

Case No. 79424

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

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

Appellants,

vs.

BABYLYN TATE, individually,

Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

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

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**APPELLANTS' APPENDIX  
VOLUME 8  
PAGES 1751 – 2000**

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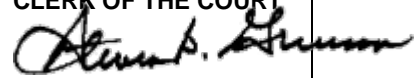
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 DESIRE EVANS-WAIAU,  
9 Plaintiff,

10 vs.

11 BABYLYN TATE,  
12 Defendant.

)  
) CASE#: A-16-736457-C  
)  
) DEPT. XVIII  
)  
)  
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13 BEFORE THE HONORABLE MARY KAY HOLTHUS  
14 DISTRICT COURT JUDGE  
THURSDAY, MAY 30, 2019

15 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 11**

16  
17 APPEARANCES:

18 For the Plaintiff:

DENNIS M. PRINCE, ESQ.

19 For the Defendant:

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

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24  
25 RECORDED BY: YVETTE SISON, COURT RECORDER

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None

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Las Vegas, Nevada, Thursday, May 30, 2019

[Case called at 12:02 p.m.]

[Outside the presence of the jury.]

THE COURT: I think I thought -- we're outside the presence  
the jury. We're back on, right?

THE CLERK: Yes, we are.

THE COURT: I think I thought you all had your jury  
instructions worked out; I'm hearing you don't really?

MR. PRINCE: We still have -- no. We tried, and we haven't  
been able to resolve it. So there is -- we have met. We're sending you  
an agreed upon set of instructions --

THE COURT: Okay.

MR. PRINCE: -- and each side has several that they're  
proposing, that we'll need your assistance on.

THE COURT: And when are we going to finalize those?

MR. HENRIOD: I believe it will need to be as soon as we're --

MR. PRINCE: Done with the evidence today.

MR. HENRIOD: -- [indiscernible] after the jury --

THE COURT: Okay. We can't stay past 5:00 today, so figure  
that in.

MR. WINNER: I will move quickly.

THE COURT: I was under the impression --

MR. PRINCE: Well, I --

THE COURT: That's why we had all afternoon yesterday, and

1 I -- when you all left without, I don't know if we had --

2 MR. PRINCE: Because Mr. Henriod --

3 THE COURT: -- some that weren't agreed on, why --

4 MR. PRINCE: Go ahead, I'm sorry.

5 THE COURT: You all left. I waited in chambers, because my  
6 understanding was you were going to figure out what you could agree  
7 on, then we were going to talk about the others and see where we were.  
8 When you all packed up and left at 4:00, or whatever it was, I assumed  
9 that you were done, because we had another hour or two that I thought  
10 we could work, so I wasn't worried. And then when you came out at  
11 11:30, I thought, well, they're going to send for me, because if there's an  
12 issue -- so anyhow, that's --

13 MR. HENRIOD: Well, we have them -- we had them  
14 narrowed. I got their specials yesterday, so I wanted to look at them. I  
15 have. I think that we can discuss them pretty quickly.

16 THE COURT: But the reality is, we're going to go back and  
17 look at what we've been emailed from -- as stocks, and whatnot --

18 MR. HENRIOD: Uh-huh.

19 THE COURT: -- and that's kind of -- a lot of where it --

20 MR. PRINCE: Right. I think it's just a couple --

21 THE COURT: -- probably will shake out. Obviously I don't  
22 know. I don't have my way of doing this yet, because I've never done it  
23 before.

24 MR. PRINCE: Right. I'm just saying that --

25 THE COURT: All right. Well, maybe what we should -- it's

1 noon, are we've only got, what, three witnesses?

2 MR. HENRIOD: Uh-huh.

3 MR. WINNER: Yes. Two of those witnesses are --

4 THE COURT: And I can't fathom they're very long, right?

5 MR. HENRIOD: I think we should be able to do this.

6 MR. PRINCE: Appearance at trial and prep for trial for like  
7 three weeks ago, whenever it was.

8 THE COURT: Well, and if not you'll have to do the jury  
9 instructions in the morning and --

10 MR. PRINCE: How do we deal with the afternoon?

11 THE COURT: Wait, so --

12 MR. WINNER: Very good.

13 THE COURT: Figure that out everybody.

14 THE MARSHAL: Ready?

15 THE COURT: Ready. Ready to go.

16 [Pause]

17 THE COURT: Who's the first witness?

18 MR. PRINCE: Dr. Lewis is here. We resolved the order to  
19 show cause issue.

20 THE COURT: Perfect. All right.

21 MR. PRINCE: He's here, some are not.

22 THE COURT: We'll take it off the calendar then?

23 MR. PRINCE: Yes.

24 [Pause]

25 THE MARSHAL: All rise, please, for the jury.

1 [Inside the presence of the jury.]

2 THE COURT: Good afternoon, ladies and gentlemen,  
3 welcome back. The end is near. Everybody ready? Do the parties  
4 stipulate to the presence of the jury?

5 MR. PRINCE: We do.

6 MR. WINNER: We do, yes.

7 THE COURT: Okay. Mr. Winner.

8 MR. WINNER: Thank you. The Defendant would call Dr.  
9 Keith Lewis to the stand, please.

10 THE MARSHAL: Please watch your step. Raise your right  
11 hand, face the Court clerk. Thank you.

12 KEITH MICHAEL LEWIS , DEFENDANT'S WITNESS, SWORN

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

15 THE WITNESS: Keith Michael Lewis, L-E-W-I-S.

16 THE CLERK: You may be seated.

17 DIRECT EXAMINATION

18 BY MR. WINNER:

19 Q I was going to say good morning, but good afternoon, Dr.  
20 Lewis. I don't think you and I have met before?

21 A No.

22 Q Okay. Tell us your business or occupation, please?

23 A I am a diagnostic radiologist.

24 Q Okay. You're a medical doctor, M.D.?

25 A Correct.

1 Q Okay. Where did you go to school?

2 A Vanderbilt University, Nashville, Tennessee.

3 Q Okay. Just for the Jury's benefit would you tell them, please,  
4 what a radiologist does?

5 A A radiologist reads and interprets various imaging studies,  
6 such as x-rays, CT scans, nuclear medicine, performs MRI, performs  
7 diagnostic procedures, such as draining fluid out of the chest cavity, the  
8 abdominal cavity, doing biopsies, doing angiograms, angioplasty-  
9 resistant placement.

10 Q Okay. I want to ask specifically about MRIs. You look at neck  
11 and back MRIs for various facilities, and at various doctors' requests,  
12 right?

13 A Yes.

14 Q Okay. Who is Align MRI?

15 A Align is a -- is a group of chiropractic physicians that has an  
16 MRI and they send the studies to be read. They -- they do about five  
17 studies a day, approximately.

18 Q Do they send them all to you?

19 A Yes. We have a contract with them.

20 Q Okay. Now you said they take the MRI -- they take the MRIs  
21 themselves and then just send you the films to have a radiologist review  
22 them?

23 A That's correct.

24 Q Okay. Is Align MRI then owned by Align Chiropractic; do I  
25 understand what you're saying?

1           A     I'm not sure.

2           Q     Okay. Do you do the same thing for any other -- or at the  
3 request of any other chiropractic offices in town?

4           A     Yes. There's one other -- there's advantage diagnostic  
5 imaging.

6           Q     Okay. And Advantage Diagnostic Imaging, have you done  
7 this work in the past for a Dr. Ben Lurie, who I think is the owner, or he is  
8 affiliated with a neck and back clinic?

9           A     Correct.

10          Q     Okay. Do you read films the same way for all of the people  
11 that you read for?

12          A     Yes.

13          Q     Have any chiropractors asked you to read films in a certain  
14 way, or interpret films in a certain way?

15          A     I've been told that -- to give measurements of disc bulges  
16 and disc protrusions, and disc extrusions, and put them -- put the  
17 information, if I report any of the conclusion nearby, it's an easy  
18 reference when the patient has a follow-up study and is seen by a new  
19 doctor they have something to compare, and then they'll know how to  
20 incorporate a change, or lack of change into the overall gestalt of how  
21 they treat the patient.

22          Q     And have you testified about this in depositions in the past?

23          A     Yes, I have.

24          Q     Have you testified in deposition of being asked to measures  
25 millimeters at the request of chiropractors made you uncomfortable or

1 you weren't happy with that request?

2 A No. We have to measure things, that's -- that's the only way  
3 we have any credibility at all in terms on imagining studies. We have to  
4 describe what we see and make a very detailed report of what the  
5 abnormal findings are.

6 Q Okay. Do you remember being deposed in a case called  
7 *Scaletti v. Allred* [phonetic]?

8 A No.

9 Q Okay. Do you recall testifying in that case that doctors and  
10 attorneys have approached you and asked you to read images, and in  
11 the way you write reports of those images?

12 A I'm bad with names.

13 Q Well, let me just ask you, has that happened in the past?

14 A Sorry, can you repeat that?

15 Q Yes. Have you been asked by doctors and/or attorneys to  
16 read images in a certain way?

17 A No. I have little contact with most of them, because I'm  
18 usually sitting behind -- behind a desk in front of an MRI monitor and  
19 reading the studies independently.

20 Q Okay. You said that Ben Lurie was one of the chiropractors  
21 that asked you to begin measuring the size of bulge on your MRI  
22 reports?

23 A Yes.

24 Q And you said there was another chiropractor, can you  
25 remember who the other one was?



1           A     There was one in town many years ago that wanted me to --  
2 well, I don't remember his name. But other facilities, like Pueblo Medical  
3 Imaging and -- Align doesn't give a -- Align Chiropractic doesn't give me  
4 any parameters. Pueblo Imaging likes me to do it also. I think it's a good  
5 standard, there's nothing wrong with it.

6                   MR. PRINCE: Do you have a copy of whatever you're going  
7 to show him?

8                   MR. WINNER: I do, but --

9                   MR. PRINCE: Okay.

10                  MR. WINNER: -- I'm not sure I need it.

11                  THE COURT: Okay.

12 BY MR. WINNER:

13           Q     And you were specifically told to put millimeter  
14 interpretations within your reports, correct?

15           A     Yeah. On many different types of studies, you'd be amazed.  
16 Doctors tell me to make sure you say this in centimeters. Make sure you  
17 say this in millimeters. Make sure you -- I get that all the time from many  
18 different groups, across many different subspecialties in medicine.

19           Q     And in fact, when you didn't put millimeters in your reports,  
20 chiropractors have called you and asked you to change it, put millimeters  
21 in, correct?

22           A     I -- I remember that. I always give a measurement when I --  
23 whenever I say a bulge or protrusion or an extrusion, I always give a  
24 measurement.

25           Q     Okay. You've also testified that giving measurement s in

1 millimeters on an MRI is often not accurate, correct?

2           A     We're talking about precision here. MRI is not like CAT  
3 scans, where you're dealing with the electro-magnetic spectrum, which  
4 is a visible light, and you take a picture photograph, you can measure  
5 things quite accurately on a photograph.

6           The same with the CAT scan. You can measure things quite  
7 accurate on CAT scans too, because it's using x-rays, and x-rays are the  
8 same basic phenomena as visible light, they just have to carry more  
9 energy and you can't see them, but they can do more damage,  
10 obviously. But the point being, x-rays -- so MRI images are obtained  
11 from a different mechanism, they're an indirect mechanism, they're not a  
12 direct transmission mechanism like the visible eye. So it's not like a  
13 photograph.

14           So there are restrictions on the amount -- when you -- when you  
15 give a measurement in millimeters, let's say you say two millimeters,  
16 three millimeters, you have to clarify that by saying plus or minus one  
17 millimeter, because depending on the machine, the parameters of the  
18 study, the day it was taken, the type of patient, their body habitus, it can  
19 vary slightly between a millimeter. But generally you can get it down to  
20 one or two millimeters; as with CAT scans I get it down in fractions of  
21 millimeters.

22                   MR. PRINCE: Your Honor, can we approach for a second?

23                   THE COURT: Sure.

24                               [Sidebar begins at 12:16 p.m.]

25                   MR. PRINCE: He's trying to -- Mr. Winner showed me a copy

1 of the deposition transcript, a copy of which I don't have. I apologize,  
2 Mr. Winner, but he's also trying to ask him questions about, there's  
3 another guy, he used to do a lot of MRIs, and told me not to put in  
4 degenerative changes in my report. I'm like, how can you tell me not to  
5 read my reports. I know how to read my reports; nobody can tell me not  
6 to read my reports? So he's now trying bring up how other  
7 chiropractors direct him to do it, unrelated to a lie, unrelated to this --

8 MR. WINNER: No, no. I was actually pointing to down here.

9 MR. PRINCE: Okay.

10 MR. WINNER: To include all disclosures, no matter what. As  
11 a matter fact, when I didn't do it, because it's not important, he would  
12 make me fix the report and change it, which he just said he hadn't done.

13 MR. PRINCE: But it was -- that's Dr. Murray [phonetic]. But it  
14 wasn't related to this case, it wasn't related to Align Chiropractic, and so  
15 it has nothing to do with --

16 THE COURT: So is he saying that he's changed the words  
17 before?

18 MR. PRINCE: Yes. Now you need to ask him that question.  
19 You haven't even asked him that question.

20 THE COURT: If that's what we're saying, I think it's  
21 impeachment.

22 MR. PRINCE: How is that impeaching?

23 MR. WINNER: He just said that he --

24 THE COURT: Because he said doesn't --

25 MR. WINNER: -- didn't do it.

1 THE COURT: -- change reports.

2 MR. PRINCE: He didn't say that.

3 THE COURT: Well, he said he wouldn't do it if people come  
4 [indiscernible]. Didn't he say that?

5 MR. WINNER: I wasn't asking him this, I was going to ask  
6 him this, about he has been asked to fix reports, and he did. And I'll --

7 THE COURT: Fix them, like fix them?

8 MR. WINNER: I'll say that it wasn't Align, I agree with you.  
9 Here it appears what I'm --

10 MR. PRINCE: I'm reading --

11 [Counsel reviewing document]

12 MR. WINNER: Here's where I'm talking about this.

13 MR. PRINCE: I know, I know. I'm trying to read the whole  
14 thing. I'm trying to read the context of it.

15 MR. WINNER: But you've got your own copy of it.

16 MR. PRINCE: So I'm trying to figure out what page you're  
17 on.

18 MR. WINNER: 12 to 15. The one I'm talking about is page 13,  
19 beginning at line --

20 THE COURT: Is this a big area you're going to go into, or  
21 are --

22 MR. WINNER: -- 4.

23 THE COURT: Well, if that's what we say I think it's  
24 impeachment --

25 MR. WINNER: This is going to be a very short examination.

1 MR. PRINCE: My apology. Well, can't this -- I recall reading a  
2 deposition of yours where you have a discussion about a conversation  
3 you had with Dr. Lurie about findings, on the films. He says, well, a long  
4 time ago. I've been reading for Dr. Lurie for many years. In the  
5 beginning he wanted to me say the interpretation, disposal, disc  
6 protrusion, specific to how many millimeters they were, projecting the  
7 spinal column.

8 He said, I confide he was giving me his business, and it's not  
9 as much work to actually put it into interpretation. I didn't see the  
10 relevance of it necessarily, but that's what he wanted me to do.  
11 And then where's the other. Well, what page is that, 13?

12 MR. WINNER: Yeah. So I don't understand it.

13 THE COURT: And Dr. Lurie is Align, right.

14 MR. PRINCE: This is not even the same -- this is a different  
15 deposition.

16 MR. WINNER: It might be a different case, yes.

17 MR. PRINCE: Well, I want to read in this case.

18 THE COURT: Well, he keeps it open.

19 MR. WINNER: Well, no, because it the case.

20 MR. PRINCE: No, it's not.

21 MR. HENRIOD: It's [indiscernible].

22 MR. PRINCE: No, I'm not. It's not the case, it's not the same  
23 case.

24 MR. WINNER: Oh, I beg your pardon. Look at the one  
25 underneath it then.

1 THE COURT: Give him that so he gets to look at it.  
2 MR. WINNER: You have those copies.  
3 MR. PRINCE: Okay.  
4 [Counsel reviews document]  
5 MR. WINNER: You're right, I'm sorry, I gave you the wrong  
6 one; page 13. Well --  
7 [Counsel reviews document]  
8 THE COURT: Do you need a highlighter?  
9 MR. PRINCE: I'm okay. I got it.  
10 MR. WINNER: Are we okay?  
11 MR. PRINCE: Where are you at, I don't even know where  
12 you're at.  
13 MR. WINNER: Here.  
14 MR. PRINCE: Where, you're talking about right --  
15 MR. WINNER: Page 13.  
16 MR. PRINCE: He's not talk to about changing reports there.  
17 Like I said, why does another chiropractor have any relevance what he  
18 did in this case? He talked about Align never giving that directive, so  
19 what's the relevance of what he -- what other chiropractors had to do in  
20 the past?  
21 THE COURT: Well, it's whether he would do it or not.  
22 MR. PRINCE: No, no, but he didn't -- he didn't do it. The  
23 only thing --  
24 THE COURT: Well, then why did he say he didn't do it?  
25 MR. PRINCE: How does -- Judge --

1 MR. WINNER: I just asked him if he ever --

2 MR. PRINCE: -- I didn't even open the door? He's like, have  
3 you -- or has someone ever done this, unrelated to this case. He said  
4 that the Align doesn't ever give him that direction, that was what the  
5 record already said. How does he get into what their chiropractors have  
6 asked him to do or not do? How does that impact this case, and his read  
7 in this case?

8 THE COURT: Where are you going on this?

9 MR. PRINCE: Yeah.

10 THE COURT: Just tell where you're going.

11 MR. HENRIOD: It undermines the credibility of the  
12 assessment that he did in this case.

13 MR. WINNER: No.

14 MR. HENRIOD: Certainly. I mean, just as he did with the  
15 other --

16 MR. PRINCE: It's like a prior bad act like some other  
17 chiropractor --

18 MR. HENRIOD: -- just as he did with the other -- well, no. I  
19 mean, he can't deny that he's in this case, but with each of the treaters  
20 that have been up here, right? We've got into their methods of  
21 treatment, their habits, the reliability of their work.

22 MR. PRINCE: But they're not by changing reports. There's  
23 been no evidence of everybody requested a change in report, they're not  
24 even questioned about any of that. And even Dr. Wong, he didn't  
25 disagree with that.

1 THE COURT: No. I'm going to go ahead, and I'm going to  
2 sustain this. I don't think it's necessary, to the extent --

3 MR. WINNER: May I asked the question again, has a  
4 chiropractor ever asked you to go back and fix the report and change it  
5 to add millimeters in?

6 MR. PRINCE: No, he's already answered that.

7 THE COURT: He already answered that.

8 MR. WINNER: And he said, yes.

9 MR. PRINCE: Well, he's already answered that, that's asked  
10 and answered.

11 MR. WINNER: And in his deposition he said, "Yes, I did. I  
12 was made to go back and change it and add millimeters, even though it's  
13 not important.

14 THE COURT: But he's not saying he did something bad.

15 MR. WINNER: Right.

16 THE COURT: Oh, so that's -- well, that's okay. I thought --

17 MR. PRINCE: Well, listen, why is it okay?

18 THE COURT: -- he was saying he didn't [indiscernible].

19 MR. PRINCE: Why is it okay --

20 MR. HENRIOD: Judge, if I might --

21 MR. PRINCE: -- I guess he opened the door to all of that now.

22 MR. WINNER: No.

23 MR. PRINCE: He opened the door to anything that another  
24 chiropractor, in another case years ago, asked him to do that. How could  
25 that be relevant? He's already say, yeah, some chiropractors, ask me to



1 include it, and I think it's not a bad idea. I mean, how does that -- how  
2 does that --

3 THE COURT: Yeah. So it's already--

4 MR. WINNER: Okay. But what he said in the past --

5 THE COURT: -- been asked and answered.

6 MR. WINNER: -- is it's inappropriate and he didn't want it  
7 done.

8 MR. PRINCE: Well, yeah, he didn't -- there's no question he  
9 did it in this case. So that then has a relevance to this case what another  
10 chiropractor has done --

11 THE COURT: Well, at this point I think it's just inconsistent  
12 what he's saying. And a flip flop again, now, and I'm going to overrule  
13 it, because it's not a bad act. It is not --

14 MR. PRINCE: Judge --

15 MR. WINNER: I'll ask the question carefully.

16 MR. PRINCE: Judge, how does he get to go into the -- what  
17 another chiropractor asked him to do in another matter, of --

18 THE COURT: It's not the fact that the chiropractor asked him  
19 to, it's what his response to it was.

20 [Sidebar ends at 12:22 p.m.]

21 MR. WINNER: If I may approach, please, Your Honor?

22 THE COURT: Yes.

23 BY MR. WINNER:

24 Q Doctor, I'm showing you a deposition. I understand you said  
25 you're not good with names, but do you recognize this as a deposition

1 you gave December 6th, 2018? I just want to ask you about this. Dr.  
2 Lurie has nothing to do with this particular case, but I'm going to ask you  
3 to read, if you would --

4 A Sure.

5 Q -- the bottom of page 12 and the top of page 13. And I'm  
6 going to ask you that question again. Has any chiropractor asked you to  
7 change your report or fix your report to add in millimeter  
8 measurements?

9 A So you want me to just read it as it says? Okay.

10 Q Sure.

11 A Yeah, that guy, too. There was another guy. He used to do a  
12 lot of MRIs, order a lot of MRIs. He would tell me not to put degenerative  
13 changes in the report. It's like how can you tell me how to read my  
14 reports. I know how to read my reports. Nobody can tell me how to  
15 read my reports. You're not the radiologist here, you know, and then  
16 there's Dr. Lurie, another chiropractor, that told me specifically what to  
17 put in, in interpretations. Basically, to include all disc bulges in the  
18 interpretation no matter what. As a matter of fact, when I didn't do it  
19 because it's not important, he would not -- he would make me fix my  
20 report and change it.

21 Q Okay. So he would make you fix a disc bulge or fix a report if  
22 it doesn't say -- if it didn't say there was a disc bulge because you  
23 thought it was not important?

24 A Yeah. Basically, disc bulges are very common. We all will  
25 have them. You can see them in people that are --

1 Q I'm sorry, I didn't hear what you said.

2 A You can see them in --

3 Q The bulges are very what?

4 A -- teenagers. Disc bulges are very common.

5 Q Okay.

6 A Yeah. We all have them.

7 Q Okay. You've also testified that -- you began explaining why  
8 giving millimeter measurements on an MRI, and you're going to have to  
9 explain the technology to me, because I don't quite understand it, but  
10 giving measurements --

11 A Sure.

12 Q -- on magnetic images of an MRI that then get translated to  
13 photographs, and then interpreting the photographs might produce  
14 inaccurate millimeter readings.

15 A Not inaccurate, but less precise --

16 Q Okay.

17 A -- than you would get in like an x-ray or a CAT scan. MRI is  
18 known for its contrast resolution. Being able to differentiate pathological  
19 processes from normal physiologic processes in the presence of water,  
20 hydrogen, that aligns the magnetic field, that free -- that hydrogen acts  
21 differently in edema from trauma or from other pathological processes  
22 than it does in the normal state when it's just in normal tissue, because  
23 it's closer to free water.

24 So, when -- if you're talking about -- you can't treat a measurement  
25 -- you can treat a study. A study is only good in the context of the total

1 management of the patient, the subjective of what the patient says and  
2 answers questions to. The objective, the MRI studies and other imaging  
3 studies and other -- and other laboratory tests, EMG, for example, to  
4 correlate with the test findings, and then based on that information, the  
5 doctor comes up with an assessment or a diagnosis. Once they have  
6 that assessment, then they can formulate a plan, and that's what the  
7 treating physician does.

8 Q Okay. Did you also testify in that case when you assigned  
9 measurements -- millimeter measurements to bulges, even though you  
10 don't like doing it, one to two millimeters is very small?

11 A Yeah, that's true.

12 Q Okay. In fact, you testified that one to two millimeters means  
13 the bulge typically means it's not impinging on any nerve roots or  
14 irritating or touching roots, correct?

15 A That's correct.

16 Q Okay. You said in the past that translating those magnetic  
17 images onto photographs and then trying to extrapolate millimeter  
18 measurements from them brings about a margin of error?

19 A That's correct. I like CAT scan where you can measure things  
20 to fractions of a millimeter quite accurately. An MRI, you can't be as  
21 precise. That's what -- every test has its advantages and disadvantages.  
22 There's no perfect test in the world. We wish there was. I think in the  
23 future pieces like this will be decided much more quickly.

24 Q Okay. And you said that margin of error could be two to  
25 three millimeters?

A No. A margin of error is generally plus or minus, up to a millimeter.

Q Okay. You said in the past, it's more than that?

A I don't remember saying that.

**Q** You said there can be a large margin of error on these MRIs?

A I didn't say there was a large margin of error. My job, as a radiologist, is to accurately, and in detail, describe every abnormality seen on that MRI.

[Pause]

MR. WINNER: May I approach, please, Your Honor?

MR. PRINCE: What are you approaching with?

MR. WINNER: It's page 25, I'm sorry.

THE COURT: Show counsel.

MR. PRINCE: Of which case?

MR. WINNER: Thornton.

MR. PRINCE: I don't have that.

MR. WINNER: I'll get it to you.

MR. PRINCE: Okay.

THE COURT: You have it, Mr. Prince?

MR. PRINCE: I do.

BY MR. WINNER:

Q Doctor, I'm just showing you here. This would've just been last month, April 10th of 2019, a deposition you gave in a case called *Thornton v. Gary Davies* [phonetic].

A Uh-huh.

1 Q I'm going to ask you to look at page 15, if you can see that --

2 A Sure.

3 Q -- there. Okay. Someone asked you: So the margin of error  
4 is bigger than a tenth of a millimeter. Your answer was: Yes. And what  
5 did you explain then?

6 A If you look at different radiology reports that describe the  
7 same findings, you'll see ranges of plus or minus two or three  
8 millimeters in certain cases.

9 Q Okay. What kind of a magnetar machine would you have  
10 been using or would [indiscernible] had been using asking you to obtain  
11 those images? This would've been in 2015.

12 A Yeah. I'm not sure of the exact MRI, but images were of high  
13 quality and adequate for interpretation.

14 Q Were radiology -- were different machines being used back in  
15 2010 in Las Vegas; to your knowledge?

16 A In what facility?

17 [Counsel confer]

18 MR. WINNER: Can I approach?

19 THE COURT: Yes.

20 BY MR. WINNER:

21 Q Are you able to tell us what kind of machine was being used  
22 in 2010 at that facility?

23 A Centennial upright MRI.

24 Q Incidentally, would an upright MRI, a cervical MRI, potentially  
25 produce different findings from a regular MRI where a patient is reclined

1 in the cervical spine?

2 A Yeah. There's an advantage of an upright MRI in terms of  
3 the fact that you can do stress or dynamic images. So in other words,  
4 you can -- since the patient is upright, they can -- when it comes to the  
5 spine, or the knee, or the ankle, they can flex and extend to see if there's  
6 any instability. So they're like -- they're called stress patients.

7 Q Was there any flexion or instability done on that study in  
8 2010 to your -- did you read that?

9 A I didn't read the study.

10 Q Okay.

11 A It's --

12 Q Are you able to tell from looking at that study I left there with  
13 you, whether those were dynamic images?

14 A No, I can't tell without looking at the study myself.  
15 Apparently, whoever read the study claimed that it was a normal,  
16 unenhanced MRI examination of the cervical spine.

17 Q You mentioned a few moments ago that when you were  
18 asked some years ago by a chiropractor to go back and add millimeter  
19 measurements, you thought it was not -- I think your word was relevant,  
20 or necessary, or useful. Can you explain what you mean by that?

21 A Well, I'm a physician, not a lawyer, so I try to give physicians  
22 information that is useful to them in the management of their patients so  
23 that they can use that information in order to -- and doctors are very  
24 busy people, and they need succinct, detailed information, and they need  
25 to correlate it with their physical examination in order to determine the

1 appropriate treatment for the patient. So by rehashing the body of the  
2 report and interpretation, and then giving specific numbers is not usually  
3 the purpose of an interpretation.

4 Q Why might the interpretation, and adding in a number of one  
5 to two or three millimeters be unnecessary for the interpretation?

6 A Well, if you're talking about a disc bulge, generally disc  
7 bulges are very common and asymptomatic, and we all have them.

8 Q Have you testified in the past that other radiologists can read  
9 the same report differently?

10 A Yes.

11 Q Okay.

12 A That is true.

13 Q In other words, if a radiologist, one radiologist saw a bulge of  
14 one or two or three millimeters, might another radiologist may read that  
15 as essentially normal and not accounted to have a bulge?

16 A Yes, it depends on their degree of attention, degree of  
17 experience, how many MRIs they've read. There's a lot of factors  
18 involved, so it's -- there are times when there will be a bulge, and I won't  
19 mention it, you know. I'll just pass it over because there's other  
20 important findings in the study. You know, we're human beings and  
21 medicine is an art, not a science, so we don't treat numbers.

22 Q Have you testified --

23 A Things have to be treated in context.

24 Q Have you testified in the past some concern that adding in  
25 those millimeters could mislead physicians or lead to a use that you



1 wouldn't like?

2 A I can only speculate. I do not know the answer to that  
3 question. I'm a physician. I know my practice, and I know how to read  
4 films. I've been doing it for a long time. And doctors that send to me are  
5 very familiar of how I read, and they like the detail I give in my reports,  
6 so that's why people send to me. We read for over 150 different facilities  
7 in town.

8 Q From what -- you mentioned that you get work from Align  
9 Chiropractic and Advanced Diagnostic Imaging. Is Advanced Diagnostic  
10 Imaging affiliated, to your knowledge, with The Neck and Back Clinic?

11 A Yes.

12 Q Okay. Any other diagnostic facilities for whom you receive  
13 referrals? Or I'm sorry. Any other referring facilities from whom you get  
14 diagnostic referrals?

15 A There's a long list.

16 Q Okay. What percentage of those, to your understanding,  
17 would be chiropractors or providers involved in claims or personal injury  
18 cases?

19 A In terms of number of facilities or in terms of number of  
20 studies?

21 Q Studies.

22 A Less than five percent.

23 Q Okay. Are in terms of number of facilities?

24 A Less than five percent.

25 Q Okay. Do the facilities, that are not involved in personal

1 injury claims, ask you to add millimeters, or go back and fix them? Has  
2 any ?

3 A Yeah. Yeah, as a matter of fact, for Las Vegas Vein, if you  
4 don't give the time and milliseconds of venous reflux, you have to go  
5 back and change the report, because that's their convention. Partell  
6 Medical Center, when you give measurements of the thyroid gland,  
7 they're very specific in terms of measuring things in millimeters versus  
8 centimeters.

9 Q Doctor, I'm going to ask you to look first --

10 MR. WINNER: -- if I could have the ELMO, please?

11 THE COURT: What is it?

12 MR. PRINCE: Could I have the doctor have the exhibit?

13 Potentially --

14 MR. WINNER: Yeah, it's Exhibit EE, but I think it's --

15 MR. PRINCE: Well, that's yours is not in evidence, yeah.

16 MR. WINNER: It's the --

17 MR. PRINCE: I'll give him mine. The Plaintiff's book I can  
18 give him that, and he can -- just to help the doctor along.

19 MR. WINNER: Guadalupe car accident. Defendant's it's  
20 Guadalupe

21 MR. PRINCE: I know, but that's not in evidence, so I just want  
22 to use the one that's in evidence.

23 MR. WINNER: Okay.

24 MR. PRINCE: So it would be part of Exhibit 45. I don't know  
25 which one it is in ours.

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[Plaintiff's counsel confer]

MR. WINNER: May I show him this while you're looking?

MR. PRINCE: I just want to make sure we're all on the same number.

MR. WINNER: Ours is 66.

MR. PRINCE: Exhibit 66?

MR. WINNER: We'll refer then to Plaintiff's Exhibit 66. I'm trying to zoom in so you can see it, Doctor.

THE WITNESS: I can see it.

BY MR. WINNER:

Q This is one of two -- I'll represent to you; this is one of two claimants in this case. This is of the --

MR. PRINCE: Can the doctor -- I think it would help the doctor if he could actually have the hard copy in front of him.

THE WITNESS: No, I can see it.

MR. PRINCE: You're good?

THE WITNESS: Yeah.

MR. PRINCE: Okay.

THE WITNESS: I'm a radiologist.

MR. PRINCE: Okay.

THE COURT: I can't see it.

MR. PRINCE: Well, that's a good thing.

THE WITNESS: Yes.

BY MR. WINNER:

Q This just happens to be a lumbar MRI, and I'll represent to

1 you that following this lumbar MRI, I don't think Ms. Parra required any  
2 more treatment other than chiropractic, but I want to ask about some of  
3 the findings here. You indicated extreme --

4 MR. PRINCE: I guess I'm going to object, Your Honor. That  
5 misstates the evidence, because she went to Dr. Rosler twice after this,  
6 so she went to more than chiropractic care after this.

7 MR. WINNER: I'll --

8 MR. PRINCE: That's correct.

9 THE COURT: Okay.

10 MR. WINNER: I won't negate that. That's fine.

11 BY MR. WINNER:

12 Q You indicated here a central disc extrusion, central posterior  
13 disc protrusion, posterior lateral disc protrusion at, I guess, L3-4, L4-5,  
14 and L5-S1; is that right?

15 A Correct.

16 Q Okay. And you mentioned evidence for lumbar strain, and  
17 you mentioned those protrusions with central spinal canal stenosis in the  
18 L3-4 with mild central canal -- I'm sorry -- spinal canal stenosis of L4 and  
19 L5. No significant neuroforaminal narrowing to the lumbar spine. Let  
20 me ask you first about a couple of those findings. What does no  
21 neuroforaminal narrowing indicate to you diagnostically?

22 A That means that there's no evidence for impingement of the  
23 exiting nerve roots from the central spinal canal as they leave the spine  
24 and go into the rest of the body.

25 Q Okay. Is mild central spinal canal stenosis a finding of any

1 significance to you?

2 A In and of itself, no.

3 Q Okay. Would the central posterior disc extrusion be of any  
4 clinical significance to you?

5 A Absolutely.

6 Q Okay. Would a posterior disc protrusion in L4-5, L5-S1 be of  
7 any particular clinical significance to you?

8 A Quite possibly.

9 Q Okay. Can we agree that protrusions and extrusions and the  
10 like are, in most patients, are benign and asymptomatic --

11 A No.

12 Q -- in your experience?

13 A Extrusions are symptomatic because there's a chemical that  
14 is in the center of the disc, the nucleus pulposus and the annular fibrosis.  
15 So in the center of the disc, they're like shock absorbers, like your tires.  
16 So when that chemical material exits between the vertebral bodies and  
17 goes into the canal, it's extremely irritating to the nerve roots that are in  
18 the canal or to the spinal cord if you're dealing with the cervical spine or  
19 the thoracic spine. And patients often complain of pain radiating down  
20 their legs or their arms. And the body's response to it, because of the  
21 pain, is to limit the motion. So they get very stiff, and they can't walk  
22 around too easily.

23 Q And those protrusions are, in many people, asymptomatic?

24 MR. PRINCE: Objection. Outside the scope of this witness.

25 He's not a clinician. He's a radiologist.

1 THE WITNESS: That's correct.

2 THE COURT: Overruled.

3 MR. WINNER: He's already answered it. Yeah.

4 BY MR. WINNER:

5 Q Okay. I'm going to ask you to look at another plaintiff's -- the  
6 report of cervical MRI that's been discussed somewhat here. You've  
7 testified in the past --

8 MR. WINNER: This is starting again, Mr. Prince, at page 17.

9 May I approach, please, Your Honor?

10 THE COURT: Yes.

11 MR. PRINCE: Of which case?

12 MR. WINNER: Thornton, page 17.

13 MR. PRINCE: Of which case?

14 MR. WINNER: Thornton, page 17.

15 BY MR. WINNER:

16 Q Doctor, you testified in the past that an MRI is very good at  
17 contrast resolution and looking for edema from pathological processes  
18 such as post-traumatic edema, bone contusions, soft tissue swelling,  
19 hemorrhage, prevertebral edema, ligamentous injury related to edema,  
20 increased signal within the ligaments?

21 A Correct.

22 Q Okay. So an MRI is capable of picking up evidence of recent  
23 trauma such as bone marrow edema, spinal cord bruising, ligamentous  
24 disruption, ligamentous laxity?

25 A That's the main advantage of why people get MRIs instead of

1 CAT scans.

2 Q Okay. Other physicians, including the Plaintiff's physicians,  
3 have testified they saw no evidence of any of those things in this case.

4 Would you agree with that?

5 A That's correct.

6 Q Okay. No evidence of recent trauma than on this --

7 A That doesn't --

8 Q -- MRI?

9 A That doesn't mean there wasn't recent trauma. It just says  
10 there's no evidence of it.

11 Q Okay. And again, might another radiologist, at another time,  
12 using a different machine, view this MRI as essentially normal given the  
13 absence of stenosis, given the absence of foraminal stenosis?

14 MR. PRINCE: Objection. Foundation. Speculation, how  
15 anybody else would read it.

16 THE WITNESS: It's not a normal MRI. There's bilateral disc  
17 protrusions at C6-C7. I leave it up to the treating physician to determine  
18 how that fits in terms of the physical examination, EMG studies, what  
19 other studies were done, in order to determine how to treat this patient.  
20 There's other factors besides an imaging study in the treatment of a  
21 patient. You don't treat a study.

22 BY MR. WINNER:

23 Q Sure.

24 A You treat a patient.

25 Q I agree.

1           A     A patient could have muscle spasm, and not have edema.

2           Q     Okay. You indicated here there is no significant central  
3 spinal canal stenosis nor significant neural foraminal encroachment.

4           A     Right.

5           Q     What does that mean?

6           A     And the reason I put that there is because there's nothing  
7 that I need to call the doctor right away and tell them look, there's spinal  
8 cord compression here. There's a hemorrhage in the central spinal  
9 canal. You better get a neurosurgeon involved right away, because this  
10 is a chiropractor, in order to decompress the spine, or else this person  
11 may lose permanent function. So the timing is of the essence here.

12          Q     Okay. You testified in the past that -- I can't remember the  
13 word you used, but micro trauma of day-to-day living might cause about  
14 small -- bring about small disc protrusions?

15          A     That's my theory. In order to know what's really going on in  
16 any given situation, you have to be outside the box looking in.  
17 Unfortunately, in most cases and most times, we can never do that.

18          Q     Okay. Do you know if, in this particular case, Align Medical  
19 MRI Center or Align Chiropractic was taking on a lien?

20          A     I didn't get to finish my thought, but that's okay.

21               MR. PRINCE: Oh, goodness. Finish it.

22 BY MR. WINNER:

23          Q     I thought you were finished. Please go ahead.

24          A     So you'll have various organizations, professional  
25 organizations, describe things as degenerative, quote-unquote. Maybe



1 there's no such thing as degeneration. Maybe what you're dealing with  
2 by the time -- when you're born, and you live, and you die, like a movie,  
3 you have chronic wear and tear, entropy. Your body wears down. Your  
4 body tries to repair things. It responds. Sometimes it responds out of  
5 control. So people with pre-existing conditions from prior multiple  
6 micro traumas, not degeneration, are more susceptible to a traumatic  
7 event.

8         So in other words, if you have some of these pre-existing  
9 conditions, you might get up from a chair and get a disc herniation. Now  
10 that's not a lot of force getting up from a chair, but you can feel it when  
11 that disc herniation is irritating your nerves. And it needs to be treated.  
12 When it's a large disc herniation, you have to do surgery. You got to  
13 take out that disc or else the patient is never going to heal.

14         Q     Would you agree, on your study, as you read it, despite a  
15 potential margin of error, you saw no significant neural foraminal  
16 encroachment, no significant central spinal canal stenosis?

17         A     That's correct. And the reason I say that is, again, to alert the  
18 physician that he doesn't have to do something emergently and call a  
19 neurosurgeon and get them involved.

20         Q     Okay. Could lifting 50 pounds a day at a job cause, in your  
21 experience, mild disc bulges or extrusions?

22                 MR. PRINCE: Objection. Outside the scope. Incomplete  
23 hypothetical. Foundation.

24                 THE WITNESS: That's true. It's all hypothetical. We don't  
25 know. There's never been any long-term studies of normal people,

1 whatever that is, undergoing the stresses of everyday life and having a  
2 movie where you have several frames in time on an MRI, thousands of  
3 MRIs over a lifetime, to put all that information together to know what is  
4 the significance of every disc bulge they have. What is the disc bulge of  
5 ever disc protrusion they have? What is the significance of every  
6 abnormal finding that they have? There's never been any study like that,  
7 because it's not cost-effective, and it's not ethical. There are no MRI  
8 crash dummies.

9 BY MR. WINNER:

10 Q All right. Based on studies -- you keep current on  
11 radiological studies or --

12 A Yes, I do.

13 Q -- spine MRI studies?

14 A Yes.

15 Q Based on [indiscernible] studies, would it be fair to say that  
16 the vast majority of people are found to have disc bulges, disc  
17 herniations, disc protrusions, and never experience any symptoms from  
18 them?

19 A We don't know that, because you can't interview someone  
20 that's dead.

21 Q Okay. Without any history of any pain in those areas?

22 A We don't know that, because you can't interview someone  
23 that's dead.

24 Q Okay.

25 A And these autopsy studies --

1           Q     I know you're not trying to be cute, doctor.

2           A     -- are generally done on older people. Here's a case in point.  
3 Prostate cancer. One third of males over the age of 80 have prostate  
4 cancer on autopsy when they died from other causes. That's a fact. Do  
5 with that information what you please. They didn't die from prostate  
6 cancer.

7           Q     Let me ask this a simpler way. And you might have already  
8 answered it. Would it be fair to say, according to the current medical  
9 literature, that the vast majority of adults walking around might have  
10 disc herniations, disc protrusions, big disc herniations, big disc  
11 protrusions, small disc protrusions, small disc bulges, and walk around  
12 every day without even knowing it?

13          A     No study has been done, to my knowledge, of that. We don't  
14 know. We -- that would be a good thing to find out. I think that, in the  
15 future, big data, when you take all of the information from all of the MRIs  
16 and all the doctor studies, and you put it all together, you may start  
17 discovering certain trends. And I think that's good. That's where Google  
18 and -- can be very useful.

19          Q     You're not aware of any such studies showing the most  
20 bulges, most protrusions --

21          A     They usually --

22          Q     -- most are asymptomatic?

23               MR. PRINCE: Objection. Asked and answered, Judge. He's  
24 asked this question like five times.

25               THE COURT: Well, approach.

1 MR. WINNER: I'm getting a different answer this time.  
2 THE WITNESS: I don't know --  
3 MR. WINNER: Which is really --  
4 THE WITNESS: I'm a radiologist. But I can't --  
5 THE COURT: Please approach, Mr. Winner.  
6 THE WITNESS: -- put the findings in context --  
7 THE COURT: Hang on.  
8 [Sidebar begins at 12:55 p.m.]  
9 MR. PRINCE: He's asked the question five times.  
10 THE COURT: Well, I know. I was -- I've been waiting for an  
11 asked and answered, because it has been asked and answered 15 times,  
12 although this last time he gave a different answer.  
13 MR. WINNER: Yeah.  
14 MR. PRINCE: He's asked and answered it five times, Judge.  
15 THE COURT: I know. But why is he changing it now?  
16 MR. PRINCE: He's not. He's just adding more context,  
17 because he keeps asking the same question.  
18 THE COURT: It sounds like he's changed it. I'm going to let  
19 you ask it one more time. Although, follow-up on what he's already said,  
20 because he's already --  
21 MR. WINNER: Okay.  
22 THE COURT: He's changed it. But then we're done with this.  
23 Please.  
24 [Sidebar ends at 12:55 p.m.]  
25 BY MR. WINNER:

1 Q I'll withdraw the question. I think my question may have  
2 been unintentionally confusing. We can agree that, based on what we  
3 know, what you know, what the medical community knows, most disc  
4 protrusions, most disc herniations, most disc bulges are benign or  
5 asymptomatic?

6 A Not true. Herniations are symptomatic.

7 Q Okay. Did you see any herniations in this particular patient?

8 A The report, you said, said a six millimeter disc extrusion.

9 Q Oh, I'm sorry. In the cervical spine, we found a protrusion of  
10 2 to 3 millimeters.

11 A Yeah. That has to be -- you have to look at what level that  
12 was and what nerve root would be involved at that level and whether or  
13 not an EMG was done or whether the doctor saw objective signs of  
14 muscle weakness, or paresthesia, or abnormal sensations along that  
15 nerve distribution.

16 Q In this study, you did not see any central spinal canal  
17 stenosis nor significant neural foraminal --

18 A Encroachment.

19 Q -- encroachment at the C6-7 levels, correct?

20 A That's correct.

21 Q Okay. Would you agree, to the extent there was a little bulge  
22 found at C6-7, it was on the right side?

23 A If I said it, yes.

24 Q No, you didn't say that.

25 MR. WINNER: No further questions. Thank you.

1 THE COURT: Mr. Prince.

2 MR. PRINCE: If we could have control on our side, please.

3 MR. WINNER: Did you say we need to approach?

4 MR. PRINCE: No. I said --

5 MR. WINNER: Oh.

6 MR. PRINCE: -- we need control on our side, so we can use  
7 the monitor.

8 THE COURT: I wondered what that meant.

9 MR. PRINCE: We need to be able to use the monitor.

10 THE COURT: It sounded --

11 Give him control, please.

12 CROSS-EXAMINATION

13 BY MR. PRINCE:

14 Q Doctor, thanks for being here this afternoon. Appreciate your  
15 time. I never met you before today, correct?

16 A Correct.

17 Q All right. And you typically don't come to court in -- I mean  
18 in your role as a radiologist and come in testify in cases, right?

19 A I've been in court three times.

20 Q Right. In the entirety of your career?

21 A Yes.

22 Q And I just want to go back a little bit. You said you went to  
23 Vanderbilt University for medical school; is that right?

24 A Correct.

25 Q And then after you completed medical school, did you go on

1 to a residency program?

2 A Yes.

3 Q And just for our jury's benefit -- I think they understand, but  
4 just in case. I mean the first four years of your medical education,  
5 everybody goes through a similar curriculum all around the country,  
6 right?

7 A That's correct.

8 Q And then if you want to specialize in what they call a medical  
9 subspecialty, whether it be orthopedics, neurosurgery, or radiology, then  
10 you go into advanced training in that called a residency.

11 A That's correct.

12 Q And where did you do your residency, Dr. Lewis?

13 A Mount Sinai Medical Center, New York City, New York.

14 Q And how many years was your residency?

15 A Four years.

16 Q Are you board certified?

17 A Yes.

18 Q How long have you been a board certified radiologist?

19 A Since 1995.

20 Q All right. And you indicated -- how long have you been  
21 practicing in the state of Nevada, Dr. Lewis?

22 A 25 years.

23 Q 25 years. And what types of imaging do you review on a  
24 day-to-day, month -- week-to-week, month-to-month?

25 A I read everything.

1 Q When you say everything, what does that mean? Everything  
2 head to toe?

3 A Head to toe. Interventional -- I was the interventional  
4 radiologist at Lake Mead Hospital for 10 years in the 2000s. I did a  
5 fellowship in cross-sectional imaging/ultrasound. I did a fellowship in  
6 nuclear medicine.

7 Q What are -- tell us about that fellowship training.

8 A So, basically, I did a year of fellowship training in nuclear  
9 medicine between my internship and after medical school, and my  
10 radiology residency. So I'm very fluent in reading PET scans, and all  
11 sorts of bone scans, and cardiac scans. You name it. And my fellowship  
12 in cross-sectional imaging/ultrasound made me an expert in ultrasound.  
13 I can see a study from across the room and know exactly what it is.

14 Q Right. And how long have you been reviewing images of  
15 the -- and specifically, MRI images of the spine? How long have you  
16 been doing that?

17 A For 25 years.

18 Q How many images -- MRI images, specifically, since we're  
19 talking about that primarily, of the spine do you think you've reviewed  
20 over the course of the years?

21 A God only knows.

22 Q Thousands?

23 A Many, many thousands.

24 Q All right.

25 A I'm reading 50 a day.



1 Q You read 50 --  
2 A Right now, I --  
3 Q Do you read 50 images of the spine a day?  
4 A 50 MRIs a day.  
5 Q Of the spine?  
6 A And they're not just personal injury.  
7 Q Right. So I want to talk about -- you said you ready for 150  
8 facilities.  
9 A Correct.  
10 Q Are you an independent radiologist?  
11 A I work with a partner, Dr. Dean Yarbrow, Y-A-R-B-R-O.  
12 Q And who do you and Dr. Yarbrow read for? Tell us about how  
13 this works.  
14 A Okay. So at this point in my career, I work at home. I have  
15 the luxury of being able to sit in front of a monitor all day and night and  
16 read studies at a reasonable price.  
17 Q Of course.  
18 A And I -- that's how I get my experience. You get your  
19 experience by doing not by having fancy degrees behind your name.  
20 Q Right. And so, you now read at home. You read images  
21 from home, right?  
22 A Correct.  
23 Q Do you have all of the computer equipment and technology  
24 necessary for you to read images, including the monitors, at home?  
25 A And they're HIPAA compliant too.

1           Q     Okay. And so, these 150 facilities that you read for -- like  
2 off -- I know, because I was growing up -- I was born and raised in Las  
3 Vegas. I mean for an MRI, you go to Steinberg Diagnostic or Desert  
4 Radiology, where you go to like a fixed location. Are you -- the place,  
5 does it have like -- like let's say a cancer facility, maybe they have their  
6 own imaging equipment. And then they contract with you and Dr.  
7 Yarbro, and you read images.

8           A     Yeah. For example, we read for Kindred hospitals. So we  
9 read all their x-rays and CAT scans. And we're on call all the time to be  
10 able to do that. So we take all 50 percent of the time to cover that all  
11 night long. And for that, we do our own billing.

12          Q     Okay.

13          A     So if they get a chest x-ray, the Kindred hospital will charge  
14 for the technical fee, and we'll charge for the professional fee.

15          Q     For the interpretation?

16          A     For the interpretation. Now other facilities like the two  
17 chiropractic facilities mentioned, we have a contract to read per click. So  
18 if there's a --

19          Q     What does that mean?

20          A     For each study, whether it's a cervical spine, lumbar spine,  
21 thoracic spine, it's for a certain amount of money. So if it's three,  
22 multiply it by three.

23          Q     Okay. So you -- if they want you to review an x-ray or an MRI  
24 that they -- you've agreed upon a set price for -- to do that?

25          A     That's correct.

1 Q And they pay you regardless of outcome of the case, right?

2 A That's correct.

3 Q Okay. So as you sit here today, you are not owed any money  
4 by my clients in this case, right?

5 A Not that I'm aware of.

6 Q Right. And do you also review like -- do primary care  
7 physicians, internal medical physicians, surgeons, chiropractors, pain  
8 management specialists, do they have patients undergo imaging and  
9 have you review those?

10 A Yes.

11 Q Is it a broad cross-section of the community that has you do  
12 this?

13 A Absolutely.

14 Q Including -- it sounds like most --

15 A I can give you a list.

16 Q Right. You said you read for over 150 places. It sounds like  
17 five percent or less is involved in some type of personal injury matter. Is  
18 that fair to say?

19 A That's true. And not only that, some of these -- it sounds like  
20 a large number. You've got to remember that some doctors have two  
21 facilities in town, one in the north and one in the south. So that counts  
22 as two.

23 Q Right. And in this case, has Align Chiropractic ever asked  
24 you to change reports, to document anything in a specific way that you  
25 didn't feel comfortable with and anyway, ever?

1           A     No.

2           Q     You stand by your -- we're going to talk about your reports in  
3 this case. But do you stand by those reports that you've authored in this  
4 case?

5           A     Yes.

6           Q     Okay. Have you ever had a situation where a surgeon maybe  
7 reviewed an MRI and called you on the phone to say, hey, to my eye,  
8 there's something more, let's say, at C4-5, for example, and can you  
9 reread it? Do they ever ask you to reread?

10           A     Yes. And I'm very humbled about that because I'm a  
11 human being, and I miss things. And I make an addendum to my report  
12 when that happens.

13           Q     Right. So just because someone calls you on the phone,  
14 whether it be a chiropractor or a surgeon or otherwise, and wants you to  
15 look at something or change something, that doesn't mean that  
16 something nefarious or fraudulent is going on, does it?

17           A     No. Not at all.

18           Q     In fact, the opposite, right?

19           A     That's right.

20           Q     Correct. Now, I want to talk a second about something  
21 else. I want to talk about measurement. Okay? Do you measure many  
22 things in the body on imaging, so that you can give the clinician,  
23 whoever ordered the study, some idea of what we're talking about,  
24 whether it be a disc issue, whether it be something in the -- say a rotator  
25 cuff, a tendon, or something in the knee, or otherwise?

1                   A   This is the art of medicine. So basically when you see an  
2 abnormal finding, let's say it's a mass, you have to give the  
3 measurements in three dimensions. You have to describe its shape, you  
4 have to describe its contours, you have to describe is it homogenous or  
5 heterogeneous, is there internal calcifications. You have to describe  
6 where it is and how it's affecting the structures around it. When you've  
7 done all that accurately, then you don't have to think about what it is.  
8 You already know what it is.

9                   Q   Okay. Is --

10                  A   And that's your diagnosis.

11                  Q   When you measure things in the body, whether it be a  
12 rotator cuff issue, something in the knee, or even using as an example in  
13 this -- we're talking about in case, a disc abnormality, do you think that's  
14 clinically helpful to the person or to the study to give them an idea of  
15 what they're dealing with?

16                  A   That's all I can do because otherwise it's out of context.  
17 What do you take from the study? I mean, how are -- how is the doctor  
18 supposed to treat the patient using the information that you have on  
19 your study if it's incomplete?

20                  Q   For example, let's say you had a study January 1st, 2018.  
21 You did an MRI of your neck, okay, and you found -- let's say you found a  
22 two- to three-millimeter protrusion say at C4-5 -- and this is my example,  
23 okay -- and they repeated the study May 1st, 2019, and now the person --  
24 they're -- they've now moved to the state of Texas. Now they're living in  
25 Dallas, Texas. And they bring their report in to the doctor and said, hey,

1 Dr. Lewis, I had a three- to four-millimeter disc at C4-5. And now can  
2 they -- can that then be useful to that clinician and that -- and that  
3 radiologist later to say, has it changed, is it bigger, is it smaller? Do you  
4 see what I'm saying?

5 A They depend on that. As a matter of fact, a person's life  
6 is a movie. So having two frames is a lot better than one.

7 Q I mean, when you take an MRI, that's just a snapshot in  
8 time on that day, right?

9 A That's correct. It's a very small window.

10 Q Right. And so then when you do another one -- let's say  
11 you do another one later, an updated one. Then you can use that for  
12 comparison, like what I measured --

13 A It's critical.

14 Q -- a year ago versus what I'm seeing today?

15 A It's critical.

16 Q Even though it's not -- you say it doesn't provide a lot of  
17 context, it does give you some useful information to use about -- in  
18 terms of the pathology of the disc, right?

19 A Yeah. And the best ways the same radiologist who had  
20 the original study reads the study and compares them.

21 Q Right. But let's say -- let's say a family doctor, who's not  
22 an expert in radiology, let's say he has your report and says, there's a 3  
23 to 4 millimeter disc at C4-5 January 1st, 2018, May 1st, 2019 you --  
24 another MRI facility says, now it's a 4 to 5 millimeter disc. He can then  
25 use that information to, hey, there might be a worsening of the

1 condition. I'm going to refer you somewhere now.

2 A Absolutely.

3 Q Does that seem -- that -- that scenario happens in real  
4 medicine, doesn't it?

5 A All the time. As a matter of fact, because I've been doing  
6 this for so many years, I've gotten an idea of the natural history of some  
7 of these disease processes just anecdotally. So -- and I've seen  
8 protrusions become extrusions.

9 Q Right. And that's why you measure and that's why you  
10 comment on what you see specifically, right?

11 A That's correct.

12 Q Just so we're clear, Doctor, don't you agree that a disc  
13 protrusion is a form of disc herniation?

14 A Yes. Disc protrusions and extrusions are forms of disc  
15 herniation.

16 Q Okay. So if someone calls what you call a protrusion,  
17 this -- so we're clear, that is a disc herniation, right?

18 A Absolutely correct by the standards of the American  
19 Board of Neurosurgeon, Radiology, Neurosurgeon, Neuroradiology.

20 Q And in addition, do you continue on with your medical  
21 every year with continuing medical education in your specialty of  
22 radiology?

23 A Yes. I --

24 Q Do you attend meetings and conferences in this area?

25 A I usually do it online with courses and other seminars

1 and stuff like that.

2 Q Right. Do you keep up to date with current medical  
3 literature in the field of radiology?

4 A Absolutely.

5 Q All right. Now, you talked about -- earlier that an MRI by  
6 itself doesn't give you the overall context, right, whether someone has  
7 pain or no pain?

8 A That's absolutely correct.

9 Q Right. Because it's up to the clinician or the treating  
10 physician or surgeon to take what you get, your findings are, and then  
11 correlate that with somebody's symptoms and exam findings --

12 A It's --

13 Q -- and response to other treatment. Is that fair to say?

14 A It's called the SOAP notes; subjective, objective,  
15 assessment, and plan.

16 Q Right.

17 MR. PRINCE: Brandon, put up demonstrative 41, please.

18 BY MR. PRINCE:

19 Q I'm showing a chart here that I've used throughout the  
20 course of the case called, "Clinical Correlation." You tell doctors who  
21 order studies that they need to clinically correlate findings on an MRI,  
22 correct?

23 A That's right. Because I did not examine the patient.

24 Q Right. So when you -- so when you reviewed the MRI  
25 images -- studies in this case, the patient wasn't there in front of you?



1 You did no examination, right?

2 A That's correct.

3 Q In fact, you don't even have an idea of even really why  
4 they're at the chiropractor's office in the first place?

5 A That's correct.

6 Q You don't know all their complaints, their exam findings;  
7 you have no information about that?

8 A That's correct.

9 Q You just -- you just read it how you see it?

10 A That's correct.

11 Q And that's up to the clinician -- the doctors involved in  
12 the care to do this clinical correlation?

13 A That's correct.

14 Q MRI imaging is just one part of that puzzle?

15 A That's correct.

16 Q And so if we look at -- we're specifically going to be  
17 looking at the MRI image of Desire Evans. That's Exhibit 45 --

18 A Yeah.

19 Q -- 155.

20 A Can I give you an example?

21 Q Oh. You can.

22 A Professional athletes have the gold standard. And the  
23 reason I say that is because they perform at a different level than the rest  
24 of us. And they have abnormalities on their image studies of their joints,  
25 of their spine that people in their 90s don't have, people that have way

1 less on their MRIs, and can't even get out of bed. And I wonder how  
2 they can do that. It's amazing. Mind over matter --

3 Q Because it's --

4 A -- what people are capable of.

5 Q I guess your point is everybody is different, right?

6 A Yeah.

7 Q Right.

8 A Their response to pain, their response to disc  
9 protrusions, their response to herniations, yeah.

10 Q Okay.

11 A Yeah.

12 MR. PRINCE: Can I see the binder -- binder one?

13 THE WITNESS: That's why medicine's an art, not a science.

14 BY MR. PRINCE:

15 Q I'm going to hand you some exhibits, so you have a hard  
16 copy just in front of you. I just wanted you to have that available to you  
17 in case you needed to view that.

18 So just so we're clear, I want to -- looking at that -- at 155,  
19 that's your report on November 24th, 2015, right?

20 A Yes.

21 Q Okay. So Align Medical, they have an -- what they own  
22 an MRI machine, correct?

23 A I assume so.

24 Q And so -- or they have access to an MRI machine, a  
25 scanner, right?

1 A Right.

2 Q In order to do that, they have to have a radiologist, like  
3 yourself, contracted to do -- read the studies, correct?

4 A That's correct.

5 Q Right. And that's required by the state of Nevada,  
6 correct?

7 A That's correct.

8 Q All right. And so now you read this study to November  
9 24th, 2015?

10 MR. PRINCE: Brandon, give me the date at the top.

11 BY MR. PRINCE:

12 Q -- correct?

13 A Yes.

14 Q Okay. And all you know is that it's going to be an MRI of  
15 the cervical spine, right?

16 A Correct.

17 Q You don't see the -- you don't see Desire Evans as a  
18 patient? You don't -- right?

19 A That's correct.

20 Q You don't take a history of her or do an exam of any  
21 kind?

22 A That's correct.

23 Q You don't review her medical records or her chart,  
24 correct?

25 A That's correct.

1 Q All right. You just review what you see?

2 A That's correct.

3 Q Is it your -- in fact, isn't the standard of care, Doctor, for a  
4 radiologist -- not just in the state of Nevada, but every state, for that  
5 matter -- if they see an abnormality on an MRI image, to document their  
6 findings?

7 A Yes.

8 Q All right. Is that what you did in this case?

9 A Yes.

10 Q All right. If we look at the --

11 MR. PRINCE: Brandon, go to the -- I want to go to the -- not  
12 the impression part but the other part. The findings. There you go.

13 BY MR. PRINCE:

14 Q All right. So it's fair to say the first three levels, C2-3, C3-  
15 4, and C4-5, completely normal, correct?

16 A That doesn't mean they're not having pain.

17 Q Right. That's -- we're going to get to that in a second.

18 But what you see on the -- there's no radiological evidence of  
19 any abnormality?

20 A That's correct.

21 Q All right. Then on the C5-6, there's a right sided disc  
22 bulge extending one to two millimeters in the posterolateral recess. Do  
23 you see that?

24 A Yes.

25 Q Okay. And that means there's an abnormal shape to that

1 disc, correct?

2 A Correct.

3 Q That's -- even though you say they're common, disc  
4 bulges are anatomically abnormal, correct?

5 A Yes.

6 Q They're not -- by definition, they're not normal?

7 A That's correct.

8 Q And you don't know whether that's causing pain or not,  
9 and that would be up to the physicians involved in the care to clinically  
10 correlate that, right?

11 A Absolutely.

12 Q All right. Let's now -- I want to spend our time on C6-7  
13 where it says,

14 "C6-7 bilateral posterolateral disc protrusion extending two  
15 to three millimeters into the bilateral posterolateral recess of  
16 effacing the bilateral C7 nerve roots."

17 Is the nerve root exiting the C6-7 disc space, is that the C7 nerve root?

18 A That's correct.

19 Q All right. And if someone -- if that nerve is inflamed or  
20 irritated, can -- from -- coming from that disc, can symptoms go down  
21 one or both of the arms?

22 A Absolutely.

23 Q All right. That -- it would be up to the doctor to clinically  
24 correlate that, correct?

25 A That's correct.

1 Q By history, and exam findings, and treatment, correct?

2 A Correct.

3 Q All right. Now, what does it mean to have bilateral  
4 posterolateral disc protrusion? Tell the jury what that means.

5 A So --

6 Q I have a --

7 MR. PRINCE: Do I have my spine model? I don't know.

8 THE WITNESS: I don't --

9 BY MR. PRINCE:

10 Q I have a spine model, if you want to use it here, or you  
11 can just explain -- or just explain --

12 A I can explain --

13 Q -- it -- you can just explain it.

14 A I can explain it.

15 Q Then explain it then.

16 A There's different ways to look at it. You can look at it as  
17 tubes of toothpaste, or tires on your car, or -- there's all -- there's a whole  
18 range of ways to look at it. But --

19 Q What does it mean to go -- be bilateral and  
20 posterolateral? Tell us what that means.

21 A So it's kind of like you have a bulge is a dome and a  
22 protrusion is a hump.

23 Q It's the size of it that -- that makes the difference, right?

24 A It's -- it's the --

25 Q The shape?

1                   A    -- dimension. It's the shape. It's -- a protrusion has to be  
2 less than 90 degree of the circumference of the entire disc or else it's a  
3 bulge generally. And not only that, it has to be in its transverse  
4 dimension larger than in its anteroposterior dimension, because if it's --  
5 if it's less than 90 degrees, and it's larger in the anteroposterior  
6 dimension than it is in the transverse dimension, then it's an extrusion.

7                   Q    Okay. So you're saying there's criteria for disc  
8 protrusions?

9                   A    Yes.

10                  Q    You use those in your practice, right?

11                  A    Yes.

12                  Q    And what does it mean to be posterolateral bilateral?  
13 What does that mean?

14                  A    It means that it's on both sides.

15                  Q    On the right and left do you mean by -- by that?

16                  A    Right and left. And it's touching both -- the C7 nerve  
17 root. And so the patient may have pain going down their arms.

18                  Q    So let's assume -- I don't want you to assume -- that  
19 Desire has pain going down into her arms. Okay? And I want you to --  
20 well, I'm just going to -- if we look at Exhibit 47 -- I'm going to -- we're  
21 going to come back to that.

22                  MR. PRINCE: Brandon, pull up what's 196, which is a note  
23 from Dr. Rosler, who is a pain management physician. Just the chief  
24 complaints.

25                  BY MR. PRINCE:

1                   It says,  
2                   "Headaches, left-sided neck pain, left-sided shoulder pain,  
3                   left-sided periscapular pain, shooting pains down left arm,  
4                   and numbness into the hand."  
5       Do you see that?  
6                   A    Yes.  
7                   Q    Is that a description of pain down the arm and into the  
8       hand and the numbness into the hand, is that consistent with nerve root  
9       irritation at C6-7, which you found on your imaging studies?  
10                  A    Yes, it is.  
11                  MR. WINNER: Sorry. Outside the scope of direct, Your  
12       Honor.  
13                  MR. PRINCE: No. Well, he brought up a lot of topics about  
14       clinical relation, about --  
15                  THE WITNESS: I'm a doctor.  
16                  MR. PRINCE: -- symptoms.  
17                  THE COURT: Approach.  
18                  THE WITNESS: I know my anatomy.  
19                               [Sidebar begins at 1:18 p.m.]  
20                  MR. PRINCE: He opened this door wide open. He --  
21                  THE COURT: What was -- what was your question?  
22                  MR. PRINCE: Is that consistent with that -- was that  
23       description of symptoms consistent with his radiological finding.  
24                  THE COURT: Yeah. Overruled.  
25                  MR. PRINCE: Okay.



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[Sidebar ends at 1:18 p.m.]

BY MR. PRINCE:

Q So is that complaint, is that consistent with your radiological finding?

A Yes, it is.

Q Okay. If we look at Number 198, that is the sensory exam from Mr. Rosler, the same day, I want to ask you a question about this. It says,

"Perception of light touch and pin prick was diminished in the left C7 dermatome. Pain follows left C7 dermatomal distribution."

Do you see that? "Examination Finding."

A Yes.

Q Is that examination finding consistent with your finding of a disc -- bilateral disc protrusion effacing the C7 nerve root on the MRI study?

A Yes.

Q Is this part of the clinical correlation you were talking about; putting things into context?

A Yes.

Q And I want to show you another document, Exhibit 49. 275 is the Bate number. And I want to talk about, first off, the exam -- physical examination finding, this is from a neurosurgeon, Dr. Jeannie Khavkin, dated May 7th, 2016. And I want to direct your attention. It says, "She has decreased sensation to light touch of the left deltoid, left

1 lateral tricep, and down to the forearm." Do you see that?

2 A Yes.

3 Q Is that examination finding consistent with a disc  
4 protrusion at C6-7 that you found on MRI imaging?

5 A Yes.

6 MR. PRINCE: And if we can look at the results part of it,  
7 Brandon. Okay.

8 BY MR. PRINCE:

9 Q Dr. Khavkin read the same -- your -- the films you read.  
10 Okay? And it says,

11 "Direct visualization. An independent interpretation of the  
12 MRI of the cervical spine obtained at the Align Medical MRI  
13 center on November 24, 2015, showed bilateral pain level  
14 disc protrusion at C6-7 level."

15 Is that consistent with your own read?

16 A Yes.

17 Q And it says, "As well as right level disc bulge at C5-6." Is  
18 that consistent with your reading?

19 A Yes.

20 Q Okay. If Dr. Jason Garber, that's a neurosurgeon, found  
21 that the patient has a cervical -- C7 radiculopathy on the left, would that  
22 be consistent with your imaging finding at C6-7?

23 A Yes.

24 Q If Dr. Garber said that he reviewed the film and found a  
25 left paracentral disc protrusion at C6-7, is that consistent with your

1 reading?

2 A Yes.

3 Q Just because you said earlier that people -- it's common  
4 -- well, it's not uncommon for people to have disc bulges, correct?

5 A That's correct.

6 Q And some can be symptomatic even though you  
7 characterize them as a bulge, right, even though they may be common?

8 A I don't know the answer to that question because there's  
9 been no -- been no long-term studies --

10 Q Right.

11 A -- to determine that.

12 Q Well, don't you agree that as part of the clinical  
13 correlation, the onset of symptoms and the type of symptoms and where  
14 they're located, that's an important part of the clinical correlation  
15 process?

16 A Yes, it's very important.

17 Q Because someone could have these imaging findings,  
18 have some kind of traumatic event, and then become symptomatic,  
19 right?

20 A That's my theory on degeneration. If you dismiss  
21 everything as degenerative, then you're missing out on a whole  
22 substance of pathology where trauma in the presence of degeneration  
23 can make -- degenerate -- because you have a weakened state from  
24 degeneration, trauma can make that worse. So by just saying, oh, it's  
25 degenerative --

1 MR. WINNER: Move to strike as nonresponsive, Your Honor.  
2 THE WITNESS: -- and it's not saying that it can be made --  
3 MR. WINNER: Excuse me. I have an objection.  
4 THE WITNESS: -- with trauma --  
5 MR. WINNER: Excuse me. I object.  
6 THE WITNESS: -- you miss the whole point of --  
7 MR. PRINCE: Well, you can't interject in the middle of the --  
8 THE COURT: Doctor --  
9 MR. PRINCE: -- answer. He's interrupting him.  
10 THE COURT: Well, he can object. And let me --  
11 MR. WINNER: I can object if it's nonresponsive. It was not  
12 responsive --  
13 THE COURT: Come forward, please.  
14 MR. WINNER: -- to the question.  
15 THE WITNESS: It wasn't?  
16 [Sidebar begins at 1:23 p.m.]  
17 THE COURT: What -- what's he talking about?  
18 MR. WINNER: He's talking about --  
19 THE COURT: This witness is a lot longer than I thought it  
20 was going to be.  
21 MR. PRINCE: Well, he took 45 minutes. And so he -- he went  
22 into [indiscernible].  
23 THE COURT: About an hour. I know.  
24 MR. PRINCE: He went --  
25 THE COURT: I'm -- I'm timing.

1 MR. PRINCE: Yeah. He went a full hour. So I -- I've had the  
2 witness 20 minutes. So -- I'm almost done though. So I don't know what  
3 the objection is.

4 THE COURT: I don't either.

5 MR. WINNER: The objection is you asked a very simple  
6 question, and he started giving a speech about degenerative disc disease  
7 becoming symptomatic --

8 THE COURT: That's when every expert --

9 MR. WINNER: -- which was not responsive to your question.

10 THE COURT: -- [indiscernible] on the stand, but --

11 MR. PRINCE: Well, he's talking about the [indiscernible] as a  
12 radiologist. That's a different subspecialty, and he talked about it. So --

13 MR. WINNER: It's not responsive to your question.

14 THE COURT: Just ask him --

15 MR. WINNER: I object.

16 THE COURT: -- another question or ask the question that he  
17 responds to so he can respond to it.

18 MR. PRINCE: Okay.

19 [Sidebar ends at 1:24 p.m.]

20 THE COURT: Sustained.

21 BY MR. PRINCE:

22 Q Doctor, do you agree that trauma can cause a disc  
23 protrusion from a motor vehicle collision?

24 A In general, specifically, do we have any MRI crash  
25 dummies to show what the range of -- protrusions don't just come out of

1 -- overnight. I mean --

2 Q Correct.

3 A -- something has to cause it. I mean --

4 Q Okay. And so you would --

5 A -- it can either be a longstanding protrusion that gets  
6 worse slowly over time or it's a longstanding protrusion that can get  
7 acutely worse from acute trauma --

8 Q Right. Does a motor vehicle --

9 A -- or --

10 Q -- can that be acute trauma making a --

11 A Yeah. I mean --

12 Q -- disc protrusion symptomatic?

13 A That's why I don't like the word degenerative change,  
14 because your whole life is a system of microtraumas and your body's  
15 response to that. If you look at it that way, then you can have a better  
16 clue of pathophysiology of disease and how things incidentally work  
17 than confining yourself into a box of, oh, it's degenerative.

18 Q Right. And so when you're talking about a disc  
19 protrusion, I guess it's important to understand a patient's clinical status  
20 immediately before a trauma, not -- and immediately after to determine  
21 if that disc became symptomatic in connection with the traumatic event,  
22 right?

23 A That's right. There -- there's --

24 Q That's part of that overall clinical correlation?

25 A That's right. There's a lot variability in how protrusions

1 present. And remember, the MRI just shows one snapshot in time. So  
2 you don't know what happened before and how long it took to get to that  
3 way. So you don't know was it the acute event, you don't if it's gotten  
4 worse from a -- before because you don't have anything to compare it to.

5 Q Right. So I guess that's why history and exam findings,  
6 those are important to understand when this did come on and how did it  
7 come on? Is it through trauma or is it -- was it something that's been  
8 coming on for days or weeks or months at a time, right?

9 A That's critical.

10 Q Right.

11 A And I can't answer that question.

12 Q Right. Because you require more clinical information,  
13 correct?

14 A That's correct.

15 Q All right. So you can just say, this is what the images  
16 show; it would be up to the clinicians to do a correlation, right?

17 A Yeah.

18 Q So you'd defer to the neurosurgeons and/or pain  
19 managers involved in her care?

20 A That's correct.

21 Q Very good. Now, let me ask you this: Mr. Winner asked  
22 you a question about an MRI that was taken back in 2010. Do you  
23 remember that?

24 MR. PRINCE: 955, Brandon. It's part of Exhibit 81, 955.

25 Okay. Just -- yeah. Okay. Then, Brandon, show the findings.

1 That's all I want.

2 BY MR. PRINCE:

3 Q That's from July 12th, 2010.

4 A Okay.

5 Q At the -- as of July 12th, 2010, according to this  
6 radiologist's reading, there's no abnormality of any kind at any level of  
7 her spine, correct?

8 A That's correct.

9 Q And we know when you read it, there was a disc bulge as  
10 C5-6 on the right side and then a bilateral disc protrusion at C6-7,  
11 correct?

12 A Correct.

13 Q That would be considered an interval change in -- in your  
14 terms, right?

15 A That's correct.

16 Q All right. That could be consistent with trauma or it  
17 could be consistent with something that developed over time?

18 A That's correct. 2002 --

19 Q It would be up to the clinician?

20 A Yeah.

21 Q -- to determine when the set of the symptoms started to  
22 determine if it was traumatic or became symptomatic because it was  
23 there before, and now, subject to trauma, and now the symptoms  
24 started, right?

25 A That's correct.



1                   Q   The starting point of the symptoms are critical to the  
2 analysis; isn't that true?

3                   A   Critical.

4                   Q   That's why patient history is so important in every aspect  
5 in medicine?

6                   A   That's right. And that's why my testimony is limited.

7                   Q   Okay. Now, one other thing before you go. Looking at  
8 40 -- Exhibit 48, 238. This is a selective nerve root block at the left side,  
9 C6-7 nerve root, do you see that?

10                  A   Yes.

11                  Q   And it says the postoperative diagnose -- preoperative pain  
12 was 8 out of 10; post-operative zero out of 10, do you see that?

13                  A   Yes.

14                  Q   If there was a response -- complete elimination of pain and  
15 symptom into the neck and to the arm following this injection, at the left  
16 side C6-7, is that consistent with your finding of a disc protrusion at that  
17 level, in November of 2015?

18                  A   It's actually -

19                         MR. WINNER: Outside the scope -- excuse me -- outside the  
20 scope of direct, and outside the scope of the witness's expertise --

21                         MR. PRINCE: No, it's about --

22                         MR. WINNER: -- which he just told us.

23                         MR. PRINCE: It's about -

24                         THE WITNESS: It's actually proved, and a diagnosis has  
25 officially been established.

1 THE COURT: Overruled.

2 BY MR. PRINCE:

3 Q How is it -- how is -- how's the diagnosis now been officially  
4 established?

5 A Because, the pain went away, in that distribution.

6 Q Which is consistent -

7 A Based on that specific treatment; at that specific level.

8 Q At that --

9 A That establishes a diagnosis.

10 Q Okay. Thank you, doctor, I appreciate your time today.

11 THE COURT: Anything further?

12 MR. WINNER: Yes.

13 REDIRECT EXAMINATION

14 BY MR. WINNER:

15 Q Did you tell me earlier how many -- how many reads you get  
16 a day from Align MRI?

17 A Yeah, it's about five or so.

18 Q And, you said you get 50 MRIs a day, just for personal injury  
19 cases?

20 A No. They're all sorts of -- most of them are from Pueblo  
21 Medical Imaging, which is one of the larger groups in town.  
22 They --

23 Q Well, we can read it back.

24 A They have 20-some radiologists, and they work in four  
25 different hospitals, and --

1 Q We can read it back. Are you saying you did not just testify  
2 in response to Mr. Prince's question, you probably get 50 MRIs a day,  
3 just for personal injury cases, alone?

4 A No, I didn't. That's not what I said.

5 Q You didn't?

6 A No, I did not.

7 Q Okay.

8 A What I said was, I read 50 MRIs a day; some of them are  
9 personal injury, and some of them are not.

10 Q What other personal injury clients do you get referrals from?  
11 MR. PRINCE: Objection. Relevance.

12 A I don't read for personal injury claims, I read for --  
13 THE COURT: Overruled.

14 A -- I read for MRI facilities, and I read -- most of my MRIs are  
15 for a radiology group.

16 Q Okay. You would not consider Align Chiropractor -- Align  
17 MRI, a personnel -- personal injury facility?

18 A I don't know. They never give me histories on any of their  
19 cases; so, I don't know why they're being sent.

20 Q Okay.

21 A And, it's unfortunate for patient care, because, everybody's  
22 in such a hurry, and, if they gave me some more information in each  
23 case, I could be more useful to them.

24 Q Okay.

25 A Especially, if we could mark the area that hurts, or mark the

1 area there's a lump, or an abnormal -- palpable abnormality, then, my  
2 use would be greatly --

3 Q Okay. And, Dr. Lurie in The Neck and Back Clinic of southern  
4 Nevada, and all of their locations, do you consider them a personal  
5 injury clinic?

6 A I wonder sometimes, because, most of their cases seem to  
7 be personal injury.

8 Q But how do you know?

9 A Because, the report says, status post-MVA.

10 Q And, we agree -- well, you did say you are okay with  
11 measurements -- can we agree, based on questions I asked you earlier,  
12 you testified under oath two times in depositions in the last six months,  
13 that you do not like necessarily giving disc bulges in measurements in  
14 personal injury patients, twice.

15 A Disc bulges are very common.

16 Q Okay.

17 A Disc protrusions are a different story. Because, they -- a  
18 bulge is just a dome, and it doesn't usually touch nerve roots. But,  
19 protrusions are humps, like, a tire blow out, and you have a focal area of  
20 the tire that's, like, bulging out before it bursts and extrudes.

21 Q Do you agree that two MRIs are better than one?

22 A Absolutely. Two points determine a line.

23 Q Okay.

24 A If one point -- you can't -- if you're in a two-dimensional  
25 universe, you don't know what three dimensions look like. That's

1 outside your box.

2 Q You did say in your report, there was no nerve root  
3 compression; no nerve root impingement. It just says some nerve root  
4 effacement with the foraminal openings full, correct?

5 A Correct. So, basically, the difference between impingement  
6 and effacement is when the protruded disc touches the nerve, as  
7 opposed to entraps the nerve between two different structures.

8 Q Do you know why Dr. Garber, the Plaintiff's surgeon the  
9 other day, went through your MRI images and said he couldn't visualize  
10 the nerve -- any nerve root encroachment, or any nerve root effacement  
11 on your images?

12 MR. PRINCE: Objection, Your Honor, with regard to that. It  
13 misstates the testimony, and foundation for this witness.

14 THE WITNESS: It'd be nice if Dr. Garber were here with me,  
15 and we could review the MRI together.

16 BY MR. WINNER:

17 Q Okay. You did see it say that two competent radiologists  
18 could look at the pain MRI; one person see bulges and another person  
19 see it as normal?

20 A Yeah.

21 Q Okay.

22 A We're human beings.

23 Q Would it be helpful for you to, you think, to actually see that  
24 2010 MRI; what machine it was shot on, and look at the images yourself?

25 A Yeah. I mean, it's theoretically possible that the protrusion

1 was there in 2010, and it was missed, I don't know. I can't make any  
2 assumption unless I see it myself.

3 Q Okay. Can we agree you've testified at least once, in the last  
4 six months, in fact, in the last couple of months, that a two- to three-  
5 millimeter margin of error in interpreting an MRI is common?

6 A When you have something that's, like, 30 millimeters, a two-  
7 to three-millimeter error --

8 Q Two- to three- millimeters.

9 A -- is not unusual.

10 Q You testified that a two- to three-millimeter margin of error is  
11 common, correct?

12 A When you have something that's four centimeters, yeah,  
13 that's -- that -- that -- I've -- I've seen ranges of how radiologists measure  
14 it --

15 Q Well --

16 A -- based on how much time they spend, and --

17 Q -- I -- doctor, I understand what you're saying, I just want -- I  
18 want to make sure we're not confusing the jury, four centimeters is a lot,  
19 right?

20 A Yeah.

21 Q I'm saying -- you agree that -- you have agreed under oath -

22 A Two and a half centimeters is an inch.

23 Q -- yeah, we have agreed under oath, a two- to three-  
24 millimeter margin of error is common in your readings, correct?

25 A Well, on something the size of a few centimeters, yes.

1 Q Millimeters I'm talking about.

2 A Yeah. You can have an error of two- to three-millimeters on  
3 something the size of three centimeters, yes.

4 Q Okay. And you can have --

5 A I've seen it.

6 Q -- you can have a margin of error of two- to three-millimeters,  
7 specifically -- and you testified to this in the last three months -- you  
8 could have a two- to three-millimeter margin of error in measuring a disc  
9 bulge, correct or protrusion?

10 A No.

11 Q Didn't we just go through this?

12 A Not -- not if something's -- how do you -- okay, if you have a  
13 bulge that's two millimeters, and you have a two- to three-millimeter  
14 error, that means you're seeing ghosts; you're seeing phantoms.

15 Q Yes.

16 A That doesn't make any sense. Why would I say that?

17 Q What's that?

18 A Why would I say that?

19 Q Well, and you did say that.

20 A No, I didn't say that.

21 Q You've said you can see a two-millimeter --

22 MR. PRINCE: Objection. Argumentative, Judge. Asked and  
23 answered, and argumentative.

24 THE WITNESS: I wouldn't have said that.

25 THE COURT: Overruled. The -- I think it's the witness

1 that's --

2 THE WITNESS: Why would I say --

3 BY MR. WINNER:

4 Q But you did say that in the deposition, you can be seeing a  
5 phantom.

6 A -- there's either a protrusion there or there's not. If I say  
7 there's a two- to three-millimeter disc protrusion, and if I were to say  
8 there's a two- to three-millimeter error; that means that I just negated  
9 what I said.

10 Q When you said it under oath before, were you lying?

11 A No. I never said that. It was taken out of context. I couldn't  
12 have said that.

13 Q Would we like to read through it again?

14 A Yeah, I'd be glad to.

15 Q Okay.

16 MR. WINNER: Do we have that?

17 THE WITNESS: It doesn't make any sense.

18 MR. WINNER: And, again, the same exhibits as before, for  
19 Mr. Prince's benefit, it's the three aligned MRIs of the entire  
20 Guadalupe/Guadalupe.

21 [Pause]

22 MR. WINNER: Thornton case, page 15. May I approach,  
23 please, Judge?

24 THE COURT: Yes.

25 MR. WINNER: Let's go through your testimony here.



1 BY MR. WINNER:

2 Q The question you were asked.

3 "Well, when you were asked to provide a measurement, let's  
4 say, to a millimeter, is the margin of error great enough that  
5 there could be a mistake in that measure?

6 Your answer was, "yes. "

7 A Yeah.

8 Q "Have you ever been asked to provide a measurement  
9 to a fraction of a millimeter, like, 3.5 millimeters, for example  
10 -- or, for example, 3.5 millimeters?

11 Your answer: Nobody's ever actually asked me to do that  
12 but when you give a fraction of a millimeter, by definition,  
13 you cannot do that, based on reasonable, statistical models.

14 A Correct.

15 Q Question: Okay. So, that margin of error is bigger than  
16 a tenth of a millimeter?

17 Your answer: Yes.

18 Question: Okay. Your answer, as a matter of fact, if you look  
19 at different radiology reports that describe the same findings,  
20 you'll see ranges of plus or minus, up to two- to three-  
21 millimeters, correct?

22 A Not in this particular case --

23 Q Oh --

24 A -- in general.

25 Q Okay. That's --

1           A     If you -- if you have a mass that's four centimeters, and you  
2 have a two-millimeter difference, you see it all the time, it's called human  
3 error. It's within the range of human error, plus or minus. So, when  
4 you're talking about this protrusion that's two- to three-millimeters,  
5 yeah, it's plus or minus a fraction of a millimeter.

6           Q     How many reports or requests do you think you get a month  
7 from the various neck and back clinics owned by Dr. Lurie?

8           MR. PRINCE: Well, objection. Relevance. Dr. Lurie has no  
9 relevance to this case at all. Judge, he has no participation.

10          THE COURT: Sustained.

11          THE WITNESS: I'd be glad to answer that.

12          MR. PRINCE: No, hang on.

13          THE COURT: Sustained.

14          MR. PRINCE: She sustained it.

15 BY MR. WINNER:

16          Q     Well, the reason I ask is you said you suspect --

17          THE COURT: Approach.

18 BY MR. WINNER:

19          Q     -- that that might be a personal injury clinic?

20          A     It might be.

21          MR. PRINCE: Objection, move to strike, Your Honor.

22          THE COURT: Granted.

23                         [Sidebar begins at 1:41 p.m.]

24          MR. WINNER: I'm sorry for that.

25          THE COURT: I'm moving to -- I'm striking what you just

1 said --

2 MR. WINNER: Oh.

3 THE COURT: -- because I asked you to approach, and you  
4 were commenting -

5 MR. WINNER: I apologize.

6 THE COURT: -- on stuff that you shouldn't be doing.

7 MR. WINNER: I accept it. I apologize.

8 THE COURT: Okay.

9 MR. PRINCE: This isn't the first time -- he's asked this five  
10 times; he's already asked other questions --

11 THE COURT: What -- stop --

12 MR. WINNER: Well, he asked -- he said to Mr. Prince, and I  
13 wrote it down, I get 150 personal injury referrals a month --

14 MR. PRINCE: No.

15 THE COURT: He didn't --

16 MR. WINNER: -- and when I asked him to follow up, he said,  
17 I never said that.

18 MR. PRINCE: He didn't say that, Tom.

19 THE COURT: He didn't say that. What he actually said was  
20 he would use 50 studies a day, not all personal injury.

21 MR. PRINCE: Correct, 150 facilities he reviews for.

22 THE COURT: Yes. He specifically --

23 MR. PRINCE: Yes, specifically.

24 THE COURT: -- downplayed his personal injury contact,  
25 throughout his testimony.

1 MR. PRINCE: I think 5% or less, yes.

2 MR. WINNER: Okay.

3 MR. PRINCE: Yeah, that's wrong.

4 MR. WINNER: And, if he gets five or six a month from --

5 MR. PRINCE: You've already asked and answered that

6 question, three times.

7 MR. WINNER: -- Align Chiropractic, may I ask, he said --

8 MR. PRINCE: You've already asked that question, three

9 times.

10 MR. WINNER: Yes. Yes, I'm not finished. He said he

11 suspects that the back and neck clinic that asked him to measure these in

12 millimeters, is a personal injury clinic. I'm asking how many referrals do

13 you get from them?

14 MR. PRINCE: No, forget that. So, that's irrelevant.

15 THE COURT: All right, he's suspecting that it's -- it's called

16 speculation, it's irrelevant, you've really gone --

17 MR. WINNER: Okay.

18 THE COURT: -- too far. Sustained.

19 MR. PRINCE: Yes, make sure you strike the last comment

20 from him, Judge.

21 THE COURT: I did.

22 MR. WINNER: I will withdraw the last comment.

23 MR. PRINCE: Thank you.

24 [Sidebar ends at 1:42 p.m.]

25 MR. PRINCE: I don't have any other questions, Judge.

1 THE COURT: Thank you.

2 MR. PRINCE: Oh, I'm sorry, I thought Mr. Winner was  
3 finished, sorry.

4 THE COURT: Mr. Winner, are you --

5 MR. WINNER: I'm just looking at my notes, give me a  
6 moment, please.

7 THE COURT: Ladies and gentlemen, do you have your  
8 questions ready, if you have any?

9 UNIDENTIFIED JUROR: Yeah, I got a question.

10 THE COURT: Mr. Winner, nothing further?

11 MR. WINNER: Nothing further at this time, thanks, Judge.

12 THE COURT: Thank you. Ladies and gentlemen.

13 THE BAILIFF: No other questions?

14 MR. WINNER: Oh, I did have -- I did have one more.

15 THE COURT: Go ahead.

16 BY MR. WINNER:

17 Q Doctor, in taking a cervical MRI, how many multiple images  
18 might you shoot, axial and sagittal images?

19 A It depends, it could be anywhere from 60 to 100, or more.

20 Q Can we agree that the angle at which a slice is taken, or an  
21 angle at which a view is taken, can lead to a misreading -- a misleading  
22 read?

23 A Yes, in radiology, you take that into account every day. It's  
24 called volume averaging.

25 Q Okay.

1           A     So, there are intrinsic limitations to an MRI, because it does  
2 not have the spatial resolution that CAT scans have. So, if you have  
3 something that's, like, one- or two-millimeters, or one-millimeter, and  
4 you take thin enough slices, you can't make them even thinner because  
5 you'll get grainy images; you'll get images that you can't really see  
6 what's going on. So, there's a balance there.

7           So, when you have something that small, like, one- or two-  
8 millimeters, you can get an average of that volume before, and an  
9 average of that volume after, and totally miss the finding. You won't see  
10 it.

11          Q     Well --

12          A     It's there but, if you did another MRI, and they did it -- sliced  
13 it a little differently, then you would see it.

14          Q     Well --

15          A     And you might make that mistake that, oh, yeah, that  
16 occurred in the interval. But, you got to be careful, and look at every  
17 image very carefully, to make sure that's not the case.

18          Q     Well, one physician testified the other day, that if you  
19 carefully select and edit out -- if you carefully select in slices that the  
20 radiologist took, and you looked at exactly the wrong slice, there could  
21 appear to be a big bulge at every level, when we know there isn't.

22                Or, you can look at the slice from a different level, and all of the  
23 slices would look -- or all of the levels would look completely different; in  
24 which case, picking out one individual slice, instead of all of the slices  
25 you took, can lead to a misleading interpretation. Would you agree with

1 that?

2 A No.

3 Q No?

4 A No, radiologist are professional. We're all trained in reading  
5 MRIs.

6 Q No, no, no, no, someone else looking at your slices, if he  
7 picked out one slice, to the exclusion of all the others, could he be led to  
8 a misleading conclusion?

9 A Why would he look at just one slice? The goal is to look at all  
10 the different -- three different imaging planes --

11 THE COURT: Can I -- I'm sorry, I don't mean to interrupt but  
12 he's asking a pretty specific question. Could you just answer that?

13 A Well, radiologists don't make diagnoses from one slice.

14 Q Okay. Do you think physicians should make radial diagnoses  
15 from one of your slices, or should they look at them all?

16 A They should look at them all, yeah.

17 Q Thank you.

18 MR. PRINCE: Okay. All right.

19 RECROSS-EXAMINATION

20 BY MR. PRINCE:

21 Q When you establish a finding, when you make a finding on  
22 an MRI image, like you did in this case, it's -- I want you to talk about C6-  
23 7, the disc protrusion. Did you look at both the sagittal, which is the  
24 views from the side, and the axial, which is the top down view, and put  
25 all that data together to come up with your impression?

1           A     Absolutely, that's what a radiologist does.

2           Q     Yes. And, that's how -- neurosurgeons are also trained  
3 similarly how to read MRI imaging, looking at both the side slices, and  
4 the top down -- the sagittal and the axil, which is the top down, and put  
5 that data together to have their own impression, right?

6           A     In my experience, the people that can read imaging studies,  
7 as good as; if not better than, radiologists or surgeons.

8           Q     Like, neurosurgeons?

9           A     Yes.

10          Q     Okay. Very good.

11          A     They're very good at it.

12               MR. PRINCE: Thank you, Judge. Thank you.

13               THE COURT: Now --

14               MR. WINNER: Nothing further. Thank you.

15               THE COURT: Thank you.

16               Jury?

17                               [Sidebar begins at 1:47 p.m.]

18               THE BAILIFF: Just the bottom question, he crossed out all  
19 the other ones.

20               THE COURT: Sorry, guys, I just couldn't take it to seeming a  
21 five-minute answer that didn't answer the question, and I couldn't handle  
22 it anymore. The bottom question only.

23               MR. PRINCE: Oh, yeah.

24               THE COURT: Okay?

25                               [Sidebar ends at 01:47 p.m.]



1 THE COURT: No objection, right, guys?  
2 MR. WINNER: Oh, none, Judge.  
3 THE COURT: Thank you.  
4 In this case specifically, did you review every slice?  
5 THE WITNESS: Yes.  
6 THE COURT: Okay. This witness is through? Any more?  
7 Was that -- anybody have any more to ask as a result of that one  
8 question?  
9 Okay. Thank you very much for your testimony and for  
10 coming down.  
11 THE WITNESS: Sure.  
12 THE COURT: Appreciate it.  
13 THE WITNESS: Thank you.  
14 THE COURT: You're excused.  
15 MR. WINNER: Our next witness is here, George Parra, the  
16 husband.  
17 THE COURT: Okay.  
18 MR. WINNER: So, if we're ready -- I wouldn't mind taking a  
19 two-minute -- just a restroom break.  
20 THE COURT: Do you want a five-minute restroom break?  
21 MR. WINNER: -- I want to use the restroom, thank you.  
22 THE COURT: Okay. Let's do that, let's do a five-minute  
23 restroom break.  
24 During the recess you're admonished not to talk or converse  
25 among yourselves or anyone else on any subject connected to this trial,

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

6 THE BAILIFF: All rise for the exit of the jury.

7 [Outside the presence of the jury.]

8 THE COURT: Let the record reflect we're outside the  
9 presence of the jury.

10 Just quickly, guys, I'm looking at your -- the jury instructions  
11 here, and basically, you agree to the general stocks.

12 MR. PRINCE: Yes.

13 THE COURT: It's everything else you don't agree to, just  
14 pointing that out there but -- and I'll go look it up if I need to -- but, do  
15 you both agree that neither side has to put on evidence of a statute or a  
16 law for the negligence per say aspect?

17 MR. WINNER: Yes.

18 THE COURT: You don't have to?

19 MR. WINNER: Right.

20 MR. PRINCE: What do you mean? I think the facts of the  
21 case determine its application, and kind of a theory of the case, the  
22 inferences will be drawn from the case, or --

23 THE COURT: Well, I mean, my expectation would be that  
24 you would put on somebody from somewhere that knows the rules of  
25 the road --

1 MR. PRINCE: Oh, no, no, no --  
2 THE COURT: -- or an expert --  
3 MR. PRINCE: No.  
4 MR. WINNER: No.  
5 THE COURT: -- or a police officer, or --  
6 MR. PRINCE: No.  
7 MR. WINNER: No.  
8 THE COURT: None of that's required.  
9 MR. PRINCE: Correct.  
10 THE COURT: You guys both can --  
11 MR. PRINCE: If the evidence supports it based on your  
12 listening to the evidence, I agree.  
13 MR. WINNER: In fact, a police officer would not even be  
14 allowed to say it if he were here.  
15 MR. PRINCE: So, and that -- oh, that's exactly my point.  
16 MR. WINNER: Yeah.  
17 MR. PRINCE: So, we go back to the motion on the mistrial  
18 fees, a police officer couldn't even talk about a statutory violation.  
19 MR. HENRIOD: Oh, brother.  
20 THE COURT: Well, isn't negligence per say -- hang on --  
21 negligence per say is violation of a law or a statute, correct?  
22 MR. PRINCE: Yes.  
23 MR. HENRIOD: It's a little bit more complicated but, yes.  
24 MR. PRINCE: Yes.  
25 MR. HENRIOD: And, if the statute is correctly worded, it can

1 be in there. Now, some of these issues are easily resolved. So, for  
2 instance, I think that if they come in -- if theirs come in, then it just needs  
3 to be even-handed --

4 THE COURT: Okay.

5 MR. HENRIOD: And, ours come in. If they all come in, then  
6 I'm okay with theirs.

7 MR. PRINCE: He's talking about something completely  
8 different, Judge, let me tell you how this goes. Number one, you decide,  
9 per instruction, which applies based on the facts of this case. It's not a  
10 question of, well, if my statutes come in; therefore, it's -- it's conditional  
11 that theirs come in. No, no, you have to look at each one individually -

12 THE COURT: I'm just -- I was just talking about in terms of a  
13 legal standard.

14 MR. PRINCE: Oh, no, you don't --

15 THE COURT: Because neither one of you put on any  
16 evidence of that -

17 MR. WINNER: We agree.

18 MR. PRINCE: We --

19 THE COURT: -- and that --

20 MR. PRINCE: We agree to that, Your Honor.

21 THE COURT: -- but you both seem to be saying you can put  
22 it in.

23 MR. PRINCE: Yes.

24 THE COURT: So, that's what I wanted to know.

25 MR. WINNER: Yes.

1 MR. PRINCE: Yes.

2 THE COURT: All right.

3 MR. PRINCE: You have to determine if it's applicable, based  
4 on the facts of the case.

5 THE COURT: All right. Thank you.

6 [Recess at 1:51 p.m., recommencing at 2:01 p.m.]

7 [Outside the presence of the jury.]

8 MR. HENRIOD: And I can wait until Mr. Prince gets back in  
9 the room. Just before you get too far. There are three small caveats in  
10 the agreed upon set, where there is a quibble that are addressed in our  
11 proposed. And these are things that I think can be addressed --

12 THE COURT: Okay.

13 MR. HENRIOD: -- quickly.

14 THE COURT: Okay.

15 [Pause]

16 THE COURT: They're going to have to, or you guys aren't  
17 going to know your instructions until moments before your openings.

18 MR. HENRIOD: Understood.

19 [Pause]

20 THE COURT: Is this a special verdict kind of thing?

21 MR. PRINCE: It's a general verdict form.

22 MR. HENRIOD: I think that the Court needs to give the  
23 Plaintiffs general -- that has those interrogatories on specific amounts in  
24 an apportionment. But then the Court also gives at the same time --

25 MR. PRINCE: A defense verdict form.

1 MR. HENRIOD: Exactly. General defense version.

2 THE COURT: All right. Next time we do this, I'm going to

3 know what I'm doing. Ready? Ready go.

4 MR. PRINCE: Oh, Judge, hang on.

5 THE COURT: Oh.

6 MR. PRINCE: One issue is about that video, the audio.

7 MR. HENRIOD: Uh-huh.

8 MR. PRINCE: Are you going to try to introduce that audio

9 during George's --

10 MR. HENRIOD: Yes.

11 MR. PRINCE: That is a problem, Judge, with all the curse

12 words. If that's him just saying he's frustrated about the car, that's

13 hearsay. I don't -- even though he's in court today, he's not a party, so

14 it's not a party opponent, anything.

15 MR. HENRIOD: He was a party.

16 MR. PRINCE: So he did it hours after the collision at home

17 expression frustration about his car.

18 THE COURT: Okay. So --

19 MR. PRINCE: You've ruled on this before.

20 THE COURT: Well, I ruled on it not coming in through --

21 MR. PRINCE: But how could it come in through him?

22 THE COURT: -- Plaintiff.

23 MR. PRINCE: What does it matter through him, then?

24 THE COURT: Well, it's different issues. I don't know. I'll wait

25 and hear what the hearsay -- you'll say hearsay.

1 MR. PRINCE: Let's deal with it now, so we can deal with it  
2 before, Judge.

3 THE COURT: And they'll say something, and I'll say yes or  
4 no.

5 MR. PRINCE: Let's deal with it right now, so we can rule on it  
6 now, so we know what to do with our direct exam.

7 THE COURT: Okay. Do you have -- anticipate -- what's your  
8 objection?

9 MR. PRINCE: Hearsay.

10 THE COURT: Okay.

11 MR. PRINCE: And Judge, it's inflammatory. It's in the sense  
12 of what does it matter what he thought or felt about the car or the  
13 collision that night. Those statements are purely hearsay. They're only  
14 doing it, because he's using curse word and it sounds negative.

15 THE COURT: Well, I think there's also a certain end of it  
16 that's motive and bias and whatnot. Somebody's going to pay for this  
17 car. Who's going to pay for the damage? I mean, I think there's --

18 MR. PRINCE: But he's not a party to the case.

19 THE COURT: -- side of it.

20 MR. WINNER: He was at the time and it is motive and bias.  
21 We heard evidence that -- well, we heard two pieces of evidence. We  
22 heard that was supposed to be a date night with the husband. It was  
23 not. He testified about that. We heard that they waited around for two  
24 hours to get a police report, even though nobody was injured. We heard  
25 that they went about their regular work or their regular evening going

1 trick or treating and riding on the Ferris wheel. They went back trick or  
2 treating.

3 We discussed the video with the first Plaintiff some time ago.  
4 She identified that was her husband and the video was shot that  
5 evening. We heard evidence that nobody in that car was injured.  
6 Nobody is in that car was injured, until somebody felt symptoms the  
7 next day and that night, the husband is walking around that car angry  
8 and saying somebody's going to pay for this.

9 MR. PRINCE: I didn't [indiscernible].

10 MR. WINNER: Then they go to a lawyer and everybody in  
11 the car gets sent to a chiropractor.

12 MR. PRINCE: Think about that now, Judge, all the attorney-  
13 driven, which you've excluded. They went to a lawyer.

14 MR. HENRIOD: It was not excluded.

15 MR. PRINCE: Judge, their experts -- Dr. Wong, to put a point  
16 on this, he said Desire Evans was hurt and all the treatments she had  
17 was reasonable.

18 THE COURT: I agree.

19 MR. PRINCE: So if that's -- that argument's over with now.

20 THE COURT: I agree.

21 MR. PRINCE: The lawyer stuff is gone. Secondly, statements  
22 about how he's observing the condition of his car by this witness  
23 because there's frustration, somewhere there needs to be a balance of  
24 this. That is nothing -- going to be prejudicial. He's using the F word.  
25 What if he just offends somebody? He wasn't doing this. He's



1 documenting how his car looked.

2           And so now that's somehow -- even assuming that had any  
3 conceivable relevance, number one, it's hearsay. It has no exception, no  
4 exception. Two, even if it was relevant, just the prejudicial aspect of him  
5 saying like the F word and cussing and acting pissed about the car, that's  
6 more prejudicial than probative, that part of it. If he wants to show the  
7 video with no audio, show it.

8           THE COURT: Well, I disagree that using the F bomb -- his car  
9 is trashed. I don't think anybody over there is going to be surprised that  
10 he's dropping F bombs and going -- but I think it's relevant, the part  
11 where he's saying somebody's going to pay for this. I mean --

12           MR. PRINCE: How is it relevant? To what?

13           THE COURT: I just told you to --

14           MR. PRINCE: Somebody needs to pay for it, right.

15           THE COURT: Absolute -- that's why I said --

16           MR. PRINCE: We're here about --

17           THE COURT: -- I don't know why you care, because to me it's  
18 not that big a deal.

19           MR. PRINCE: Honestly, I think Geico did pay for that. I'm  
20 positive they did.

21           THE COURT: All right. Well --

22           MR. PRINCE: Well, ask them. Did Geico pay the property  
23 damage?

24           MR. WINNER: I think property damage was resolved.

25           MR. PRINCE: By GEICO?

1 MR. WINNER: I don't know if it was intercompany arbitration  
2 or GEICO --

3 MR. PRINCE: Did GEICO pay is what I'm asking?

4 MR. WINNER: I understand what you're asking. I believe  
5 property damage was paid. It wasn't pled in this case.

6 MR. PRINCE: No, I'm just asking paid in the prelitigation.

7 THE COURT: Any way, in much of the --

8 MR. PRINCE: You're allowing the audio?

9 THE COURT: Yes. Much in the same way, if there had been  
10 audio of the Plaintiff saying -- her testimony came in I'm sorry, I'm sorry,  
11 I'm so sorry, I'm so sorry.

12 MR. PRINCE: But that's the Defendant.

13 THE COURT: I think it's kind of the same thing.

14 MR. PRINCE: No. He's a witness. He's not a party.

15 THE COURT: But he's testifying.

16 MR. HENRIOD: Well then he shouldn't be in the courtroom  
17 right now.

18 MR. PRINCE: There's no testimony going on.

19 MR. HENRIOD: And he was a party.

20 MR. PRINCE: He is not a party to this case right now. He  
21 wasn't even there. How was he injured? He was not --

22 MR. HENRIOD: I actually still have him on my caption.

23 THE COURT: Well, he's married to a par -- in terms of bias of  
24 all of the witness, he's married to a --

25 MR. PRINCE: Well, that's for certain. That -- I understand

1 that, the relationship, but how does his statements come in? How does  
2 his out of court statements on an audio, how do they come in?

3 THE COURT: Well, they're not --

4 MR. WINNER: It was statements he made --

5 THE COURT: -- offered to prove the truth of the matter  
6 asserted.

7 MR. WINNER: It's not.

8 MR. PRINCE: Then what's the relevance of them?

9 THE COURT: It's state of mind. I think it's potential to bias.

10 MR. PRINCE: To whose bias?

11 THE COURT: To both his bias as well as his wife, Plaintiff.

12 MR. PRINCE: You told me they're not married, and they're  
13 legally not married. I say they're married, because that's how they hold  
14 themselves out, but --

15 THE COURT: Well, I wasn't and then you said they were, so I  
16 was, so what -- to his --

17 MR. PRINCE: I called them married.

18 MR. WINNER: Okay. So we're clear. I'm saying this out of  
19 respect and courtesy. There was a motion that you haven't ruled on yet  
20 about sub rosa video. The husband is in many of those sub rosa videos.  
21 I don't have any particular interest in showing the videos. Depending on  
22 what this witness says during his testimony, it might be necessary to do  
23 that as a courtesy to Mr. Prince and --

24 MR. PRINCE: Wow --

25 MR. WINNER: -- and Mr. Degree, depending on what is said

1 on direct of the husband --

2 MR. PRINCE: Then you need to show it now, Joel.

3 MR. WINNER: -- I may ask to use that. It is not my intention  
4 to do so, but I'm telling you if you don't open that door, I'm dropping it.

5 MR. PRINCE: Well, what would be the issue to open the  
6 door, so we know? I mean --

7 MR. WINNER: What they're able to do together.

8 THE COURT: I'm questioning whether this witness should be  
9 sitting here when this is going on. Can just have him step out into the  
10 anteroom, please.

11 MR. PRINCE: You have show -- you have to preview the  
12 video, Judge, of what you're going to allow.

13 THE COURT: That's my point.

14 MR. PRINCE: That's was the order. That was your order.

15 THE COURT: That's correct. You're not -- you can't -- I don't  
16 think he's going to show the video without me previewing. Is that  
17 correct?

18 MR. WINNER: That's true.

19 MR. PRINCE: I'm trying to figure out what the -- what he's  
20 trying to, what potentially the relevance is, so we can deal with it now.  
21 That's why we deal with these issues in advance --

22 THE COURT: Okay.

23 MR. PRINCE: -- so that we know how to guide our own  
24 exam, what we're doing, which things to stay away from.

25 MR. WINNER: That's why I'm telling you.

1 MR. PRINCE: I don't know what we're talking -- he's talking  
2 about.

3 MR. WINNER: The video shows them spending a lot of time  
4 together. I think in most, if not all of the video, they are spending time  
5 together. They seem to be enjoying themselves. They seem to be  
6 laughing. They seem to be having a nice time. They're going either to a  
7 pawn shop together or McDonald's together. He's going to work with  
8 her. They're spending a lot of time together.

9 THE COURT: When is they --

10 MR. WINNER: If the testimony is --

11 MR. PRINCE: 2018.

12 MR. WINNER: -- I don't see her anymore, and she can't leave  
13 the house, I'm putting that in.

14 THE COURT: When are they taken?

15 MR. WINNER: I don't think that -- and I'm telling you now, if  
16 you open that door, I will. If you don't, I'm dropping it and not offering  
17 it.

18 MR. PRINCE: They were done in 2018.

19 THE COURT: So pre-pregnancy?

20 MR. PRINCE: And surgery, after -- postoperative.

21 MR. WINNER: Post surgery.

22 THE COURT: Okay, post-surgery, pre-pregnancy.

23 MR. WINNER: I'm not trying to start an argument with Mr.  
24 Prince. I'm actually saying if you're not opening this door, I'm dropping  
25 it. I don't intend to offer it. Does that make sense?

1 MR. PRINCE: Yeah.

2 MR. WINNER: Okay.

3 THE COURT: Okay, well --

4 MR. WINNER: I thought I was being courteous.

5 THE COURT: -- I can't rule on what I don't know, but you

6 guys --

7 MR. WINNER: Didn't expect to get yelled at. That's fine.

8 MR. PRINCE: I --

9 THE COURT: Like I said, I can't rule on what I --

10 MR. PRINCE: What hearsay exception does the statements

11 come in under?

12 THE COURT: Which?

13 MR. PRINCE: The -- Mr. Parra's. I guess I'm trying to

14 understand the Court's ruling, so I mean, if I have an alternative

15 argument to that.

16 THE COURT: I just told you. I don't think it's offered for the

17 truth of the matter asserted. I think it's potential bias and motive. And

18 I --

19 MR. PRINCE: Then what's the point of offering it? If it's not

20 offered for the truth of the matter asserted, what would it be relevant

21 towards? I guess, what's --

22 THE COURT: Bias.

23 MR. PRINCE: If it's not offered for the truth of it about

24 someone's going to -- let's assume he says that, someone's going to pay

25 for this. I mean he --

1 THE COURT: I don't -- like I said -- I don't think it's  
2 particularly probative of anything in particular, but I do think it's  
3 somewhat when a hu -- not a husband, but a boyfriend, father of her  
4 children is standing there kind of saying someone's going to pay for this,  
5 someone did this to the car and that kind of thing, I think that that --  
6 there's an argument to say that her testimony can on some level be  
7 impacted by that. For whatever that's worth.

8 MR. PRINCE: Okay.

9 THE COURT: Are we ready now? And don't -- please don't  
10 mention that video, the sub rosa.

11 MR. WINNER: I'm saying I don't intend to offer it --

12 THE COURT: Okay.

13 MR. WINNER: -- unless a door --

14 THE COURT: I'm just telling you if that changes --

15 MR. WINNER: -- is opened. Okay.

16 THE COURT: -- approach. Okay.

17 [Pause]

18 THE BAILIFF: All rise for entry of the jury.

19 [Inside the presence of the jury.]

20 THE COURT: Both sides stipulate to the presence of the jury?  
21 Okay. That's a yes?

22 UNIDENTIFIED SPEAKER: Yes.

23 THE COURT: Thank you. Mr. Degree.

24 MR. DEGREE: Thank you, Your Honor. We're going to call  
25 Jorge Parra-Meza.

1 JORGE PARRA-MEZA, PLAINTIFF'S WITNESS, SWORN

2 THE CLERK: Please state your full name and spell your first  
3 and last name for the record.

4 THE WITNESS: Jorge Umberto Parra-Meza. First name J-O-  
5 R-G-E. Last name P-A-R-R-A hyphen M-E-Z-A.

6 THE CLERK: You may be seated.

7 DIRECT EXAMINATION

8 BY MR. DEGREE:

9 Q Good afternoon, Jorge, how's it going?

10 A It's going great. Yourself?

11 Q Pretty good. You've been here since about noon today?

12 A Or before.

13 Q Okay. For the past part of a couple hours, we've had a doctor  
14 in court here testifying. Where have you been most of this time?

15 A In the room right outside.

16 Q Okay. Why have you not been here in trial for the past  
17 couple weeks?

18 A It's my understanding that there's a court order in place,  
19 because I'm testifying, so I'm not allowed to be in here.

20 Q Okay. How old are you now?

21 A 31.

22 Q Where'd you grow up?

23 A Las Vegas.

24 Q Okay. Moved here from California?

25 A Yes.



1 Q What high school did you attend?  
2 A Desert Pines High School.  
3 Q And how old were you when you moved here to Las Vegas?  
4 A Nine.  
5 Q What brought you out to Las Vegas?  
6 A There was more work and we have family members who  
7 lived out here.  
8 Q Family?  
9 A Yeah.  
10 Q Opportunity?  
11 A Yes.  
12 Q How long have you and Desire been together?  
13 A Ten years.  
14 Q Okay. Ten years. And thinking back to the very beginning of  
15 that relationship, what kind of drew you to Desire?  
16 A For the most part, just her personality. She's always the life  
17 of everything. You know, she's very outgoing, you know. You know, we  
18 like similar stuff, you know. So it was justly her personality.  
19 Q Presently engaged?  
20 A Yes.  
21 Q And we've heard that you have three daughters?  
22 A Yes.  
23 Q And they're names are Mayra, Sienna and Alliyah.  
24 A Correct.  
25 Q Where do they go to school right now?

1           A     Ferron Elementary.

2           Q     We're kind of at that time of year. Did they just finish up?

3     Are they moving on to the next grade next -- in the fall?

4           A     Yes. They're moving on to the next grade. Sienna is actually  
5     going to sixth grade, so --

6           Q     Sixth grade, middle school?

7           A     Yes.

8           Q     Now, I understand May -- or excuse me -- Sienna and Alliyah  
9     are your children from a prior relationship?

10          A     Correct.

11          Q     Have you raised those two girls since your split from that  
12     prior relationship?

13          A     I have.

14          Q     Do you have full custody of the girls?

15          A     I do.

16          Q     Is there biological mother still involved?

17          A     If -- I mean she -- in the last eight months, she's seen them  
18     twice.

19          Q     Okay.

20          A     For -- and only a couple of hours.

21          Q     Okay. Very come and go?

22          A     Yes.

23          Q     Very come and go?

24          A     Yeah.

25          Q     Okay. And Mayra, the two of you had together, you and

1 Desire?

2 A Correct.

3 Q We were pleased to hear that you had a little baby boy  
4 yesterday?

5 A Oh, thank you.

6 Q Right?

7 A Yes.

8 Q Everything go okay with the delivery? Mom and baby doing  
9 well?

10 A Yeah. It went better than expected actually, yes.

11 Q Okay.

12 A So --

13 Q What time was the baby born?

14 A He was born at 4:59 p.m.

15 Q Okay.

16 A Yeah.

17 Q So it was kind of -- she was scheduled to be induced around  
18 8:00?

19 A Well, she was -- see, it's funny because she was -- we were  
20 scheduled to be there at 8:00 because they wanted to get started with it  
21 at 10:00 a.m., but around 4:00 a.m. her water broke at home.

22 Q Okay.

23 A So you know, by the time we got to the hospital around 5:00  
24 a.m. or so she was already dilated. So they said you know what, we're  
25 going to go for the natural birth. Worst case scenario, you know, we'll

1 have a C-section, but it was a natural birth you know, nine pounds four  
2 ounces.

3 Q Okay.

4 A Yeah.

5 Q Congratulations.

6 A Thank you.

7 Q Everything go well then?

8 A Yes.

9 Q Long day for you?

10 A Yeah.

11 Q A little tired?

12 A A little bit.

13 Q That's okay. What do you currently do for a living?

14 A Inbound sales for Cox Communications.

15 Q Okay. How long have you been with Cox?

16 A One year.

17 Q Okay.

18 A This month.

19 Q Prior to working for Cox where did you work?

20 A AT&T.

21 Q And before AT&T you were with?

22 A The Review Journal.

23 Q Okay. And if I remember correctly from your deposition you  
24 were employed by the Review Journal at the time of this collision in  
25 October 2015?

1           A     Correct.

2           Q     Did your time with the Review Journal ever overlap with  
3     Desire's time there at any point?

4           A     Yes.

5           Q     Okay. Tell us a little bit about that? You had a route?

6           A     Yes. So we had a route. We had a little bit of a larger route.  
7     So we were both, you know, sometimes driving the car, you know,  
8     delivering the newspaper together. And then at some point when we  
9     both knew the route pretty well you know; we would deliver the route  
10    separate as well.

11          Q     And so when you took the position with AT&T she'd take  
12    over the route?

13          A     Yes, correct.

14          Q     Okay. And this is actually in 2016 after this collision  
15    occurred?

16          A     Yes.

17          Q     Okay. So you've been together roughly ten years?

18          A     Yes.

19          Q     Okay. Can you tell us a little bit about the early years of the  
20    relationship, say those three to four years prior to this 2015 collision?  
21    What types of things did you enjoy doing? How did you guys spend  
22    your time together?

23          A     Yeah. Well, I mean for the most part like I said you know, we  
24    enjoy similar things. You know, so you know, with the kids you know,  
25    having them involved with just about everything. You know, the driving

1 was something pretty common we would do. Going out to the lake in  
2 the summertime, going out to Mount Charleston. You know, in the  
3 wintertime you know, doing some hiking. You know, she loves  
4 swimming you know, so even though I don't know how to swim, her and  
5 the girls, they do. So we enjoy that very much. Dancing you know as  
6 well.

7 Q Okay. And these are all the kind of things you'd do as a  
8 family, the five of you? Or excuse me, the four of you at that time, right?

9 A Yeah, correct. Well, besides the dancing, but yes.  
10 Everything else, yes.

11 Q Okay. What would you say -- if you were thinking back, what  
12 would you say seemed to make Desire the happiest?

13 A Just anything related to the kids you know.

14 Q Whatever it is?

15 A Yeah. Just about -- you know, just as long as they were  
16 happy you know.

17 Q Okay. If you're working how -- to the extent you know, how  
18 Desire and the kids spend their time doing?

19 A You know, just about you know, she'll help them with their  
20 homework you know, taking them out you know, to the -- you know, to a  
21 park as well. You know, across the street from the house. You know,  
22 there's a -- you got the school, you know, so we live right across the  
23 street from the school. So just take them there you know.

24 Q Is that kind of what the normal day was like?

25 A Yeah. I mean, they're kids. You know, so they don't -- you

1 know, we don't need to take them out. We don't spend money and you  
2 know, so for them you know, playing is great.

3 Q Okay. We're obviously here to talk about a collision that had  
4 occurred in October of 2015. Do you remember that night?

5 A Yes.

6 Q That's a Friday night?

7 A Correct.

8 Q Were you around prior to Desire and the kids leaving the  
9 house that night?

10 A I was home.

11 Q Okay. What do you remember about that night, just before  
12 they'd left the house?

13 A I mean, I remember them all being well. You know, just  
14 being ready to do some trick or treating down at The LINQ. And yeah.

15 Q Okay. You weren't in the car that day when the Defendant  
16 ran into the rear of Desire's car, correct?

17 A Correct.

18 Q Had you ever at any point in time spoken directly with the  
19 Defendant?

20 A No.

21 Q Is -- she's sitting right over here. Is this actually the first day  
22 you've ever even seen her in person?

23 A Not sure who it is, but yes. It would be.

24 Q Okay. Fair enough. You never went to the scene of the  
25 collision that night, correct?

1 A No.

2 Q Okay. This is on a Friday night. Did you have to work the  
3 following Saturday morning?

4 A Yes.

5 Q When was the first time that you saw Desire and the kids  
6 after this collision happened?

7 A When they first got home, 11:00, 12:00 o'clock at night.

8 Q It was late?

9 A Yeah.

10 Q Okay. Did you have the opportunity to speak with Desire and  
11 the kids that night?

12 A Yes.

13 Q Okay. Did they tell you what happened?

14 A Yeah.

15 Q All right. You owned -- at the time did you own the vehicle  
16 that was involved in that collision?

17 A Yes, I did.

18 Q Were you able to observe the damage to the car that night?

19 A I did.

20 Q Were you upset?

21 A Yes.

22 Q Okay.

23 A I mean, I was upset about the car and what had happened,  
24 but you know, overall I mean I was glad that, you know, nothing more  
25 major or serious happened you know, to Desire or the kids.



1 Q Okay. So you're upset with the car, but relieved to some  
2 extent that the kids and Desire weren't more seriously injured that night?

3 A Correct.

4 Q Was the damage to the rear of the vehicle all new from that  
5 October collision?

6 A Yes.

7 Q All right. And there's been some discussion and some  
8 pictures that have been shown earlier that had I guess some black kind  
9 of covers over the rear taillights. Do you remember those?

10 A Yes.

11 Q Did you have those put on?

12 A Yes.

13 Q Okay. How long did you -- prior to this collision how long  
14 had you owned this vehicle?

15 A I'd say a year or two.

16 Q Okay. And so at what point in time did you have those put  
17 on?

18 A Within a few months of me buying the car.

19 Q Okay. Why'd you do it?

20 A Just because I thought it would look -- you know, it would  
21 enhance the look of it.

22 Q Okay. So you had those on for approximately I don't know,  
23 give or take a year and a half prior to this collision?

24 A Yeah, about.

25 Q Do those -- do the rear taillights light up day or night?

1           A     Yes.

2           Q     Okay. You can see blinkers, right blinkers, left blinkers even  
3 at night with those things on?

4           A     Correct.

5           Q     Okay. In the year and a half that you had the vehicle had you  
6 ever had any malfunctions with those rear lights or brake lights,  
7 taillights?

8           A     No.

9           Q     Okay. Had you ever been cited, or ticketed in any way  
10 concerning a problem with those rear lights?

11          A     No.

12               MR. HENRIOD: Objection, Your Honor.

13               MR. DEGREE: I'll move on from that.

14               THE COURT: I'm sorry; what did you say? Can you  
15 approach? I don't think I heard it.

16                         [Sidebar begins at 2:25 p.m.]

17               THE COURT: What did he say? What did you say?

18               MR. DEGREE: I just asked him if at any point in time in the  
19 year and a half that he's had this vehicle if he's every been ticketed, cited  
20 or had any problems with his rear taillights because there's been an  
21 insinuation --

22               THE COURT: What's wrong with that question?

23               MR. HENRIOD: Yes. So basically the idea that there is no  
24 negligence per se because no citation has ever been --

25                         [Indiscernible - parties speaking over each other.]

1 THE COURT: No. I don't think that's what he's saying.

2 MR. HENRIOD: It's not.

3 THE COURT: No.

4 MR. WINNER: There wasn't a ticket the night of the accident  
5 either. We just mistried a case over that.

6 THE COURT: No. But all he's saying is that as far as he  
7 knows the taillights were working.

8 MR. HENRIOD: Yeah. Well, yeah. But what's being used as  
9 evidence of those being compliant is that no citation has ever been  
10 issued for --

11 [Indiscernible - parties speaking over each other.]

12 THE COURT: No. I think it's knowledge. I think it's the fact  
13 that -- it's not having anything to do with whether it was true or not but  
14 whether to his knowledge he has no reason to believe that they weren't  
15 functioning that night.

16 MR. WINNER: I don't have a problem with that question. It's  
17 the ticket question I had a problem with.

18 THE COURT: Because we had so much trouble with the  
19 ticket, I don't think --

20 MR. DEGREE: I'll just say hey --

21 THE COURT: -- it's a --

22 MR. DEGREE: -- have you ever had any problems --

23 THE COURT: -- problem but I don't know. So just take it out  
24 and re-ask it.

25 MR. PRINCE: [Indiscernible] ever been pulled over and

1 [indiscernible].

2 THE COURT: Yeah. Just change it. Like I said --

3 MR. WINNER: Okay.

4 THE COURT: -- just to be careful.

5 [Sidebar ends at 2:26 p.m.]

6 THE COURT: Okay. Overruled, sustained kind of. Just --

7 BY MR. DEGREE:

8 Q I'll just ask one more question --

9 THE COURT: -- change it up. Thank you.

10 BY MR. DEGREE:

11 Q -- about it, Jorge. At any point in time after you had installed  
12 those on the rear taillights had you ever been pulled over at any point in  
13 time and told that you had a problem with those lights?

14 A No.

15 Q That very night there in the first few hours after this collision  
16 did you have an understanding of the extent of her injury or what you  
17 know now?

18 A No.

19 Q So what happened with the remainder of that evening?  
20 Everyone go to bed?

21 A Yes.

22 Q What do you -- did you have to work the next morning?

23 A I did.

24 Q What was your -- you had a delivery route with the RJ at the  
25 time?

1 A Yes.

2 Q What was your typical work shift like, just the hours?

3 A Yeah. I mean, I would say you know, 3:00 a.m. until about  
4 6:00 a.m.

5 Q Okay. So did you have to work the very next morning?

6 A Yes.

7 Q So what is it about -- what do you remember about the very  
8 next morning or the very next day?

9 A Well, I remember the next day you know, me coming home  
10 at 6:00 a.m. you know, 6:30 or give or take. You know, everybody's  
11 sleeping. Me going to bed, waking up around noon or so. And at this  
12 point you know, really you know, talking to Desire about what happened  
13 and everything and just her just complaining about you know, just you  
14 know, her left arm, you know, her left shoulder just bugging her.

15 Q What else? Any other parts of her body that she was  
16 experiencing problems with?

17 A It was mostly the shoulder.

18 Q Did -- and the very next day is a Sunday. Did her -- your  
19 observations of her symptoms, did she appear to be doing better, or  
20 worse or the same the very next day?

21 A It was about the same the next day, yeah. It's all on the left  
22 side.

23 Q Okay. And you know she went to the doctor following the  
24 very next day, the Monday, right?

25 A Correct.

1           Q     Okay. She -- there's already been plenty of testimony that's  
2 been presented. She obviously went onto a little over three months of  
3 chiropractic treatment, correct?

4           A     Correct.

5           Q     Did the chiropractic care that she was receiving over those  
6 three, three and a half months, did that appear to help her?

7           A     I mean, it was temporary relief I would say. You know, give  
8 or take the rest of the day she would feel you know; it was like instant  
9 relief you know. But the next day you know, right back the same, square  
10 one.

11          Q     Okay. So was she getting some benefit from it?

12          A     For the day I would say.

13          Q     How would she feel leaving -- based upon your observations  
14 how would she feel leaving a chiropractic appointment?

15          A     She would seem more energetic.

16          Q     Okay. How would she feel by the time she goes to the next  
17 appointment?

18          A     The same way she walked in you know, which was not very  
19 good.

20          Q     Would you accompany her with -- would you accompany her  
21 to these doctor appointments?

22          A     I would.

23          Q     Okay. How often would you go with her?

24          A     I mean, I would skip some here and there you know, just you  
25 know, life would happen. You know, the kids or you know, an

1 appointment. You know, but I would go for most of them.

2 Q On those days you did go with her, why'd you go with her?

3 A Because she's -- you know, because I live with her. You  
4 know, why wouldn't I support her?

5 Q Okay. And on those days you couldn't, why not?

6 A Because as I said you know, life happens. So there was --  
7 whether there was an appointment or something to do with the kids you  
8 know, I just wouldn't be able to make it.

9 Q How was she doing around the house in those first few  
10 months?

11 A It was a little bit rough I would say.

12 Q How so?

13 A It was rough. You could tell that the pain would get to her  
14 sometimes and it would almost change her demeanor at times I would  
15 say. You know, with me, with the kids. It just seems like every -- she  
16 would get a lot more stressed out. You know, it seemed like she was  
17 you know, going through some sort of depression. So it was getting  
18 hard there.

19 Q Okay. Would she get any -- did she get any long-term lasting  
20 permanent benefit from the chiropractic care?

21 A I would say no.

22 Q Was she taking prescribed medication during that time?

23 A Yes.

24 Q Was the medication helping at all?

25 A It was -- you know, it was okay. It would relieve it for a bit.

1 Q Did you notice any side effects from the medication?

2 A Yeah. She would sleep a lot and she was also gaining  
3 weight.

4 Q What about her mood?

5 A I mean, she would have her mood swings. As I said earlier, it  
6 just seemed like she was going through some sort of depression. You  
7 know, just any little thing you know, her -- you know, she went from  
8 being this lively life of the party you know, woman to you know, now I  
9 just want to sleep. You know, seemed like she would get triggered you  
10 know, with the kids running around and everything. So I would have to  
11 help her pick up a lot of the slack around the house.

12 Q Okay. Do you remember being discharged from chiropractic  
13 care around February 2016?

14 A Yes.

15 Q How would you say she was doing around that time?

16 A She was -- I mean, she was still in pain.

17 Q Even at that time in February of 2016, what would you say  
18 was the most bothersome, the heart of her pain?

19 A I would definitely say her -- the -- her shoulder and arm, but  
20 also it would extend to her shoulders and neck.

21 Q Did your parents help -- have to help out during this time?

22 A Yeah, they would.

23 Q Did you observe it to impact the kids in any way?

24 A Yes.

25 Q How so?



1           A     You know, she's -- how can I put it? She was always all  
2 about the kids. Always all about the kids. Helping them, you know,  
3 playing with them. But at this time you know, with her mood swings she  
4 was just very distant towards the kids. And it seems like she didn't want  
5 to play. You know, she would get aggravated more with them. You  
6 know, so they would come to me a lot and tell me daddy, why is  
7 mommy being mean to us. You know, why -- and I would explain to  
8 them you know, mommy's in pain. Mommy can't be herself right now.  
9 You know, she's going to get better, but that's -- I mean, you know, that  
10 was rough. It was rough.

11           Q     Do you remember her starting treatment with a Dr. Rosler?

12           A     Yes.

13           Q     Do you remember her being recommended for injections?

14           A     Yes.

15           Q     Did you and Desire discuss those procedures and what those  
16 are like? And can you tell us about that?

17           A     Absolutely. I mean, obviously you know, we were going  
18 based on what, you know, the experts suggested. But you know, as with  
19 any procedure you know, there's you know, drawbacks to them. You  
20 know, long-term, you know, effects that could happen. So those were  
21 always things that we would discuss. You know, the what if something  
22 goes wrong.

23           Q     Uh-huh.

24           A     Yeah.

25           Q     Did you watch any videos, or You Tube videos, or check the

1 internet about this stuff?

2 A Yes. And those were the scary ones. Like maybe we  
3 shouldn't be watching this because it just -- you know, just gets you  
4 thinking, you know.

5 Q Okay. Do you have an understanding as to why she chose to  
6 undergo the injections with Dr. Rosler? It was two, one in January and  
7 one in March?

8 A Well, because she wanted to get rid of her pain.

9 Q Did she get some relief --

10 A I would say --

11 Q -- from those?

12 A I would say it was again, temporary relief. You know, I  
13 would say you know, it would last about a week or so.

14 Q Okay. Was she able -- even after the injections and after a  
15 period of time or a few weeks, was she able to go back to being her old  
16 self?

17 A For a couple of days, yes.

18 Q Did the pain return?

19 A Yes.

20 Q After undergoing those two procedures with Dr. Rosler do  
21 you remember her being referred to a spine surgeon for --

22 A Yes.

23 Q -- evaluation?

24 A Yes.

25 Q Dr. Khavkin ring a bell?

1           A     Yes.

2           Q     As a couple when she's referred to Dr. Khavkin who is a  
3 spine surgeon, even before the appointment, before going and being  
4 evaluated by him, what's -- as a couple what's going -- what's the  
5 mindset? What's going on between the two of you leading up to that  
6 appointment?

7           A     Well, I mean, the first thing we think about is oh you know,  
8 this could be great news but at the same time it's a scary time because  
9 we don't know what they're going to recommend, how we would go  
10 about it, you know, what the repercussions could be. So it was a lot of  
11 thinking, a lot of talking back and forth as to what could you know,  
12 happen. You know, good and bad. You know, so kind of try and weigh  
13 both things, you know.

14          Q     Okay. So in May of 2016 she goes, and she's evaluated by  
15 Dr. Khavkin. What do remember Dr. Khavkin recommend for her?

16          A     Neck surgery.

17          Q     So now you've gone to the appointment and she's been  
18 recommended for neck surgery in May 2016. What's going through your  
19 mind at that point and her mind in discussing with her?

20          A     At that point it's you know, we just got -- we just have to  
21 evaluate things. You know, do you want to live you know, with pain like  
22 this you know, for the rest of your life or undergo a procedure that could  
23 potentially you know, help you out. You know, also weighing you know,  
24 the negative that could come from it. You know, where you have to you  
25 know, be limited further on things. You know, what if there's an

1 accident. You know, just everything is just you know, it's too much.

2 Q Is this the debate that's going on between the two of you --

3 A Yeah.

4 Q -- between May and end of June of --

5 A Yes.

6 Q -- 2016?

7 A Correct.

8 Q Okay. Was it weighing at that point heavily on both of you?

9 A It was.

10 Q During the time that the two of you are considering whether  
11 or not to proceed with this surgery and all the risks and potential  
12 complications that go along with it, the two of you were involved in  
13 another motor vehicle collision?

14 A Correct.

15 Q And that's in -- we've heard about it, that's in July of 2016?

16 A Yes.

17 Q And what happened in that collision?

18 A We were rear ended.

19 Q Did Desire take an ambulance from the scene?

20 A She did.

21 Q Why'd she do that?

22 A Well, because she had already been recommended for  
23 surgery. So as a precaution I mean, she just wanted to make sure that  
24 no further damage had occurred.

25 Q All right. Did you go pick her up that day?

1           A     Yes.

2           Q     What kind of pain was she dealing with that day?

3           A     The same as the day before and the day after.

4           Q     Okay. So was she still experiencing the same kind of pain in

5 the day, two, three days later that she was before that collision?

6           A     Correct.

7           Q     Do you remember going -- her then going to see Dr. Garber,

8 a second spine surgeon?

9           A     Yes.

10          Q     What was that for?

11          A     I believe that was for a reevaluation.

12          Q     Second opinion?

13          A     Yeah. Second opinion.

14          Q     What did Dr. Garber recommend for Desire?

15          A     A neck surgery.

16          Q     Okay. Now to your understanding was that similar kind of

17 surgery as what Dr. Khavkin had recommended?

18          A     Yes.

19          Q     After you get a second opinion for the surgery, did that ease

20 you guy's concerns in any way?

21          A     No, because, you know, mistakes happen, you know.

22          Q     She ultimately underwent the neck surgery with Dr. Garber?

23          A     Yes.

24          Q     Where was that performed?

25          A     That was performed at Valley Hospital.

1 Q What do you remember about that day?

2 A I just remember, you know, us working up in the morning,  
3 you know, me having breakfast. Her, not so much, you know, just  
4 because she couldn't eat. And going down to the hospital. You know,  
5 just -- me just trying to lighten the mood for her. And right before her,  
6 you know, being called in there, you know, her just breaking down, you  
7 know, you know, wanting me to be there. But, you know, having to  
8 explain to her, you know, that, you know, we -- we can't. You know, we  
9 have to go back there, you know, everything will be okay. You know,  
10 just trying to reassure her.

11 Q Was that tough?

12 A It was.

13 Q Okay. Were you able to see her later that day?

14 A Yeah.

15 Q Tell me about that.

16 A Yeah, I just remember, coming in, just understand that -- that  
17 everything -- everything went okay, according to plan. Just seeing her,  
18 you know, hearing her, you know, her -- her raspy voice. Just, you know,  
19 seeing her in bed. It -- it was -- it was tough. But, you know, I didn't  
20 show no emotion. No, not like I am, anyways, because I didn't want her  
21 to feel, you know, you know, more down than she already was, but --

22 Q What do you mean by raspy voice?

23 A Well, her -- her -- the -- the --the incision was in the front, so it  
24 just seem like -- like maybe it was swollen.

25 Q Okay. Tell us a little bit about the recovery period. That first

1 few weeks following the surgery, did you have to help her out in any  
2 ways, or how -- how are things going for the two of you in that first  
3 month?

4 A I -- it was rough, because you know, I guess this was just  
5 months build up, you know, with, you know, the mood swings and  
6 things like that, you know. With the medicine and everything, but once  
7 she came out of surgery, I mean she -- she -- literally she could do was  
8 rest. You know, she couldn't bend down, couldn't sit down for a long  
9 amount of time. So I would have to help her, you know, with cleaning,  
10 cooking, getting the kids ready, taking them to school, picking them up  
11 from school. I mean, you know, I was basically have to run the  
12 household, you know, while she -- you know, got to rest. So it was hard.

13 Q Did you have to help her get dressed for a period of time?

14 A I have to help her get dressed. I have to help her, you know,  
15 shower, you know, wash her back. You know, help her, you know, clean  
16 the -- you know, the -- the cut, you know, the incision. Yeah, just I mean I  
17 wanted to help her with everything.

18 Q In your opinion, was the surgery successful?

19 A It was.

20 Q Is she still able to obviously stand up?

21 A Yeah.

22 Q Is she able to -- she's obviously able to sit?

23 A Yes.

24 Q Able to walk?

25 A Yes.

1 Q Able to drive?

2 A Yes.

3 Q Able to go about her day -- day to day activities?

4 A Yes.

5 Q Has the surgery made doing all of those things easier for  
6 her?

7 A Yes, it has.

8 Q Has the surgery made all -- doing all of those day to day  
9 things more enjoyable for her?

10 A Yes.

11 Q Is she still experiencing pain in her neck?

12 A I mean, just -- just here and there, you know, but, you know,  
13 nothing compared to what it was, you know, so, you know, for the most  
14 part, I mean -- I mean we're happy with it.

15 Q How is she doing emotionally now?

16 A A lot better.

17 Q How are the kids doing?

18 A They're great.

19 Q Okay. Since the surgery have things gotten better for the  
20 two of you?

21 A Yes, they have.

22 Q In the -- I just have a few more questions to finish up here. In  
23 the three or four years prior to this 2015 collision, did you ever see  
24 Desire suffer neck or back pain like this?

25 A No.



1 Q In the three to four years prior to this 2015 collision, did you  
2 ever see her injure her neck or back of any sort of any traumatic event?

3 A No.

4 Q In the three to four years prior to this collision, to your  
5 knowledge, has she ever sustained any sort of work-related injury to her  
6 neck or back?

7 A No.

8 Q In the three to four years prior to this collision, did you ever  
9 see her take prescription medication for neck or back pain?

10 A No.

11 Q In the three to four years prior to this collision, did you ever  
12 see her in the kind of pain she experienced in this October 30th, 2015  
13 collision?

14 A No.

15 Q Thank you, George.

16 MR. DEGREE: I don't have any further questions. Just one second.

17 BY MR. DEGREE:

18 Q Okay, just a few quick follow-up questions. All right. With  
19 respect to the two times that she received injections from Dr. Rosler, did  
20 she get some relief immediately after those injections?

21 A Immediately. Immediately.

22 Q Okay. And did it last for a period of time?

23 A Yes.

24 Q Okay. Now when you went to see Dr. Khavkin and later Dr.  
25 Garber, now your wife at the time is about 25, 26 years old, right?

1           A     Correct.

2           Q     Okay, did they -- what were some of the risks and concerns  
3 the surgeons expressed to her, about undergoing this procedure at that  
4 age?

5           A     That, you know, she would end up enduring a -- she would  
6 probably have to have another surgery at some point down the road.

7                   MR. WINNER: Hearsay, Your Honor. And already been  
8 covered.

9                   THE COURT: Overruled.

10           BY MR. DEGREE:

11           Q     Is this a conversation and discussion that you've had with  
12 Desire?

13           A     Yes, it is.

14           Q     Was that a big concern for you and Desire, even before  
15 undergoing the surgery?

16           A     It's --

17                   THE COURT: Counsel, I'm sorry. Will you guys just briefly  
18 approach? Sorry.

19                               [Sidebar begins at 2:44 p.m.]

20                   THE COURT: I just want to be sure he's not going to talk  
21 about the --

22                   MR. DEGREE: Yes. Yes, I'm going to -- yes. I just wanted to  
23 know about the emotion -- the emotional impact --

24                   THE COURT: I understand.

25                   MR. DEGREE: -- the consideration.

1 THE COURT: That's fine. I just wanted to be sure that --

2 MR. WINNER: You're not saying two --

3 MR. DEGREE: No.

4 MR. WINNER: Okay.

5 THE COURT: Thank you.

6 [Sidebar ends at 2:44 p.m.]

7 BY MR. DEGREE:

8 Q One last topic here, George. The night of the collision, after  
9 Desire and the kids returned home, and you had the opportunity to look  
10 at the damage, right?

11 A Right.

12 Q Did you take a video on your cell phone of that damage?

13 A I did.

14 Q Okay. Counsel may or may not -- Defense counsel here, may  
15 or may not be showing you that video. Were you upset?

16 A I was.

17 Q Okay. Did you swear?

18 A Yes, I did.

19 Q Were you bothered?

20 A Were, I'm sorry?

21 Q Were you bothered?

22 A I was bothered at the car, yes.

23 Q Okay. Were you wondering at the time who was going to  
24 pay for that?

25 A I did.

1 Q Okay. Sorry. As with respect to when you had that  
2 conversation with Desire concerning that she may need a future surgery  
3 in the future, is that something the two of you still discuss?

4 A It is because, you know, as -- as good as she feels now, we  
5 don't know how long that's going to last. And it's scary knowing that at  
6 some point down the road we're going to be doing the same procedure  
7 again.

8 Q Does that worry you in the future?

9 A It does, because, you know, I mean I'm not surgeon, but, you  
10 know, at a younger age, I would think she would heal faster, but, you  
11 know, after a second surgery, is she going to need a third one, a fourth  
12 one? I mean, I don't know.

13 Q Okay. I don't have any further questions.

14 MR. WINNER: Thank you. May we switch over to here,  
15 please?

16 CROSS-EXAMINATION

17 BY MR. WINNER:

18 Q Mr. Parra, I'm just going to play this video, and I'll ask you if  
19 this is you and this is the video?

20 [A video recording played at 2:48 p.m., ending at 2:49 p.m.]

21 Q Was that your voice on the video, sir?

22 A Yes.

23 Q Are those the voices of your children we hear in the  
24 background?

25 A Yes.

1 Q What time of night was this?

2 A 11:00 or 12:00.

3 Q 11:00 or 12:00 at night?

4 A Yeah, whenever they got home.

5 Q How old were your kids at that time?

6 A This was about 2015 -- about 7 or 8.

7 Q 7 and 8? Had you been told by Desire that all the children

8 were fine? Uninjured?

9 A Yes.

10 Q Had you been told that Desire was fine and uninjured?

11 A Yes.

12 Q And who is Guadalupe to you? Is she your sister in law or

13 sister?

14 A Sister-in-law.

15 Q Okay. And you were told that she was fine and uninjured?

16 A Yes.

17 Q Okay. Did you talk to your wife -- well, did you talk to her

18 while you were at the accident -- while she was at the accident scene?

19 A Yes.

20 Q And she told you that she was fine?

21 A She -- I mean we didn't go into full details about that, but

22 yes, she said me, and the kids are fine.

23 Q Okay. You're the one that did the black out, smoke out

24 covers on the back of that car?

25 A Yes.

1 Q Okay. Did you do that yourself?

2 A Well, I took it to a body shop -- well, not -- an audio shop.

3 Q Some place with aftermarket --

4 A Yes.

5 Q -- things on it? And you think that might have been a year  
6 before this happened?

7 A Give or take.

8 Q Okay. You'd had the car longer than that, and you added the  
9 smoked out taillights later, correct?

10 A Shortly after I bought it, yes.

11 Q Okay. And Desire was involved in this accident on October  
12 30th, 2015?

13 A Yes.

14 Q There was another accident July of -- 10th, I believe, of 2016,  
15 correct?

16 A Correct.

17 Q She was in the same car when that July 10, 2016, car  
18 accident happened, correct?

19 A Yes.

20 Q In both of those accidents, somebody bumped into a car with  
21 those taillights from the rear, correct?

22 A Correct.

23 Q And now you don't have the car anymore?

24 A No.

25 Q You agree the taillights that are not blacked out, or not

1 smoked over, are not aftermarket, are more visible than taillights that are  
2 blacked out?

3 A Well, they're visible.

4 Q Would you agree that when they're not blacked out, when  
5 they're actual Honda taillights that Honda installs, they're more visible to  
6 people behind you?

7 A I mean that's interpretation, I think.

8 Q Okay. Do you think it's safer to have visible taillights, visible  
9 brake lights?

10 A I never received a ticket, so I should be safe enough.

11 Q Well, you've been run into -- run into from behind twice -- or  
12 your wife has, during the short period of time you've had that car.

13 A Okay.

14 Q Do you agree that taillights that are brighter and can be see  
15 more clearly are safer for the traffic behind you?

16 A I mean I could be, yes.

17 Q Okay. So the following morning, the morning after the  
18 accident happened, you said she had some -- she was complaining about  
19 her left shoulder.

20 A Correct.

21 Q Correct. Here? Her front shoulder? On the left?

22 A Left arm, yes.

23 Q Okay. Have you ever seen her deposition testimony in this  
24 case? Or talk to her about whether she struck her shoulder on anything  
25 inside the car?

1 A Can you repeat that?

2 Q Did she ever tell you she struck her shoulder on anything  
3 inside the car?

4 A No.

5 Q You went with her to some chiropractic treatment?

6 A Yes.

7 Q Okay. When this video was shot, that we just looked at,  
8 where you were angry about the car.

9 A Yes.

10 Q That was 11:00 at night, and you had been told everybody  
11 was perfectly fine, everybody was perfectly safe, and everybody was  
12 uninjured, correct?

13 A Correct.

14 Q Okay. You were not in the car at the time?

15 A No.

16 Q Were you pleased to hear that everybody in the car was  
17 uninjured?

18 A I was pleased to know that they weren't seriously injured.

19 Q In fact, nobody had any symptoms or any pain at all at the  
20 time that this video was taken, correct?

21 A Correct.

22 Q Three days later, did you arrange for everybody in your car,  
23 including the three kids sitting in car seats to go to Align Chiropractic?

24 A Correct.

25 Q And you were referred to Align Chiropractic by Attorney Paul



1 Powell?

2 A Correct.

3 Q Did you think it was odd that five people in the car in that  
4 accident all needed to go see a chiropractor? Three of them who were  
5 strapped in car seats.

6 A No.

7 Q You said as time went by, you thought her shoulder and her  
8 arm were the biggest problem for her?

9 A Yes.

10 Q Were you told, or did you understand that an MRI showed  
11 that she had a bruise on her shoulder, and bursitis in her shoulder?

12 A I'm not sure.

13 BY MR. WINNER:

14 Q Have you ever looked at her chiropractic records or talked to  
15 her chiropractor?

16 A Not directly.

17 Q Okay. Did you ever talk to Dr. McCauley, the chiropractor?

18 A Probably.

19 Q Okay. Did Dr. McCauley tell you that she's responding great  
20 to treatment, she's doing really well?

21 A I don't recall.

22 Q Do you know why her chiropractic records would say she's  
23 doing much better since the last visit, she's improving. Doing better  
24 since last visit, she's able to do more activities, she's responding well to  
25 treatment?

1 A Why?

2 Q Do you know why they would say that?

3 A Because maybe she was showing more improvement.

4 Q Okay. Did you tell the jury that you were with her when she  
5 went back to surgery?

6 A Yes.

7 Q Okay. Do you know why Desire testified the other day that  
8 you were not with her when she went back to surgery, and she was all  
9 alone?

10 A Are you talking about for the injections?

11 Q The surgery.

12 A No.

13 Q Did you speak with Dr. Garber about the surgery?

14 A Not directly, but I was there.

15 Q Did you listen to Dr. Garber talk about the surgery?

16 A Yes.

17 Q Did Dr. Garber tell you that this is a very routine surgery?  
18 Professional athletes get it, that Payton Manning got it, Tiger Woods got  
19 it?

20 A I don't watch sports.

21 Q And that the recovery time would be short?

22 A Yes.

23 Q Okay. Did they tell you that's usually a very safe procedure  
24 in his hands?

25 A Yes.

1 Q Did he tell you that she would only require one night, one  
2 overnight stay in the hospital?

3 A I don't recall. I don't recall full details.

4 Q Okay. Did he tell you that she would be back up on her feet  
5 and walking the day after the surgery happened?

6 A I don't know.

7 Q Okay. Was she up and walking within a day after the surgery  
8 happened?

9 A Slow walking, but yes.

10 Q Okay. Do you know how you chose Dr. Garber?

11 A You wondering how I chose him?

12 Q How was Dr. Garber chosen?

13 A He was recommended.

14 Q By?

15 A By her lawyer.

16 Q The car was still drivable after the October 30, 2015 accident,  
17 correct?

18 A Correct.

19 Q I don't mean to -- believe me, I don't mean any disrespect by  
20 asking this question, so believe me -- forgive me, but at various points in  
21 this case, you've been referred to as Desire's boyfriend, at some point,  
22 husband, at another point, we're not really married, but he's kind of my  
23 fiancé, and later, husband. I know the case has been going on for a  
24 couple of years. Do you know why that would be?

25 A I mean, in a court setting, what's the right term? I mean, we

1 live together. We both work. You know, wedding bands, we're engaged.

2 Q Okay.

3 A You know, some people might call it boyfriend, but we're  
4 engaged.

5 Q All right. So I guess what I'm asking is, this accident  
6 happened in 2015, end of 2015, so it's been a couple years ago. Has the  
7 status of your relationship or the way you pose yourself out to others in  
8 a relationship changed since the end of 2015 to now, in 2019? Were you  
9 maybe calling yourselves boyfriend and girlfriend for a while, later,  
10 fiancé, and later, husband and wife?

11 A For the most part, we --

12 Q Over the course of that time period?

13 A For the most part -- for the most part, we refer to each other  
14 as husband and wife.

15 Q Okay. And has that been true ever since then or has that --

16 A Yes.

17 Q -- gradually changed over time?

18 A No, I mean, for the most part, it's always been like that.

19 Q Okay. Okay. And, Mr. Parra, did you intend to go to the  
20 LINQ that night for trick-or-treating?

21 A I don't believe so; no.

22 Q Okay. Your sister-in-law, Ms. Parra, testified that it was  
23 going to be a date night; is that not your recollection?

24 A No.

25 Q Okay. If you wanted to be at the hospital on September 1st,

1 2016, you had extended family, as well, your sister-in-law to look after  
2 your children and her children, correct?

3 A Mom and dad.

4 Q Yeah. Okay. When you went to Align Chiropractic with your  
5 children, would you also go with Guadalupe --

6 MR. WINNER: Well, I guess I shouldn't ask that.

7 BY MR. WINNER:

8 Q You said you accompanied your wife to the chiropractor  
9 sometimes. Did you do that with the children and your sister-in-law, as  
10 well?

11 A Yes.

12 Q Did you go on the same days at the same times?

13 A Well, the kids and Desire did. From time to time, we would  
14 run into each other with Guadalupe, I believe so.

15 Q Did it just happen to be that you went on the same days?

16 A I don't know.

17 Q Okay. Did you know that Guadalupe was also referred to see  
18 a surgeon after this accident?

19 A Yes.

20 Q Did you know Guadalupe was also sent to get a couple of  
21 MRIs after this accident?

22 A Yes.

23 Q Did you know she was also sent to see Dr. Rosler after this  
24 accident?

25 A I don't know.

1 Q Okay. Do you have any understanding as to why Guadalupe  
2 chose not to do -- not to go see the surgeon?

3 A No.

4 Q Okay. Thank you.

5 THE COURT: Mr. Degree?

6 MR. DEGREE: Just a few questions, George.

7 REDIRECT EXAMINATION

8 BY MR. DEGREE:

9 Q Obviously, we showed you this two minute video not long  
10 after Desire returned.

11 MR. PRINCE: Do we need -- we need to [indiscernible] on our  
12 side.

13 MR. WINNER: Oh.

14 THE COURT: What's the matter?

15 MR. DEGREE: We didn't switch sides.

16 THE COURT: Oh.

17 MR. PRINCE: We need to switch our sides.

18 THE COURT: Oh, oh. Gotcha.

19 MR. WINNER: Oh.

20 BY MR. DEGREE:

21 Q So we don't need to play the video again, but you told us,  
22 even when I was asking you questions, that you swore?

23 A Of course.

24 Q We did hear the kids. Were the kids right next to you or  
25 were the kids 10, 15 -- where were the kids at when you were taking that

1 video?

2 A Sidewalk.

3 Q Okay. A little ways away?

4 A Because I'm on the street; yeah.

5 Q Okay. The focus that evening was mostly the car?

6 A I'm sorry?

7 Q The focus mostly that evening was the car?

8 A Well, when I was in the video; yes.

9 Q Okay. The next morning or the next day after you got home

10 from work, did the focus and attention shift from the car?

11 A Right away.

12 Q To what?

13 A To Desire and the kids.

14 Q The taillights or the black covers on those taillights, when the

15 brakes are applied or when the blinker is on, whether it's day or night, do

16 those light up like a big, red bulb?

17 A Yes.

18 Q Okay. So they don't affect whether or not people can

19 actually see the lights, right?

20 A Correct.

21 Q Did you, even in your conversations with Desire through this

22 entire time, at any point in time, did you guys ever feel uncomfortable or

23 misled by any of the medical treatment she was being provided, in terms

24 of chiropractor care, in terms of going to Dr. Rosler, the injections, the

25 surgeons? At any point in time, did the two of you feel uncomfortable

1 about the advice you were being given by them?

2 A No.

3 Q Just one more question.

4 MR. DEGREE: Can you pull up that still image?

5 BY MR. DEGREE:

6 Q Counsel asked you several questions about whether or not  
7 you're boyfriend/girlfriend, whether or not you're engaged, and whether  
8 or not you're married, and you told us you hold each out as husband and  
9 wife, right?

10 A Correct.

11 Q Okay. And that's how you treat one another?

12 A Correct.

13 Q Okay. And this is a still image taken from that night, right?

14 A Correct.

15 Q Okay. Is it -- what is that on your hand?

16 A Are you referring as to my engagement ring or, you know, or  
17 my marriage ring?

18 Q Okay. And you were wearing that hours after this closure,  
19 right?

20 A Correct.

21 Q Okay. No further questions.

22 THE COURT: Okay. Mr. Winner?

23 MR. WINNER: Really quickly.

24 RECROSS EXAMINATION

25 BY MR. WINNER:



1           Q     You weren't uncomfortable with any of the advice given by  
2 any of the doctors to Desire?

3           A     Correct.

4           Q     Okay. She was advised, according to the notes, to stop  
5 smoking cigarettes before she went in to get that surgery; you're aware  
6 of that correct?

7           A     Correct.

8           Q     Okay. Was she still smoking half a pack or a pack a day the  
9 day she went in to get the surgery?

10          A     She was trying to slow down, but she was smoking.

11          Q     She was still smoking when she had the surgery?

12          A     I believe so; yes.

13          Q     Okay. The reason I asked the question about the marital  
14 status is I'm not trying to be flip, but do you believe you're the first or  
15 only boyfriend or husband who noticed his girlfriend or spouse behaving  
16 moody and distant from time to time?

17          A     No.

18          Q     And do you think that's because she had a sore neck?

19          A     I don't know.

20          Q     Okay, thanks.

21               MR. PRINCE: Nothing, nothing.

22               MR. DEGREE: No questions after that.

23               THE COURT: Okay. Jurors, anybody have a question?

24                               [Sidebar begins at 3:07 p.m.]

25               THE COURT: I'm glad I had you approach and make sure

1 that he knew not to do that so he could exactly what I told him not to do.

2 MR. PRINCE: Well, he didn't even know we had that  
3 discussion.

4 THE COURT: I know, but I -- I think that that's fair. I'm quite  
5 curious, as well.

6 MR. PRINCE: The hospital when --

7 MR. WINNER: Before we go back, Judge --

8 THE COURT: We have another one.

9 MR. WINNER: Okay. Before we go back, while we're up  
10 here, I would like two minutes with Dr. Schifini to tell him to keep his  
11 answers short. I think these people would like to get out of here. I'm  
12 going to shorten up my question, so if I can have three or four minutes  
13 break before we begin with the next witness --

14 THE COURT: Sure.

15 MR. WINNER: -- if that's okay.

16 THE COURT: I'm always good with that.

17 MR. WINNER: Okay.

18 THE COURT: Did you say there's another question?

19 THE MARSHAL: Yes, there is.

20 THE COURT: Okay.

21 [Pause]

22 THE COURT: It's a question that he's kind of asking me.

23 MR. PRINCE: No. See, that's the problem. When we make it  
24 of record, it gets us this question about we ask the details about Powell.  
25 See, when we start asking questions about following a lawyer and a

1 lawyer's involved, it's a --

2 THE COURT: Okay.

3 MR. PRINCE: You can never get away from that.

4 MR. WINNER: I will propose -- I'll see what you think. I'll  
5 propose that your response to that is you're limited to the evidence you  
6 hear in the case.

7 THE COURT: Or I just don't answer and then he knows.

8 MR. WINNER: Okay. That's fine.

9 THE COURT: Yeah, because I'm not going to ask that one.

10 [Sidebar ends at 3:09 p.m.]

11 THE COURT: Were you at the hospital -- what do you call  
12 her?

13 THE WITNESS: Desire.

14 THE COURT: When Desire had surgery, or did you drop her  
15 off at the hospital?

16 THE WITNESS: Did I drop -- was I -- for which one? The  
17 surgery or the injections?

18 THE COURT: It says surgery. So were you at the hospital  
19 when Desire had surgery or did you drop her off at the hospital, or none  
20 of the above?

21 THE WITNESS: I believe I dropped her off.

22 THE COURT: Anybody else? Any follow-up? Any questions?

23 MR. WINNER: No, thank you.

24 THE COURT: Okay. We're going to take -- before our last  
25 witness, right?

1 MR. PRINCE: Yeah.

2 THE COURT: Can I commit to that? Yeah?

3 MR. WINNER: Yes.

4 THE COURT: Okay. Before our last witness, we're going to  
5 take a five minute break. During the recess, you're admonished not to  
6 talk or converse among yourselves or with anyone else on any subject  
7 connected to this trial, or read, watch, or listen to any report for  
8 commentary on the trial, and any person connected with this trial by any  
9 medium of information, including without limitation to newspaper,  
10 television, the internet and radio, or form or express any opinion on any  
11 subject connected with the trial until the case is finally submitted to you.

12 THE MARSHAL: All rise for the jury.

13 [Outside the presence of the jury]

14 THE COURT: The record reflect we're outside the presence  
15 of the jury?

16 MR. PRINCE: Yes.

17 MR. WINNER: Yes. Mr. Prince and I spoke about --

18 THE COURT: You can take off. I'm sorry. Thanks for your  
19 testimony. I appreciate you coming down.

20 MR. WINNER: Mr. Prince and I spoke about it, you know, our  
21 argument was that we thought the surveillance video was relevant for  
22 the loss of earning capacity in 2018, some other reasons I thought might  
23 be relevant based upon what the Plaintiff and her husband testified to  
24 today. I believe my client would still want it in, but those were the  
25 reasons we opposed it. I think Mr. Prince's argument is stronger now

1 since he has withdrawn those claims. I think my client expects me to ask  
2 that it be viewed, but I understand circumstances are changed, and --

3 MR. PRINCE: They were asking if it pertained to --

4 THE COURT: How long is it?

5 MR. WINNER: It takes --

6 MR. PRINCE: Since there's no basis for it at this point, I  
7 think --

8 THE COURT: Well, I --

9 MR. PRINCE: -- Mr. Winner is saying that --

10 THE COURT: It --

11 MR. PRINCE: -- even [indiscernible] an objection, he's  
12 probably not giving a strong opposition to what I'm saying.

13 THE COURT: Well, I understand. It's just hard for me to have  
14 any credibility to do anything with something I've never seen. That's all.  
15 It's just --

16 MR. WINNER: My client would want it to be seen. I --

17 THE COURT: What's in the video?

18 MR. PRINCE: He understands our objection. I think he  
19 understands our position is probably more merit than his at this point.  
20 There's probably really no --

21 THE COURT: Okay, just tell me what's in it.

22 MR. PRINCE: Just walking around with her and getting out  
23 of the cars.

24 THE COURT: Okay.

25 MR. PRINCE: I mean, yeah.

1 THE COURT: I think based upon the testimony so far, I don't  
2 think he's denying that she can't walk around and get out of the car, so  
3 I'm not feeling any --

4 MR. WINNER: Grant the Plaintiff's motion to exclude?

5 THE COURT: Yes. We'll grant the Plaintiff's motion to  
6 exclude.

7 MR. WINNER: Thank you, Your Honor. Are we still on or are  
8 we off?

9 THE COURT: We're always on if we're in here.

10 MR. WINNER: Okay.

11 THE COURT: Keeps it nice and clean and no one worries  
12 about it. All right.

13 MR. WINNER: Does that work for you?

14 MR. PRINCE: Thank you.

15 [Recess at 3:13 p.m., recommencing at 3:24 p.m.]

16 THE COURT: Okay.

17 MR. PRINCE: Judge, we have an issue we're going to  
18 address quickly. Dr. Schifini is here. The issue is, can we discuss the  
19 MRI images themselves? He did -- it's identified that he reviewed the --  
20 was provided a copy of the MRI imaging, but he does not document, or  
21 in any of his reports -- he did like five or six reports for Desire, does not  
22 document any of his own independent findings on his review of the  
23 imaging.

24 And I would say since he is an expert under 16.1, he is  
25 required to disclose all of his opinions, which these would be an opinion,

1 surely, and certainly an interpretation or impression from reviewing  
2 diagnostic imaging that would be required to be identified. Moreover, if  
3 it was a basis for an opinion, it'd have to be form -- he'd have to state  
4 that as a basis. He does not document like an independent review  
5 interpretation of the images, so therefore, I'm objecting to him  
6 commenting directly on it and discussing in front of this jury the images.

7 THE COURT: Okay.

8 MR. WINNER: Yeah, it has come up during trial. He did  
9 comment in his report that he reviewed the images themselves, he  
10 reviewed Dr. Wong's [phonetic] review of the images, and he agreed  
11 with Dr. Wong and his reasoning.

12 MR. PRINCE: Well, that's not his own independent  
13 interpretation, and he doesn't even comment on -- he was provided with  
14 them, but he does not talk about his own independent review and the  
15 findings. Like everybody else has their own section about what they saw  
16 in the imaging. He does not comment at all in any of his reports about  
17 the direct review of the imaging, and the impressions he formed as a  
18 result of that.

19 So mine is a disclosure issue under Rule 16.1. I'm saying,  
20 does he review them in his practice. I'm not -- I'm saying he's qualified  
21 to do it and he does likely do it, and I know what his frequency level of  
22 doing it is, but more importantly, it's about what's not in his -- contained  
23 in his report, and that is my objection.

24 MR. WINNER: Maybe I don't understand. You don't disagree  
25 he reviewed the films in this case?

1 MR. PRINCE: He doesn't document that he did, in fact,  
2 review them and this is what his findings were. So he might've been  
3 provided them, but he does not document his impression of them. You  
4 can see what --

5 THE COURT: Okay, wait.

6 MR. PRINCE: -- that would be clearly an opinion.

7 THE COURT: He doesn't document his impression, or he  
8 doesn't document that he reviewed them?

9 MR. PRINCE: He doesn't document his impression of them.  
10 He doesn't even document, yes, I direct reviewed them. So I -- that, I  
11 don't know. He doesn't document that either. He comments on that he  
12 was provided a disc with them on there, but he doesn't go to the next  
13 level, I did a direct review, and secondly, here's my impression.

14 THE COURT: Okay. I'm going to overrule. My  
15 understanding is there's a reason that experts sit in and listen to other  
16 people testify, and I think that the doctor so far --

17 MR. PRINCE: He wasn't here for that.

18 THE COURT: -- has done that.

19 MR. PRINCE: He wasn't here for any testimony.

20 THE COURT: He --

21 MR. WINNER: He's been told.

22 THE COURT: He was here from --

23 MR. WINNER: He's been told.

24 MR. PRINCE: No, he wasn't here.

25 THE COURT: -- the last one.



1 MR. PRINCE: He wasn't here.

2 THE COURT: He's been told. I don't know.

3 MR. PRINCE: But Judge, you don't get to do that, but that's  
4 an opinion outside the scope of any of his reports. He's never given that  
5 opinion, and that truly would be an opinion, and what his interpretation  
6 is of a film. That's an opinion. We just went through this with a  
7 radiologist, and everybody had different opinions, and therefore, I want  
8 -- under Rule 6.1, I can identify for you where they say, number one, he  
9 directly reviewed it, and two, what his impressions were of the cervical  
10 imaging. Have him say it. Have him point it to you.

11 THE COURT: I'm assuming they can't, or you wouldn't --

12 MR. PRINCE: No, in a report.

13 THE COURT: -- have raised the issue.

14 MR. PRINCE: In a report. Have them point it out. They can't.

15 THE COURT: I don't necessarily think the witness had to be  
16 present. I'm sure they told him what came up at trial and are going to  
17 ask him to comment on that.

18 MR. PRINCE: Well, then -- no, no. The problem is, remember  
19 the unfairness. Remember, you talked about the adjacent segment with  
20 us on the third level. That was always going to be part of Dr. Khavkin's  
21 impression because he recommended two level, her getting the C4-5.  
22 That, we're not getting into, obviously, because you said that, but more  
23 importantly -- even though he's a treating physician. But as a retained --  
24 especially retained expert, as a unique status, they are required to  
25 document and report all of their opinions and the basis for their

1 opinions. He does not directly -- he does not expressively, that's the  
2 keyword, say I reviewed the imaging, and this was is my impression  
3 from the direct review of the imaging. Under Rule 16.1, in the -- because  
4 that would be an opinion.

5           They can't just say, oh, well this has come up during the  
6 course of the trial, therefore, that would be something -- he was given  
7 that information back in 2018, and that forms the basis of whether we  
8 want to take a deposition, don't want to take a deposition, because we're  
9 not required to. They're required to outline all of their opinions, and so  
10 for those reasons, we're asking you how to identify where he talks about  
11 his impression of the imaging, because it's not there, and that would be  
12 truly an opinion testimony.

13           MR. WINNER: Well, we have one, page two of the April 30,  
14 2018 report. He had been provided with the images. He disagrees with  
15 Dr. Rosler's interpretations because this is a relatively normal MRI.

16           THE COURT: Okay. That's it.

17           MR. PRINCE: No, it isn't. He can't say there's no -- he  
18 doesn't talk about -- he doesn't discuss it.

19           THE COURT: Well, it's right there in his report. I mean --

20           MR. PRINCE: That's not in his report. He said -- he may have  
21 used those words. He doesn't talk about his impression is and what --  
22 and the basis for his opinion.

23           THE COURT: Okay, well I'm going to overrule. I think that's  
24 exactly what he puts there, and even if it hadn't been, in an expert, they  
25 modify his or her opinion based on new information during the course of

1 the trial, to the extent that's it, but if it's right at the core, we don't even  
2 need to get there, so let's just go.

3 MR. WINNER: For the record, also, page 13 of his first report,  
4 he discusses looking at several EDD's from Align MRI. It's my opinion  
5 none of these films demonstrated any evidence of acute traumatic injury  
6 or any -- to any areas of the spine. My opinions in this regard are  
7 consistent with those expressed by another medical expert, Dr. Jeffrey  
8 Wong [phonetic], in his report, or be included. Included the delayed  
9 onset of symptoms, significant proof of conservative care.

10 THE COURT: Okay, and that was provided to you, Mr.  
11 Prince? You're not alleging you didn't have that?

12 MR. PRINCE: I have that, but it's not his impression just  
13 saying I agree with somebody else. It doesn't mean he --

14 THE COURT: Okay.

15 MR. PRINCE: -- that's his own independent findings. I think  
16 either independent, unique findings that we would have to be -- that it  
17 would have to be disclosed separately and specifically.

18 THE COURT: Okay. I'll overrule.

19 MR. PRINCE: And this also goes to -- and moreover, goes to  
20 my argument before -- you haven't addressed it -- the cumulative nature  
21 of all of this.

22 THE COURT: Okay, well I --

23 MR. PRINCE: He's going to give the same opinion about the  
24 soft tissue injury through February, I agree with Dr. Wong. Then there's  
25 no point. He's got nothing independent to say other than that's truly

1 cumulative.

2 THE COURT: You've had three now.

3 MR. PRINCE: What?

4 THE COURT: You've had three now.

5 MR. PRINCE: Who has?

6 THE COURT: You.

7 MR. PRINCE: Well, Judge --

8 THE COURT: The Plaintiff.

9 MR. PRINCE: No, that's a completely different issue. I have,  
10 number one, the burden of proof.

11 THE COURT: I know.

12 MR. PRINCE: I have to establish how the care was relevant,  
13 because they don't agree that care was causally related, so I have to  
14 call --

15 THE COURT: I understand.

16 MR. PRINCE: -- the various people and the various  
17 subspecialties, and I had to call Dr. -- both surgeons, because one  
18 recommended a surgery before --

19 THE COURT: I understand --

20 MR. PRINCE: -- the second --

21 THE COURT: -- but I already ruled on this yesterday, so the  
22 ruling stands. Are we doing anything with respect to the third, fourth  
23 surgery? Are we doing another limine instruction? Are we just letting  
24 that go or are we just --

25 MR. PRINCE: Well, he was talking about that was their fear.

1 Not somebody told him that. That was his own --

2 THE COURT: Wait, I get it's not your fault, but I specifically  
3 said approach, tell me that this witness knows not to mention a third or  
4 fourth surgery and I was told, and I said, please be careful, we've done  
5 this before, and I was assured that wasn't going to happen again. And I  
6 know I keep making orders and people keep -- I don't know.

7 MR. HENRIOD: Yeah. So --

8 THE COURT: But --

9 MR. HENRIOD: -- I don't know that the answer is no, but if  
10 we can --

11 THE COURT: All right.

12 MR. HENRIOD: -- before 5:00 get this witness on --

13 THE COURT: Okay, let's go.

14 MR. HENRIOD: -- we should be good.

15 THE COURT: Just throwing out that I noticed it.

16 [In the presence of the jury.]

17 THE COURT: Parties stipulate to the presence of the jury?

18 MR. PRINCE: Yes.

19 THE COURT: Okay. Mr. Winner?

20 MR. WINNER: Yes.

21 THE COURT: Call your next witness.

22 MR. WINNER: The Defendant calls Dr. Joseph Schifini.

23 JOSEPH SCHIFINI, DEFENDANT'S WITNESS, SWORN

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

1 THE WITNESS: It's Dr. Joseph Schifini. It's J-O-S-E-P-H.  
2 Schifini is S-C-H-I-F-I-N-I.

3 DIRECT EXAMINATION

4 BY MR. WINNER:

5 Q Dr. Schifini, what is your profession, please?

6 A I'm an anesthesiologist specializing in pain management.

7 Q For the jury's benefit, can you tell us exactly what that is?

8 A Sure. Most of the jury is probably familiar with what an  
9 anesthesiologist does. There is some additional training and experience  
10 in pain management which involves placement of spinal needles and  
11 diagnosis and treatment of spinal conditions, orthopedic conditions,  
12 shoulders, knees, that type of thing. So basically, you're diagnosing and  
13 treating painful conditions.

14 Q Okay. The jury heard from a Dr. Hans Jorg Rosler --

15 A Yes.

16 Q -- last week. You're familiar with Rosler and know who he is?

17 A I do know who he is.

18 Q Okay. Do you essentially practice the same kind of medicine  
19 Dr. Rosler does?

20 A Yes.

21 Q Okay. Are you board certified?

22 A Yes. I'm board certified in anesthesiology.

23 Q Okay. Members of any medical society?

24 A Yes, member of the Spine Intervention Society, member of  
25 the North American Spine Society, member of the American Society of

1 Anesthesiologist, the Nevada State Society of Anesthesiologists. I think  
2 that's it.

3 Q Okay. I want to ask you about something particular. Are you  
4 an examiner for the State of Nevada Workers' Compensation system?

5 A Yes. I'm on their list for doing what we call independent  
6 medical evaluations. I can be selected by a patient, an attorney, an  
7 arbitrator, some officer of the State of Nevada, to perform those types of  
8 examinations.

9 Q Okay. Do you independent medical evaluations at the  
10 request of the State of Nevada, and you also do that sometimes request  
11 of attorneys?

12 A Yes.

13 Q Okay. And the State of Nevada, who has entrusted you with  
14 writing reports and reaching opinions?

15 A Yes, that's true.

16 Q Do you take that process seriously?

17 A Yes.

18 Q Okay. Before Mr. Prince asks you, I, myself, have hired you,  
19 and my firm has hired you on a number of occasions in the past, correct?

20 A You have; yes.

21 Q Have you also been hired by, or asked to consult with  
22 plaintiffs on plaintiff cases?

23 A Yes, of course, and I've been on the opposite side of you  
24 many times, as well.

25 Q You've been on the opposite side of me, and I think I met you

1 when you were opposite me in a case. Can you explain your specialty  
2 and practice?

3 A Yeah, so I practice mainly pain management. On a daily  
4 basis, I see patients, treat them, evaluate them. I also evaluate records in  
5 this capacity, kind of a forensic capacity where I don't meet the patient or  
6 I may meet the patient on one occasion by doing what we call an  
7 independent medical evaluation, but in either case, I'm formulating  
8 opinions based on information that I received, whether it's directly from  
9 the patient or gathering that information from a variety of other sources,  
10 whether it be, you know, medical records, imaging studies, MRIs, CAT  
11 scans, x-rays, deposition testimonies, that type of thing.

12 So I gather all that information and then formulate opinions in  
13 reference to the care of the person received, the diagnosis that they  
14 have, the treatment that was reasonable and necessary, and perhaps  
15 related to a particular event. My -- the great majority of my clinical  
16 practice, meaning actually treating patients, has to do with industrial  
17 injuries or workers' compensation injuries. It probably represents,  
18 depending on the week or the month, probably two-thirds to 75 percent  
19 of my daily clinical practice.

20 And so in that setting, I am seeing patients who were injured in  
21 various different ways, whether it's a slip and fall injury or an accident,  
22 whether they lifted something, they fell off a ladder, they got into a car  
23 accident. So all sorts of different types of injuries, all sorts of different  
24 types of body parts involved. So I deal with a lot of different specialties.  
25 I also assist surgeons in helping them to decide whether or not to



1 operate on somebody or selecting the actual spot that they need to focus  
2 on.

3 Q Okay. Obviously, you've treated college athletes,  
4 professional athletes, also?

5 A Yep. Yes.

6 Q Okay.

7 A Some of them Golden Knights.

8 Q Okay. Much of your practice focuses on the cervical and  
9 lumbar spine, just given the kind of work you do?

10 A Yes, I think that's fair.

11 Q Okay. Have you read a number of cervical and lumbar MRIs  
12 and x-rays in your past?

13 A Yeah, on a regular basis. Patients often times will present  
14 with a DVD, or CD, or actual films. There's also websites you can go on,  
15 what they call portals, that you can type in some, you know,  
16 identification information in reference to a patient and look at films that  
17 way, so there's all sorts of varieties of ways, but I do that on a regular  
18 basis.

19 Q Now, as part of your practice, as Rosler described it, you  
20 sometimes provide injections into the cervical spine or injections into the  
21 lumbar spine?

22 A Yes.

23 Q And if and when you're doing that, you want to look at the  
24 actual films, the actual MRIs when doing that, and also look at like a  
25 lighted fluoroscope when you're injecting a needle?

1           A     Yeah. So you're basically looking at the MRI films or the CAT  
2 scans or the x-rays, or whatever you have available to you beforehand.  
3 You're formulating a plan based on your review of those films. Plus,  
4 what we call clinical correlation, so you're actually trying to look at a  
5 picture and trying to predict which symptoms the patient might have, or  
6 you may see the picture later, and you're seeing a patient who has  
7 symptoms, and you're trying to predict what the imaging study, the CAT  
8 scan or the MRI may show.

9           Q     Why do you prefer to look at the films yourself as opposed to  
10 looking at a radiologist's report?

11          A     Well, typically, the radiologist has never met the person.  
12 They don't necessarily understand the symptoms that the person might  
13 have, or they may have the little blurb about, you know, neck pain or  
14 something like that, that's very non-specific. So in looking at the films  
15 myself will allow me to correlate the patient's history, whether that was  
16 provided to me directly or I gathered that from review of various  
17 histories that were provided to other providers.

18           I can then correlate the pictures that we see, the images that we  
19 see with the patient's symptoms, and it needs to make sense, so there  
20 needs to be, you know, kind of a -- almost a handshake between those  
21 two things rather than, you know, forcing to fit something.

22          Q     Does it happen that you will see something on an MRI that a  
23 radiologist missed?

24          A     Occasionally, I will see something that a radiologist missed,  
25 or I will not focus on something that seemed to draw their attention

1 because it doesn't fit with the patient's symptoms. So there are times  
2 where I will call a radiologist and say, could you prepare an addendum,  
3 because when I saw the patient, they complained of this, and when I  
4 looked at the MRI, there was a two millimeter disc bulge in the cervical  
5 spine over on the right side that fits with their symptoms, but you didn't  
6 see it, it's on this particular thing.

7 And they're usually pretty nice about preparing an addendum, but  
8 then there's also things on there that we call incidental findings. Things  
9 that they focus on, they focus their attention on, that really has zero to do  
10 with what the patient is complaining of.

11 Q How often do you see patients?

12 A I see patients most days of the week.

13 Q Okay. To be here today, you have had to clear your calendar  
14 of all your patients?

15 A Yes.

16 Q Okay. Can you explain to the jury why you feel qualified to  
17 offer opinions about imaging studies of the spine and pain management  
18 treatment of the spine?

19 A Sure. Imaging studies are things that you start looking at  
20 when you're in medical school, and you continue on, depending on your  
21 specialty. Sometimes, there are specialties who rely heavily on  
22 radiologists' interpretations of films. In the specialty that I'm in and  
23 spine medicine in general, whether you're a surgeon or a pain  
24 management physician looking at the films yourself, is very important in  
25 correlating what you're hearing from the patient, what you're reading in

1 the notes if you haven't met the patient, and you're trying to kind of put  
2 those two pieces of the puzzle together and making sure that they fit.

3 Q Have you reviewed multiple MRIs of the same body part  
4 from the same patient?

5 A Yes, what we call serial films, where you might get a film,  
6 you know, nine months before or in between a film if somebody has had  
7 surgery, and now you're looking at a film post-operatively, so there's all  
8 sorts of different circumstances that happens.

9 Q Simple question, and this has already been answered  
10 already. Would you agree that one radiologist can review a film and see  
11 some abnormality in it, and another qualified radiologist or physician  
12 can look at the same film and see no abnormality?

13 A Absolutely.

14 Q Is that common?

15 A I don't know that it's common, but it does happen, and, you  
16 know, it has to be explained, and you know, hopefully someone provided  
17 an explanation of why they felt one way or the other when that  
18 happened, but I wouldn't say it's very common, but it's not uncommon.

19 Q Okay. And how many employees do you have in your  
20 practice?

21 A Currently, I have seven.

22 Q Okay. And did you have to reschedule patients to be here?

23 A Yes.

24 Q Did you -- is your staff still working while you're here?

25 A I hope so.

1           Q     Is it fair to say the fees you charged to be here today, the fees  
2 you charge, those fees go towards your practice and the employees that  
3 you need to pay?

4           A     Yes. I still have bills to pay, despite the fact that I'm not there  
5 making money.

6           Q     Okay. How did you become involved in this case?

7           A     I was contacted, or my office was contacted from your office,  
8 I believe sometime in September of 2017 to ask if I had time or desire to  
9 review thousands of pages of records in reference to these cases to  
10 provide opinions following my review.

11          Q     And you were asked to -- you were asked about -- to evaluate  
12 two of the Plaintiffs in this case, Guadeloupe Parra, and Desiree or Desire  
13 Evans-Waiau, correct?

14          A     Yes.

15          Q     Okay. You reviewed all of the medical records that were  
16 available?

17          A     I reviewed the medical records, the imaging studies,  
18 deposition testimonies, accident-related data, video; yes, the entire world  
19 of records.

20          Q     So you actually reviewed every deposition transcript of every  
21 physician, every chiropractor? Every party in this case you reviewed and  
22 studied and made that a part of your evaluation in this case?

23          A     Yes. That became the part of my analysis of the case, is to --  
24 even though I've never met either one of the Plaintiffs, I feel like I know  
25 them, because I've reviewed all the records and deposition testimonies

1 that are expressing opinions regarding the care that they received, the  
2 reasoning behind the care, and -- and the treatment that was provided.  
3 So I have a good idea of the totality of the -- kind of the big picture.

4 Q Well, distinguish what you do as a forensic evaluator of a  
5 person's medical chart. with depositions and imagining studies and x-  
6 ray, with that library of forensic information available to you, distinguish  
7 how that might be different from what a treating doctor was able to see?

8 A So the difference, and I didn't really realize this when I first  
9 started doing forensic work, or just being a treating physician just in  
10 general, but you're oftentimes limited, and I don't mean that in any  
11 disrespectful way to people who are just they treating physicians, but  
12 what I found is that you're kind of limited to what's in your chart. If it's  
13 not in your chart it really doesn't exist. The patient might tell you  
14 something, but you don't have a way to necessarily independently verify  
15 that, because you don't have those records to review.

16 So being a forensic reviewer you're looking at not only the history  
17 that might have been provided to you, but you're looking at the history  
18 that was provided to everybody. You're getting deposition testimony,  
19 sworn testimony, where people are meant to tell the truth. You're  
20 looking at doctor's notes, they're being asked way more specific and kind  
21 of deeper questions than might be reflected in their notes, to kind of get  
22 their thought process or their patterns of what they -- of what they think  
23 about a particular case, or a condition, or a treatment plan, or whatever it  
24 is.

25 So there's a way bigger view, kind of you're getting the bird's eye

1 view versus a, you know, kind of looking through a scope on a rifle.

2 Q In other words, you're able to look for consistencies, or  
3 inconsistencies, or areas of concern, in looking at your forensic  
4 evaluation, more so than say Dr. Khavkin, who testified the other day  
5 that he had limited information available to him in his interaction with a  
6 patient?

7 A Yeah. I mean, I think that's a much more succinct way than I  
8 said it, but yes, I agree with that -- that assessment, it's basically you're  
9 getting a much wider sort of view versus a very narrow focus.

10 Q I'll represent to you that Dr. Khavkin, the other, day, wasn't  
11 sure if he had seen any of the chiropractic records, hadn't seen any of  
12 the pre-accident records. That could conceivably be important to  
13 somebody like you doing a forensic evaluation of an injury claim,  
14 correct?

15 A Absolutely, because I now get to consider all the factors  
16 versus just focusing on the factors that I know of.

17 Q All right. This might sound like common sense, but before  
18 we move on, because you leave your practice to be here today, and I  
19 know there was earlier an unexpected cancellation of a trial dated some  
20 weeks ago, you not only have to leave your practice and cancel patients,  
21 but you have to take some time to prepare for your appearance, going  
22 back and reviewing your notes and your materials, correct?

23 A That's correct.

24 Q And that is paid into your practice, paid into your office, out  
25 of which you pay your employees?

1           A     It is. I'm paid for my time that I spent, you know, doing that  
2 type of analysis --

3           Q     Okay.

4           A     -- and preparation.

5           Q     You're not paid for you time -- you're not paid for your  
6 opinions; you're paid for your time?

7           A     That's correct.

8           Q     Okay. And that is part of your practice's income, and how --  
9 which you pay bills and employees?

10          A     Yes. And my practice's income kind of goes all into one big  
11 pot, no matter what the source of the payment comes from.

12          Q     Okay. Okay. Are payment of your services contingent at all  
13 upon what this jury might award?

14          A     No. I -- I get paid either way, in my opinion, independent. I  
15 just -- I'm here to provide my opinions. It's not up to me to decide who  
16 wins or loses, I'm just here to give my opinions based on what I've  
17 reviewed, and the time I've spent reviewing it.

18          Q     Your income derived from treatment of patients versus  
19 forensic work; can you tell us about that?

20          A     Well, my overall practice, let's say I work five days a week,  
21 probably one to two days a week in probably the past couple of years  
22 has been dedicated to doing forensic work, and so I would estimate  
23 that's probably 20 to 40 percent of my overall practice.

24                 So my income from this type of work is commensurate with  
25 that -- that split, so I would think 20 to 40 percent of it comes from this.



1 The other 60 to 80 percent comes from, you know, my normal job as a  
2 doctor, what you normally think of as a doctor.

3 Q And is that kind of 50/50, one side or the other?

4 A As far as Plaintiff versus Defense, is that --

5 Q Yeah. Yeah.

6 A Yeah. I mean, if I take my entire practice, which includes, like  
7 I said, a lot of the Worker's Compensation, I would say, you know, it's  
8 probably a fairly even split between plaintiff and defense. So it depends  
9 on how you ask the question.

10 Q All right. Are your findings across these cases the same, or  
11 consistent? They're not dependent on whether asked to look at it by a  
12 plaintiff or a defendant?

13 A Well, it's -- I'm not asked to come to a particular conclusion.  
14 I'm asked to review records, and you know, when I'm reviewing those  
15 records I'm kind of independently looking at them and coming to a  
16 conclusion one way or another. And there have been several times  
17 where I've been hired let's say by the Defense, and will call up the  
18 Defense attorney, and I think I've called you a couple of times, and said,  
19 you know, I've reviewed the records, I can't necessarily help you. And  
20 that doesn't always end my involvement in the case, because sometimes  
21 the defense attorney needs information to, or an opinion to provide to  
22 the adjustor at the insurance company --

23 MR. WINNER: Excuse me. Excuse me. Could we approach,  
24 please?

25 THE COURT: Yes.

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[Sidebar begins at 3:52 p.m.]

THE COURT: What do you want to do with it?

MR. WINNER: Uh?

THE COURT: What do you want to do with it?

MR. WINNER: I want to --

MR. PRINCE: What did he have [indiscernible] --

MR. WINNER: -- move to strike it, and ask him -- he knows better, I think he was just nervous.

MR. PRINCE: What did he say?

MR. WINNER: I think he was talking about an adjustor in an insurance company.

MR. PRINCE: But who's the company?

MR. WINNER: Uh?

MR. PRINCE: Did he say anybody at your company?

THE COURT: Uh-huh.

MR. WINNER: No.

MR. PRINCE: Well, no, it's okay. Remember it's all part of the defense, he does defense, and part of the defense, and part of bias. He does the same for insurance companies, it goes to bias.

THE COURT: He was specifically talking about what we said couldn't come in?

MR. WINNER: What was -- what's that?

THE COURT: Insurance and adjustors, and considering insurance --

MR. PRINCE: Oh, no --

1 MR. WINNER: I'm moving to strike that comment. I'm  
2 asking --

3 THE COURT: And granted.

4 MR. WINNER: -- the jury to disregard it.

5 MR. PRINCE: Judge, doing work for insurance is part of  
6 doing work for the defense; that's what he does. So you can't like  
7 exclude that. Evidence of insurance is relevant to anything, other than --  
8 and it could go to bias --

9 THE COURT: Well, the jury instruction says it's not.

10 MR. PRINCE: No, but you --

11 MR. WINNER: Exactly.

12 MR. PRINCE: This goes to bias. This issue goes to bias now.

13 THE COURT: No. Huh-uh.

14 MR. PRINCE: You don't have to consider whether it's for --  
15 no, it's not going to talk about this --

16 THE COURT: That's mistrial kind of stuff, no.

17 MR. PRINCE: It does cut to the statute.

18 MR. WINNER: I'm not asking for a mistrial --

19 THE COURT: I know you're not, it's your witness, but --

20 MR. WINNER: My witness said it, but --

21 THE COURT: -- what I'm saying is, if it had have been your  
22 witness it would potentially be.

23 MR. WINNER: If your witnesses had said it I would asking  
24 for a mistrial.

25 MR. PRINCE: I [indiscernible] I'm looking for something else

1 on my computer, so I didn't hear what he said, honestly. What did he --  
2 what was his exact words?

3 MR. WINNER: He said sometimes --

4 THE COURT: You can't say it -- that's way broader than you  
5 think, so --

6 MR. WINNER: Okay.

7 THE COURT: So let's huddle.

8 MR. PRINCE: What he said, was -- he said, well sometimes I  
9 would get a call from a defense lawyer, and I'll give an opinion he  
10 doesn't like, which answered my question, and he says, because they  
11 want my opinion to get to the adjuster of the insurance company so they  
12 can settle the case.

13 MR. WINNER: Well, I --

14 MR. PRINCE: But he started saying, I don't feel. I think  
15 there's a misperception, that just because of -- in reference to the  
16 insurance, and to the Defense, contacts, because automatically per see.  
17 It's okay, so I understand, do what you have to do, I'm just making my  
18 record --

19 THE COURT: Okay.

20 MR. PRINCE: -- relative to -- it goes to bias.

21 THE COURT: So do you want me to restate the statement, or  
22 are you going to just --

23 MR. WINNER: I would like the curative instruction read. And  
24 if you'll permit me I'm going to approach Dr. Schifini and say, do not  
25 mention insurance again. If Dennis has no objection.

1 THE COURT: Sure go ahead.  
2 MR. PRINCE: I don't care, go ahead.  
3 THE COURT: [Indiscernible] already on that issue?  
4 MR. WINNER: Apologies, and then thank you, Your Honor.  
5 [Counsel confer]  
6 THE COURT: You do realize it's the elephant in the room?  
7 MR. PRINCE: Yes, that's fine.  
8 MR. HENRIOD: Okay. So let's just strike it and move on.  
9 MR. PRINCE: Strike what?  
10 THE COURT: Do you want to say what we're striking --  
11 MR. HENRIOD: Sure. It's the last answer.  
12 [Counsel confer]  
13 MR. HENRIOD: I'll strike the last statement.  
14 THE COURT: Okay.  
15 MR. HENRIOD: And then let's not --  
16 THE COURT: Okay.  
17 MR. HENRIOD: -- re-ring the bell.  
18 THE COURT: All right.  
19 MR. WINNER: I'm going to ask to approach the witness?  
20 [Sidebar ends at 3:54 p.m.]  
21 THE COURT: Uh-huh. Ladies and gentlemen, you'll  
22 disregard the previous statement. Okay.  
23 MR. WINNER: Our apologies, and thank you, Your Honor.  
24 THE COURT: Uh-huh.  
25 BY MR. WINNER:

1           Q     In general, Dr. Schifini, can you describe what you did in this  
2 case?

3           A     Sure. I had the opportunity to review boxes, and boxes of  
4 records, thousands of page of records. Multiple different imagining  
5 studies, x-rays, MRIs, reviewed multiple deposition testimonies of the  
6 Plaintiff's that are involved in this case, and also the various treating  
7 doctors that were involved that reviewed expert reports. I've reviewed  
8 what we call "rebuttal reports" where one person gives an opinion,  
9 another doctor then gives an alternative opinion.

10                     And then the next doctor gives another opinion, and kind of  
11 goes and tells someone, I guess gives up, you know, or we run out of  
12 time, but there's lots of opinions that are given by doctors, that had the  
13 opportunity to review and provide my opinions, my perhaps alternate  
14 opinions about --

15           Q     Okay. Let me ask you about the -- I'm going to go through  
16 this quickly, and I'm going to try not to show you a lot of exhibits, if I can  
17 help it. You went through the treatment notice of Guadeloupe Parra, first  
18 of all?

19           A     Yes.

20           Q     Or Parra-Mendez?

21           A     Yes.

22           Q     Let me ask you, first of all, you did not -- you were not asked  
23 to form, and you didn't form an opinion about whether she was in fact  
24 injured in this accident; do I understand that right?

25           A     That's correct. I did not form any opinions in reference to

1 whether or not she was injured. I simply expressed an opinion that if we  
2 assume injury in this case, the treatment up to a particular point was  
3 reasonable. I did not state that she had an injury as a result of this.  
4 There was no objective evidence, so nothing you can see or touch to  
5 indicate that there was any injury in this particular case.  
6 By giving her the benefit of the doubt I commented on the possible  
7 injuries, if you -- if you assume.

8 Q Yeah. And your report said, if we assumed there was an  
9 injury, then we would have related the following treatment with some  
10 confidence?

11 A That's correct.

12 Q There are reasons to believe that there was no injury,  
13 correct?

14 A Yes.

15 Q Okay. Among those would be, no reported injury at the  
16 scene?

17 A There was no report at the scene, there was no  
18 documentation of any injury for three days after the subject accident.

19 Q Okay. This findings by chiropractor seemed to have been  
20 largely subjective?

21 A I believe chiropractor commented in his deposition testimony  
22 that the only significant findings on physical examination were  
23 decreased range of motion, so, you know, decrease movement of the --  
24 of the spine, but that's also subjective in the sense it's self-limited.  
25 They're saying can you, you know, bend your neck forward and bend

1 your back, and there were some abnormalities there, but those are self-  
2 limited, in the sense that the patient is in control of when they stop or  
3 start.

4 Q Would the fact everybody in the car was sent over to the  
5 chiropractor the same day, three days after the accident, after all of them  
6 denied injury at the scene, would that be evidence in your mind,  
7 suggesting maybe there was no injury?

8 A Well, I don't know that all of them presenting on the same day  
9 is consistent with no injury, but it's unusual, in and of itself, to have five  
10 people present to the same doctor, on the same day. I mean, medical  
11 care is usually not a group activity.

12 Q Okay. You mention it, when you reviewed the chiropractic  
13 records of Guadeloupe Parra-Mendez?

14 A Yes.

15 Q And again, I'm not putting anything up on the screen, I'm  
16 trying to get through this.

17 Q Guadeloupe Parra-Mendez is, to your reading, the subjective,  
18 and -- by the way, for jury's benefit, what's the difference between  
19 subjective and objective, please?

20 A So subjective is something a patient will tell you, it's kind of  
21 part of the history, something a patient may say, I hurt today. Objective  
22 would be, let's say, you know, they had a cut on their hand, and  
23 everybody agrees that there some sort of laceration on the hand, then  
24 something you can see, you don't necessarily have to get the patient's  
25 input to kind of figure out.



1           So there are things you can see or prove which are objective, and  
2 then there's thing that you have to be told or explained. You know,  
3 there's some sort of an involved explanation as to which is subjective.

4           Q     Okay. Let's move it along. I will show you this, this will be --

5           MR. WINNER: -- I'll approach with Doctor with it, I'll show it  
6 to Mr. Prince first.

7           MR. PRINCE: Can I see a copy of it?

8           MR. WINNER: This is just from opening.

9           MR. PRINCE: Yeah, I need a copy of that.

10          MR. WINNER: I don't have an extra with me. I can get a  
11 copy to you.

12          MR. PRINCE: I do need a copy, yeah.

13                               [Counsel confer confer]

14          MR. WINNER: May I approach, please, Your Honor?

15          THE COURT: You may.

16          MR. WINNER: Okay.

17          MR. PRINCE: I still don't know what you're showing the  
18 witness.

19          THE COURT: Did you show, Mr. Prince?

20          MR. WINNER: What's that?

21          MR. PRINCE: I don't any of what you're showing the witness.  
22 I don't have a copy of it.

23          MR. WINNER: Let's approach.

24          THE COURT: Okay. She can make a copy over there.

25          MR. WINNER: Okay.

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[Sidebar begins at 4:01 p.m.]

MR. WINNER: Just these demonstrative things. You've seen them. You know, you put your demonstrative things up.

MR. PRINCE: No, no, that's not demonstrative. I thought the rule was --

THE COURT: He's not putting them up, right?

MR. PRINCE: Well, that's what he's trying to do.

MR. WINNER: I was going to put them on ELMO after showing them to the witness.

THE COURT: If you lay the foundation?

MR. WINNER: Uh?

THE COURT: If you lay the foundation --

MR. PRINCE: But he didn't do the comparative analysis between to the two patients. He didn't do like a report, like comparing pain days, pain scoring. He never did that. That's like something I tried to do, and you didn't allow any of that, gravity --

MR. WINNER: Are you talking about this is --

MR. PRINCE: -- [indiscernible] table.

MR. WINNER: This is her pain complaint.

MR. PRINCE: No. I don't know, without talking to her how you did it. So , I needed the witness to --

MR. WINNER: I don't know how anything -- you did this accurate either. And you didn't provide copies to me, you just let it go that --

THE COURT: There's more copies.

1 MR. PRINCE: Is he even allowed to do that?

2 THE COURT: If he lays a foundation. Is there anything else  
3 you want a copy of? Will you go on with the question while she's doing  
4 it, can you do something different?

5 MR. WINNER: Sure.

6 MR. PRINCE: Judge, this has got to be done by 5:00.

7 MR. WINNER: Yeah.

8 MR. PRINCE: Well, I won't be --

9 MR. WINNER: Then we come -- we come back tomorrow  
10 anyway.

11 [Sidebar ends at 4:02 p.m.]

12 BY MR. WINNER:

13 Q According to your view of the records, Doctor, did  
14 Guadeloupe Parra respond well to -- assuming she was -- she responded  
15 well to chiropractor treatment?

16 A Not only based on my review of the records, but based on  
17 her chiropractor, Dr. McCauley's deposition testimony, both Ms. Parra-  
18 Mendez and Ms. Evans-Waiau responded. I think he used the word,  
19 "great benefit" or --

20 Q Extremely effective?

21 A Extremely effective. I mean, there were -- there were words  
22 that would imply that she got better. So that was my impression and  
23 then it was confirmed when he -- he was reviewing his own records and  
24 made the same conclusion.

25 Q Did you review the records of Dr. Ross from NLV Pain, that

1 clinic for Guadeloupe Parra-Mendez?

2 A Yes.

3 Q Would it be fair to say two weeks after the accident her pain  
4 was down to 1 out of 10, before she had been prescribed any  
5 medication?

6 A Yes. Her pain had significantly reduced while be treated  
7 through that pain management clinic, which I believe is really a primary  
8 care clinic that associated with the chiropractic clinic, but in either case  
9 her pain had significantly reduced before she was provided with any  
10 significant oral medication, or any other significant treatment, other than  
11 chiropractic.

12 Q So before she got any medication her neck pain was down to  
13 1 out of 10?

14 A Yes.

15 Q And her low back pain was down to four out of ten?

16 A I believe it was four, yes.

17 Q Okay. Assuming there was an injury, was that a good  
18 response in a couple weeks to conservative treatment?

19 A That's an expected response for a soft tissue or sprain/strain  
20 injury.

21 Q Okay. Could you see any basis, based on those findings, for  
22 the folks that at Align Chiropractic, to begin making referrals to pain  
23 management doctor, surgeons and MRI facilities?

24 A Not based on the response to conservative care, kind of the  
25 typical things that you start off with. You know, you start off slow and

1 then kind of stair-step it up. And if patients don't improve, if there's no  
2 change in their paying, and they're not responding to the normal  
3 conservative care, he typically will kind of escalate the level of care, but  
4 there was no -- there was no reason to make those referrals.

5 MR. WINNER: May I approach, please, Your Honor?

6 THE COURT: Uh-huh.

7 BY MR. WINNER:

8 Q Doctor, based on your review of the records, would that  
9 charge from the chiropractic notes accurately reflect the -- and that's not  
10 counting the reports to Dr. Ross, that's just of the chiropractor?

11 A Yes.

12 Q Does that accurately reflect the improvement of pain scores  
13 over the course of that, about three-month period, that Ms. Parra was  
14 going in for treatment?

15 A This is based -- they're similar. To my recollection the only  
16 error is on the very bottom left, it should say 2/12/16 instead of 1/12/16,  
17 that was her end date at the chiropractor.

18 Q I agree, I apologize. You have a screen right there.

19 A Okay.

20 Q Based on this, Doctor, does it appear that Guadalupe Parra-  
21 Mendez responded well to chiropractic treatment?

22 A That would be my assessment, and again, that was  
23 consistent with her own chiropractor's assessment as well.

24 Q Okay. I'm making a mark with my pen right here; it was  
25 during this time that she began seeing Dr. Ross and her pain was 1 out

1 of 10 in her cervical spine?

2 A Yes.

3 Q And 4 out of 10 on her lumbar spine?

4 A That's correct.

5 Q I know symptoms can wax and wane, get better and get a  
6 little worse. Can you see any use in getting multiple MRIs in a referral to  
7 pain management, following this day?

8 A Not unless there was some other concern that wasn't  
9 documented in the -- in the medical records, I saw no reason for pursuit  
10 of the MRIs that were ordered.

11 Q Can we agree that she -- her self-reporting subjective  
12 complaints, she improved steadily and regularly of the cervical spine, all  
13 the way down through her last couple or three visits in January and  
14 February of 2016?

15 A That's correct.

16 Q Okay. She testified, yesterday I believe, that she's had no  
17 symptoms, no problems since her discharge, and I'll change that to a  
18 two, in February of 2016?

19 A That's my understanding as well, based on my review of her  
20 deposition testimony, and it sounds like her testimony here was  
21 consistent.

22 Q Based on your review of the records can you think of any  
23 reason for Align to send her to get a cervical MRI, two or three visits  
24 before she's discharged from further treatment?

25 A No medical reasons.

1 Q Okay. Can you think of any medical reason why she might  
2 be required to go see Dr. Rosler for injections?

3 A No medical reasons, no.

4 Q Okay. Can you think of any medical reasons, based on what  
5 you've seen, for Dr. Rosler to tell her, over the course of this treatment,  
6 that she needs to go see a spine surgeon?

7 A No medical reasons.

8 Q Okay. Did you note in the initial intake form, at Align  
9 Chiropractic, that Guadalupe Parra-Mendez was diagnosed with exactly  
10 verbatim, the same thing that Desiree Evans was diagnosed with this  
11 cervical disc protrusion, or cervical disc disease causing symptoms down  
12 the left arm?

13 A That -- that's unusual, and yes, I did notice that.

14 Q Okay.

15 MR. WINNER: May I approach, please, Judge?

16 THE COURT: You may. When you're done with the other,  
17 will you leave that as a court exhibit, please?

18 MR. WINNER: Yes.

19 THE COURT: Thank you.

20 MR. WINNER: May I approach, please?

21 THE COURT: Thanks. This will be a court exhibit, not  
22 evidence.

23 BY MR. WINNER:

24 Q Doctor, does that fairly and accurately report the response to  
25 chiropractor treatment by Desire or Desiree Evans-Waiiau?

1           A     It does.

2           Q     What's shown here is her steady response to chiropractic  
3 treatment?

4           A     Yes.

5           Q     Have you also reviewed the chiropractic notes from doctor --  
6 or Chiropractor McCauley over at Align Chiropractic, true?

7           A     Yes. His notes and his deposition testimony.

8           Q     Okay. And here, on the first day, the day that apparently  
9 everybody in the car at the scene, on that first day Align Chiropractic  
10 diagnosed her also, a different adult in the car, with cervical disc disease,  
11 or cervical disc protrusion, with radiculopathy going down the left arm to  
12 the hand?

13          A     Yes.

14          Q     Does it strike you as odd that two different people involved in  
15 this accident were diagnosed with exactly the same thing?

16          A     It's possible, it's just not likely.

17          Q     Okay. All right. We also had steady improvement in the  
18 lumbar spine, correct?

19          A     That's correct.

20          Q     We have steady improvement in the thoracic spine and the  
21 cervical spine?

22          A     Yes.

23          Q     Okay. By early January of -- and by the way, the notes from  
24 Chiropractor McCauley, and you read Chiropractor McCauley's  
25 deposition, the note said that she's improving regularly, she's doing



1 better, she's getting back to activities of daily living, and chiropractic  
2 treatment is benefiting her, correct?

3 A Yes.

4 Q Okay. Could you see any reason here, between the 4th and  
5 12th of January of 2016, when she's down to a 3 out of 10, for her to be  
6 sent to a pain management doctor for injections?

7 A Again, no medical reasons, no.

8 Q Okay. By the way, is it common for somebody who has a  
9 soft tissue injury, if it's an injury, for somebody to have soft tissue injury,  
10 or a little whiplash or a strain/sprain, is it common for somebody to have  
11 symptoms going down one of her arms?

12 A Yes. Chiropractors oftentimes comment on symptoms going  
13 down arms, or legs that are presumed to be arising from the spine, but  
14 oftentimes if there's no correlating, remember the clinical correlation  
15 that we talked about, if there's no correlating finding on the MRI to  
16 support that symptom it's often thought to be a peripheral nerve,  
17 meaning outside the spine nerve being pinched in the soft tissue, the  
18 muscle spasm, or some other source of that symptom, which can mimic  
19 other symptoms that would be more consistent with a spinal injury. In  
20 this case I didn't see any evidence of that.

21 Q And we did see that after the Rosler injection she continued  
22 to improve, 2 out of 10, 2 out of 10, 1 out of 10, 1 out of 10, until she was  
23 discharged by the chiropractor?

24 A She did. I don't -- I mean, based on the way that you just  
25 made that statement, though, I don't want the jury to believe that Dr.

1 Rosler's injection was the reason. It looks like that was just the trajectory  
2 of the pain scores, and I think it was independent of Dr. Rosler's  
3 injection.

4 Q When Desiree Evans went to -- and by the way, I'm going to  
5 ask you the same question, do you have an opinion, that Desire or  
6 Desiree Evans actually had an injury in this accident; have you ever  
7 given that opinion?

8 A I have not given that opinion. I also stated, if you assume  
9 that there was injury treatment up to a certain point in the kind of mid-  
10 February range was reasonable, but that's assuming, giving her the  
11 benefit of the doubt, that there was actually an injury, in my opinion  
12 there was no objective evidence of injury to Ms. Evans-Waiiau.

13 Q And in fact, that's true of both Plaintiffs. You have -- as a  
14 medical doctor you have ample reason to believe that neither of these  
15 persons was actually injured?

16 A Yeah. They certainly were possibly injured, but I can't say to  
17 a reasonable degree of medical probability that they were injured based  
18 on the information that I reviewed.

19 Q Assuming they were being truthful and giving them the  
20 benefit of the doubt, you would give them a limited amount of treatment,  
21 at least more limited than the treatment they're claiming?

22 A Yes. Assuming all of that I would -- I would say the  
23 treatment through about mid-February, when she was -- when both of  
24 them were discharged from the chiropractor, was reasonable, but you'd  
25 have to satisfy a bunch of criteria before you got to that point.

1           Q     So unlike Drs. Khavkin and Garber, you actually looked at all  
2 of the medical records in depositions and films before arriving at that  
3 opinion?

4           MR. PRINCE: Object and move to strike, Your Honor. Dr.  
5 Garber did do a comprehensive medical record review, he reviewed all  
6 the records in this case.

7           THE COURT: Sustained.

8           MR. PRINCE: Yeah.

9           THE COURT: Rephrase.

10          BY MR. WINNER:

11          Q     Unlike Dr. Garber, before forming his opinion on his first visit  
12 you actually --

13          MR. PRINCE: Move to strike, lacks foundation, misstates the  
14 evidence in this case.

15          BY MR. WINNER:

16          Q     He did his record, it would be later, I believe, but that's fine.  
17 Unlike Dr. Khavkin --

18          THE COURT: Sustained.

19          BY MR. WINNER:

20          Q     You -- I'll withdraw the question. Unlike Dr. Khavkin, you  
21 actually looked at all of the deposition transcripts and you looked at all  
22 the medical records, and you looked at the charts before arriving at your  
23 opinion, correct?

24          A     Yes.

25          Q     Okay. When Ms. Evans went to Dr. Rosler and said

1 chiropractic treatment had failed, is that consistent with what you see in  
2 her chart?

3 A Yes. That's -- that's inconsistent with -- my review of her  
4 chart is inconsistent with the record, it's inconsistent with the  
5 chiropractor's deposition testimony, and it's inconsistent with her own  
6 testimony.

7 Q Okay. In fact the chiropractor testified that the treatment was  
8 very effective for her, that she had responded very well to it, and she  
9 was welcome to come back for treatment, correct?

10 A That's my understanding, yes.

11 Q Yeah. And your understanding is also that she never went  
12 back for treatment?

13 A That's correct.

14 Q Okay. When she appeared in Dr. Khavkin's office May 17th,  
15 2016, complaining of pain down both arms, complaining of pain in the  
16 head, complaining with pain in the neck, complaining of pain in the low  
17 back, and complaining of pain down both legs, after having just been  
18 discharged by the chiropractor in February, would it be fair blame  
19 Babylyn Tate, the Defendant in this case, for all of those symptoms that  
20 appeared in May of 2016?

21 A In my opinion and based on my review of the records, no.

22 Q Okay. Is it your understanding that the Plaintiff saw -- the  
23 Plaintiff Evan saw Dr. Khavkin exactly one time?

24 A Yes. One time for Dr. Khavkin.

25 Q And she saw Dr. Khavkin one time so that he could write a

1 surgical cost letter for her attorney?

2 MR. PRINCE: Objection. Move to strike, leading and  
3 argumentative. He didn't -- he wasn't there to see her for a cost letter.

4 MR. WINNER: Yes, he did.

5 MR. PRINCE: He knows it.

6 THE COURT: Approach.

7 [Sidebar begins at 4:17 p.m.]

8 THE COURT: I know. What's the objection.

9 MR. PRINCE: Dr. Khavkin provided a neurosurgical  
10 consultation. He later said, after he recommended surgery, he provided a  
11 cost letter of what the surgery would cost. That's not uncommon, I'll  
12 deal with that with him later, but he can't say he only saw her exactly  
13 one time to provide a cost letter for the attorney. Do you see how the  
14 attorney builds up argument, he keeps coming, and I keep asking you to  
15 strike all of that, and I'm urging you to do that, and strike that, because --

16 MR. WINNER: I don't know what's wrong with her.

17 MR. PRINCE: That order precludes her from doing that. He  
18 saw her in a neurosurgical consultation and then was later asked about a  
19 cost assessment for a procedure.

20 MR. WINNER: The order doesn't preclude it. In fact, your  
21 motion was denied.

22 THE COURT: I think --

23 MR. PRINCE: You have no basis --

24 THE COURT: -- you just can't use the words --

25 MR. PRINCE: You have no basis.

1 THE COURT: -- unless there's a basis.

2 MR. PRINCE: You have no basis.

3 MR. HENRIOD: Unless there's a basis --

4 THE COURT: Yeah.

5 MR. HENRIOD: This trial has [indiscernible].

6 MR. WINNER: I'll take the word "so" out, I guess --

7 MR. PRINCE: No, he had a neurosurgical consultation.

8 That's just not -- Your Honor, he can't just misstate the record either.

9 And his question was leading. The voice inflection is argumentative.

10 THE COURT: Okay. So he had the consultation first, and  
11 then the letter was --

12 MR. PRINCE: Later.

13 THE COURT: Later.

14 MR. PRINCE: Yeah.

15 THE COURT: So you can just clear that up in cross.

16 MR. PRINCE: No, my position is --

17 MR. WINNER: I'll ask the question a different way.

18 MR. PRINCE: That's fine.

19 THE COURT: Sustained.

20 [Sidebar begins at 4:18 p.m.]

21 BY MR. WINNER:

22 Q Let me ask that question a slightly different way. Ms. Desiree  
23 Evans saw Dr. Khavkin a total of one time?

24 A Yes.

25 Q Okay. And you have reviewed Dr. Khavkin's deposition

1 transcript?

2 A I believe so, yes.

3 Q Okay. And after that one time he wrote a surgical cost letter  
4 directed to her lawyer, correct?

5 A Yes.

6 Q Okay. Do you believe that all of those symptoms that Ms.  
7 Evans reported to the surgeon on May 17th, 2016, do you believe those  
8 are consistent with anything else in the medical history that you've seen?

9 A No. Those are much more extensive than anything else that  
10 has been documented, or was documented up to that point, and that was  
11 -- it was an unusual, what we call "pain diagram" that was filled out on  
12 that particular occasion.

13 Q When Ms. Evans went to see -- well, hang on a minute. You  
14 treat degenerative disc injuries, and you treat traumatic disc injuries,  
15 correct?

16 A Yes.

17 Q Is it true that traumatic disc injuries frequently appear  
18 immediately, as exquisitely painful?

19 A Yes. A traumatic disc disruption or an acute disc disruption  
20 is a very severe onset of pain that wouldn't be able to be ignored for  
21 three days.

22 Q Okay. An athlete who has a traumatic disc injury on the  
23 football field, or on the hockey rink typically has to be removed from the  
24 field or the ice immediately?

25 A They're often carried off the field, yes.

1 Q Okay. Would that be inconsistent with someone who waited  
2 three days to report such an injury?

3 A Development of a traumatic disc disruption would be  
4 inconsistent with the delay of three days, yes.

5 Q Inconsistent?

6 A Yes.

7 Q You're also aware from your review of the record she was  
8 involved in a subsequent accident on July 10th, 2016?

9 A Yes.

10 Q And in that accident she was taken by ambulance to the  
11 hospital with immediate onset of symptoms?

12 A She was, yes.

13 Q Okay. Did you review in her deposition transcript, that the  
14 morning -- the morning of that July 10, 2010 accident, she did not have  
15 any of those left arm symptoms?

16 A Yes.

17 Q Okay. Is it true Dr. Rosler reported a repeat -- or requested a  
18 repeat MRI after that 2016 accident --

19 A Yeah.

20 Q -- that was never performed?

21 A Yes. Dr. Rosler made a request, but that request was never  
22 honored or followed through on.

23 Q Okay.

24 MR. WINNER: Can we switch to this, please, Judge?

25 [Pause]



1 MR. WINNER: Judge, do you want this as a Court exhibit --

2 THE COURT: I do.

3 MR. WINNER: -- also?

4 THE COURT: Please.

5 MR. WINNER: Thank you.

6 BY MR. WINNER:

7 Q Doctor, would these be the films you reviewed of the  
8 November 2015 MRI?

9 A I assume they are; the name is cut off on the top, but --

10 [Pause]

11 BY MR. WINNER:

12 Q Okay. Tell us, really quickly, I want to finish up as quickly as  
13 we can, tell us really quickly what we're seeing here, Doctor?

14 A So on the left side of the screen versus the right side of the  
15 screen is just a cut of somebody kind of from top to bottom, kind of  
16 cutting them in half, from left to right. And on the right side of the  
17 screen it's almost like if you're cutting off somebody's head through their  
18 neck, so you're looking down on the -- on that kind of bird's eye view on  
19 the right-hand side, and kind of peeled open view on the left-hand side.

20 Q Okay.

21 A The left side of the picture on the left side of the screen is the  
22 front of the spine, and there's a kind of reddish green stripe is -- is kind of  
23 the back of the picture. And then on the picture that's over on the right-  
24 hand side --

25 Q May I ask you to come down?

1           A     Sure. Oh, sure.

2           THE WITNESS: Is that okay, Judge?

3           THE COURT: Yeah. Of course.

4           MR. WINNER: Your Honor, is that all right?

5           THE COURT: Let's keep the microphone there.

6           THE WITNESS: The microphone is?

7           THE MARSHAL: It's over here.

8           THE COURT: Over there.

9           MR. WINNER: The microphone is --

10          THE MARSHAL: Mr. Winner?

11          THE COURT: Over there.

12          MR. WINNER: Oh, all right. That's a clicker you can probably

13 go three inches. I'll bring the microphone with you.

14          THE COURT: Over there.

15          MR. WINNER: Oh, over there.

16 BY MR. WINNER:

17          Q     That's a clicker. You can probably go through each of these.

18 I'll bring the microphone with me.

19          A     All right. So on this column right here is the column of the

20 discs and the bones. The discs are the darker things with kind of the

21 white center. A lot of people refer to them as the jelly doughnuts. You

22 have this white stuff here, which is the spinal fluid. And that this kind of

23 grace thing that goes through there is the spinal cord. And then in this

24 picture, again, this is kind of where you're cutting sort of somebody in

25 this direction. You have to remember in this picture though, the patient

1 is positioned like this. So what appears to be the left side is really the  
2 right side. They have the little R there to remind you, and then they  
3 don't have one on this side.

4 I'm not sure why, but -- so you're looking at this dark circle here  
5 surrounded by the white stuff, which is the spinal fluid. You've got the  
6 spinal cord in there. The disc would be positioned up here. So this is  
7 the front, and this is the back. Again, front and back.

8 Q Are you able to slip through with that and get us to the level  
9 at which an abnormality is supposedly discovered?

10 A Well, I think this is --

11 Q Maybe I have to stand farther better. So this would be --

12 A This is number 8 of 15.

13 Q Okay. Do you see anything in there that would suggest  
14 neural foraminal narrowing, anything in there that would suggest any  
15 nerve root impingement of any kind?

16 A I've looked at the study independently. Previously, when I  
17 did my reporting, there's no impingement of any nerves that I saw on  
18 this particular film. There's no evidence of any acute traumatic this  
19 disruption that I saw when I reviewed this film. I disagree with Dr. Lewis,  
20 who originally read it.

21 Q Okay. Dr. Wong was pointing to images over here and how  
22 clear the nerve pathways are and how that's something you deal with in  
23 your injections. Can you explain what that is?

24 A It is. And you look at these films kind of from the overhead  
25 view, it looks like a little animal with eyes nose here in the ears. The ears

1 should be straight. There shouldn't be any pinching on there. Now you  
2 can have a disc protrusion that's one-sided or the other or it can be in the  
3 center.

4 So it depends on where it is. And so, a small disc bulge way over  
5 to one side or the other can be associated with symptoms. Even if it's  
6 small, if it's two millimeters, it can be kind of compressing something.  
7 But based on my review of these films independently, I didn't see any  
8 evidence that there was any nerve compression as it exited the spine.  
9 There was a small disc bulge at C6-7 that I saw when I looked at this, but  
10 I believe it was on the right side. So it didn't fit with the symptoms she  
11 was complaining of on the left side.

12 Q Okay. Any sign of trauma anywhere in that MRI?

13 A No.

14 Q Could another physician or another radiologist look at this  
15 film and see it as completely normal?

16 A Completely?

17 Q Normal.

18 A Normal. Yes. I mean I saw it as completely normal, so.

19 Q Okay. You're aware that she had another MRI done 2010?

20 A Yes.

21 Q Okay. That 2010 MRI is no longer available, correct?

22 A That's correct.

23 Q Would it be helpful to you, would it be useful to you, would it  
24 be important to you to actually see the film in that 2010 MRI?

25 A It might be, but normal is normal. And if it's normal in 2015,

1 it's normal and 2010 most likely. So I don't know how important it would  
2 be. It would just kind of, you know, probably look very similar to this.

3 Q Okay. Dr. Wong testified that you're not a member of the  
4 American Academy of Orthopedic Surgeons I don't think. You're not an  
5 orthopedist, but --

6 A No, I'm not.

7 Q Dr. Wong testified he's one of the five questioners in the  
8 United States who writes questions for board certification for orthopedic  
9 surgeons and said anybody who found anything surgical or a surgical  
10 lesion on this MRI he would fail. Is that -- you have any thought about  
11 that? Would that be consistent with questions you would be asked in  
12 your practice specialty?

13 A Well, I'm not sure why anybody would operate on a normal  
14 MRI, but I'm not in a position of writing questions for an orthopedic  
15 surgeon or spine surgeons in general. But I don't see anything  
16 operative. And as I stated before, I'm often in the position of helping  
17 surgeons kind of decide where to operate on. I don't even know that I  
18 would do an injection on a spine that looked this normal.

19 Q Okay. Thank you. The injections done by Dr. Rosler, who  
20 was here the other day -- and I'll ask you a couple of things about what  
21 Dr. Rosler said. Rosler said, one, he didn't see any herniation on that  
22 MRI. Would you agree with that?

23 A Yes, I would.

24 Q Dr. Rosler that he hadn't seen the films. But based on Dr.  
25 Lewis' assessment, he might see a bulge, or a protrusion based on

1 Lewis' interpretation. Do you see a protrusion or no?

2 A I don't see a protrusion. I believe there was a small bulge, if  
3 you kind of squint and imagine, at C6-7. But it's on the right side. It  
4 doesn't fit with Desire's symptoms.

5 Q Okay. So had there been a bulge or had you agreed that  
6 there's -- squint your eyes and say a bulge, it's on the wrong side. And  
7 it's not on the side where she had the symptoms?

8 A Yeah. So it doesn't make sense.

9 Q Is there --

10 A It's an incidental finding.

11 Q Is there anything on this MRI that would explain her  
12 symptoms?

13 A Nothing.

14 Q Okay. Do you agree with Dr. Lewis that there can be a 2 to 3  
15 millimeter margin of error?

16 MR. PRINCE: Objection. Misstates Dr. -- definitely misstates  
17 Dr. Lewis' testimony today on 2 to 3 millimeter margin of error on this  
18 image.

19 THE COURT: On what?

20 MR. PRINCE: On this image. He said if there's a four  
21 centimeter object or tumor or something, he might have a variant of 2 to  
22 3 mill, but not on this image.

23 THE COURT: I'm going to overrule.

24 MR. WINNER: And then he changed it to two centimeter.

25 THE COURT: It's up to the jury. Your recollection counts as

1 to what the testimony previously has been.

2 THE WITNESS: I would agree with Dr. Lewis' assessment in  
3 that sense, in his opinion, in reference to the margin of error being 2 to 3  
4 millimeters.

5 BY MR. WINNER:

6 Q Can you see any basis where there might be a 2 to 3  
7 millimeter margin of error on any of these films in your review of them?

8 A I don't see anything that large that required the margin of  
9 error that was discussed.

10 Q Okay. Dr. Rosler also said that small disc bulges, disc  
11 protrusions, any of us can have them. They're usually benign. They  
12 usually don't cause any symptoms. They usually don't mean anything.  
13 Do you agree with that?

14 A I do.

15 Q Okay. In other words, any of us, even a 25/26-year-old, can  
16 walk around with a small 1, 2-millimeter disc bulge, even a protrusion,  
17 and it's overwhelmingly likely we wouldn't even know about it.

18 MR. PRINCE: Objection. Leading. Argumentative.

19 THE COURT: Overruled.

20 MR. WINNER: I agreed it's leading. I'm trying to get through  
21 the day.

22 THE COURT: Overruled.

23 THE WITNESS: Yes.

24 BY MR. WINNER:

25 Q Okay. Did you have any criticism of any of the injections Dr.

1 Rosler did, the reasonableness and necessity of just injections?

2 A Well, they were reasonable to do. Were they necessary?

3 Were they related to this accident? No. Did we discover anything as a  
4 result of them? No. So I don't think they were helpful in any way in  
5 figuring out --

6 Q Did they help diagnose anything?

7 A No.

8 Q Did they help diagnose a C6/C7 nerve root problem?

9 A They might have.

10 Q Okay. In this case, did they help diagnose a C6 or C7 nerve  
11 root problem from a disc?

12 A From a disc, no.

13 Q Okay. A C6 and C7 nerve root issue might be coming just  
14 from sore muscles or some other reason?

15 A Well, you can have radicular symptoms just from a pinched  
16 nerve outside the spine, yes. So I don't see any evidence that it's  
17 coming from the spine.

18 Q Okay. You also treat, you said, sports injuries. So you treat  
19 patients who might have shoulder injuries or shoulder problems?

20 A Yes.

21 Q Do you treat patients who have shoulder problems who  
22 haven't been involved in injuries or traumas?

23 A Yes.

24 Q Okay. You aware that Ms. Evans testified under oath she did  
25 not strike or shoulder on anything inside the car?



1           A     That's my understanding.

2           Q     You are where Ms. Evans testified she did not notice any  
3 symptoms in her shoulder until sometime the next day?

4           A     Yes.

5           Q     Okay. Do you believe there's a traumatic bone bruise caused  
6 by the -- caused to the shoulder as a result of this accident?

7           A     Not without recollection of trauma or some external bruising.  
8 She -- it was described as a bone bruise, and I don't think it was related  
9 to the accident without some external trauma. You can't bruise a bone  
10 without bruising your skin.

11          Q     Bone bruises on the shoulders are common findings?

12          A     Uncommon.

13          Q     There's also bursitis found in the shoulder and impingement  
14 syndrome found in the shoulder. Those are conditions you treat?

15          A     Yes.

16          Q     Can those symptoms -- those conditions cause symptoms  
17 down the left arm?

18          A     Yes.

19          Q     Okay. And do you believe those symptoms were causally  
20 caused by this car accident?

21          A     No.

22          Q     Finally, do you have any criticism of the billings done by Dr.  
23 Rosler or the chiropractor or the MRI facility?

24          A     I believe the billings from the chiropractor were within the  
25 usual and customary range. Dr. Rosler's billing was higher than usual

1 and customer. The MRI billing was normal, in the usual range.

2 Q In what way would Dr. Rosler's billings have been too much?

3 A His billing for office visits were approximately two times  
4 usual and customary. And his billed services for injection based services  
5 were anywhere from 50 to 100 percent higher than usual and customary.

6 Q What would be a usual and customary charge for those  
7 services?

8 A The billed charge for a left C7 selective nerve root block  
9 should have been somewhere around 1000 to \$1200.

10 Q Okay. And is that what you would charge?

11 A Yeah. I think that's what many people in this community  
12 would charge.

13 Q Okay. Would that include the surgical fee?

14 A No. The facility fee would be somewhere between 1800 and  
15 probably \$2400.

16 Q Okay. And that would be a fair charge for the injection?

17 A The 1000 or 1200 whatever plus the 1800 to 2400, yes.

18 Q Okay. Three thousand plus --

19 A Yes.

20 Q -- for the injection, assuming the injection was necessary and  
21 appropriate.

22 A Yes.

23 Q And assuming there was an injury?

24 A Yes.

25 Q Okay. And you didn't have any dispute with the MRI

1 charges?

2 A No.

3 Q Or the chiropractic charges?

4 A I don't believe so.

5 Q Okay. And last time, doctor, your opinion written in your  
6 report is you are giving the benefit of the doubt for the purpose of  
7 looking at the medical treatment. Do you have an opinion that any of  
8 these plaintiffs was actually injured in this accident?

9 A I cannot state that to a reasonable degree of medical  
10 probability.

11 Q And in fact, there's reason to believe that neither of them  
12 was actually legitimately injured, correct?

13 A Based on the historical facts that I've reviewed, that's correct.

14 Q Okay. Thank you. Have all the opinions you've given today  
15 been given to a reasonable degree of medical probability?

16 A Yes.

17 Q Including this opinion. Would any treatment, any billing, any  
18 billing of any kind for either of these plaintiffs after the 1st of February  
19 2016, be reasonable or necessary?

20 A I believe I gave them -- I believe I gave Guadalupe till  
21 February 12th and --

22 Q February 12th. Excuse me.

23 A -- Desire till February 18, 2016. But otherwise, I agree with  
24 your question.

25 Q Okay. Do you believe that any surgery that came about in

1 September 2016 would have any causal relationship to the accident in  
2 October 2015?

3 A No.

4 Q Okay. Thank you, doctor.

5 A Sure.

6 THE COURT: Mr. Winner.

7 MR. PRINCE: Yeah.

8 THE COURT: Or Mr. Prince. I'm sorry.

9 MR. PRINCE: Yes. If we can have maybe the control on our  
10 side.

11 [Counsel confer]

12 MR. PRINCE: Your Honor, could I just have one approach  
13 before I ask one question.

14 THE COURT: Sure.

15 MR. PRINCE: For just one moment.

16 THE COURT: Mr. Winner.

17 [Sidebar begins at 4:37 p.m.]

18 MR. PRINCE: I won't be done by 5.

19 THE COURT: Okay.

20 MR. PRINCE: Just want to make that clear.

21 THE COURT: Okay. He's not going to be done by 5. Is he  
22 available tomorrow at 10?

23 MR. WINNER: I don't know.

24 THE COURT: Find out.

25 MR. WINNER: Do you mind if I go ask?

1 THE COURT: No. What I'm thinking is we'll --  
2 MR. PRINCE: Might want to start a little now. I want to get  
3 started.  
4 THE COURT: Of course.  
5 MR. PRINCE: Want to start some --  
6 THE COURT: Of course. We'll go until 5, and then we'll  
7 meet -- we'll come back at 10, finish him. Take a break, a longer break if  
8 you need, so we can get the instructions settled.  
9 MR. WINNER: He says he wouldn't be available until  
10 afternoon tomorrow if he had to come back.  
11 MR. PRINCE: We've ordered other people to come back. I  
12 had to bring my doctors back, and they did it. This is the last day. You  
13 can order him back.  
14 THE COURT: I didn't order your doctor back. I asked him if  
15 he would be available. I mean I can only -- I'm only going to do so much  
16 to mess with him, you know. How long are you going to be?  
17 MR. PRINCE: Oh, an hour. It took -- it's just some of the  
18 things he got out of there. We think -- with the questions that came out, I  
19 mean I -- you -- I mean address the cumulative [indiscernible] that I even  
20 heard. There's all this other stuff. So --  
21 THE COURT: What's he have tomorrow?  
22 MR. HENRIOD: Outside reports.  
23 MR. PRINCE: Outside the reports. So we've got a lot of --  
24 MR. WINNER: What's that?  
25 THE COURT: What's he have tomorrow?

1 MR. WINNER: Let me ask. Excuse me.

2 MR. HENRIOD: Can we come back earlier and do the  
3 instructions? Do you have hearings? Can we come in earlier for that?

4 THE COURT: If he can come back at 10, we can do the  
5 instructions right now until 5.

6 MR. PRINCE: He can handle that. He can just say I'm going  
7 to --

8 MR. WINNER: If he's ordered to, he can try to cancel his  
9 entire morning, but he'd prefer to just keep going.

10 MR. PRINCE: He says he can come back, if needed. He's  
11 needed. What can I do? I'm given 20 -- at 4:35. So --

12 THE COURT: Yeah. I mean I thought you were going to be  
13 quicker than that.

14 MR. PRINCE: You said Dr. Lewis was five minutes. You --

15 THE COURT: Not to be pooey, but --

16 MR. PRINCE: I agree.

17 THE COURT: -- my inclination now is to let him go.  
18 Do you want to go?

19 MR. PRINCE: I do want to go now.

20 THE COURT: Okay. Well, then --

21 MR. PRINCE: I want to start to go to -- I want to go to 5.

22 THE COURT: Okay. Then do you want to do instructions  
23 before we bring him back?

24 MR. PRINCE: I'm fine with that. I mean can we come at 9?

25 THE COURT: Do you want to come back at 1 then tomorrow.

1 We can put him on and then close. We can do instructions at 10 in the  
2 morning in.

3 MR. PRINCE: No. I --

4 MR. WINNER: We need the case to go to the jury tomorrow  
5 before afternoon.

6 MR. PRINCE: I do. I do. I don't want to come back and start  
7 him at 1. I want to like do the instructions either tonight or early in the  
8 morning or something. So --

9 THE COURT: I told you 5:00 is tonight. So --

10 MR. PRINCE: I know.

11 THE COURT: -- you all should have done it yesterday when I  
12 told you to. I'm just --

13 MR. PRINCE: We --

14 THE COURT: Not my fault. I'm just saying --

15 MR. PRINCE: Okay.

16 THE COURT: -- it's your fault.

17 MR. PRINCE: Oh, I -- right. It's because Joel couldn't agree  
18 on anything, so --

19 MR. HENRIOD: Do you want to get into that?

20 MR. PRINCE: I do.

21 MR. HENRIOD: I got them yesterday.

22 MR. PRINCE: I do.

23 THE COURT: So --

24 MR. HENRIOD: Then we can argue about that. I got your  
25 instruction the day -- yesterday. They were due before trial.

1 MR. WINNER: So we start earlier tomorrow? Is 10 the  
2 earliest we can start? The jury said they would have the case and be  
3 done tomorrow. They need to have the case. They can't be deliberating  
4 next Monday.

5 THE COURT: Right.

6 MR. PRINCE: I'm trying to figure out --

7 THE COURT: I know, but I'm been saying that --

8 MR. WINNER: Yeah.

9 THE COURT: -- quite a while here. Not for nothing.

10 MR. WINNER: So I don't want to make him come back  
11 Saturday. And --

12 MR. PRINCE: They can't come back Saturday.

13 MR. WINNER: Yeah.

14 THE COURT: And we've also got the issue with the one guy  
15 who's not going to be available tomorrow afternoon. So I'm going to tell  
16 you right now I'm going to let him go. He's an alternate. If you can get it  
17 to them, he can stay on the jury and go do his thing. If he is --

18 MR. PRINCE: Okay.

19 THE COURT: -- not, I'm just --

20 MR. PRINCE: Yeah.

21 THE COURT: I'm excusing him. We have another alternate.  
22 But I promised him at the beginning of this that we would definitely -- if  
23 we weren't done, we would excuse him. I can't even remember what it  
24 was. But I --

25 MR. PRINCE: Okay.



1 THE COURT: He's committed to that. So --  
2 MR. PRINCE: All right.  
3 MR. PRINCE: Let's go do what we can.  
4 THE COURT: We'll come in at 9:30 tomorrow.  
5 MR. WINNER: That's fine.  
6 THE COURT: And we'll bring the jury at 10.  
7 MR. PRINCE: That's fine.  
8 THE COURT: That's the best I'm doing. I'm done.

9 [Sidebar ends at 4:41 p.m.]

10 CROSS-EXAMINATION

11 BY MR. PRINCE:

12 Q Dr. Schifini, good afternoon. I have some questions before  
13 we go through the balance of our day.

14 A Of course. Good afternoon.

15 [Court and clerk confer]

16 BY MR. PRINCE:

17 Q We've met many times?

18 A Yes.

19 Q Now I've read your billing in this case. And you generated,  
20 before coming to trial today, approximately \$40,000 in billings, correct?

21 A I think. Yeah, I believe that's correct. I think --

22 Q And that's not even including your bill for preparation and  
23 for being here today, correct? I've read your billing and the last one  
24 goes back to like early May.

25 A I believe there were 24,000 and 8,000. So I may be wrong,

1 but I --

2 Q I tallied up \$39,800 between for your review and your  
3 participation in this case thus far by Mr. Winner today.

4 A Okay.

5 Q And there's no bill for being here today or any preparation  
6 for being here specifically today.

7 A Okay.

8 Q And so, if it's \$40,000, you're going to bill another \$5,000 for  
9 today, correct?

10 MR. WINNER: Excuse me. It's 32,000 we have added up.

11 MR. PRINCE: Well, Jack is a CPA. You better have got this  
12 right, Jack. What is it? Is it 32 or 38?

13 BY MR. PRINCE:

14 Q Whatever. It's 30 whatever. Who cares? It's 30 something  
15 thousand dollars.

16 A I agree with that.

17 Q So you're good with that, right?

18 A Yes.

19 Q All right. And that doesn't include being here today, which is  
20 another 5,000?

21 A Well, I think you may have actually included the previous  
22 billing that was just carried over to this. But in either case, it was 30  
23 something thousand. I agree with you.

24 Q All right. And Dr. Wong testified that he's going to bill about  
25 30 something thousand, 35, 36, 37,000. So between the two of you, it's

1 over \$70,000 to be here.

2 A I think so, yes.

3 Q Yeah. And one of the ways you spend your professional  
4 time is doing this forensic work, correct?

5 A Yes.

6 Q That's not participating in patient care for which you went to  
7 medical school, correct?

8 A That's correct.

9 Q Because you enjoy doing this, right?

10 A I do.

11 Q And one of the primary reasons you do it is because it's  
12 lucrative. You make a lot of money doing it.

13 A I can make more money doing injections, but it's --

14 Q Then go -- then why are -- you spent up to 40 percent -- up to  
15 40 percent of your professional time is now spent doing this forensic  
16 medical legal work, correct?

17 A Yes.

18 Q So lawyers call you, like Mr. Winner, and have you review  
19 cases and provide opinions like what you did here today?

20 A Yes.

21

22 Q and provide opinions like what you did here today?

23 A Yes.

24 Q And that's about 40 percent of your professional time. So  
25 you dedicated a large chunk of your professional time to doing this,

1 right?

2 A Yes.

3 Q And the reason you do it is for financial reasons, right?

4 A I think I -- in practice in general for financial reasons but yes.  
5 I agree with you.

6 Q Right. And the medical, 40 percent of that work virtually  
7 when you're hired by somebody -- I don't want to talk about injured  
8 worker because that's in the role of a treating physician, right?

9 A Yes.

10 Q You are truly acting like a treating physician when you're  
11 [indiscernible] an injured worker, right?

12 A Most of the time.

13 Q Yeah. The vast majority, right?

14 A Yes.

15 Q So when you're in this medical forensic legal work, 80  
16 percent or more of the time you're doing stuff for the defense, correct?

17 A I would say probably 75, 80 percent, yes.

18 Q Okay. Now you've treated patients who have been involved  
19 in motor vehicle collisions, correct?

20 A That's correct.

21 Q And you've also had, when patients come to you they come  
22 to you through a variety of sources. Other physicians may refer them to  
23 you, correct?

24 A Yes.

25 Q Primary care doctors refer people to you?

1 A Yes.

2 Q Chiropractors refer people to you?

3 A Yes.

4 Q Surgeons refer people to you?

5 A Yes.

6 Q Friends and family refer people to you?

7 A Yes.

8 Q Even lawyers refer people to you?

9 A That's correct.

10 Q You have no problem if somebody kind of feels hey, I think

11 Dr. Schifini's a good doctor or anybody else for that matter. It doesn't

12 matter how they got to you, right? You're going to treat them

13 appropriately.

14 A Yeah. I'll treat them the same no matter what the referral

15 source is.

16 Q Right. So you don't have a problem if a lawyer sends you a

17 patient, right?

18 A No.

19 Q So while there's this discussion about Mr. Powell being

20 referred, there's not a problem with because hey, I think this physical

21 therapy group, chiropractic facility provides good care, sending people.

22 There's nothing wrong with that. You're not critical of that, are you?

23 A No.

24 Q Okay. Because you also make referrals to lawyers, correct?

25 A Yes.

1 Q And you've referred people to me and my law firm, right?

2 A I have.

3 Q Because you want people to have good representation?

4 A Yes.

5 Q Okay. So that issue has no effect, right? Whether it's

6 referred -- how they get there on the care, as long as the care is

7 appropriate that's what your focus is, right?

8 A Yes.

9 Q All right. Now if a client doesn't -- or a patient doesn't  
10 necessarily know where to go or to turn a lawyer may be able to give  
11 them the name of a doctor to at least start some medical care to start the  
12 process, right?

13 A It's reasonable, yes.

14 Q Right. Now, Doctor, let's talk about Dr. Garber specifically for  
15 a moment.

16 A Okay.

17 Q He did surgery on Desire Evans on September 1st, 2016,  
18 correct?

19 A I believe that's the date, yes.

20 Q And according to the medical records that you've reviewed,  
21 and you looked at before and after that surgery, she had a very good,  
22 excellent surgical outcome?

23 A That's what was documented, yes.

24 Q Had significant relief of her symptoms, correct?

25 A Yes.

1 Q So she responded well to the surgery, correct?

2 A That's correct.

3 Q And you know Dr. Garber well, don't you?

4 A I do.

5 Q You refer many patients to Dr. Garber, don't you?

6 A I share many patients with Dr. Garber.

7 Q And he refers patients to you, correct?

8 A He does.

9 Q And one of the things that you do is you provide site specific  
10 injections like selective nerve root blocks on those patients. And that  
11 data is in turn given to Dr. Garber who makes surgical decisions, right?

12 A That's correct.

13 Q And that you testified earlier that one of the things that you  
14 do is you help surgeons identify if someone's surgical or not, correct?

15 A Yes.

16 Q And you also help identify what level they should have a  
17 surgery in, right?

18 A Correct.

19 Q So for example, Dr. Rosler did two selective nerve root  
20 blocks in January and in April of 2016, correct?

21 A Yes.

22 Q You perform those types of injections, correct?

23 A I do, yes.

24 Q You've even performed those on patients for Dr. Garber  
25 where he's the surgeon, right?

1           A     Yes.

2           Q     And he's relied upon that data to make recommendations to  
3 patients for surgery, correct?

4           A     Yes.

5           Q     That data's important in the sense of that might determine  
6 number one, if they're surgical, but where he should do the surgery.  
7 Should he do one level, should he do two levels, right?

8           A     It is.

9           Q     So with regard to Dr. Garber you agree his surgical  
10 recommendation, that was reasonable?

11          A     Well, I'm not a surgeon. I'm not disagreeing with Dr.  
12 Garber's --

13          Q     Okay.

14          A     -- judgment. But --

15          Q     So you -- okay. You're not criticizing his surgical judgment  
16 because you're not a surgeon?

17          A     I'm not a surgeon.

18          Q     Okay, all right. Now it's your -- so I want to make sure I  
19 understood you correctly, Dr. Schifini, for the few minutes we have here  
20 this evening before we come back tomorrow. And that's this. You're  
21 saying you don't have an opinion that Desire Evans was hurt or not hurt.  
22 You're giving no opinion on that, right?

23          A     But I gave an opinion that said if we assume she was hurt,  
24 but I -- but there's not an opinion to a reasonable degree of medical  
25 probability which is required in the court.



1 Q Okay. So then you have no opinion that Desire Evans was  
2 hurt to a reasonable degree of medical probability in this crash, correct?

3 A Correct.

4 Q You have no opinion that Desire Evans was not hurt to a  
5 reasonable degree of medical probability in this case, correct?

6 A I think by default, yes. That's true.

7 Q Okay. So you have no -- okay. All right. Now you -- one of  
8 the things you did -- strike that. When you were hired in this case you  
9 were given medical records to review, correct?

10 A Correct.

11 Q That wasn't the only thing you were given. You were also  
12 given Dr. Jeffrey Wang's report, correct?

13 A Not after --

14 Q In your initial?

15 A No.

16 Q Okay.

17 A I checked that. It's -- I think it was my second report that I  
18 was given Dr. Wong's. Not the initial.

19 Q Okay. What's your initial report dated?

20 A My initial report was dated --

21 Q I have January 7th, 2018.

22 A Yes.

23 Q Okay. So you formed your opinions clearly and separately  
24 and apart from Dr. Wong?

25 A Yes.

1 Q Before you ever read his report?

2 A Yes.

3 Q Because it'd be important you'd want to do this all  
4 independently without seeing Dr. Wong's opinions first, right?

5 A Yes.

6 Q Because that could influence your own opinions, couldn't it?

7 A I mean, I would take those into account. So yes. I guess it  
8 could in some sense.

9 Q If you're trying to be independent and you've already seen  
10 another expert's opinions then that could potentially influence kind of  
11 where you're going in a case, right? You want like to separate that apart  
12 and I want to do my own analysis independent of anybody else, right?

13 A Well, if we're talking hypothetically yes. Because I -- that  
14 wasn't the case in this particular situation.

15 Q Yeah. Do you have your report in front of you?

16 A Yes.

17 Q Perfect. Look on the second page. I want to look at your first  
18 report, January 7th, 2018.

19 A Okay.

20 Q And I want you to -- in there you summarize 28 various  
21 documents or categories of documents that you reviewed, right?

22 A Yes.

23 Q Number 28, Dr. Jeffrey Wong report dated November 9th,  
24 2017.

25 A Yes.

1 Q So you were in error a moment ago when you said you  
2 didn't have it and you didn't review it, correct?

3 A I did. You're absolutely correct. What I was referencing was  
4 my March 22nd report where he did an addendum report and I forgot -- I  
5 didn't see the word addendum. So you are correct.

6 Q And a moment ago you said you checked before you came  
7 that when you got that report and it wasn't -- it was after your first  
8 report. You remember you said that a minute ago?

9 A Yes. And --

10 Q Hold on. We've got to be precise here. Because you're  
11 holding my client to a very precise standard and I want you to be precise.

12 A And you're correct.

13 Q Right. And in that report you state that you agree with Dr.  
14 Jeffrey Wong and that all the treatments should be cut off as of February  
15 2018, right?

16 A I don't know if that's exactly what he said. That's what I said,  
17 but I said I Agree with him.

18 Q Right. It says -- you -- in your report you say you agree with  
19 his report, right? You say that?

20 A Yes.

21 Q Okay. Now -- all right. I want to show you some testimony  
22 from Dr. Wong from this trial, okay?

23 A Okay.

24 Q Very brief. Well, first have you seen Dr. Wong's trial  
25 testimony?

1           A     No.

2           Q     Did -- because I've been ordering daily transcripts so there's  
3 no mistake on what anybody said. I'm going to -- so I'm going to show  
4 the transcript. But have you seen the transcript?

5           A     I have not.

6           Q     Good enough.

7                     MR. PRINCE: Let's start at page 254 Brandon of Dr. Wong's  
8 testimony before this jury. Macs are so slow running. Okay. Brandon,  
9 start at line 3 and I want you to go to line 15.

10       BY MR. PRINCE:

11           Q     This is Dr. Jeffrey Wong testifying this week. The question is  
12 line 3:

13           "Q     Now just so we're clear, you used the word if. You  
14 agree more likely than not that my client sustained an injury  
15 to her body -- talking about Desire -- on October 30, 2015  
16 motor vehicle collision, correct?

17           "A     Yes.

18           "Q     You agree to --

19           "A     Yes.

20           "Q     -- to a reasonable degree of medical probability that's your  
21 opinion that she suffered an injury?

22           "A     Yes."

23       Are you saying you disagree with Dr. Wong's opinion?

24           A     Yes.

25           Q     Okay. So even though you said in your report that you agree

1 with Dr. Wong, clearly when he came in front of Clark County, Nevada  
2 and was talking about Desire Evans and testified that he's now -- he  
3 agrees to a reasonable degree of medical probability, which you  
4 understand is the legal standard that she was injured, you would  
5 disagree with that testimony?

6 A Well, I can't possibly agree with something I've never seen.  
7 So I mean, I was agreeing with what he had in his report from --

8 Q Yeah.

9 A -- November.

10 Q Okay. Well, I'm asking you right now, you disagree with that  
11 trial testimony he gave this week, correct?

12 A Yes. Because I've --

13 Q Okay.

14 A -- come to a different conclusion.

15 Q Okay. Now he said that --

16 MR. PRINCE: If you go down Brandon. Same page.

17 BY MR. PRINCE:

18 Q And follow-up to that question starting on line 16.

19 MR. PRINCE: Go down to the end of the page, straight down.

20 BY MR. PRINCE:

21 Q It says,

22 "All right", question by me.

23 "Q Now you believe that all the care that she -- being  
24 Desire -- received up through February 2016, that was  
25 reasonable and appropriate?"

1 You agree with that statement, don't you?

2 A I do. If you assume injury, yes.

3 Q Right.

4 "Q You thought the chiropractic care was reasonable and  
5 appropriate, didn't you?

6 "A Yes."

7 Do you agree with that?

8 A Yes.

9 Q You thought the referral for an MRI was reasonable and  
10 appropriate. Do you agree with that?

11 A Yes. Because she had left arm symptoms.

12 Q Right. And so the chiropractor, based upon her presenting  
13 complaints of neck pain and left arm symptoms, an MRI is a reasonable  
14 diagnostic image to order, correct?

15 A It is.

16 Q All right. And it's also reasonable for a chiropractor who's  
17 suspected a possible disc injury to refer Desire to a pain management  
18 physician like Dr. Rosler for an evaluation, correct?

19 A It was reasonable, yes.

20 Q So it's reasonable in this case, correct?

21 A In this case, yes.

22 Q Right. And you agree Dr. Rosler, based on his examination,  
23 his review of the imaging and the history, he thought there might be at  
24 that time a C6-7 disc problem, correct?

25 A That's correct.

1           Q     He thought there might be -- well, strike that. She had  
2 symptoms consistent with a nerve root irritation going down the left arm  
3 coming from the C6-7 disc, correct?

4           A     That was his assumption, yes.

5           Q     All right.

6           MR. WINNER: Excuse me; I think Rosler testified he did not  
7 review the imaging.

8           MR. PRINCE: He did. He did testify to that.

9           MR. WINNER: I object to that part of the question.

10          MR. PRINCE: He did.

11          THE COURT: Ladies and gentlemen, it's your recollection of  
12 the testimony that counts.

13 BY MR. PRINCE:

14          Q     And Dr. Rosler recommended a selective nerve root block to  
15 confirm his working diagnosis of a possible disc issue at C6-7. That was  
16 a reasonable decision to make, wasn't it?

17          A     Well, I disagree with your question because that's not what  
18 he did. He did a selective nerve root block. He did not do a  
19 transforaminal epidural.

20          Q     He did a selective nerve root block, correct?

21          A     Right. Which is different. He did not focus on the disc at all.  
22 He focused on the nerve.

23          Q     On the nerve. And the focus of that injection was to  
24 determine if the nerve root exiting the C6-7 disc, whether that may be a  
25 source of the symptoms, correct?

1           A     I agree with that, yes.

2           Q     Right. And he did -- it was reasonable for him to make that  
3 recommendation given her presenting symptoms and complaints,  
4 correct?

5           A     Based on her symptoms, yes.

6           Q     Okay.

7           THE COURT: Is this a good breaking time?

8           MR. PRINCE: I just want a couple -- just a few more minutes.  
9 Can I just sort -- I want to take my five minutes just to finish up --

10          THE COURT: You got it.

11          MR. PRINCE: -- on a few things if I can.

12          THE COURT: Okay.

13 BY MR. PRINCE:

14          Q     You agree that pain is a real symptom that can be  
15 experienced by patients, correct?

16          A     Yes.

17          Q     You agree that pain can affect many parts of the body  
18 including the nervous system, correct?

19          A     Yes.

20          Q     You agree that the long-term effects of chronic pain may  
21 affect a patient's ability to pay attention to tasks, whether it be at work or  
22 at home, correct?

23          A     Yes.

24          Q     You agree that acute as well as chronic pain can cause  
25 anxiety, fear, anger and depression?



1 A Yes.

2 Q You agree that a patient's self-report of pain is the most  
3 reliable measure we have of pain in the field of medicine?

4 A It is.

5 Q So as a clinician you have to rely upon what patient's tell you  
6 whether you're in the medical legal setting or not as to what their pain  
7 level is and how long it's been present and what's causing the pain?

8 A Well, that's not the only thing you have to rely on. You can  
9 rely on what they told others, but yes. What the patient says is  
10 important.

11 Q Right. And you agree that each person responds to an injury  
12 and pain differently, correct?

13 A Yes.

14 Q Everybody may have -- while we have similar anatomical  
15 structures we're all unique in our own way, correct?

16 A Correct.

17 Q You agree that there's no medical evidence that you've seen,  
18 and you've not offered that opinion, that Desire was in need of any type  
19 of surgical spine surgery before October 30th, 2015, correct?

20 A That's correct.

21 Q You agree that you've seen no medical evidence that Desire  
22 Evans required any type of site specific injection in her spine, either  
23 cervical or lumbar before October 13th, 2015, correct?

24 A Correct.

25 Q And you agree that in fact there's no medical evidence or

1 indication that she needed any treatment whatsoever to her spine before  
2 the October 30th, 2015 motor vehicle collision; you agree with that?

3 A I'll agree with it if we put interventional treatment to her  
4 spine. She had chiropractic treatments prior to this but --

5 Q Oh, well I can show you that too. You agree that 2010,  
6 whatever was in 2010, that resolved long before 2015, right?

7 A Right. But she required treatment --

8 Q Okay.

9 A -- but so that was my distinction, but it was a couple months  
10 of treatment.

11 Q In July of 2010, more than five years before this?

12 A Yes.

13 Q Okay. You agree that is a remote history, correct?

14 A I would say that would be categorized as remote.

15 Q Right. And you agree that she had a soft tissue injury from  
16 that accident based on your review of the records?

17 A Based on the review, yes.

18 Q Right. You -- the medical records you reviewed after the  
19 2010 accident in no way explains any of her symptoms after October  
20 2015, correct?

21 A I would say that's accurate.

22 Q Right. And that opinion is to a reasonable degree of medical  
23 probability, correct?

24 A It is.

25 Q All right. Doctor, in your practice it's not uncommon to see

1 patients who at the scene of a motor vehicle accident don't report that  
2 they're injured or need medical treatment, correct?

3 A That's correct.

4 Q Something you see frequently, correct?

5 A Very frequently.

6 Q And you even treated patients who suffered disc pyogenic  
7 pain where those symptoms may take hours or even a couple of days for  
8 those symptoms to start and develop, correct?

9 A That's distinguished though from an acute disc disruption,  
10 but yes. That's true.

11 Q You agree that when you're injured the body's going to have  
12 an inflammatory response that's going to take some period of time to  
13 develop?

14 A Yes.

15 Q Pain and injury, that's all about inflammation, correct?

16 A Yes.

17 Q No matter where you're injured in the body whether it be a  
18 disc or some other body part, the body's going to go through this  
19 inflammatory process that it's going to take time for the body to start to  
20 heal and the pain to develop, correct?

21 A Yes.

22 Q That's often times why it takes hours or even a day or two for  
23 someone to start to feel some symptoms, correct?

24 A Yes.

25 Q So when Desire started reporting symptoms the next

1 morning following this motor vehicle collision, that's within the time  
2 period where people can start to develop symptoms and have problems,  
3 right?

4 A Yes, it is.

5 Q Right.

6 THE COURT: Okay. I think that's a good breaking point.

7 MR. PRINCE: That's fine, okay.

8 THE COURT: Ladies and gentlemen, during the recess you're  
9 admonished not to talk or converse among yourselves or with anyone  
10 else on any subject connected to this trial, or read, watch or listen to any  
11 report of or commentary on the trial of any person connected with this  
12 trial by any medium of information including without limitation to  
13 newspapers, television, the internet and radio, or form or express any  
14 opinion on any subject connected with the trial until the case is finally  
15 submitted to you.

16 Ladies and gentlemen, we'll see you tomorrow morning at  
17 10:00 o'clock. Doctor, sorry. Attorney's 9:30.

18 I got you. You're going to come and stay as long as you can  
19 and then we'll see what happens. But whatever time you say you have  
20 to leave you get to leave, okay.

21 THE BAILIFF: All rise please for the jury.

22 [Outside the presence of the jury.]

23 THE COURT: Thank you, Doctor.

24 THE WITNESS: No problem. All right.

25 THE COURT: Are you all planning after the doctor finishes

1 tomorrow to have a lunch break of some sort to get your closings ready,  
2 or are you going to be ready to go right into your closings or --

3 MR. WINNER: I'm ready to go now with close.

4 MR. PRINCE: My guess is it's up to the jury. So the answer  
5 would be -- would I be ready to go, the answer's yes.

6 THE COURT: Okay. We'll leave it up to them. How long are  
7 they going to be, the closings?

8 MR. PRINCE: I'm expecting mine to be about an hour and 15  
9 minutes.

10 THE COURT: Okay. And yours?

11 MR. WINNER: An hour.

12 THE COURT: And then rebuttal? You get rebuttal, right?

13 MR. PRINCE: I don't know. I usually go -- I don't usually go  
14 longer than 15 or 20-minute rebuttal. So --

15 THE COURT: Okay. So we're two and a half hours.

16 MR. PRINCE: -- I'm going to say I'm usually -- I'll restrict  
17 myself to 15 minutes.

18 THE COURT: So we're two -- we'll probably have to give  
19 them at least an abbreviated lunch.

20 MR. WINNER: Yeah, I agree.

21 THE COURT: How much --

22 MR. PRINCE: We can even maybe --

23 THE COURT: How much longer do you have for the doctor?

24 MR. PRINCE: Probably 30, 45 minutes. So up to an hour. I  
25 don't want to limit myself in any way. The --

1 MR. WINNER: Your cross is effective, but I don't think I have  
2 much --  
3 MR. PRINCE: Okay.  
4 MR. WINNER: -- cleanup.  
5 THE COURT: Okay. We can also --  
6 MR. PRINCE: Well, maybe we could --  
7 THE COURT: -- do a -- we can order lunch and do a quick  
8 lunch break.  
9 MR. PRINCE: Maybe offer them lunch here and I'm happy to  
10 help pay for half of that.  
11 THE COURT: Okay.  
12 MR. WINNER: I will do the same.  
13 THE COURT: All right. I think we booked the jury --  
14 MR. HENRIOD: How early can we come in?  
15 THE COURT: 9:30.  
16 MR. HENRIOD: Can we come in earlier to hammer out the  
17 instructions? I don't think it will take long.  
18 THE COURT: It's not going to take long. It's -- no. Because  
19 you guys will take all the time I -- I've looked at them.  
20 MR. HENRIOD: Okay.  
21 THE COURT: It's a half hour. When we're in doubt I'm going  
22 to default to the packet that I got in with my welcome to the bench --  
23 /////  
24 /////  
25 /////

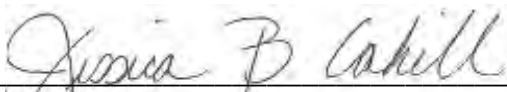
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MR. HENRIOD: Okay. All right.

THE COURT: -- thing so. Okay.

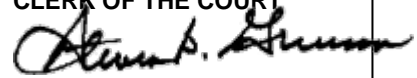
[Proceedings concluded at 5:04 p.m.]

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

  
\_\_\_\_\_  
Maukele Transcribers, LLC  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

**TRIAL BRIEF TO STRIKE DEFENSE  
MEDICAL EXPERT WITNESS, JOSEPH  
SCHIFINI, M.D.'S TESTIMONY**

PLAINTIFFS DESIRE EVANS-WAIAU and GUADALUPE PARRA-MENDEZ, by and  
through their attorneys of record, Dennis M. Prince, Esq., Tracy A. Eglet, Esq., and Ashley E.  
Kabins, Esq. of EGLET PRINCE, hereby submit their *Trial Brief To Strike Defense Medical*

1 *Expert Witness, Joseph Schifini, M.D.'s Testimony.*

2 This Brief is based upon the pleadings and papers on file in this action, the Points and  
3 Authorities set forth herein, and any argument the court may entertain at the time of the hearing.

4  
5  
6 DATED this \_ day of May, 2019.

7 **EGLET PRINCE**

8  
9 /s/ Ashley E. Kabins Esq.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL AUTHORITY FOR BRIEF

This Trial Brief is served pursuant to Eighth Judicial District Court Rule 7.27, which allows counsel to submit to the court a trial memoranda of points and authorities at any time prior to the close of trial. EDCR 7.27. One of the primary functions of the trial court is to act as an evidentiary gatekeeper, admitting only appropriate evidence. The court is vested with the discretion to simplify issues for trial and, when necessary, exclude or admit evidence. *Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 320-21 (1995). The trial court's determinations concerning the admissibility of evidence will not be overturned unless they show an abuse of discretion. *Id.*

II.

STATEMENT OF FACTS

Trial in this matter commenced on May 14, 2019. On May 30, 2019, Defendant's second medical expert, Joseph Schifini, M.D. testified that to a reasonable degree of medical probability, he could not comment on (1) whether Plaintiffs Desire Evans-Waiiau ("Evans-Waiiau") and Guadalupe Parra-Mendez ("Parra-Mendez") were injured from the subject motor collision, or (2) whether Plaintiffs were not injured due to the subject motor collision.

In addition, in his expert reports, Dr. Schifini authored the following medical opinion:

**If injury was assumed** to be related to the events of October 30, 2015, based on my review of the totality of the medical records, the lack of evidence of acute, traumatic injury on any imaging study, the lack of acute, severe pain complaints following the events of October 30, 2015, Ms. Evans-Waiiau's significant improvement following conservative care, my knowledge, my training, my experience in treating similar patients, and my familiarity with applicable, multi- disciplinary medical literature, it is my opinion, on a more likely than not basis, that Ms. Evans-Waiiau's presumed injuries were limited to soft tissue or musculoligamentous injuries commonly discussed as sprain/strain type injuries.

*See 1/7/18 Schifini report, at pp. 7-8 (emphasis added).*

...

...

III.

**LEGAL ARGUMENT**

A district court’s decision to allow expert testimony is reviewed for abuse of discretion. *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014). According to NRS 50.275, there are three requirements for expert testimony to be admissible: (1) qualification, (2) assistance, and (3) limited scope. *Las Vegas Metro. Police Dep’t v. Yeghiazarian*, 129 Nev. 760, 766, 312 P.3d 503, 508 (2013).

**A. Dr. Schifini’s Opinions and Testimonies Fails the “Assistance Requirement” in *Hallmark v. Eldridge*.**

***1. Standard of Review for the Admission of Expert Testimony.***

The Supreme Court of Nevada identified three “overarching requirements” for expert testimony and opinions as the “blueprint for admissibility” pursuant to NRS 50.275. *Higgs v. State*, 126 Nev. 1, 16-17 (2010). The requirements are: (1) Qualification: the expert “must be qualified in an area of scientific, technical or other specialized knowledge;” (2) **Assistance**: the expert’s “specialized knowledge must assist the trier of fact to understand the evidence or to determine a fact in issue;” and (3) Limited scope: the expert’s “testimony must be limited to matters within the scope of his or her specialized knowledge.” *Id.*; *Hallmark v. Eldridge*, 124 Nev. 492, 498 (2008) (citing Nev. Rev. Stat. 50.275). These factors are not exhaustive. “Courts should consider additional factors that tend to indicate that an expert’s opinion is reliable or unreliable.” *Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1421 (9th Cir. 1998). Nevada trial judges assume the role of a gatekeeper in assessing whether experts satisfy these requirements. *Higgs*, 126 Nev. at 20. “Nevada trial judges [have] wide discretion, within the parameters of NRS 50.275, to fulfill their gatekeeping duties.” *Id.* at 17. The determination of the competency of expert testimony, absent a manifest abuse of discretion, will not be disturbed on appeal. *Porter v. State*, 94 Nev. 142, 148 (1978).

The Nevada Supreme Court’s ruling in “*Hallmark* stands for the well-established proposition that expert testimony . . . must have sufficient foundation before it is admitted into evidence.” *Rish v. Simao*, 132 Nev. \_\_\_, 368 P.3d 1203, 1208 (2016). In performing its gatekeeping duties, “the district court must first determine that the witness is indeed a qualified

expert.” *Cramer v. Dep’t of Motor Vehicles*, 126 Nev. 388, 395 (2010) (emphasis in original) (citing *Mulder v. State*, 116 Nev. 1, 13 (2000) and *Hallmark*, 124 Nev. at 498)). If qualified, the court must determine if the expert’s testimony **will assist the trier of fact** to understand the evidence or determine a fact at issue in the case. *Hallmark*, 124 Nev. at 500. The proponent of expert testimony bears the burden of proof to show that the expert’s testimony is reliable. *State Dep’t of Motor Vehicle v. Bremer*, 113 Nev. 805, 808-09 (1997). Ultimately, “...the threshold test for the admissibility of expert testimony turns on whether the expert’s specialized knowledge will **assist the trier of fact in understanding the evidence** or an issue in dispute.” *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 243 (1998) (citing Nev. Rev. Stat. 50.275). “[T]he admissibility of such evidence must also satisfy the prerequisites of all relevant evidence, i.e., that its probative value is not substantially outweighed by its prejudicial effect.” *Id.*

**2. Dr. Schifini Admittedly Lacks the Opinions to Assist the Jury in Understanding the Evidence About Plaintiff’s Alleged Physical Injuries.**

When determining if an *expert’s methodology is reliable* the court should consider, among other things, “...whether the opinion is (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community (not always determinative); and (5) **based more on particularized facts rather than assumption, conjecture, or generalization.**” *Hallmark*, 124 Nev. at 500-01. (emphasis added). Ultimately, “...the threshold test for the admissibility of expert testimony turns on whether the expert’s specialized knowledge will assist the trier of fact in understanding the evidence or an issue in dispute.” *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 243 (1998) (citing Nev. Rev. Stat. 50.275). “[T]he admissibility of such evidence must also satisfy the prerequisites of all relevant evidence, i.e., that its probative value is not substantially outweighed by its prejudicial effect.” *Id.*

Defendant retained Dr. Schifini to review Plaintiffs’ medical records, and to provide opinions and/or conclusions following his review. See **Exhibit “1,”** at p. 1. Dr. Schifini does not give opinions that assist the trier of fact in his expert reports or in his trial testimony. In his first expert report, Dr. Schifini did not base his expert opinion on particularized facts. See **Exhibit “1.”** Instead, Dr. Schifini specifically made an opinion, “if injury was assumed.” See **Exhibit “1,”** at

p. 7. Consideration of particularized facts is critical in the medical context because a plaintiff's specific medical conditions and treatment are unique and provide the most reliable information necessary to clinically evaluate the cause of the claimed injuries. Dr. Schifini never based his opinion on when the subject collision occurred, the type of medical treatment the Plaintiffs' underwent, or the time it took for them to recover. Instead, he simply writes an opinion *assuming* there is an injury. Dr. Schifini also never stated whether there was a causal relationship or lack thereof between the plaintiffs' injuries and the subject collision. Dr. Schifini expressly stated in his report that his medical expert opinion is based on an assumption, and not on particularized facts.

In addition, Dr. Schifini testified during trial that to a reasonable degree of medical certainty, he could not determine whether or not Plaintiffs were injured from the subject collision. This medical expert's opinion does not assist the jury in determining whether Plaintiffs were actually injured from this collision. *Unlike the parties' previous medical experts who gave definite opinions as to whether the plaintiffs were injured or not, Dr. Schifini testified that to a reasonable degree of medical probability, he does not know whether there was an injury.* This opinion does not help the jury in determining or understanding the facts and evidence in this case. This opinion misleads the jury about the medical evidence and to the evidence of the alleged injuries. The existence of Plaintiffs' injuries and whether those injuries were caused from this collision are crucial parts of this trial. A medical expert who only gives the opinion that he cannot opine on alleged injuries, or has to assume an injury, does not assist the jury in determining important factors of the case.

As a result, there is no reliable quality to his opinions and trial testimony that will assist the jury in accordance with the standards set forth in *Hallmark*. The jury cannot use Dr. Schifini's testimony to determine any fact in issue because even he has no definitive opinion regarding the issue himself. Allowing Dr. Schifini to offer opinions about Plaintiffs' medical records based on conjecture will ultimately prejudice Plaintiffs and mislead the jury about a critical issue of fact in this case. Therefore, Dr. Schifini's opinions fail the "assistance requirement."

...

**B. Moreover, Dr. Schifini Fails the Test for Competency of Medical Expert Testimony Because He Did Not State Any Independent Causes to a Reasonable Degree of Medical Probability.**

Moreover, “[t]he test for competency of medical expert testimony depends on the purpose for which the testimony is offered.” *FGA, Inc. v. Gliglio*, 128 Nev. 271, 284, 278 P.3d 490, 499 (2012) (citing *Williams v. Dist. Ct.*, 127 Nev. 518, 529, 262 P.3d 360, 368 (2011)). Further,

If medical expert testimony is offered to establish causation, it “must be stated to a reasonable degree of medical probability. *Id.* However, if expert testimony is offered to contradict the party opponent's expert testimony, the offered testimony must only be “competent and supported by relevant evidence or research.” *Id.* However, for defense expert testimony to constitute a contradiction of the party opponent's expert testimony, the defense expert must include the plaintiff's causation theory in his analysis. *Id.*

*FGA, Inc.*, 128 Nev. 284 (citing and quoting *Williams*, 127 Nev. 529).

More importantly, the analysis continues:

If the defense expert does not consider the plaintiff's theory of causation at all, then the defense expert must state any independent alternative causes to a reasonable degree of medical probability because he or she then bears the burden of establishing the causative fact for the trier of fact. ***Otherwise, the testimony would be “incompetent not only because it lacks the degree of probability necessary for admissibility but also because it does nothing to controvert the evidence of appellants.”***

*Williams*, 127 Nev. 531 (quoting *Stinson v. England*, 69 Ohio St. 3d 451 (1994)) (emphasis added).

Here, Dr. Schifini was not retained to offer testimony to establish causation. He was specifically retained to give his opinions about Plaintiffs’ medical records, and subsequently contradict Plaintiffs’ treating physicians and hybrid retained experts. See **Exhibit “1,”** at p. 1. However, in order to constitute a contradiction of Plaintiffs’ expert testimony, Dr. Schifini’s testimony was supposed to include Plaintiffs’ causation theory in his analysis. Dr. Schifini did not and does not consider Plaintiffs’ causation theory whatsoever because he testified that he does not opine whether the subject collision (1) did cause Plaintiffs’ injuries or (2) did not cause Plaintiffs’ injuries. He refused to even accept Plaintiffs’ theory of causation that the subject motor vehicle collision caused their injuries. Dr. Schifini could not even state to a reasonable degree of medical probability that the subject collision could not have caused Plaintiffs’ alleged injuries.

Since Dr. Schifini's testimony does not consider Plaintiffs' theory of causation, then he was required to state any independent alternative causes to a reasonable degree of medical probability. The burden of proof was on Dr. Schifini to establish the causative fact for the jury; and yet he could not come to any conclusion within a reasonable degree of medical probability. However, based on his trial testimony, he could not state an opinion to *a reasonable degree of medical probability that either (1) the subject collision caused Plaintiffs' injuries, or (2) the subject collision did not cause Plaintiffs' injuries*. Subsequent to this testimony, Dr. Schifini never testified to **any** independent alternative causes that could have resulted in Plaintiffs' alleged injuries. Therefore, Dr. Schifini's testimony is "incompetent not only because it lacks the degree of probability necessary for admissibility but also because it does nothing to controvert the evidence of [the plaintiffs.]" The Court should strike Dr. Schifini's testimony since it is incompetent.

#### IV.

#### CONCLUSION

Therefore, Plaintiffs request this Court strike Defendant's medical expert, Dr. Schifini's testimony because it does not assist the jury in understanding the evidence or in determining a fact in issue, and it fails the test for competency of a medical expert's testimony.

DATED this 30<sup>th</sup> day of May, 2019.

**EGLET PRINCE**

/s/ Ashley E. Kabins  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on May 30, 2019, I caused a true and correct copy of the foregoing document entitled **TRIAL BRIEF TO STRIKE DEFENSE MEDICAL EXPERT WITNESS, JOSEPH SCHIFINI, M.D.'S TESTIMONY** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

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

**VS.**

BABYLYN TATE,  
Defendant

**RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 12**

For the Plaintiff:

DENNIS M. PRINCE, ESQ.

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

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Las Vegas, Nevada, Friday, May 31, 2019

[Case called at 9:33 a.m.]

[Outside the presence of the jury.]

THE COURT: I assume, Mr. Henriod, you're in charge of jury instructions so we can go without Mr. Winner?

MR. HENRIOD: Correct.

THE COURT: Okay. All right. How do you want to start? Do you all have the same things that I have? We're on -- are we on?

THE CLERK: Yeah.

MR. PRINCE: I was going to start with the Plaintiff's proposed jury instructions since we go first, and then just -- and then we --

THE COURT: Okay. I have two sets of Plaintiff proposed.

MR. PRINCE: I mean, Plaintiff's proposed --

THE COURT: I have Plaintiff proposed --

MR. PRINCE: -- not agreed upon.

THE COURT: Okay.

MR. HENRIOD: Okay. And I -- even before we get to that, let's -- let's figure out, shall we do -- in the interest of time, shall we do this on the record right now, or settle them now and then make the record just when we have the final set and we do the formal --

THE COURT: We're in here, so we're on the record. So it will all be on the record.

MR. HENRIOD: Do you want to agree, Dennis -- or

1 Mr. Prince, that arguments made now can be incorporated --

2 MR. PRINCE: Yes.

3 MR. HENRIOD: -- by reference for that?

4 MR. PRINCE: Yes.

5 MR. HENRIOD: All right. What I would suggest we do is start  
6 with the agreed upon. Because as I informed the Bench yesterday, we  
7 do have brief comments on the, quote, agreed upon.

8 MR. PRINCE: Or are agreed upon.

9 MR. HENRIOD: And then I don't mind going through their  
10 proposed first, after that --

11 THE COURT: Okay. So --

12 MR. HENRIOD: -- followed by our proposed.

13 THE COURT: But -- so let me clarify. The agreed upon are  
14 the Plaintiff's proposed jury instructions that don't say not agreed upon?

15 MR. PRINCE: I think we sent you an email that said these are  
16 the agreed upon instructions. Didn't we send that?

17 UNIDENTIFIED SPEAKER: We sent them.

18 MR. PRINCE: We sent that. We sent an email. We have our  
19 proposed, and then we sent you what we agreed upon, and then what --  
20 Plaintiff proposed not agreed upon. So we sent you three emails, so you  
21 should have those already in emails, all those lists. Do you want us to  
22 email you again, that?

23 THE COURT: Will you --

24 MR. HENRIOD: Is the not agreed upon --

25 THE COURT: -- call Morgan?

1 MR. HENRIOD: -- is that just the ones that were in the  
2 proposed, then taken out --

3 MR. PRINCE: Yes.

4 MR. HENRIOD: -- a separate document? Are those  
5 numbered? I mean, I don't have that.

6 THE COURT: Can you just -- can you look at see if this is  
7 what you all are talking about? This is what we've been working with as  
8 understanding were the agreed upon. Is that not correct?

9 UNIDENTIFIED SPEAKER: Yeah, these are the agreed upon.

10 THE COURT: Oh, that's right. They just happened to be  
11 titled Plaintiff's proposed.

12 [Counsel confer]

13 THE COURT: Okay. So that -- we agree on that.

14 MR. PRINCE: Can you -- is there -- I want to make a fresh  
15 copy of that. Is that possible?

16 THE COURT: Yeah.

17 MR. HENRIOD: We agree we're looking at the same  
18 document.

19 MR. PRINCE: Well --

20 THE COURT: Okay. And then I have Plaintiff's proposed not  
21 agreed upon, and that's --

22 MR. PRINCE: Right.

23 THE COURT: -- 12 pages. And then I have Defendant's  
24 proposed not agree upon.

25 MR. PRINCE: Right.



1 MR. HENRIOD: Yeah.

2 THE COURT: Looks like it's 23 pages.

3 MR. HENRIOD: And then I have --

4 THE COURT: And then I have another one you all sent me  
5 this morning.

6 MR. PRINCE: Yeah, which is just -- it's a supplement with  
7 three -- two of which arose yesterday.

8 THE COURT: Where did they go?  
9 [Counsel confer]

10 THE COURT: Mr. Prince --

11 MR. HENRIOD: So, Your Honor, if I may, I can -- I can get  
12 quickly to our just three small issues with the -- the, quote, agreed upon  
13 set where one of our disagreements didn't make it into -- to that.

14 THE COURT: Okay. All right.

15 MR. PRINCE: Which -- because I have them all numbered on  
16 the bottom, Judge. So which one -- let's start with that. Because I want  
17 to start with the agreed upon, and then we can work through.

18 MR. HENRIOD: That's exactly what I'm suggesting.

19 THE COURT: Okay.

20 MR. HENRIOD: So -- so page 26.

21 THE COURT: Okay. Page 26 of what?

22 MR. HENRIOD: Of the, quote, agreed upon, end quote.

23 MR. PRINCE: It reads, "When I use the word negligence"?

24 MR. HENRIOD: Uh-huh.

25 THE COURT: A query here. I have Plaintiff proposed, 48

1 pages, and then I have Plaintiff's proposed 38. The smaller packet is  
2 the --

3 MR. PRINCE: That's the whole thing.

4 THE COURT: -- agreed.

5 THE CLERK: This is the agreed upon.

6 THE COURT: Okay.

7 THE CLERK: Yeah.

8 MR. PRINCE: Do you have our agreed upon? That should be  
9 through 37.

10 THE COURT: Right.

11 MR. PRINCE: Do you have those? I can --

12 THE COURT: Well, 38 pages, right?

13 THE CLERK: Yeah, the --

14 MR. PRINCE: Yes, that's right.

15 THE COURT: Okay.

16 THE CLERK: Those are the ones you handed me yesterday,  
17 right?

18 MR. PRINCE: Yes.

19 THE CLERK: Yeah.

20 THE COURT: No, no, no. I just lost the Defendant's four that  
21 they sent me today. Where the heck did those go? Those are those.

22 THE CLERK: No, these are --

23 THE COURT: That's the old --

24 THE CLERK: These are old.

25 THE COURT: Yeah.

1 THE CLERK: So I'm going to put these over here.

2 THE COURT: These are not agreed upon, not agreed upon.

3 There's one more packet. This is it. Supplemental not agreed upon.

4 Okay. Now, so do -- we don't really need to go through the  
5 proposed, do we --

6 MR. HENRIOD: We do.

7 THE COURT: -- at this point?

8 MR. PRINCE: He wants to add some language.

9 THE COURT: Oh, oh, oh, oh.

10 MR. HENRIOD: Right. Now, okay, the agreed upon set was  
11 assembled in about 15 minutes, and then printed both for us and for the  
12 Court at the same time.

13 THE COURT: Okay.

14 MR. HENRIOD: I -- I told the Court yesterday that I have just a  
15 few quibbles with it --

16 THE COURT: That's fine.

17 MR. HENRIOD: -- that we needed to discuss.

18 THE COURT: What are your quibbles?

19 MR. HENRIOD: Okay. So on page 26, the instruction  
20 beginning with, "When I use the word negligence in these instructions" --

21 THE COURT: Wait a minute. Wait a minute. I don't have  
22 that on page 26.

23 MR. PRINCE: Audrey, can give you another set of these.  
24 Where are these?

25 UNIDENTIFIED SPEAKER: The agreed upon or the --

1 MR. PRINCE: Where -- no, the agreed upon. Give me  
2 another set of them. Here, I'm going to give you these, Judge, so you're  
3 -- maybe put an asterisk on it. Let me give you a -- this is the same -- this  
4 is the set we're working off of right here.

5 THE COURT: These are the agreed upon?

6 MR. PRINCE: Yes. I want to make sure you have them.

7 THE COURT: Okay.

8 MR. PRINCE: This was 1 through 37. So --

9 THE COURT: No, this is, too, but it doesn't have that on that  
10 page. But okay. I guess those are agreed upon. That's good.

11 MR. PRINCE: Yeah. So that -- yeah. That's -- so we just  
12 make sure we're all on the same page.

13 THE COURT: These are old, I guess.

14 MR. PRINCE: Yeah, maybe just set those there, yeah.

15 THE COURT: Yeah. Well, now it's going to throw off all my  
16 stuff because all my stickies were for the instructions that were in that  
17 other thing, but --

18 MR. PRINCE: Well, just look -- no, you can still rely on those.  
19 I mean, these are agreed, so this -- it won't be a problem with these,  
20 unless you have a problem.

21 THE COURT: What page are we on again? Okay. Twenty-  
22 six.

23 MR. HENRIOD: Twenty-six.

24 THE COURT: Okay.

25 MR. HENRIOD: It is -- one, two, three, four, five -- it's at five

1 paragraph in the instruction --

2 THE COURT: Uh-huh.

3 MR. HENRIOD: -- beginning with, "When I use the word  
4 negligence."

5 THE COURT: Right.

6 MR. HENRIOD: Okay. So there is a sentence that is not  
7 included that shows up -- what -- Judge, the issue here is we have --  
8 Nevada has three sets of stocks in --

9 THE COURT: Okay.

10 MR. HENRIOD: -- civil, right? We've got the 1986 set, the  
11 2011 set, and the 2018 set. There is a sentence that shows up at the end  
12 of this in the 1986 and the 2018, the most recent. And I think it ought to  
13 be included in the instruction here. It reads, "While exceptional skill is to  
14 be admired and encouraged, the law does not demand it as a general  
15 standard of conduct."

16 MR. PRINCE: Okay.

17 MR. HENRIOD: That is -- and so I --

18 MR. PRINCE: And to end this -- to make it go faster, add it.

19 MR. HENRIOD: Good.

20 THE COURT: Okay. So --

21 MR. PRINCE: That lang -- yeah, so just to avoid any further  
22 issue, because I want to --

23 THE COURT: Appreciate that.

24 MR. PRINCE: Add it.

25 THE COURT: So what is it?

1 MR. HENRIOD: It is --  
2 THE COURT: Do you have a proposed right there?  
3 MR. HENRIOD: Yes. So we are adding that to this --  
4 THE COURT: Which one of the --  
5 MR. HENRIOD: -- one. It would be my alternative number 3  
6 on page 4.  
7 THE COURT: Okay. From your original packet?  
8 MR. HENRIOD: No. No.  
9 THE COURT: From your supplemental packet?  
10 MR. PRINCE: No.  
11 MR. HENRIOD: Well, from the -- if by original --  
12 THE COURT: Those are the only packets you have.  
13 MR. HENRIOD: If -- yeah, because we did one before trial. If  
14 what you mean by original is Defendant's proposed not agreed upon,  
15 yes.  
16 THE COURT: Yes.  
17 MR. HENRIOD: Yes.  
18 THE COURT: That's what I'm talking about?  
19 MR. HENRIOD: Yes.  
20 THE COURT: Okay. So that is number --  
21 MR. HENRIOD: It's on page 4. It's titled --  
22 THE COURT: Page 4, alternative instruction number 3?  
23 MR. HENRIOD: That's right.  
24 THE COURT: All right.  
25 [Court and clerk confer]

1 THE COURT: Have you all filed these things so that -- in  
2 evidence -- because we're doing this on the record like this, we should  
3 make sure that we have copies --

4 MR. PRINCE: We will file them, yes.

5 THE COURT: -- of everything, cleaned, original copies.

6 MR. PRINCE: Yes.

7 MR. HENRIOD: Yes. So what will happen is, after we settle  
8 it, then if there are ones that we proposed that you are not giving, you'll  
9 need to actually mark those proposed, not given, and sign it. And that  
10 will be what is filed along with the ones that you read to the jury.

11 THE COURT: All right. Well, I would also -- in addition, I  
12 would like to have packets of everything so that, to the extent that we're  
13 arguing these now, it means something on the record. So that --

14 MR. HENRIOD: Okay. Sure.

15 THE COURT: -- if we're saying we're looking at Defense --  
16 this exhibit whatever, whatever, then we know --

17 MR. PRINCE: Right.

18 THE COURT: So we don't just have those -- the final  
19 resolution in a vacuum because sometimes they interplay with each  
20 other.

21 MR. PRINCE: So right now, for the record --

22 MR. HENRIOD: That makes perfect sense. I will do that.

23 MR. PRINCE: -- we'll file this when we're done --

24 THE COURT: Okay.

25 MR. PRINCE: -- Plaintiff's proposed jury instructions, we

1 have pages 1 through 37. That's what we're talking about right now.  
2 That's what we're -- that's the agreed upon instructions. Because those  
3 were proposed by us that they're agreeing to, and we're going to make a  
4 change -- an addition to number 20 -- proposed 26 with that additional  
5 language.

6 THE COURT: Okay. So the additional language is, "While  
7 exceptional skill is to be admired and encouraged, the law does not  
8 demand it." Okay.

9 MR. PRINCE: Are you guys going to make that change here,  
10 the Court?

11 THE COURT: Do we have all of the jury instructions?

12 THE CLERK: We don't.

13 THE COURT: We don't.

14 THE CLERK: You have them, though.

15 MR. PRINCE: You have them.

16 THE COURT: You do it.

17 MR. PRINCE: You have them by email. You want us to do it?

18 THE COURT: Yeah. I guess. Yeah. That's --

19 THE CLERK: Yeah, because if there's a typo, then --

20 THE COURT: Yeah. Because that way it's your fault if there's  
21 a typo.

22 MR. PRINCE: Well -- okay.

23 THE COURT: And you can email stuff back and forth here,  
24 and we can help you print out stuff. But --

25 MR. PRINCE: All right. Well, then, Joel, if -- you add it. You



1 do it so I don't --

2 MR. HENRIOD: Yeah, we can --

3 THE COURT: All right. So --

4 MR. HENRIOD: Do you have it?

5 MR. PRINCE: That's fine. Okay.

6 THE COURT: Should I just tear this out, then?

7 MR. PRINCE: Maybe just -- maybe put a -- maybe a stickie on  
8 it and an asterisk so that --

9 THE COURT: I got a stickie on it.

10 THE CLERK: Stickie, and then do --

11 THE COURT: Add.

12 THE CLERK: Yeah.

13 THE COURT: Okay. Okay.

14 MR. HENRIOD: And then the only other issue we have with  
15 this document, the agreed upon, is that on page 36 there is a  
16 three-paragraph instruction beginning with the words, "When you retire  
17 to consider your verdict".

18 THE COURT: Uh-huh.

19 MR. HENRIOD: the stock includes a paragraph about  
20 comparative negligence and apportionment. In between what is  
21 paragraph 2 and 3 here, I understand that those -- that that was omitted  
22 not to be sneaky, but because Plaintiff intends to move for judgment as a  
23 matter of law on comparative negligence.

24 MR. PRINCE: Yeah, we're asking not to instruct on  
25 comparative fault, that Desire, our client, the driver of the Honda, did

1 anything to cause or contribute to this collision.

2 THE COURT: Okay.

3 MR. PRINCE: And not give that instruction. That's why that  
4 language is there. I think if it -- if you give it, the instruction, then that  
5 language needs to be added.

6 MR. HENRIOD: Good.

7 THE COURT: Got it. Okay.

8 MR. PRINCE: And so it's not a dispute over the language.  
9 It's whether you give the instruction or don't give the instruction.

10 THE COURT: Okay.

11 MR. PRINCE: So to the extent you offered it, you guys draft it  
12 and just provide it to the Court.

13 MR. HENRIOD: Yeah. And we have -- and we have provided  
14 that. Good. So I just didn't want to hear that I had --

15 THE COURT: And so where is that?

16 MR. HENRIOD: -- acquiesced to it not being in here.

17 THE COURT: All right. Where is that one?

18 MR. HENRIOD: Where is -- let's see. It is -- it is on page 10 of  
19 our --

20 MR. PRINCE: Of which one? Of ours?

21 MR. HENRIOD: Of ours.

22 MR. PRINCE: Of the agreed upon?

23 MR. HENRIOD: Of our proposed -- our proposed not agreed  
24 upon.

25 THE COURT: They're proposed --