11 A Yeah. So my first job was at the place called Kitchen Noble.  
12 It was an online kitchen store. I was an office assistant. I did emails,  
13 phone calls, shipping. After that I did spacecraft components, which I  
14 assembled little parts for spacecraft, like engines. Then after that is  
15 when I started working at Cromwell as accounting attendant where I  
16 collected all the funds, all the monies from the casinos, just basically run  
17 the money through a big machine and have paperwork, everything,  
18 ready for audit.

19 After that I did Texas Station as a cage cashier, as well as a  
20 consultant for USAA, which is an online military bank. And after that I  
21 worked at the Cosmopolitan as a cage cashier. And as of right now, I'm  
22 working at Sitel as a customer service for PlayStation.

23 Q Okay. What are you doing for Sitel?

24 A Sitel, troubleshooting. Mostly troubleshooting for the  
25 consoles.

1 Q Did you just recently finish up training for that?

2 A Yes.

3 Q So on October 30th of 2015, were you working for The  
4 Cromwell at the time?

5 A Yes.

6 Q And what were you in charge of doing at The Cromwell?

7 A Well, it depends on the day. But majority of the time I would  
8 be the one in charge of pushing or pulling like this really big cart where  
9 we put all the money in. It did weigh more than a hundred pounds. I did  
10 have assistance at times. Like I said, I just collected money from the  
11 ATM machines, the slot machines, the tables, the revenue from the  
12 bartenders, the -- basically everything in that casino.

13 Q Around that time, in October of 2015, what would -- what  
14 were your typical workdays?

15 A My typical --

16 Q Did you have a set schedule?

17 A Yes. I worked Monday through Friday from 3 in the morning  
18 until 12 in the afternoon.

19 Q So normal off-days, typical weekends, Saturday and Sunday?

20 A Yes.

21 Q You talked a little bit about collecting the money out on the  
22 casino floor from the tables or from the ATMs, or the slot machines.  
23 When you went back to count it, would you be mostly sitting, mostly  
24 standing? How would you describe that?

25 A Standing.

1 Q At the time, in the months leading up to October 30th of  
2 2015, if you weren't at work, how were you typically spending your time?

3 A At home. Either at home. At that time, I was very active with  
4 Desire's family, my husband's family. We were always together, always  
5 just getting together, little family get-togethers. I also did -- was taking  
6 care of my brother's dog. So I would actually take him to the little dog  
7 park that we had in my apartment complex. Also, I -- during the  
8 weekends, I was playing in a Mariachi group as a violinist, so --

9 Q Tell us about that. How would that work? Would you do  
10 private events, restaurants?

11 A Both. At that time, we were contracted with Lingo Meitro  
12 Gann (phonetic), so we were playing at the restaurants, and we were  
13 contracted as well at private events, like weddings, quinceaneras, all that  
14 stuff.

15 Q When did you meet Desire?

16 A In January of 2014.

17 Q Okay. You've been friends ever since?

18 A Yes.

19 Q She's obviously had Sienna and Alliyah --

20 A Yes.

21 Q -- the two oldest daughters, as long as you've known her?

22 A Yes.

23 Q So when you would spend your time with Desire or with the  
24 kids, what would all of you typically enjoy doing?

25 A Typically, I would -- well, me, personally, I always spent the

1 time with the girls. They like watching YouTube videos. They like  
2 playing video games. So -- I like video games, so I'd play with them.  
3 There will be some times where me and Desire do take the girls out to  
4 the park, like just to play around and such.

5 Q Are you close with them?

6 A Yeah.

7 Q What do they -- what do they call you?

8 A I call them -- they call me Lupe.

9 Q Okay.

10 A And it's rare, but they sometimes call me Baby because  
11 that's what I call them.

12 Q Okay. Okay. I want to shift gears a little bit --

13 A Yeah.

14 Q -- and talk about the October 30th, 2015 collision, okay?

15 A Okay.

16 Q Desire testified yesterday. You were here for that, correct?

17 A No.

18 Q Oh, I'm sorry. You were not. What do you remember -- did  
19 you work that day?

20 A Yes, I did.

21 Q Okay. What -- did you have the same normal shift that you  
22 always had, 3 a.m. to about noon?

23 A Yes.

24 Q Okay. What do you remember happening from about noon  
25 until the time you were getting ready to go to the event?

1 A Yeah. I was just sleeping.

2 Q What time did you get up?

3 A Around 3 or 4 in the afternoon.

4 Q Okay. And then what time did the collision occur, roughly?

5 A After 6. Approximately around 6:30.

6 Q Was there any -- as you're -- and, obviously, you were

7 coming from westbound Flamingo?

8 A Yes.

9 Q Approaching The LINQ?

10 A Yes.

11 Q That intersection?

12 A Yes.

13 Q Okay. Was there anything out of the ordinary from the time

14 you left the house until the time this collision occurred?

15 A No.

16 Q Okay. Were the kids driving you crazy at all?

17 A No.

18 Q Were they carrying on in the backseat, throwing things,

19 anything like that?

20 A No.

21 Q Are her kids generally well behaved?

22 A Yes.

23 Q Did you and Desire know where you were going that night?

24 A Yes.

25 Q All right. Had you and Desire ever been there before?

1 A Yes.

2 Q Tell us about that.

3 A It was just a night out with me and my husband, her, George,  
4 her husband, and a friend of ours.

5 Q Okay. Did she seem confused at all about where she was  
6 going or where to turn?

7 A No.

8 Q As you're getting closer to the intersection at Flamingo at  
9 The LINQ, what do you remember about the surroundings in terms of  
10 traffic conditions, pedestrians, time of day?

11 A When the collision happened, I can't really recall my  
12 surroundings because I was on my phone. But the only thing I do  
13 remember was stopping at -- behind the car because it was at a red light  
14 when we were about to turn on Linq.

15 Q So as you were approaching westbound -- heading  
16 westbound on Flamingo approaching the intersection at The LINQ,  
17 there's -- there's a stoplight there?

18 A Yes.

19 Q Was it red, yellow, or green as you approached?

20 A It was -- it was red.

21 Q Did you guys come to a complete stop?

22 A Yes.

23 Q What happened next?

24 A When it turned green, she started going, and she stopped  
25 because there was a pedestrian, and that's when I looked up. And that's

1 when the whole collision happened.

2 Q What did you see when you looked up?

3 A When she stopped, I looked up, and I just saw a pedestrian in  
4 front of us.

5 Q Did you ever at any point in time, see the Defendant's vehicle  
6 prior to the impact?

7 A No.

8 Q Did you hear any sort of tires screeching, honking, anything  
9 like that?

10 A No, I did not.

11 Q Can you describe for us what the impact felt like?

12 A Very quickly. It felt like -- like just stopping, like really just  
13 braking really hard. I guess, you would say like -- like I was kind of  
14 shocked, like it was adrenaline rush, I guess you could say.

15 Q What did it sound like?

16 A Like a thud, a big thud.

17 Q After this happens, what's -- what's the first thing going  
18 through your mind?

19 A If the girls were okay.

20 Q Did you -- what did you do next; did you get out of the  
21 vehicle?

22 A Not immediately. I did ask if Desire was okay. I asked if the  
23 girls were okay. And once Desire got out then that's when I opened the  
24 door, and I got out, as well.

25 Q In those first few minutes or at the scene, were you in

1 immediate pain?

2 A No.

3 Q What did you feel like emotionally?

4 A I was fine. I just had like an adrenaline rush. I was shocked  
5 that it happened.

6 Q Did you have -- for the entirety of the time, from the time the  
7 impact occurred until the time everyone had dispersed, did you have any  
8 interaction, whatsoever, with the Defendant?

9 A No.

10 Q The police were called to the scene, right?

11 A Yes.

12 Q What did you do in the time that you were waiting from the  
13 time this happened until the police arrived; what's going on over that  
14 period of time?

15 A I was just going back and forth in the car and making sure  
16 the girls were fine.

17 Q After this -- after everyone leaves the scene, did you continue  
18 on with the evening?

19 A Yes, we did.

20 Q Did the Trick or Treating that was there, did that help control  
21 the adrenaline or the shock of the night?

22 A Yes, it did.

23 Q Okay. After that's done, what happens then?

24 A After trick or treating, she just took me home.

25 Q Did you do anything at home that night, or go to bed?

1           A     Just went to sleep.

2           Q     How did you feel when you woke up?

3           A     Stiff.

4           Q     Can you describe how you were feeling when you first woke  
5 up that morning?

6           A     I really wasn't comfortable. My whole neck and my back was  
7 very just stiff. I wasn't flexible, I guess you could say. And I was feeling  
8 a bit pain in my lower back, as well.

9           Q     Did -- that's a Saturday. Did you have to work that day?

10          A     No.

11          Q     The following day is a Sunday. Did you have to work that  
12 day?

13          A     No.

14          Q     Can you describe for us kind of how you were feeling over  
15 the course of the weekend? Was it getting better, was it getting worse,  
16 was it staying the same?

17          A     It was getting worse. But I did take like Tylenol in case if it  
18 got too much.

19          Q     Over the course of those two days, aside from Tylenol, were  
20 you doing anything else around the house to try to see if the pain would  
21 go away?

22          A     No.

23          Q     What about the following Monday, did you work that day?

24          A     Yes, I did.

25          Q     Normal work shift, 3:00 in the morning to about noon?

1 A Yes.

2 Q Did you complete your shift that day?

3 A Yes, I did.

4 Q Did you speak with Desire at all over the weekend?

5 A Yes, I did.

6 Q And what was that about?

7 A It was just us talking about pain. I asked her if she was okay.

8 She said she was, basically, having like the same, as well. Pain, a bit of

9 stiffness. And that was basically it.

10 Q A lot of kind of what you had described to her?

11 A Yes.

12 Q So you first present to the chiropractor the Monday following

13 this collision, right?

14 A Yes.

15 Q Was this after your work shift?

16 A Yes.

17 Q Had the pain -- by that time, had the pain gotten better,

18 worse, stayed the same?

19 A Stayed the same.

20 Q Did you go to that initial appointment by yourself?

21 A Yes.

22 Q On that first visit at Align Chiropractic, did you tell the

23 chiropractor what had happened?

24 A Yes, I did.

25 Q Did the chiropractor perform a physical exam on you?

1 A Yes, he did.

2 Q Did that include exams on the neck and the low back?

3 A Yes.

4 Q Did you tell him, at the time, how it'd been affecting you at  
5 work that day?

6 A Yes, I did.

7 Q Did you tell him how it'd been affecting you at home over the  
8 course of the weekend?

9 A Yes, I did.

10 Q Okay. Were you having any pain into any of your  
11 extremities, your arms or your legs?

12 A Yes.

13 Q Tell us about that?

14 A Well, besides the pain from my back and my neck, I was also  
15 feeling like -- the way how I describe it, it's like when your leg falls asleep  
16 and it's starting to wake up and has that staticky feeling, I had that all  
17 over my arm and down my leg.

18 Q Okay. Right arm or left arm?

19 A Left.

20 Q Okay. So is this a pain that would come and go, would it --  
21 was it constant?

22 A At first it was come and go. But it did start to increase to  
23 where that feeling stayed longer than 30 minutes. It would be -- that  
24 feeling of like that tingling sensation would be on me like basically all  
25 day.

1 Q Okay. Did the chiropractor at Align ultimately refer you to a  
2 Dr. Ross?

3 A Yes.

4 Q Okay. What'd you go to Dr. Ross for?

5 A The tingling sensation, MRI findings and basically pain  
6 management.

7 Q Let me ask you this. You obviously saw a Dr. Rosler, as well,  
8 correct?

9 A Yes, I did.

10 Q Okay. So I'll ask you some questions about that in a minute.  
11 But Dr. Ross, at North Las Vegas Pain Management, do you remember  
12 going there on one occasion?

13 A Yes. Just once.

14 Q What was that for?

15 A The MRI findings, basically.

16 Q Did Dr. Ross also perform a physical exam of you?

17 A Yes, he did.

18 Q Did he -- did you tell Dr. Ross about the collision?

19 A Yes.

20 Q Did you go through a lot of the same initial process that  
21 you'd gone through with the chiropractor?

22 A Yes.

23 Q Okay. Did Dr. Ross prescribe you medication?

24 A Yes, he did.

25 Q How many times did you go to Dr. Ross?

1 A Once.

2 Q Okay. And did you take the medication as prescribed?

3 A Yes.

4 Q Okay. Was the medication helpful to you when you're going  
5 through the chiropractic treatment?

6 A Yes, it was.

7 Q How so; can you kind of describe?

8 A He did prescribe me pain medication. I mean I just took it  
9 whenever I wasn't feeling well, when I was feeling pain.

10 Q Would you sometimes take it before work?

11 A At the regular times I would just to be on the safe side.

12 Q Okay. Initially, early on you're going to the chiropractor  
13 approximately two to three times a week?

14 A Yes.

15 Q Is that mostly -- as I understand it, they kind of tapered down  
16 as time progressed?

17 A Yes, that's correct.

18 Q Okay. So roughly about two to three times per week from  
19 November and into December?

20 A Yes.

21 Q All right. And you knew that Desire was going to the  
22 chiropractor roughly about the same amount of time?

23 A Yes.

24 Q Okay. So if you're going to the chiropractor two to three  
25 times a week, she's going to the chiropractor two to three times a week,

1 initially on, it wouldn't be uncommon for the two of you to be scheduled  
2 for visits on the same day?

3 A Yes.

4 Q Would you go with Desire to these appointments?

5 A No.

6 Q Okay. So, I've gone through your records. You treated with  
7 the chiropractor a total of 23 times. Of those 23 times, how many times  
8 do you think you met with Desire?

9 A Probably twice.

10 Q Was the chiropractic treatment helping?

11 A Yes, it was.

12 Q Can you describe that? What things were make it easier?  
13 Were you getting any more lasting benefit?

14 A The stiffness did go away, did go away, at first. Then there  
15 would be times where I would go to the chiropractor, they would do  
16 what they had to do, the massages and all that, and I would feel fine.  
17 But the next time I would go, the pain would slowly start to creep up  
18 again so.

19 Q Did the pain into your left arm, did that go away right away?

20 A It didn't go away right away.

21 Q Did you ever experience headaches?

22 A Yes, I did.

23 Q Tell us about those?

24 A I actually experienced them early. I would probably say like  
25 the Sunday after the accident. I was getting a lot of headaches. I felt

1 very -- they'll be times where I felt nauseous.

2 Q Did the headaches and this feeling of nauseousness, did that  
3 resolve over time?

4 A Yes, it did.

5 Q Did you have difficulty sleeping in this two to three months?

6 A I did actually.

7 Q Difficulty sleeping can sometimes mean different things to  
8 different people, what did it mean for you?

9 A At that time I was having issues falling asleep. Falling asleep  
10 and staying asleep. I would wake up a lot of times during the night.

11 Q And when you were having that kind of difficulty, did that  
12 impact you in any way with your normal work shift?

13 A Yes, it did.

14 Q How so?

15 A I would be very tired.

16 Q Now the chiropractor also referred you to Dr. Rosler, who  
17 you've already mentioned, right?

18 A Yes.

19 Q Do you have an understanding as to why the chiropractor  
20 wanted you to go see Dr. Rosler?

21 A He was getting a bit more concerned about my arm.

22 Q The left arm?

23 A Yes. The tingling sensation.

24 Q When you first went to Dr. Rosler, did you tell Dr. Rosler  
25 what had happened?

1 A Yes.

2 Q Did you tell him about your symptoms, how you were  
3 feeling?

4 A Yes.

5 Q Did you tell him that you'd been going to chiropractic for two  
6 to three times a week by that time?

7 A Yes.

8 Q Did he also perform a physical exam of you?

9 A Yes, he did.

10 Q And by that time, you'd already had an MRI of the low back?

11 A Yes.

12 Q Did Dr. Rosler review that report with you?

13 A Yes, he did.

14 Q All right. What was Dr. Rosler's recommendation for you?

15 A To continue chiropractor.

16 Q Did you continue to go to chiropractic?

17 A Yes, I did.

18 Q Okay. When the chiropractor referred you to Dr. Rosler --  
19 well, let me ask you, what kind of doctor is he?

20 A A chiropractor.

21 Q Dr. Rosler?

22 A Oh, Dr. Rosler. I'm sorry. I don't remember his title. I know  
23 it had to do something with pain.

24 Q Okay. A pain management physician?

25 A Yes.

1           Q     When the chiropractor referred you to Dr. Rosler, the pain  
2 management physician, he's already testified, what's going through your  
3 mind that you're having to see an additional doctor?

4           A     Concerned.

5           Q     How so?

6           A     Very concerned. Well, it's kind of like getting a second  
7 opinion from another doctor from the first doctor that's not a hundred  
8 percent sure what exactly is going on. So it is a bit concerning to me. It  
9 could be that, yeah, she's okay, or it could be something completely  
10 worse or. So it is a bit concerning when he did tell me I had to go to  
11 another location, another doctor to make sure everything's completely  
12 fine.

13          Q     Okay. After you went back to the chiropractor and following  
14 Dr. Rosler's recommendations, do things start to get better for you?

15          A     Yes.

16          Q     How so; can you describe the types of treatment that you  
17 were getting and what was working and what wasn't, how long the  
18 benefit was lasting for?

19          A     Well, the pain did decrease as time went ahead. They did a  
20 lot of multiple different like procedures, I guess. Like some days it will  
21 be massages, some days it will be like electric pads, hot rocks, cold  
22 rocks. And it did decrease as time went on.

23          Q     That left arm pain, did that ultimately completely go away?

24          A     Yes, it did.

25          Q     By the time you go to Dr. Rosler for a follow up, this will be

1 the second time you went to him, right?

2 A Yes.

3 Q You only went to Dr. Rosler on two occasions?

4 A Yes.

5 Q How were you doing then?

6 A Better.

7 Q Better compared to November or December?

8 A Yes.

9 Q All right. Were you still experiencing some pain here and  
10 there?

11 A After I finished everything or?

12 Q On your second visit with Dr. Rosler?

13 A Oh, second. It was rare. I know -- I know I still was feeling a  
14 bit of pain, but it wasn't to the extent where like I can't bear it. Like on a  
15 scale of one to 10, I'd probably say like a two.

16 Q Did Dr. Rosler want you to continue with the chiropractic  
17 treatment?

18 A Yes, he did.

19 Q Did he ever recommend you for injections?

20 A No.

21 Q The last visit I see for you with the chiropractor is February  
22 12th of 2016, is that right?

23 A Yes, that's correct.

24 Q By that time, when you're being discharged from chiropractic  
25 care in February of 2016, how are you doing?

1 A Good.

2 Q Did work become more manageable by then?

3 A Yes, it did.

4 Q Were you able to get back to doing the things you enjoy?

5 A Yes.

6 Q Okay. So this treatment plan through the chiropractic care,  
7 the imagining studies, the medication management with Dr. Ross and  
8 the two visits with Dr. Rosler, this is roughly about a three and a half  
9 month period?

10 A Yes.

11 Q Okay. Were these doctor appointments largely consuming  
12 you over that time?

13 A Yes.

14 Q You continued to work, right?

15 A Yes, that's correct.

16 Q Can you just describe in that three and a half month period,  
17 some of the -- were you having difficulties at work at all?

18 A Yes, I did.

19 Q So why don't you describe for us what some of the  
20 difficulties you were experiencing at work in that three and a half month  
21 period?

22 A Like I mentioned earlier, I would be the one in charge of  
23 pulling, pushing like a big cart that was more than a hundred pounds.  
24 Security was with us at all times. So I know for the first month and a  
25 half, about two months or so, they would actually be the ones pushing

1 and pulling it for me. I was only able to do light stuff, like running -- like  
2 putting the money in the machine, just typing everything out. I guess --  
3 like the job, it does require standing at all times. I know I had to ask a lot  
4 of times to sit down because my back it was hurting. It was being a bit  
5 difficult for me to do my job correctly and efficiently. And that's basically  
6 it. I just needed to sit down. They would -- they were very  
7 understanding. They would help me out on stuff.

8 Q Okay. Why didn't you just take time off work to recover from  
9 the injuries?

10 A I had to be responsible. I had to be a good employee and  
11 had to be an adult.

12 Q Let's talk a little bit about a typical day when you'd have a  
13 doctor appointment, okay.

14 A Yes.

15 Q Tell us what that was like?

16 A A typical day would be going to work, getting out of work,  
17 going to the chiropractor, checking in, takes about 30 minutes, 40  
18 minutes and then when they call me in, it's like another 30, 40 minutes  
19 for them to do the whole thing that they have to do and then I would  
20 discuss with the chiropractor, which is another 30 minutes. So I would  
21 be like two hours in there or so.

22 Q Would you have to coordinate these appointments with your  
23 work schedule?

24 A Yes, I did.

25 Q Would you sometimes go on days you worked?

1 A Yes, I had to.

2 Q Would this usually be after a day you've worked?

3 A Yes.

4 Q Would you -- so then you'd usually go by yourself?

5 A Yes.

6 Q What about those days, over that period of time, where you  
7 didn't have work and you didn't have a doctor appointment, tell us a little  
8 bit about what you were doing on those days?

9 A Sleep.

10 Q Okay. Why?

11 A I didn't do nothing. I didn't go out. I was in pain. I was kind  
12 of miserable, sad.

13 Q Was that three and a half months different than say the three  
14 and a half months before?

15 A Yeah.

16 Q How so? Can you tell us a little bit about how you were  
17 feeling?

18 A Well, the difference was like prior to the accident, I was very  
19 more active in my life than probably for those three months. Because  
20 like I said, like I was just in pain, I didn't want to go out. I didn't feel like  
21 doing anything, basically.

22 Q Were you still doing the mariachi stuff during that three and  
23 a half months?

24 A No. I had to sadly stop that, because we do stand when we  
25 perform and the postures that I have to stand, especially being a

1 violinist, it's -- it was difficult at times.

2 Q Okay. Did you get back to doing that after February 16th?

3 A Yes and no.

4 Q What about you mentioned a dog?

5 A Yes. At that time, my brother did have a dog, and he was  
6 traveling in and out of Vegas, so a majority of the time I would keep the  
7 dog with me. But during the first two months I really couldn't. Because,  
8 like I said, I was very active so I would take the dog out to walk, take it  
9 out to the dog park. I really didn't do much like that.

10 Q Before this happens in October of 2015, how often would you  
11 say you'd see Desire and the kids?

12 A After the accident?

13 Q Before.

14 A Oh, before. A lot. I would probably see her like three, four  
15 times a week.

16 Q Did that change after October --

17 A Yes, it did.

18 Q -- 30th of 2015?

19 A Yes.

20 Q How so?

21 A Same thing with me not doing nothing, me not wanting to do  
22 nothing. I just didn't want to, literally didn't want to do nothing. Didn't  
23 want to go nowhere, I was in pain. It sucked because the kids they  
24 actually did ask about me.

25 Q Did you see much of them at all over that three and a half

1 month period?

2 A During the three months, no.

3 Q Have you ever experienced neck or back pain like this prior to  
4 October of 2015?

5 A No.

6 Q Did you ever injure your neck or back prior to October of  
7 2015?

8 A No.

9 Q Have you ever needed to go to a doctor for neck or back pain  
10 prior to October of 2015?

11 A No.

12 Q Okay. Other than -- other than maybe a death in the family,  
13 was there any one prior event, prior to October of 2015, that impacted  
14 your life more negatively?

15 A No.

16 MR. DEGREE: Thank you, Guadalupe. I don't think I have  
17 any further questions for you right now.

18 THE COURT: Mr. Winner.

19 MR. WINNER: Thank you. Can we get the deposition  
20 transcript on Ms. Parra, please.

21 [Pause]

22 THE COURT: For the record, the deposition is in a sealed  
23 condition. And it's the witness' deposition, is that correct?

24 MR. WINNER: Yes.

25 [Pause]

1 MR. WINNER: May I approach, please?

2 THE COURT: Sure.

3 CROSS-EXAMINATION

4 BY MR. WINNER:

5 Q Okay. At the time the accident happened October 30 of 2015,  
6 your sister-in-law, is it Desiree or Desire?

7 A It's Desire, but we call her Desiree.

8 Q While she was driving, you were texting on your phone,  
9 correct?

10 A Yes.

11 Q And you weren't paying attention to what was going on  
12 around you because you were texting on your phone?

13 A Yes, that's correct.

14 Q You testified that you were about to make a turn onto Link  
15 from Flamingo?

16 A Yes.

17 Q Meaning your vehicle was still on Flamingo at the time the  
18 actual contact happened?

19 A Yes, that's correct.

20 Q Okay. And she had not started to make her right hand turn?

21 A When the collision happened, she was.

22 Q In fact, you testified that the car you were in did not come to  
23 a stop as you approached the intersection of Flamingo and Link, didn't  
24 you?

25 A It did actually.

1 Q Let's look at Page 23, please. Look at Line 13, please. When  
2 you were asked at the time of the deposition, did the car you were in  
3 come to a stop as you approached the intersection of Flamingo and Link,  
4 what was your answer?

5 A I said no.

6 Q No?

7 A Yes.

8 Q You testified that -- you testified that, Ms. Evans, or Desire,  
9 slammed on her brakes before the impact happened, correct?

10 A Yes.

11 Q Stopped very quickly, stopped abruptly?

12 A Not roughly, but she did stop.

13 Q Okay. Stopped quickly?

14 A Yes.

15 Q You testified in your deposition that she slammed on her  
16 brakes because there was a pedestrian that was about to cross, another  
17 pedestrian in the crosswalk, correct?

18 A Well, when I looked up, there was the pedestrian on the  
19 crosswalk. He was walking -- well, when I glimpsed up, he was getting  
20 onto the sidewalk.

21 Q Let me ask you to turn to your deposition at Page 23.

22 [Witness reviews document]

23 BY MR. WINNER:

24 Q Ask down here what happened next. You said the light  
25 turned green and there was a car in front of us and, of course, it went

1 and when it was out turn to go, a pedestrian was about to cross and  
2 that's when Desire slammed the brakes and that's when we got hit. You  
3 didn't say there was a pedestrian in front of you, you said there was one  
4 about to cross, correct?

5 A Yes.

6 Q We can agree that about to cross means the pedestrian was  
7 not in the crosswalk, correct?

8 A That I can't really recall.

9 Q Okay. Fair to say you might have heard the story from Desire  
10 about the pedestrian in the crosswalk?

11 A Yes.

12 Q And you agree that Desire slammed on her brakes, correct?

13 A Yes.

14 Q Can we agree that slamming or stopping abruptly sometimes  
15 doesn't give people behind you ample time to stop?

16 A Yes.

17 Q You did see the pedestrian at some point, correct?

18 A Yes.

19 Q Okay. And you said the pedestrian was next to you -- not  
20 next to you on your side of the intersection, correct?

21 A Yes.

22 Q In fact, the pedestrian you saw was on the far side of the  
23 intersection, correct?

24 A Yes.

25 Q So the pedestrian, allegedly about to enter the intersection,

1 or about to cross, was not next to Desire, but was on the far side of the  
2 intersection about four lanes away, correct?

3 A Yes.

4 Q And Desire slammed on her brakes for a pedestrian, about to  
5 enter the intersection, four lanes away from her?

6 A Yes.

7 Q After the impact did you ever speak to Babylyn Tate?

8 A I don't recall speaking to her.

9 Q You heard her say she was very sorry the accident  
10 happened --

11 A Yes.

12 Q -- didn't you? Was she polite to you?

13 A When she was saying "sorry" that's the only politeness that I  
14 got, because like I said, I didn't actually have -- exchange words with her.

15 Q There were three kids in the car at the time?

16 A That's correct, yes.

17 Q And none of those kids -- you were there with the kids the  
18 whole time?

19 A Yes.

20 Q Your sister-in-law testified -- actually, I guess it was  
21 yesterday she testified that you were at the scene for about two hours?

22 A About, roughly, yes.

23 Q Did those kids stay in the car seats for two hours?

24 A Yes.

25 Q Waiting for the police to arrive?

1 A Yes.

2 Q Were you told that the police said they didn't want to come  
3 because nobody was injured?

4 A I did not hear that remark from anyone.

5 Q In fact, none of the kids cried as a result of the impact,  
6 correct?

7 A That's correct.

8 Q You didn't take any pictures of the scene?

9 A No, I didn't.

10 Q It didn't seem necessary to you, right?

11 A Yeah.

12 Q Everybody at the scene was fine and nobody was injured?

13 A That's correct, yes.

14 Q After being at the scene for two hours waiting for a  
15 policeman to come, you walked for ten minutes to the lake?

16 A Ten minutes?

17 Q Well, your sister-in-law testified it was about a ten minute  
18 walk; is that about right to you, or was it less than that?

19 A Yeah. About, yes.

20 Q And then you stood on the High Roller for 30 minutes or so?

21 A Yes.

22 Q And then you went trick or treating?

23 A No. We went trick or treating first for a bit, then to the High  
24 Roller, and then trick or treated a little bit more.

25 Q I'm sorry. So you did trick or treating first, then stood on the

1 High Roller for about 30 minutes, and then trick or treat more?

2 A Yes.

3 Q Okay. And during this time neither you nor your sister-in-law  
4 ever talked about being in any pain, correct?

5 A That's correct.

6 Q And neither did any of the children?

7 A That's correct.

8 Q And the first time, as far as you're aware that anybody  
9 experienced or complained of a symptom would have been the following  
10 day --

11 A That's --

12 Q -- correct?

13 A That's correct.

14 Q You were wearing your seatbelt?

15 A Yes, I was.

16 Q You didn't have any bruise or abrasion from your seatbelt?

17 A No.

18 Q Did you go to Align Chiropractic on February 2nd -- I'm sorry,  
19 November 2nd, 2015?

20 A Yes, I did.

21 Q And that was -- that was a referral made by Paul Powell, the  
22 attorney?

23 A Yes, that's correct.

24 Q Did everybody in the car to Paul Powell -- I'm sorry, did  
25 everybody in the car go to Align Chiropractic, to your knowledge?

1 A Yes.

2 Q The treatment was helpful?

3 A Yes, it was.

4 Q Your last visit was February 12th, 2016?

5 A That's correct.

6 Q You mentioned in your deposition that you felt a headache  
7 for a little while after the accident happened?

8 A Yes, I did.

9 Q And the headache was all better in about two weeks?

10 A Yes.

11 Q Okay. Mr. Degree asked you about going to Dr. Ross, at NLV  
12 Pain Management?

13 A Yes.

14 Q This is a little dark, I'm sorry, this is Exhibit 67. I don't see a  
15 Bate Stamp on it, it's only a couple of pages.

16 MR. DEGREE: And this is my pen mark on it, but - -

17 BY MR. WINNER:

18 Q Did you tell Dr. Ross, this would be the 13th of November  
19 2015, so this would be about two weeks after the accident, correct?

20 A Yes.

21 Q This would be your one and only visit to Dr. Ross to get  
22 medication?

23 A Yes, that's correct.

24 Q Did you tell him at that time that your neck pain was only 1  
25 out of 10?

1 A Yes.

2 Q And getting much better?

3 A Yes.

4 Q And that your low back pain was only 4 out of 10?

5 A Yes.

6 Q Okay. Would you agree it was after that date that you were  
7 sent to get a lumbar MRI?

8 A Yes.

9 Q And it was after that date you were sent to get a cervical  
10 MRI?

11 A I'm sorry. Lumbar, you mean back?

12 Q Low back, yes.

13 A Got it. Yes, sorry.

14 Q So you were sent to get a lumbar MRI, and a cervical MRI  
15 after Dr. Ross found you to have 1 out of 10 discomfort, and 4 out of 10  
16 discomfort, two weeks after the accident, correct?

17 A Yes.

18 Q Did it strike you as odd that the chiropractic treatment was  
19 helping you so much and you were still being sent to get expensive tests  
20 by Align Chiropractic?

21 A Yes. But I still continued chiropractic because of the  
22 sensation that I kept having on my arm.

23 Q Okay. Chiropractic treatment helped pretty regularly. Your  
24 pain scores at the chiropractor improved. Every visit or almost every  
25 visit you seemed to report you were doing better almost every visit,

1 correct?

2 A Yes, that's correct.

3 Q Okay. This is Exhibit 68, Bate Stamp 421. Align Chiropractic,  
4 to whom you were sent by Mr. Powell, referred you to Dr. Rosler,  
5 correct?

6 A Yes, that's correct.

7 Q Okay. We're now, oh, a month and a half after the accident.  
8 By the way the chiropractor told you that -- on your first visit the  
9 chiropractor told you that they thought you should have about three-  
10 month's worth of treatment, correct?

11 A Yes.

12 Q Three months. And during that time they sent you for two  
13 different MRIs of the lumbar spine, low back, and also of the neck,  
14 correct?

15 A Yes, that's correct.

16 Q Did they tell you they had found something wrong on every  
17 one of those MRIs?

18 A Yes -- not everyone.

19 Q And when you went to see Dr. Rosler, to whom you were  
20 sent by Align Chiropractic, would he tell you to go see a spine surgeon,  
21 refer her for surgical consultation?

22 A He -- he did speak about it, but he didn't tell me that it would  
23 be necessary for me to go.

24 Q Okay. You never did go see a spine surgeon?

25 A No, I did not.

1 Q Okay. You were also referred to get a cervical MRI in  
2 January of 2016, correct?

3 A Yes.

4 Q That is after two and a half months of treatment you were  
5 sent to get a cervical MRI?

6 A Yes. That's, that's correct.

7 Q And did you go back to the chiropractor a total of two times  
8 after that cervical MRI?

9 A The chiropractor or Dr. Rosler?

10 Q The chiropractor?

11 A Yes, I did.

12 Q The last physician you saw was the chiropractor, correct?

13 A Yes.

14 Q That was February of 2016?

15 A Yes, that's correct.

16 Q And at that time your neck was fine, your arms were fine,  
17 your low back was fine, you were great, correct?

18 A Yes.

19 Q Do you have any idea why, it was either two or three I think,  
20 two visits before that visit, somebody said you needed to go get a 1,000  
21 or \$2,000 MRI?

22 A Say that again, I'm sorry?

23 Q Do you have any idea why, just when you were about to be  
24 discharged by the chiropractor somebody sent you to get an MRI of your  
25 neck?

1           A     Yes. The reason they did that was because I was getting a bit  
2 more concerned about the feeling on my arm.

3           Q     And the feeling on your arm continued to get better all  
4 through your chiropractor treatment, correct?

5           A     Yes.

6           Q     And by the time you finished it was gone completely?

7           A     Yes.

8           Q     And just before you finished treatment with the chiropractor,  
9 somebody at the chiropractor's office decided to send you for an  
10 expensive MRI, correct?

11          A     For a third one, or just for a second one?

12          Q     The cervical MRI, the neck MRI?

13          A     They -- they did mention that I would -- they would want me  
14 to do that, just to make sure that -- I guess it was to make sure that my --  
15 my discs were not out of place, that might be causing the tingling  
16 sensation on my arm.

17          Q     Okay. The chiropractor diagnosed you with a cervical disc  
18 problem, and a lumbar disc problem, correct?

19          A     Yes.

20          Q     Did you ever talk to Desire -- Desire about her diagnosis with  
21 the chiropractor?

22          A     At times, yes, but we never really had like a full-on  
23 conversation about pain ever since that.

24          Q     Okay. Did it strike you as odd that the chiropractor  
25 diagnosed both of you with exactly the same thing, cervical disc disease

1 going down into the left arm that needs three months' worth of  
2 treatment?

3 A No, I don't.

4 Q Okay. You never did go and get an injection from Dr. Rosler?

5 A No.

6 Q You never did go see the surgeon?

7 A No.

8 Q You got better in three months and you didn't go back?

9 A I got better.

10 Q Okay.

11 MR. WINNER: Thank you.

12 THE COURT: Mr. Degree?

13 REDIRECT EXAMINATION

14 BY MR. DEGREE:

15 Q It'll probably be just a few questions for you.

16 A Yeah.

17 Q When Mr. Winner, from the first few questions he asked you  
18 he referenced you to page 23 of your deposition, right?

19 A Yeah.

20 Q Can you please flip to that again.

21 MR. PRINCE: Can we have control on our side, please?

22 [Pause]

23 BY MR. DEGREE:

24 Q And one of the questions that was referenced was, question:  
25 "Did the car you were in come to a stop as the approached

1 the intersection on Flamingo and Linq?"

2 And your answer was, "No," right?

3 A That's correct.

4 Q Okay. The very next question was, "What do you remember  
5 -- do you remember what color the light was as you approached the  
6 intersection?" And you said, "Green. Oh, I'm sorry, when we  
7 approached it was red," correct?

8 A That's correct.

9 Q Okay. Was there, as you're approaching the light at Linq,  
10 coming from westbound Flamingo, and the light's red, did you guys  
11 come to a complete stop?

12 A We did, yes.

13 Q The very next question is:

14 "All right. What happened next?"

15 "The light turned green and there was a car in front of us,  
16 and of course it went, and when it was our turn to go a  
17 pedestrian was about to cross."

18 Do you see that?

19 A Yes.

20 Q Okay. So did you have to come to a complete stop for the  
21 car that was in front of you at the red light at the intersection?

22 A Yes.

23 Q And was it when that car proceeded to turn, that your car  
24 followed?

25 A Yes.

1 Q Okay. Obviously you've talked about her hitting the brakes  
2 right there, right? When she hit the brakes is that when you looked up?

3 A Yes.

4 Q Okay. Did you see a pedestrian?

5 A I did.

6 Q Okay. Was the pedestrian in the general vicinity, in front of  
7 the car?

8 A I don't recall, honestly.

9 Q Was the pedestrian intending to cross the intersection there?

10 THE WITNESS: I believe it --

11 MR. WINNER: Foundation, objection to form.

12 MR. DEGREE: I'm asking.

13 THE COURT: Overruled. Just clarify what you mean "by  
14 there"?

15 BY MR. DEGREE:

16 Q When you looked up was the pedestrian to your left, to your  
17 right, in front of you?

18 A To my right.

19 Q Okay. Was the pedestrian in the general vicinity of where the  
20 car was?

21 A No.

22 Q Okay. How far away do you think the pedestrian was from  
23 the vehicle?

24 A If I had to guess, roughly about 10, 15 feet away.

25 Q Okay. And that's when she hit the brakes?

1 A Yes.

2 Q All right. You had two MRIs done, correct?

3 A That's correct.

4 Q One of them, the first one was of your low back, in  
5 November?

6 A Yes.

7 Q In the first few weeks following disclosure, right?

8 A Yes.

9 Q Was the chiropractor concerned about some of the findings  
10 they saw on those MRI films?

11 A He was.

12 Q Were those findings -- to your understanding were the  
13 findings on the low back MRI, was that one of the reasons you were  
14 referred to Rosler for further evaluation?

15 A Yes.

16 Q Okay. Now you went to Dr. Rosler on two occasions, right?

17 A Yes, I did.

18 Q And it was Dr. Rosler who ordered the cervical MRI, the one  
19 of the neck, correct?

20 A Yes.

21 Q When Dr. Rosler wanted the second MRI, the one of your  
22 neck, were you still experiencing the left arm pain into your extremities?

23 A Yes.

24 Q Is it your understanding that's why Dr. Rosler wanted the  
25 neck MRI?

1           A     Yes.

2           Q     Are you aware -- well, we're going to hear from Dr. Schifini,  
3 one of the Defense experts tomorrow. Are you aware that Dr. Schifini,  
4 the Defense expert has determined that every last bit of your medical  
5 treatment was reasonable and necessary?

6                     MR. WINNER: That's not in evidence --

7                     THE COURT: Yeah. Sustained.

8                     MR. WINNER: -- and that misstates the evidence.

9 BY MR. DEGREE:

10          Q     Now I think in your deposition, when you were starting the  
11 turn onto Linq Boulevard, you testified that the pedestrian was to your  
12 left, right?

13          A     Yes.

14          Q     Okay. And coming from your left that would be from the -- to  
15 the west?

16          A     Yes.

17          Q     Okay. In other words, if you're driving westbound on  
18 Flamingo and you're making the right turn, the pedestrian would be  
19 coming from that side of the intersection, right?

20          A     Yes.

21          Q     Walking towards the vehicle?

22          A     Yes.

23          Q     Okay.

24                     MR. DEGREE: Thank you. No questions.

25                     THE COURT: Okay. Mr. Winner?

1 MR. WINNER: Yes, thank you.

2 MR. PRINCE: Well, let's just approach for a second.

3 [Sidebar begins at 1:35 p.m.]

4 MR. PRINCE: On of these issue [indiscernible] project about  
5 Dr. Schifini. Dr. Schifini has testified on his -- has on the report, that  
6 relates to all, every last bit of her care. And Mr. Winner is say, you know,  
7 he believed that he entered into a stipulation that all of her treatment  
8 was necessary as a result of this collision, and we didn't agree to that --

9 THE COURT: But --

10 MR. PRINCE: So my point is, why -- so he's suggesting, you  
11 know you had just --

12 MR. WINNER: I didn't agree to that, what are you talking  
13 about?

14 MR. PRINCE: Yes, you did agree to this.

15 MR. WINNER: I said if the chiropractor were called to testify  
16 he would say that --

17 MR. PRINCE: Right.

18 MR. WINNER: -- but I didn't agree to that.

19 MR. PRINCE: Well, your experts said -- Dr. Schifini does say  
20 all those things.

21 MR. WINNER: He says, "assuming there was an injury."

22 THE COURT: When he says it, it will come in presumably.

23 MR. PRINCE: Why can't she --

24 THE COURT: Where she's aware of it has absolutely no  
25 relevance whatsoever.

1 MR. PRINCE: Why does he get to say on cross-examination  
2 that -- so your chiropractor would -- he said your friend got sort of neck  
3 MRI, and you had only two visits left, for an extensive test calling it -- you  
4 know, you use these pejorative argumentative terms. Why can't we use  
5 that information against him?

6 MR. WINNER: When she's aware of it.

7 MR. PRINCE: To address it. Yeah. When she's aware of it,  
8 yeah.

9 THE COURT: Has she met Dr. Schifini?

10 MR. WINNER: No.

11 THE COURT: Has she spoken to him?

12 MR. WINNER: No.

13 THE COURT: Did she have any contact with him  
14 whatsoever?

15 MR. PRINCE: Yes. We have his reports. We have his  
16 reports.

17 THE COURT: Well, you understand. You'll get that in  
18 through Dr. Schifini, but I don't think it's appropriate with this witness.

19 So, okay. Thank you.

20 [Sidebar ends at 1:37 p.m.]

21 MR. WINNER: The Court's indulgence, please.

22 RECROSS-EXAMINATION

23 BY MR. WINNER:

24 Q Do you still have your deposition in front of you?

25 A Yes, I do.

1           Q     A couple of lines here. Turn back to page 24, if you would,  
2 please? Page 24 of your deposition, as you were making a right-hand  
3 turn where was the pedestrian in relation to the passenger seat that  
4 Desire stopped for. You said, "I believe it was from her end." So coming  
5 from the far side of the intersection your answer was what?

6           A     Yes.

7           Q     Okay. "Were there pedestrians right next to you, entering the  
8 intersection as well?" What was your answer?

9           A     No.

10          Q     That was your testimony under oath, correct?

11          A     Yes.

12          Q     That the pedestrian that wasn't in the intersection, but was  
13 about to enter the intersection was on the far side of the street, correct?

14          A     Yes.

15          Q     Four lanes away, correct?

16          A     Yes.

17          Q     Let me ask you to look at page 48 of your deposition, please.  
18 Beginning at page 9 -- actually 11.

19          A     Okay.

20                 MR. PRINCE: What page again?

21                 MR. WINNER: Page 48.

22                 UNIDENTIFIED FEMALE: You said page 9.

23                 THE WITNESS: Yeah. You said page 9.

24                 BY MR. WINNER:

25                 Q     I'm sorry, it's line, I'm sorry.

1 A Oh, line 9?

2 Q Page 48.

3 A Okay.

4 Q The question begins at line 9 --

5 A Okay.

6 Q -- and we'll go to the question earlier, begins on line 11.

7 "Did the tingling in your arm, or arms ever go away?"

8 Your answer was, "Yeah."

9 "How long did it take for that to go away?"

10 You said it was there for about how long?

11 A Two weeks.

12 Q Two weeks.

13 MR. WINNER: Thank you.

14 THE COURT: Are you done? We're done.

15 MR. WINNER: Nothing further from us, thanks.

16 MR. DEGREE: Just a couple quick questions.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. DEGREE:

19 Q Guadalupe, just a couple quick questions. You're texting

20 with your husband at the time?

21 A Yes. At that time, yes.

22 Q Okay. You were looking up and down from the phone?

23 A Yes.

24 Q Okay. When you started to -- when the vehicle started to

25 make its turn, were the pedestrians coming from your left, or coming

1 from your right, with the pedestrian in the general vicinity of the car?

2 A Yes.

3 MR. DEGREE: No questions.

4 THE COURT: Ladies and gentlemen, jury, any questions?

5 Okay.

6 [Sidebar begins at 1:41 p.m.]

7 MR. PRINCE: I want you to answer that all witnesses are  
8 [indiscernible].

9 MR. DEGREE: Okay. Well, she's a party.

10 THE COURT: She was a party.

11 MR. PRINCE: I'll follow that up.

12 THE COURT: She's not precluded.

13 MR. WINNER: No, I don't agree with that.

14 MR. PRINCE: Why? I think it's an appropriate question.

15 THE COURT: What's the objection?

16 MR. WINNER: They could have asked her that. I don't --

17 THE COURT: Well, that's not the standard here. The juror  
18 wants to know, is there an objection to this, is there any reason it can't  
19 be asked?

20 MR. WINNER: I did not ask her why she hasn't been present  
21 during the trial. I don't think Dennis asked her --

22 THE COURT: Yeah. But I don't think that's a standard for a  
23 jury question. If it's unobjectionable, if it doesn't you'll have an instance  
24 to admissible. I don't think that it's an unfair question, so --

25 MR. WINNER: Do you expect it to go to anything

1 objectionable --

2 MR. DEGREE: No.

3 MR. WINNER: -- to which I will object?

4 MR. PRINCE: I don't know.

5 THE COURT: Do you know why she -- what prevented her?

6 MR. PRINCE: Just working, and just a lot of the case didn't to  
7 pertain to her.

8 THE COURT: Okay. Okay.

9 MR. DEGREE: [Indiscernible] most of the treatment

10 MR. PRINCE: Has never been -- as it never pertained --

11 MR. WINNER: That's all? Okay.

12 MR. PRINCE: Yeah. It all related to her.

13 THE COURT: Okay.

14 [Sidebar ends at 1:42 p.m.]

15 THE COURT: What has prevented you from being present  
16 during the course of this trial?

17 THE WITNESS: What has been -- I'm sorry, say it again?

18 THE COURT: What has prevented you from being present  
19 during the course of this trial?

20 THE WITNESS: Work. Just work.

21 THE COURT: Any follow-up?

22 MR. DEGREE: Yeah, just one question.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. DEGREE:

25 Q Guadalupe, this trial has been going on for close two weeks.

1 We've heard from Dr. Khavkin, we've heard from Dr. Garber, we've  
2 heard from Dr. Wong, yesterday, the Defense expert. Obviously you  
3 never treated with any of those medical providers, correct?

4 A Correct.

5 Q You were never evaluated by Dr. Wong, right?

6 A Correct.

7 Q So your understanding of the testimony from Dr. Garber, Dr.  
8 Khavkin and Dr. Wong has nothing to do with you?

9 A That's correct.

10 Q Okay. Were you here for opening statements?

11 A Yes.

12 Q Were you here for Dr. Rosler's testimony?

13 A Yes.

14 Q Okay.

15 MR. DEGREE: Thank you.

16 THE COURT: Anything else, anybody?

17 MR. WINNER: No.

18 THE COURT: Witness free to go?

19 MR. PRINCE: Yes.

20 THE COURT: Thank you very much.

21 [Pause]

22 THE COURT: Okay. Is that -- anybody have any other  
23 witnesses for today?

24 MR. PRINCE: Our final witness will be George Pratt, Desire's  
25 fiancé, and obviously he's in the hospital with his wife [sic] right now,

1 so --

2 THE COURT: So tomorrow noon, is that good?

3 MR. PRINCE: Yes.

4 MR. DEGREE: Are we going to start with Dr. Schifini?

5 THE COURT: Ladies and gentlemen, good, noon tomorrow?

6 Or as good as you -- bring a snack if you want, because we'll probably go  
7 12:00 to 5:00. Or maybe early, maybe we'll run out of witnesses, you  
8 don't know.

9 During the recess you're admonished not to talk or converse  
10 among yourselves or with anyone else on any subject connected to this  
11 trial, or read, watch, or listen to any report of or commentary in the trial  
12 of any person connected with this trial, by any medium of information,  
13 including, and without limitation to newspapers, television, the internet  
14 and radio, or form or express any opinion on any subject connected with  
15 the trial until the case is finally submitted to you.

16 See you tomorrow hit your chairs at noon, please.

17 THE MARSHAL: All rise, please, for the jury.

18 THE COURT: Have a good evening.

19 THE MARSHAL: Judge, noon, 12:00?

20 THE COURT: Noon. High noon.

21 [Outside the presence of the jury.]

22 THE COURT: Okay. We're outside the presence of the jury.  
23 Anything that we need to deal with?

24 MR. WINNER: No. I want to talk to Mr. Prince and write  
25 down exactly what he wants the current billing on this case, I believe

1 from Schifini?

2 THE COURT: Right?

3 MR. PRINCE: Correct.

4 MR. WINNER: Up through --

5 MR. PRINCE: We received up today.

6 THE COURT: Whole billing.

7 MR. PRINCE: Which Mr. Winner should have in his  
8 possession.

9 MR. WINNER: Okay. I don't know if I do, Dennis --

10 MR. PRINCE: Well, Dr. Schifini would have submit the bill.  
11 You hired him, so he submitted the billing to you. And the reason why  
12 we know that is, counsel for Dr. Schifini sent us a letter objecting to the  
13 subpoena, for the first time today. With regard to the billing, which is  
14 item 4 on the subpoena, they said that it's their -- her understanding that  
15 the Defense counsel, meaning Mr. Winner's law firm is in possession of  
16 all the billing.

17 THE COURT: Okay. Well, Mr. Winner --

18 MR. PRINCE: So give us the billing.

19 THE COURT: -- check and see if you have the billing turn it  
20 over.

21 MR. WINNER: Yes. Yes.

22 THE COURT: If you don't have the billing --

23 MR. WINNER: I accept that as true.

24 THE COURT: -- go and get it.

25 MR. WINNER: I have -- Mr. Prince and I talked about this

1 already, there might be additional billing. He agreed, when asked about  
2 it, with Dr. Wong. We got charged a bunch of money by Dr. Wong,  
3 because of the mistrial, because he had taken a day off. I don't want us  
4 to go into the mistrial.

5 MR. PRINCE: If I could ask for -- there's additional billing? I  
6 want to see how much he's billed so far.

7 MR. WINNER: Okay. If he billed to - back from the last trial  
8 or billed us for the time he took off because of the mistrial, I don't think  
9 that's fair.

10 THE COURT: I don't think it's fair either.

11 MR. WINNER: But the other billing I agree.

12 MR. PRINCE: Well, how is it not fair, that's what he billed.  
13 He did bill it. It's part of the economic relationship under the *Robinson v.*  
14 *GCG* [sic] case. You can say, you billed this amount. I don't have to go  
15 into the mistrial, but they billed a certain amount of money. The Defense  
16 caused the mistrial last time.

17 THE COURT: I understand, all right.

18 MR. WINNER: I disagree, but --

19 MR. PRINCE: What do you mean? Okay, you did.

20 THE COURT: We're not going to get into the specifics, but  
21 you can couch it as --

22 MR. PRINCE: So far you've billed "X" amount of dollars for  
23 your work in this case.

24 MR. WINNER: I don't think going into the mistrial, I don't --  
25 and as I stand here I don't know. I know Dr. Wong billed something for,

1 or at least was going to bill something, I think did bill something for the  
2 mistrial. I don't know as I stand here if Schifini did. But if he did, I don't  
3 want to go into that. The other billing, I agree is fair game.

4 THE COURT: Okay. Here's what I'm leaning towards. I'm  
5 leaning towards allowing the full compensation, but you have to explain  
6 that a portion of that was strictly reimbursement for a day that was taken  
7 off for a hearing that didn't happen, or however you all want to couch it.  
8 So we don't get to mistrial, but that it was in fact --

9 MR. WINNER: Okay.

10 THE COURT: So they don't pile it on and think he was  
11 charging \$20,000 to come, they understand that it was 10,000 for this day  
12 because patients were cancelled, and it was 10,000 for this day.

13 MR. PRINCE: Well, we need to see --

14 THE COURT: Or whatever --

15 MR. PRINCE: -- the billing.

16 THE COURT: -- the amount is.

17 MR. PRINCE: We need to see the actual billing.

18 THE COURT: We'll address that one.

19 MR. WINNER: And as I don't know as I stand here if it rests  
20 well --

21 THE COURT: All right.

22 MR. WINNER: -- I'll just --

23 THE COURT: Well, I guess we're probably wasting time  
24 arguing about we don't even know --

25 MR. PRINCE: Okay. Yeah.

1 THE COURT: -- and just making up stuff. We could do this  
2 all --

3 MR. PRINCE: Yeah. Right. Well, do you want to go -- can we  
4 go take a little lunch break we'll come back and deal with our --

5 THE COURT: No. We're going to take a lunch break, I just  
6 want to figure out what we're doing when we come back, so --

7 MR. PRINCE: I thought we were doing our jury instructions?

8 MR. HENRIOD: Well, I -- I think we can start chipping away at  
9 it. We just got their jury instructions today. I've been trying to go  
10 through it to see, especially on the stocks --

11 MR. PRINCE: Well, those are simple, though, Joel --

12 THE COURT: Here's --

13 MR. PRINCE: -- I mean that should take us 15 minutes.

14 THE COURT: Here's -- I don't need to be involved with you  
15 guys and your initial --

16 MR. HENRIOD: Well, then you could have given them to us  
17 last month.

18 THE COURT: With your initial -- do we have copies of your  
19 proposed from both sides?

20 MR. HENRIOD: You had copies of ours for -- since before  
21 trial.

22 THE COURT: Okay. Do I have yours?

23 MR. PRINCE: Yeah. I thought you did, but -- I'm handing you  
24 ours, right now. But then, Henriod, we can come back, say, 2:30, and  
25 then we can --

1 MR. HENRIOD: Yeah, I mean, I think we can start chipping  
2 away.

3 THE COURT: Well, here's what's going to happen --

4 MR. HENRIOD: Especially on the specials, we'll need to  
5 argue those tomorrow, I think.

6 MR. PRINCE: Why would we need to do that?

7 MR. HENRIOD: Because I want an opportunity more than  
8 the --

9 MR. PRINCE: That's how it typically happens --

10 MR. HENRIOD: -- time that I've been sitting here during  
11 trial --

12 MR. PRINCE: That's what happens.

13 MR. HENRIOD: -- to look at the -- no, they're due a week  
14 before trial so that we all have time to look at each other's.

15 THE COURT: Here's what I'm thinking, here's what I'm  
16 thinking. I'm thinking you all take a lunch, come back at 2:30. We're  
17 going to do other things, and you guys can meet and confer for a half  
18 hour and figure out what you can agree on, so -- because I don't need to  
19 sit here and watch that.

20 MR. WINNER: We'll get that out the way, that's fine.

21 THE COURT: And then you whittle it down to how many we  
22 disagree on --

23 MR. PRINCE: And we're closing on Friday, so I guess that --  
24 okay.

25 THE COURT: And then we'll -- I'll come in at 3:00, and if you

1 say everything is agreed on but these three, then if we can settle then,  
2 fine. If you all need a little bit more time, then we'll give you a little more  
3 time, or whatever.

4 MR. WINNER: Fine.

5 THE COURT: So is 45 -- you can have whatever you and for  
6 lunch.

7 [Counsel confer]

8 MR. HENRIOD: I am saying, I am not committing to having  
9 them all done today, when I want to look at the specials. But I am saying  
10 we can chip away.

11 THE COURT: Okay. The other question, is there still an issue  
12 outstanding Schifini's scope?

13 MR. PRINCE: Yes. There is.

14 THE COURT: And what is the issue?

15 MR. PRINCE: Our argument was -- we outlined in our trial  
16 brief as being cumulative.

17 THE COURT: Okay.

18 MR. PRINCE: They offer the same testimony about soft  
19 tissue injury. So just -- I guess it's just the effect of being its  
20 cumulativeness of the testimony of the soft tissue injury treatment done  
21 by February.

22 THE COURT: Okay.

23 MR. PRINCE: Okay. I mean, it's our guess. That's a  
24 summary of it, itself.

25 MR. WINNER: We -- I think -- I don't intend to go over all the

1 same ground, but we disagree. I've heard from a succession of -- two  
2 surgeons of Plaintiffs, who told the jury the same thing. And if I walk in  
3 here with just Dr. Wong, they're going to say, look, there are four  
4 doctors, you only had one.

5 MR. HENRIOD: And your one is from California.

6 THE COURT: I agree. And I'll listen. If there comes a time it  
7 becomes cumulative, but my position has always been, unless you're  
8 stipulating to a fact, cumulative is what you do, but --

9 MR. WINNER: Okay.

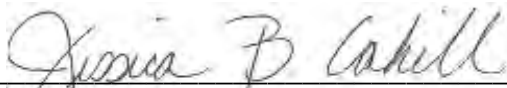
10 THE COURT: And in light of the way both sides have gone.

11 MR. PRINCE: Okay. No, that's fine Judge, I can see the  
12 relevance. That's fine.

13 THE COURT: All right. So we'll see you at 3:00, but the  
14 courtroom will be here for whatever.

15 [Proceedings concluded at 1:51 p.m.]  
16  
17

18 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
19 audio-visual recording of the proceeding in the above entitled case to the  
20 best of my ability.

21  
22 

23 Maukele Transcribers, LLC

24 Jessica B. Cahill, Transcriber, CER/CET-708  
25