

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 10  
PAGES 2251 – 2500**

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Las Vegas, Nevada, Friday, May 31, 2019

[Case called at 9:01 a.m.]

[Outside the presence of the jury.]

THE COURT: Ready.

MR. PRINCE: We're ready. Just part of housekeeping, we updated our PowerPoint with a few additional items of testimony primarily from Dr. Schifini, I've given that to Defense counsel.

THE COURT: Okay.

MR. PRINCE: And I'm delivering a new copy to the Court today, as well. So he has it. Okay. I don't have anything else.

THE COURT: Do you need another minute to go through it?

MR. WINNER: Yeah. I know we're going to have an objection to a couple of these.

THE COURT: Okay.

[Counsel confer]

MR. WINNER: We have one, Mr. Henriod, is checking, Your Honor, we had -- one screen which we might be presenting an objection, and it's a snippet from Dr. Garber's testimony where he's talking about the timing of a future surgery. My memory was that an objection was sustained for that. And if my memory is wrong, it's wrong, but --

THE COURT: Of the first future surgery?

MR. WINNER: The first surgery. First future surgery.

MR. PRINCE: The only surgery we're going to arguing for that --

1 MR. WINNER: Yes. If my recollection is wrong, then it's  
2 wrong, but --

3 THE COURT: Somebody's checking that?

4 MR. HENRIOD: I am Your Honor, yes.

5 MR. WINNER: Yeah. We have an objection to another  
6 screen, and rather than argue that, Mr. Prince is just checking it out. So  
7 it's a non-issue. We have one issue.

8 MR. PRINCE: Yes. The testimony of Dr. Garber was, it's his  
9 opinion that it's going to come on much sooner, quite frankly, in 15 to 20  
10 years is his estimated surgery, because of comprised C5-6. So he said,  
11 there's a pathologic abnormality of the disc bulge at C5-6. He said, that  
12 is my expert opinion within a reasonable degree of medical probability,  
13 but the need for that surgery at C5-6, is going to come less sooner than,  
14 quite, frankly at 15 to 20 years. So --

15 THE COURT: It sounds familiar.

16 MR. PRINCE: Right. And you didn't sustain an objection to  
17 that on the timing of it. There was other objections on the, you know,  
18 the next level, having a third surgery, but not as to this.

19 THE COURT: If I was guessing, which I'm not going to do, I  
20 would guess probably not. I don't think there was an objection to that.

21 MR. PRINCE: Right. Because the timing is the timing, right?  
22 I mean, even Dr. Schifini said at some point --

23 THE COURT: Right.

24 MR. PRINCE: -- she's going to need the surgery, it's just --

25 MR. WINNER: Okay.

1 THE COURT: But I'm only guessing, so you all are free to --

2 MR. PRINCE: Well, let's just maybe get moving forward so

3 we can -- I have to -- Judge, I have to literally be --

4 THE COURT: I know, I know --

5 MR. PRINCE: -- leaving here at 1:00. I mean, I --

6 MR. WINNER: Joel, if you don't recall, let's just go. Let's just  
7 go.

8 MR. HENRIOD: Okay.

9 MR. WINNER: All right. We're good.

10 THE COURT: I don't think it's anything completely  
11 inconsistent with the testimony that came in and the rulings that came  
12 out.

13 MR. HENRIOD: I mean, as long as -- I don't recall on this.  
14 There was like the chart with the particular year where it became more  
15 likely than not --

16 THE COURT: Right, right.

17 MR. HENRIOD: And the problem there was the implication  
18 that that's when the process would begin --

19 THE COURT: Correct.

20 MR. HENRIOD: -- over again. But since this one is more  
21 vague --

22 THE COURT: Okay. Yeah. Just don't use it as a launching  
23 pad into the second surgery, if even if you just take it to the edge --

24 MR. PRINCE: No, I'm just going argue --

25 THE COURT: -- and not say it.

1 MR. PRINCE: -- like I told you, Judge, after she has the  
2 second surgery, the adjacent second process is going to break down,  
3 she's going to have to live through that process and with that pain. I'm  
4 not asking about any type of surgery, or treatment, nothing --

5 THE COURT: Okay.

6 MR. PRINCE: -- just pain and suffering.

7 THE COURT: Okay. Let's go. I'll read fast.

8 Everybody has their jury instructions?

9 MR. PRINCE: Yes.

10 THE MARSHAL: All rise for the jury

11 [Inside the presence of the jury.]

12 THE COURT: Good morning, ladies and gentlemen, welcome  
13 back, happy Monday. Everybody ready? Got your jury instructions.  
14 Counsel stipulate to presence of the jury?

15 MR. WINNER: We do, Judge.

16 MR. PRINCE: Yes.

17 THE COURT: Anything before? Plaintiff rests, everybody  
18 rests?

19 MR. PRINCE: I'm sorry, yes. The Plaintiff rests. So, we close  
20 all of our --

21 PLAINTIFF RESTS

22 THE COURT: Mr. Winner, Defense?

23 MR. WINNER: The Defense rests.

24 DEFENSE RESTS

25 THE COURT: Thank you. Anything else we need to take care

1 of beforehand?

2 MR. PRINCE: I just wanted to make sure, you have identified  
3 all the Plaintiff's exhibits, Ms. Clerk, about all that have been admitted for  
4 the Plaintiff's exhibits?

5 THE CLERK: Yes.

6 MR. PRINCE: Okay. Very good. Thank you.

7 MR. WINNER: And we offer Defense Exhibit B, D, and it --

8 THE CLERK: Yes.

9 MR. WINNER: -- has been admitted into evidence? Thank  
10 you.

11 THE COURT: And did you want to do anything with the  
12 stipulation prior to the instructions.

13 MR. PRINCE: I think I'm going to show it in the closing  
14 argument, just identify the fact.

15 THE COURT: Okay.

16 MR. WINNER: That's fine with me. And it just stipulation  
17 about the cost --

18 MR. PRINCE: Yes.

19 MR. WINNER: -- correct? Yes.

20 THE COURT: Nothing else, right?

21 MR. WINNER: Nothing.

22 THE COURT: I'm just going to start. You're free to read  
23 along with me.

24 Ladies and gentlemen of jury, it is my duty as Judge to  
25 instruct you, and this is instruction number 1.

1                   1. In the law that applies to this case, it is your duty as jurors  
2 to follow these instructions and to apply rules of law to the facts as you  
3 find them from the evidence. You must not to be concerned with the  
4 wisdom of any rule of law stated in these instructions. Regardless of any  
5 opinion you may have as to what the law ought to be, it would be a  
6 violation of your oath to base a verdict upon any other view of the law  
7 than that given in the instructions of the Court.

8                   Instruction 2. If in these instructions any rule or direction or  
9 idea is repeated or stated in different ways no emphasis thereon is  
10 intended by me and none may be inferred by you. For that reason you  
11 are not to single out any certain sentence, or any individual point or  
12 instruction and ignore the others, but you are to consider all of the  
13 instructions as a whole and regard each in light of all the others.  
14 The order in which the instructions that are given has no significance as  
15 to their relative importance.

16                  Instruction 3. The masculine form as used in these  
17 instructions, if applicable, as shown by the text of the instruction in the  
18 evidence, applies to a female person or a corporation.

19                  Instruction 4. The purpose of the trial is to ascertain the  
20 truth.

21                  Instruction 5. The evidence which you are to consider in this  
22 case consists of testimony of the witnesses, the exhibits, and any facts  
23 admitted or agreed to by counsel. Statements, arguments and opinions  
24 of counsel are not evidence in the case. However, if the attorneys  
25 stipulated as to the existence of fact you must accept the stipulation as

1 evidence and regard the fact as proved.

2           You must not speculate to be true any insinuations  
3 suggested by a question asked a witness. A question is not evidence  
4 and may not be considered only at it supplies meaning to the answer.  
5 You must disregard any evidence to which an objection was sustained  
6 by the Court, and any evidence ordered stricken by the Court. Anything  
7 you may have seen or heard outside the courtroom is not evidence, and  
8 also must be disregarded.

9           Instruction number 6. There are two kinds of evidence, direct  
10 and circumstantial. Direct evidence is direct proof of a fact, such as  
11 testimony of an eyewitness about what the witness personally saw, or  
12 heard, or did. Circumstantial evidence is indirect evidence that is proof  
13 of one or more facts in which you could find another fact. The law  
14 makes no distinction between the weight to be given either direct or  
15 circumstantial evidence.

16           Therefore, all of the evidence in the case, including  
17 circumstantial evidence should be considered by you at arriving at your  
18 verdict.

19           Instruction number 7. You must decide all questions of fact  
20 in this case from the evidence received in this trial and not from any  
21 other source. You must not make any independent investigation of the  
22 facts, or the law, or consider, or discuss facts as to which there is no  
23 evidence.

24           This means, for example, that you must not, on your own,  
25 visit the scene, conduct experiments or consult reference works for

1 additional information.

2           Instruction number 8. Although you are only to consider  
3 only the evidence in the case in reading a verdict, you must also bring to  
4 the consideration of the evidence your everyday common sense and  
5 judgment, as reasonable men and women. Thus, you are not limited  
6 solely to what you see and hear as the witnesses testify.

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

13           Instruction number 9. No statement, ruling, remark or  
14 comment which I may make during the course of trial is intended to  
15 indicate my opinion as to how you should decide the case or to influence  
16 you in any way in your determination of the facts, and at times I may  
17 even ask questions of the witness. If I do it is for the purposes of  
18 bringing out matters which I feel should be brought out, and not in any  
19 way to indicate my opinion about the facts, or to indicate the way I feel  
20 you should give to the testimony of the witness.

21           I may during trial take notes of the witness testimony. You  
22 are not to make any inference from that action. I am required to prepare  
23 for legal arguments of counsel during this trial, and for that reason I may  
24 take notes.

25           Instruction number 10. Certain testimony has been read into

1 evidence from a deposition. A deposition is testimony taken under oath  
2 before the trial and preserved in writing. You are to consider that  
3 testimony as if it had been given in court.

4           Instruction number 11. During the course of trial you've  
5 heard reference made to the work interrogatory. An interrogatory is a  
6 written question asked by one party to another, who must answer it  
7 under oath, in writing. You are to consider interrogatories and the  
8 answers thereto, the same as if the questions had been asked and  
9 answered here in court.

10           Instruction number 12. Certain charts and summaries have  
11 been received into evidence to illustrate facts brought out in the  
12 testimony of some witnesses. Charts and summaries are only as good  
13 as the underlying evidence that supports them. You should therefore  
14 give them only such weight as you think the underlying evidence  
15 deserves.

16           Instruction number 13. The credibility or believability of a  
17 witness should be determined by his or her manner upon the stand, his  
18 or her relationship to the parties, his inner fears, motives, interests or  
19 feelings, his or her opportunity to observe the matter to which he or she  
20 has testified, the reasonableness of his or her statements and the  
21 strength or weakness of his or her recollections.

22           If you believe that a witness has lied about any material fact  
23 in the case you may disregard the entire testimony of that witness or any  
24 portion of his testimony which is not proved by other evidence.

25           Instruction number 14. Discrepancies in witness' testimony

1 or between his testimony and that of others, if there were any  
2 discrepancies, do not necessarily mean that the witness should be  
3 discredited. Failure of recollection is a common experience, and  
4 innocent misrecollection is not uncommon.

5 It is also a fact -- if it is a fact, also that two persons  
6 witnessing an incident or transaction often will see or hear it differently.  
7 Whether a discrepancy pertains to a fact of importance or only to a trivial  
8 detail, should be considered in weighing its significance.

9 Instruction number 15. An attorney has a right to interview a  
10 witness for the purpose of learning what testimony the witness will give.  
11 The fact that the witness has talked to an attorney and told him what he  
12 would testify to, does not by itself reflect adversely on the truth of the  
13 testimony of the witness.

14 Instruction number 16. A witness who has special  
15 knowledge, skill, experience, training or education in a particular science,  
16 profession or occupation is an expert witness. An expert witness may  
17 give his or her opinion as to any manner in which he or she is skilled.  
18 You should consider such expert opinion and weigh the reasons if any,  
19 given for it. You are not bound, however, by such an opinion. Give it  
20 the weight to which you deem entitled, whether that be great or slight,  
21 and you may reject it, if in your judgment the reasons for it are unsound.

22 Instruction number 17. An expert witness has testified about  
23 his reliance upon books, treatises, articles and statements that have not  
24 been admitted into evidence. Reference by an expert witness to this  
25 material is allowed, so that the expert witness may tell you what he

1 relied upon to form his opinion. You may not consider the material as  
2 evidence in this case. Rather, you may only consider the material to  
3 determine what weight, if any, you will give to the expert's opinions.

4           Instruction number 18. Hypothetical questions have been  
5 asked of expert witnesses. In a hypothetical question the expert witness  
6 is told to assume the truth of certain facts, and the expert witness is to  
7 give an opinion based upon those assumed facts. You must decide if all  
8 of the facts assumed in the hypothetical question have been established  
9 by the evidence. You can determine the effect of that admission upon  
10 the value of the opinion.

11           Instruction number 19. Whenever in these instructions I state  
12 that the burden or the burden of proof rests with a certain party, to prove  
13 a certain allegation made by him or her, the meaning of such an  
14 instruction is this: that unless the truth of the allegation is proved by a  
15 preponderance of the evidence you shall find the same to be not true.

16           Instruction number 20. A preponderance of the evidence  
17 means such evidence as one considered and compared with that  
18 opposed to it, has more convincing force and produces in your mind a  
19 belief that what is sought to be proved is more probably true than not  
20 true. In determining whether a party has met this burden you will  
21 consider all the evidence, whether produced by the Plaintiffs or  
22 Defendant.

23           Instruction number 21. The preponderance or the weight of  
24 the evidence is not necessarily the greater number of witnesses. The  
25 testimony of one witness worthy of belief is sufficient for the proof of

1 any fact and would justify a verdict in accordance with such testimony,  
2 even if a number of witnesses have testified to the contrary.

3 If from the whole case, considering the credibility of witnesses and after  
4 weighing the various factors of evidence you believe that there is a  
5 balance of probability pointing to the accuracy and honesty of one  
6 witness, you should accept his testimony.

7 Instruction number 22. In determining whether any proposition has  
8 been proved you consider all of the evidence bearing on the question  
9 without regard to which party produced it.

10 Instruction number 23. The Plaintiff seeks to establish a claim of  
11 negligence. I will now instruct you on the law relating to this claim.

12 Instruction number 24. In order to establish a claim of  
13 negligence the Plaintiffs must prove the following elements by a  
14 preponderance of the evidence:

15 1) that the Defendant was negligent; and

16 2) that the Defendant's negligence was a proximate cause of  
17 damage to the Plaintiffs.

18 Instruction number 25. The mere fact that there was an  
19 accident and that somebody was injured does not of itself prove that  
20 anyone acted negligently. Liability is never presumed but must be  
21 established by the preponderance of the evidence.

22 Instruction number 26. When I use the word negligence in  
23 these instructions I mean the failure to do something which a  
24 reasonably, careful person would do, or the denying of something which  
25 a reasonable careful person would not do, to avoid injury to themselves

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

6           The law does not say how a reasonably careful person would  
7 act under these circumstances, that is for you to decide. You will note  
8 that the person whose conduct we set up as a standard is not the  
9 extraordinarily cautious individual, nor the exceptionally skillful one, but  
10 a person of reasonable and ordinary prudence. While exceptional skill is  
11 to be admired and encouraged the law does not demand it as a general  
12 standard of conduct.

13           Instruction number 27. It is the duty of a driver of any vehicle  
14 to avoid placing himself or others in danger, and to use like care to avoid  
15 an accident, to keep a proper lookout for traffic and other conditions, to  
16 be reasonably anticipated and to maintain proper control of his vehicle.

17 Instruction number 28. A person who himself is exercising ordinary care  
18 has a right to assume that every other person will perform their duty  
19 under the law. In the absence of a reasonable cause for thinking  
20 otherwise, it is not negligence for such person to fail to anticipate injury  
21 which can come to him only from a violation of law, or duty of another.

22 Instruction number 29. There was in force at the time of the occurrence  
23 in question a law which reads as follows:

24           "The driver of a vehicle shall not follow another vehicle more  
25 closely than is reasonable and prudent, having due disregard

1 for the speed of such vehicles and of traffic upon and the  
2 condition of the highway."

3 The violation of law I just read to you constitutes negligence as a matter  
4 of law. If you find that a party violated a law I just read to you, it is your  
5 duty to find such violation to be negligence and you should consider the  
6 issue of whether that negligence was a legal cause of injury or damage  
7 to the Plaintiff.

8 Instruction number 30. There was in force at the time of the  
9 occurrence in question, a law which read as follows:

10 1) A driver of a motor vehicle shall; a) exercise due care to  
11 avoid a collision with a pedestrian; b) give audible warning with the horn  
12 or a vehicle, if appropriate and when necessary, to avoid such a collision;  
13 and c) exercise proper caution upon observing a pedestrian.

14 2) on or near a highway, street or road;

15 3) at or near a bus stop, or bench, shelter, or transit stop for  
16 passengers of public mass transportation, or in the act of boarding a bus,  
17 or other public transportation vehicle; or

18 4) in or near a school zone, or a school crossing zone marked  
19 in accordance with NRS 484(b).363, or a marked or unmarked crosswalk.

20 Instruction number 31.

21 There was in force at the time of the occurrence in question,  
22 a law that reads as follows:

23 a) when official traffic control devices are not in place, or not  
24 in operation the driver of a vehicle shall yield the right-of-way, slowing  
25 down, or stopping if need be, so to yield to a pedestrian crossing the

1 highway within a crosswalk, when the pedestrian is upon half the  
2 highway, of the highway upon which the vehicle is travelling, or when  
3 the pedestrian is approaching so closely from the opposite half of the  
4 highway as to be in danger;

5 c) whenever a vehicle stopped at a marked crosswalk or at an  
6 unmarked crosswalk at an intersection the driver of any other vehicle  
7 approaching from the rear shall not overtake and pass the stopped  
8 vehicle, until the driver has determined that the vehicle being overtaken  
9 was not stopped for the purpose of permitting a pedestrian to cross the  
10 highway.

11 The violation of the law I just read to you constitutes  
12 negligence as a matter of law. If you find that a party violated the law I  
13 just read to you, it is your duty to find such violations to be negligent,  
14 and you should consider the issue of whether that negligence was the  
15 legal cause of injury or damage to Plaintiff.

16 Instruction 32. The fact the that the speed of a vehicle is  
17 lower than the prescribed the limits does not relieve the driver from the  
18 duty to decrease speed when special hazards exist or may exist with  
19 respect to other traffic and highway conditions. Speed must be  
20 decreased as may be necessary, to avoid colliding with any person,  
21 vehicle or other conveyance on a highway, in compliance with legal  
22 requirements and the duty to all persons to use due care.

23 Instruction number 33. The Defendant claims that the  
24 Plaintiff, Desire Evans-Waiau own negligence contributed to her harm.  
25 To succeed on this claim, the Defendant must prove both of the

1 following: That the Plaintiff, Evans-Waiau was negligent, and that the  
2 Plaintiff, Evans-Waiau's negligence was a proximate cause of her harm.  
3 Plaintiff, Evans-Waiau may not recover damages if her comparative  
4 negligence has contributed more to her injury than the negligence of the  
5 Defendant.

6           However, if Plaintiff is negligent, the Plaintiff may still  
7 recover a reduced sum, so long as her comparative negligence was not  
8 greater than the negligence of the Defendant.

9           If you determine that Plaintiff, Evans-Waiau is entitled to  
10 recover upon the theory of negligence you shall return by general verdict  
11 the total amount of damages sustained by the Plaintiff, and you shall  
12 return a special verdict indicating the percentage of negligence  
13 attributable to each party.

14           The percentage of negligence to Plaintiff, Evans-Waiau shall  
15 reduce the amount of such recovery by the proportioned amount of such  
16 negligence and the reduction will be made by the Court.

17           Instruction number 34. There were in force at the time of the  
18 occurrence in question a law which reads as follows:

19           1) a person shall not drive, move, stop or park any vehicle or  
20 cause or knowingly permit any vehicle to be driven, moved, stopped, or  
21 parked, except for purposes of repair on any highway, if such a vehicle;

22           a) is in such an unsafe condition as to endanger any person  
23 or property;

24           b) is not equipped with lamps, reflectors, brakes, horns or  
25 other warnings and signaling devices, windows, windshields, mirror or

1 safety glass, mufflers, fenders and tires, and other parts and equipment  
2 in the position condition and adjustment required by the laws of this  
3 state, as to such parts and equipment of the vehicle on the highways of  
4 the State at the time, under the conditions and for the purposes provided  
5 in such laws.

6 2) With respect to any vehicle being driven, moved, stopped  
7 or parked on any highway, it is unlawful for any person to do any act  
8 forbidden, or fail to perform any act required by the laws the State,  
9 relating, lamps, brakes, fenders and other parts and equipment, size,  
10 weight and load as to such vehicles on the highway.

11 An unexcused violation of the law I just read to you  
12 constitutes negligence as a matter of law. If you find that a party without  
13 excuse or justification violate a law I just read to you, it is your duty find  
14 such violation to be negligence and you should then consider the issue  
15 of whether the negligence was a proximate cause of injury or damage to  
16 the Plaintiff.

17 The burden of proof is upon the person who violated the law,  
18 to show by a preponderance of the evidence that the violation was  
19 excusable or justifiable. The violation of the law is excusable, or  
20 justifiable, only if you find that the person who violated the law did what  
21 might reasonably be expected of a person of ordinary prudence, acting  
22 under similar circumstances who desire to comply with the law.

23 Instruction number 35. There were in force at the time of the  
24 occurrence in question a law which reads as follows:

25 1) every motor vehicle must be equipped with two tail lamps

1 mounted on the rear, which when lighted emit a red light plainly visible  
2 from a distance of 500 feet to the rear.

3 And unexcused violation of the law I just read to you  
4 constitutes negligence as a matter of law. If you find that a party without  
5 excuse or justification violated the law I just read to you, it is your duty to  
6 find such violation to be negligence, and you should then consider the  
7 issue of whether that negligence was a proximate cause of the injury or  
8 damage to the Plaintiff.

9 The burden of proof is upon the person who violated the law  
10 to show by a preponderance of evidence that such violations were  
11 excusable or justifiable. The violation of the law is excusable or  
12 justifiable only if you find that the person who violated the law did what  
13 might reasonably be expected of a person of ordinary prudence, acting  
14 under similar circumstances who desire to comply with the law.

15 Instruction number 36. There were in force at the time of the  
16 occurrence in question a law which reads as follows:

17 1) a driver shall not turn a vehicle from a direct course upon  
18 a highway unless and until such movement can be made with  
19 reasonable safety, and then only after giving a clearly audible signal by  
20 sounding the horn if any pedestrian may be affected by such movement,  
21 and after given the appropriate signal, if any other vehicle may be  
22 affected by such movement;

23 2) a signal of intention to turn right or left, or otherwise turn  
24 a vehicle from a direct course, shall be given continuously, during not  
25 less than 100 feet travelled in a business or residential district, and not

1 less than 300 feet travelled in any other area, prior to changing the  
2 course of the vehicle. This rule shall be observed regardless of the  
3 weather;

4 3) a driver shall not stop or suddenly decrease the speed of a  
5 vehicle without first giving an appropriate signal to the driver of any  
6 vehicle immediately to the rear.

7 An unexcused violation of the law I just read to you  
8 constitutes negligence as a matter of law. If you find that a party without  
9 excuse or justification violated the law I just read to you, it is your duty to  
10 find such violation to be negligence and you should then consider the  
11 issue of whether that negligence was approximate cause of the injury or  
12 damage to the Plaintiff.

13 The burden of proof is upon the person who violated the law,  
14 to show by a preponderance of the evidence that such violation was  
15 excusable or justifiable. A violation of the law is excusable or justifiable  
16 only if you find that the person who violated the law, did what might  
17 reasonably be expected of a person of ordinary prudence, acting under  
18 similar circumstances who desire to comply with the law.

19 Instruction number 37. When I use the expression proximate  
20 cause I mean that a cause which was a natural and continuous sequence,  
21 unbroken by any efficient intervening cause produces the injury  
22 complained of, and without which the result would not have occurred. It  
23 need not be the only cause, nor the latest of nearest cause. It is sufficient  
24 if it concurs with some other cause acting at the same time, which in  
25 combination with it causes the injury.

1                   Instruction number 38. More than one person may be the  
2 blame for causing an injury. If you decide that the Defendant was  
3 negligent and that her negligence was a proximate cause of injury to the  
4 Plaintiff, it is not a defense that some third person who is not a party to  
5 the suit may also have been to blame.

6                   However, if you decide that the sole a proximate cause of  
7 injury to the Plaintiff was the conduct of some person other than the  
8 Defendant then your verdict should be for the Defendant.

9                   Instruction number 39: In determining the amount of losses  
10 if any suffered by the Plaintiff, as a proximate result of the accident in the  
11 question, you will take into consideration the nature, extent and duration  
12 of the injuries you believe from the evidence Plaintiff has sustained. And  
13 you will decide upon a sum of money sufficient to reasonably and fairly  
14 compensate Plaintiff for the following items:

15                   1) the reasonable medical expenses Plaintiff has necessarily  
16 incurred as a result of the collision, and the medical expenses which you  
17 believe the Plaintiff will be reasonably certain to incur in the future, as a  
18 result of the collision;

19                   2) the physical and mental pain, suffering, anguish, disability,  
20 and loss of enjoyment of life endured by the Plaintiff from the date of the  
21 collision to the present; and

22                   3) the physical and mental pain and suffering, anguish,  
23 disability and loss of enjoyment of life which you belief Plaintiff will be  
24 reasonably certain to experience in the future, as a result of the collision.

25                   Instruction Number 40. You have heard testimony that

1 Plaintiff, Evans-Waiau may pursue multiple surgeries in the future. If you  
2 determine to award damages to Plaintiff, Evans-Waiau you may decide  
3 Plaintiff has proven by a preponderance of evidence that she is  
4 reasonably certain to require one surgery in the future.

5 The Court expresses no opinion as to whether or not Plaintiff,  
6 Evans-Waiau has met this burden of proof. You may not consider for  
7 any purpose, however, whether or not Plaintiff might choose to  
8 undertake any other significant medical procedures in the future, other  
9 than the surgery described above.

10 Instruction number 41. It is the duty of a person who has  
11 been injured to use reasonable diligence in caring for her injuries and  
12 reasonable means to prevent their aggravation to accomplish healing.  
13 When one does not use reasonable diligence to care for her injuries and  
14 they are aggravated by such failure, the liability of any of another whose  
15 act or omission was the legal cause of the original injury must be limited  
16 to the amount of damage that would have been suffered if the injured  
17 person herself had exercised the diligence required of her.

18 The Defendant has the burden of proving whose act or  
19 omission was the cause of the original injury and to present evidence  
20 that the Plaintiff failed to use reasonable diligence in treating her injuries.

21 Instruction number 42. You are not to discuss or even  
22 consider whether or not the Plaintiffs were carrying insurance to cover  
23 medical bills other damages they claimed to have sustained. You are not  
24 to discuss or even consider whether or not Defendant was carrying  
25 insurance that would reimburse her for whatever sum of money she may

1 be called upon to pay the Plaintiff. Whether or not a party was insured is  
2 immaterial and should make no difference in any verdict you may render  
3 in this case.

4 Instruction 43. No definite standard or method of  
5 calculations prescribed law by which to fix reasonable compensation for  
6 pain and suffering, nor is the opinion of any witness requires the amount  
7 of such reasonable compensation. Furthermore, the argument of  
8 counsel as to the amount of damages is not evidence of reasonable  
9 compensation.

10 In making an award and for pain and suffering you shall  
11 exercise your authority with calm and reasonable judgement, and the  
12 damages you fix shall be just and reasonable in light of the evidence.

13 Instruction number 44. According to a table of mortality the  
14 life expectancy of a female person, age 26, is expected to live an  
15 additional 54.8 additional years. This figure is not conclusive. It is an  
16 average life expectancy of persons who have reached that age. These  
17 figures may be considered you in connection with other evidence  
18 relating to probably life expectancy of Plaintiffs, including evidence of  
19 occupation, health, habits and other activities, bearing in mind that many  
20 persons live longer and many die sooner than the average.

21 Instruction number 45. Whether any of these elements of  
22 damage have been proven by the evidence is for you to determine.  
23 Neither sympathy nor speculation is a proper basis for determining  
24 damages. However, absolute certainty as to the damages is not  
25 required. It is only required of Plaintiffs to prove each item of damage by

1 a preponderance of the evidence.

2           Instruction number 46. The Court has given you instructions  
3 embodying various rules of law to help guide you to a just and lawful  
4 verdict. Whether some of the instructions will apply will depend on what  
5 you find to be the facts. The fact that I have instructed you on various  
6 subjects in the case, including that of damages, must not be taken as  
7 indicating an opinion of the Court as to what you should find to be the  
8 facts, or as to which party is entitled to a verdict.

9           Instruction number 47. It is your duty as jurors to consult  
10 with one another and to deliberate with a view towards reaching an  
11 agreement, if you can do so with violence to your individual judgment.  
12 Each of you must decide the case for yourself, but should do so only  
13 after consideration of the case with your fellow jurors, and you should  
14 not hesitate to change an opinion when convinced that it erroneous.  
15 However, you should not be influenced to vote in any way on any  
16 question submitted to you by the simple fact that a majority of the jurors  
17 or any of them favor such a decision.

18           In other words, you should not surrender your honest  
19 convictions concerning the effect or weight of evidence for the mere  
20 purpose of returning a verdict, or solely because of the opinion of the  
21 other jurors.

22           Whatever your verdict is, it must be the product of careful  
23 and impartial consideration of all the evidence in the case under the  
24 rules of law as given you by the Court.

25           Instruction 48. If during your deliberation you should desire

1 to be further informed on any point of law and hear again portions of the  
2 testimony, you must reduce your request to writing, signed by the  
3 foreperson. The officer will then return you to the Court where the  
4 information sought will be given to you in the presence of the parties or  
5 their attorneys.

6 Read-backs of testimony are time consuming and are not  
7 encouraged unless you deem it a necessity. Should you require a read-  
8 back you must carefully describe the testimony to be read back so that  
9 the court recorder can arrange for notes. Remember, the Court is not at  
10 liberty to supplement the evidence.

11 Instruction number 49. When you retire to consider your  
12 verdict you must select one of your number to act as foreperson, who  
13 will preside over your deliberation and will be your spokesperson here in  
14 court. During your deliberation you will have all the exhibits which were  
15 admitted into evidence, these written instructions and forms of verdict  
16 which have been prepared for your convenience.

17 The percentage of negligence attributable to the Plaintiff , if  
18 any, shall reduce the amount of his recovery by the portion amount of  
19 his negligence. If you determine the Plaintiff is entitled to recovery, you  
20 shall return a general verdict indicating the total amount of damages the  
21 Plaintiff would be entitled to recover without regard to his contributory  
22 negligence, if any.

23 A special verdict indicating the percentage of negligence  
24 attributable to each party, and a general verdict indicating an amount  
25 found to be recoverable by the Plaintiff. In civil actions three-fourths of

1 the number of jurors may find and return a verdict. This is a civil action.  
2 As soon as six or more of you have agreed upon a verdict you must have  
3 this verdict signed and dated by your foreperson, and then return with  
4 them to this room.

5 Instruction 50. Now you will listen to the arguments of  
6 counsel who will endeavor to aid you to reach a proper verdict by  
7 refreshing in your minds the evidence and by showing the application  
8 thereof to the law. But whatever counsel may say you will bear in mind  
9 that it is your duty to be governed in your deliberation by the evidence  
10 as you understand it and remember it to be, and by the law as given you  
11 in these instructions and return a verdict, which according to your reason  
12 and candid judgment is just and proper.

13 MR. PRINCE: All right. Thank you.

14 THE COURT: Yeah.

15 PLAINTIFF CLOSING ARGUMENT

16 BY MR. PRINCE:

17 All right. Good morning. Happy Monday. Today is our last  
18 day together, but I wanted to share with you a couple of things before  
19 we get started. I was speaking to Desire and Guadalupe yesterday, and  
20 asked what they may want to say to you, and they both simply just said,  
21 thank you, for your time, for your attention to this case, and fulfilling  
22 your responsibilities, and whatever your decision is, they respect your  
23 time and effort that you put into the case. And on behalf on my law firm  
24 and my team, I want to thank you, as well, for all the time and attention.  
25 It doesn't always go as smooth as we like in court. Sometimes, it may

1 take a little longer, but I think this is very valuable information that's  
2 given to you that was necessary, and so thank you, again, for your time.

3           You know, if you're an outsider looking in, if you're a  
4 foreigner visiting our country, with all the discourse we have, whether it  
5 be about balancing the budget, abortion and other issues, you'd feel like  
6 we can't get along and like this country is about to pull itself apart and  
7 how does it hold itself together, but really what binds us together as  
8 Americans are really common -- a set of common values and beliefs,  
9 regardless of all the disagreeing that we may have. We value hard work,  
10 honesty, integrity, being responsible, taking responsibility for your  
11 actions, being compassionate, and helping others in a time of need.

12           And when the Founding Fathers developed this country and  
13 the constitution, they didn't want to leave to chance, enforcement of  
14 these values and these beliefs, to the bureaucrats, the politicians, and so  
15 a common law, what we're going to be talking about in this case -- the  
16 instructions and the rules, I don't think it's going to violate anybody's  
17 notions of fair play or common sense. If you're careless, and you hurt  
18 somebody, you're responsible for that.

19           And so the Founding Fathers of our country, they put it in the  
20 7th Amendment in suits at common law, those cases are going to be  
21 decided by the jury. Why a jury? Because you have no stake in the  
22 outcome. You're over here by yourself, we can't talk to you, you're  
23 completely separate and apart. You're not promised anything no matter  
24 what the outcome is, and the juries make the most difficult decisions  
25 around the country each and every day, but the power to decide is really

1 what's at the heart of this 7th Amendment right to a jury trial, and to  
2 many people, it's the most valuable in the courtroom and why we have it  
3 in our country, and one reason why we had the Revolutionary War, is  
4 over this issue of the right to a jury trial.

5           So the jury has a tremendous amount of power. You have  
6 more power than the Judge, the Governor or the President as it relates  
7 to this case today. You have the power to right wrongs, the power to  
8 make decisions, and so we trust those to the jury because you didn't  
9 want the job in the first place. When you showed up here, you had no  
10 idea what case you're coming into, how long it was going to take, a day,  
11 two weeks, three weeks. Who knows. Criminal case, civil case. You sat  
12 here patiently, took time away from your life to decide. Well, now you  
13 have the right to decide and the power to decide, and you have the  
14 power to right wrongs, and hold people accountable. So juries have  
15 tremendous power, and you have that power here in this case.

16           I think the case is really simply, actually. It's either that  
17 Desire and Guadalupe, they were injured, they were in pain, they  
18 required -- Desire required surgery and will require future surgeries or  
19 it's this way, that my clients are liars, they tried to cheat the system, and  
20 they're frauds. That's really what the Defense has been saying all along.  
21 It's either one or the other.

22           And, obviously, if someone is a liar, a cheater, and a fraud,  
23 they don't deserve anybody's consideration, but if the evidence supports  
24 that they were in pain, Desire had an injury in her C6-7 disc, which  
25 required surgery and will require future surgery, then we believe she has

1 met her burden, because there's a lot of evidence for you to consider.

2           You consider -- we showed you a number of doctors, medical  
3 records, hundreds of pages of medical records supporting that, but I  
4 think ultimately what's going to guide you in your decision-making  
5 process today is, we talked about clinical correlation, and it can be -- this  
6 shape of this puzzle can be all sorts of different shapes, but I think it's the  
7 response to treatment which really tells Desire's, as well as Guadalupe's  
8 story.

9           She had an excellent outcome to her procedure by Dr.  
10 Rosler, of the injection. She had an excellent outcome to the surgery  
11 performed by Dr. Garber in December 2016. And Guadalupe, she made  
12 a full recovery after about three months herself, so she responded to the  
13 treatment extremely well after October 30th, 2015.

14           So really, in guiding you in your decision, when you're  
15 looking at what all the information is, the response to treatment, when  
16 we've been talking about this clinical and medical correlation, really  
17 guides you in your decision-making. I really think it shows the outcome  
18 or kind of tells you the outcome of this story.

19           But first things first, why are we here? We are here because  
20 an opening statement Mr. Winner said, and I think Defense frames the  
21 issue. Now, I don't know what happened, meaning -- talking about the  
22 collision, he has no idea, but I have no doubt she was driving her car,  
23 was not looking at phone, was completely well rested, was sober, was  
24 driving the speed limit, proceeding along, and somebody with another  
25 person in the car and three kids in the back trying to find the link to go

1 trick-or-treating may have slammed on her brakes when she realized, oh  
2 my gosh, this is my turn, and possibly that's when the collision occurred,  
3 suggesting as though Desire, braking for a pedestrian, set all of this in  
4 motion.

5 But what we do know -- that's the lawyer saying that. What  
6 we do know from Ms. Tate herself, and during her testimony we heard  
7 for the very first time, she says, in response to my question, you agreed  
8 you were at fault in causing this crash, right, and the impact. Answer, I  
9 accept my responsibility; yes. Oh, you're accepting that you're at fault?  
10 The answer, that I'm responsible, that I hit her car, that I hit her vehicle.

11 That really should end it right there who caused this  
12 collision. I think it's simple. It's a rear end collision, you weren't paying  
13 enough attention, you were following too close and a collision  
14 happened, and now for the first time, she did in front of you, on May  
15 29th, 2019, she admitted that.

16 And what I'm trying to do is to guide you. It's been a few  
17 weeks, and so I'm going to be showing you parts of the testimony you  
18 heard so you can actually see the transcripts. You're not just relying on  
19 my word or your recollection. I'm sure you took all copious notes and  
20 you have a good recollection, but I think it's always good to look at what  
21 we saw, and we heard, but that's why we're here.

22 Until that day, the Defendant never took the responsibility for  
23 causing this collision, but now she did. But really the case is about, in  
24 part, about a Catch-22. I call this a defense Catch-22. No matter the  
25 circumstances, Desire and Guadalupe can't win. They went to the

1 doctor. They should have gone. They were hurt. Oh, you're hurt, you  
2 should've gone to the doctor sooner. Oh, you didn't report an injury at  
3 the scene, so therefore, you must be fine.

4 What happens if they went to chiropractic treatment and  
5 someone recommended surgery, and you chose not to do it? They  
6 would have been critical. Why didn't you have that surgery if you felt  
7 you needed it? There's no way you can win in this environment.

8 And so really, part of it is -- the whole defense strategy is in  
9 this Catch-22, that no matter what you've done, you should've done  
10 something else. We're never going to satisfy them, but fortunately, we  
11 only have to satisfy the burden of proof for you, and what the legal  
12 standard is. We're going to go through what the rules are for the jury in  
13 this case, and I think instruction number 4 is really appropriate in this  
14 case.

15 The purpose of the trial is to ascertain the truth, and Desire  
16 has been fighting for the truth from the beginning. She was 24 years old  
17 when this happened, she wanted the police to come because her car was  
18 significantly damaged. Her kid was in it. Who knows what was going to  
19 happen from that night. They were critical for wanting the police to  
20 come, but she had been fighting for the truth ever since that day, and so  
21 has Guadalupe, because they're blaming her for this crash initially until  
22 we came to court, and they admitted she was responsible.

23 She has been fighting for the truth about the severity of her  
24 injuries leading up to her surgery, and the consequences of her life. So  
25 in part, it is about the truth, and that's why we've been so diligent in

1 putting this evidence on before you to establish the truth.

2 Jury instruction number 1. You must decide -- you must  
3 follow the rules of the law and the facts as you find them. What does  
4 that mean? You have to follow these rules. The jury instructions are  
5 your rules of the road. They tell you and guide you in your decision-  
6 making.

7 In terms of the evidence, you must decide all questions of  
8 fact in this case from the evidence received in this trial and not from any  
9 other source. What does that mean to you? Only consider the evidence.  
10 Whatever you saw and whatever you heard in court. Anything that you  
11 didn't hear, then you can't decide on. Whatever happened in these four  
12 walls that we talked about during the voir dire, that's what you base your  
13 decision on, what happened within these four walls.

14 Now, it's always good, I think, to remind you of the burden of  
15 proof, because this is the only standard that my clients are held to. It  
16 means that evidence, when considered and compared to that of  
17 opposing, has more force and produces in your mind the belief is what  
18 sought to be true is more probably true than not true. Just more likely  
19 true than not. Just more than the 51 percent or more. We think we've  
20 tipped the scale. We think we've proved things with certainty at times.  
21 Well beyond a reasonable -- beyond the preponderance of the evidence,  
22 but all we really have to do, if you're a football fan, is just move the ball  
23 past the 50 yard line.

24 And more importantly, what the Judge has told us, in  
25 instruction number 45, is that absolute certainty as to the damage is not

1 required. It's only required that the Plaintiffs prove each item of damage  
2 by preponderance of the evidence and certainty is not required.

3 And if you can envision a situation, if we had to prove  
4 everything with a certainty, we probably could never get anything done  
5 because there's always going to be some questions, and it's okay to  
6 have some questions and maybe even some doubt, maybe there's a few  
7 holes for you, but if you see overall, the big picture, from all the  
8 evidence, we've met that burden.

9 I use my closing argument as a puzzle. Evidence comes in  
10 like pieces of a puzzle and creates a shape and an identity. And I'm --  
11 what I'm showing you here is obviously a picture of a globe, and there's  
12 a few pieces of -- of the earth, and there's a few pieces of the puzzle  
13 missing. It's kind of like you might have some questions, but you get the  
14 idea. You can see the bigger picture. You know that that's a picture of  
15 the earth, even though a few pieces might be missing, and that happens  
16 in every case. Not just this case, but every case.

17 And so we believe that it's okay to have a few questions.  
18 We're not required to be certain. If six of you believe that it's more likely  
19 true than not that the Defendant caused this collision, caused these  
20 injuries, and our clients are entitled to compensation, then we're entitled  
21 to your verdict.

22 All right. The law of negligence. The law of negligence is  
23 simple. If you're careless, and you hurt somebody, or you break  
24 something that belonged to somebody, you have to pay for that. That's  
25 a very common belief that's probably been around since the beginning

1 of time, and I think people instill that in our children, and the law is no  
2 different. You know, so the first thing we have to do is prove that the  
3 Defendant was negligent. And what does that mean? All it means is that  
4 all drivers must drive safe, reasonably safe. It doesn't mean they have to  
5 be perfect, but they have to drive reasonably safe. That's all that's  
6 required. Actually, that's a minimum requirement. That's their  
7 minimum requirement, but all it requires is that if you're not reasonably  
8 safe while you're driving, then you're negligent.

9           Instruction 27 is important because it requires a driver keep a  
10 look out and anticipate. I think where this collision occurred on Flamingo  
11 Road and the resort corridor, you had me anticipating where the traffic  
12 was going to come to a stop, there could be stop, that you need to pay  
13 close attention to what's going on in front of you, not only distance, but  
14 speed, as well, and watching out for pedestrians yourself.

15           And so a driver must keep a lookout, drive at a safe distance,  
16 and anticipate there might be cars slowing down for any number of  
17 reason, and that's exactly what happened here. Desire was stopped,  
18 waiting to make a right turn to take her family trick-or-treating, when she  
19 was crashed into the back by the Defendant, Ms. Tate.

20           What did Ms. Tate say in her testimony? It says, all you  
21 remember is the first -- the first time you noticed my client's vehicle was  
22 immediately before impact? Yes. So there's nothing that she did,  
23 meaning Desire, before leading up to those moments, cut in front of you,  
24 or brake in the middle of the road, or anything like that to cause you any  
25 problem with your driving? Answer, no. Yes, you are correct. So Desire

1 did nothing. And you didn't see Desire stop to make a turn until right at  
2 the last minute? Correct. You didn't see the pedestrians on the street  
3 corner there, correct? Answer, there is people on the corner, but I didn't  
4 see anyone crossing. That's important because the only two that matter  
5 in this case who saw the pedestrians are Desire and the Defendant, Ms.  
6 Tate, the drivers.

7           Guadalupe was in the car. Whether she saw some  
8 pedestrians on her right or not, quite frankly, is irrelevant, because it's  
9 the drivers who have the duty to the pedestrian, so I'm going to show  
10 you the rules of the road when it relates to Desire's duty for the  
11 pedestrians and Ms. Tate's duty to the pedestrians in this case.

12           But most importantly, Ms. Tate, as she's driving westbound  
13 on Flamingo, she sees the pedestrians. Desire is at the corner. She's at  
14 a double crosswalk. Double crosswalk, because you have one that goes  
15 east and west, and you have one that goes north and south on Flamingo.  
16 She's at a double crosswalk stopped, trying to make a turn.

17           Now, the Defendant told us during the trial on May 29th: If  
18 you had been paying closer attention to the road in front of you and saw  
19 that she was stopped in the process of making a turn, you could've  
20 slowed your speed down sooner and avoided this? Answer, I could  
21 have; yes. I'm bringing this to your attention because I expect Mr.  
22 Winner to come up here and start arguing or suggesting that Ms. Tate is  
23 somehow not responsible, so I want to use her words.

24           Instruction number 30. This is an important instruction. I  
25 think it's simple, and it's common sense, but I want to share with you not

1 only was it common sense for Desire to stop for a pedestrian, she was  
2 required to by the law. It says, a driver of a motor vehicle shall, which  
3 means mandatory, exercise due care to avoid a collision with a  
4 pedestrian. So, she saw somebody getting off the curb and sort of walk  
5 in the road, she was obligated to stop. Exercise proper caution upon  
6 observing a pedestrian on or near -- or near a highway, street, or road, or  
7 more importantly, a marked or unmarked crosswalk.

8           Desire was involved in two crosswalks. She had to cross two  
9 crosswalks to make that turn. She was obligated, if she saw somebody,  
10 to slow down. And if she even had a concern, stop, because obviously,  
11 it's not a fair fight if it's a pedestrian and a car. If you hit somebody, they  
12 could be seriously injured or even killed. There's a reason for that  
13 statute in place, that law in place. And so Desire, when she stopped to  
14 slow down at that intersection, she was obligated to do that.

15           But it doesn't end there. Ms. Tate, the Defendant, she had an  
16 obligation to pedestrians, too. Let me read Instruction number 31 to you  
17 so you have an -- you understand her obligations. When I explain the  
18 statute, I think you'll understand even better. It says, there was  
19 enforcement in effect at the time in question, and the law is read as  
20 follows -- we're talking about C: Whenever a vehicle is stopped at a  
21 marked crosswalk or an unmarked crosswalk at an intersection -- that  
22 would be Desire -- the driver of any other vehicle approaching from the  
23 rear, which would mean Ms. Tate in this case, shall not overtake and  
24 pass the stopped vehicle until the driver, meaning Ms. Tate, has  
25 determined that the vehicle being overtaken was not stopped for the

1 purpose of permitting a pedestrian to cross the highway.

2           She had to wait, slow down, and stop. Instruction 31. So  
3 you have to stop because she's approaching two crosswalks. That was  
4 her job to stop, to make sure Desire wasn't stopped for a crosswalk,  
5 because what happens is, if someone is slowing down for a -- I'm  
6 thinking of in front of UNLV on Maryland Parkway. Like if someone's --  
7 you can cross in the middle of Maryland Parkway, right across from the  
8 university. Somebody got killed there recently in the last year. If  
9 someone is stopped, you're stopped for a crosswalk, maybe the driver  
10 behind, until they swing out thinking, this car -- I don't know why this car  
11 is stopped, and they hit somebody in the crosswalk, there's a reason that  
12 that law exists.

13           If you're approaching your crosswalk and another car is  
14 stopped, you have to stop. That obligation applied to Ms. Tate, and  
15 unfortunately, she didn't do that. So she had a duty to the pedestrians  
16 as well and injured -- crashed into Desire as a result of not complying --  
17 following that law or following the rules.

18           This is her testimony. I just want to make sure we're clear.  
19 I'm asking Ms. Tate, as you're driving west on Flamingo, you see  
20 pedestrians along the sidewalk on the north side of Flamingo, correct?  
21 And as you know, that area is busy, but not only in terms of cars, it could  
22 be locals, tourists, but also pedestrians on the sidewalk? And she  
23 answered, correct. Even at the scene, Desire told them, I stopped for a  
24 pedestrian.

25           And finally -- and so as Desire started to make her turn, after

1 the light turns green for east and west bound traffic, the pedestrian walks  
2 off the sidewalk into the crosswalk. She stops. The Plaintiff brakes  
3 quickly to avoid the pedestrian. You agree that's a reasonable decision  
4 to avoid hitting somebody, right? Her answer was right. So she even  
5 agrees that it was reasonable for Desire to do that, and she was the only  
6 one there at the scene.

7           Instruction 29. This is about following too close. The driver  
8 of the vehicle shall not follow another vehicle more closely than is  
9 reasonable and prudent, having due regard for the speed of the vehicles,  
10 and the traffic condition upon the highway. That's a busy area. It's a  
11 resort corridor, it's a Friday night. The cars are going to be stopping and  
12 going, and stopping and going, and there's pedestrians all along the  
13 sidewalk and on the curb.

14           By not following this law, the Court is telling you, if you find  
15 a violation of Instruction number 29, that's negligence as a matter of law.  
16 And what that means to you is she's negligent for all purposes, just  
17 because she violated -- she was following too close. She violated the  
18 law and was negligent, and that's all you have to find. A violation of any  
19 of these laws means that to you.

20           The fact that her speed might've been lower doesn't relieve  
21 her from the -- or going the speed limit doesn't relieve her of the  
22 obligation to drive slower, because traffic might dictate that you have to  
23 drive less than the speed limit, and that certainly was the case here.  
24 Driving 35, approaching that intersection, with Desire stopped or barely  
25 moving was far too fast, and it wasn't keeping a safe distance.

1                   And I asked the Defendant, Ms. Tate, you agree that your  
2 speed was a factor in causing this collision, because Desire was stopped,  
3 and you're going obviously 35 miles an hour or something close to that,  
4 and weren't able to stop in time, so your speed was a factor? Answer,  
5 that could be one factor.

6                   And now that your testimony that once Desire applied her  
7 brakes for the pedestrian, everything for you happened so fast. Answer:  
8 It happened really fast, yes. You didn't know why Desire was applying  
9 her brakes, because she didn't -- wasn't watching the pedestrians. And  
10 you even said you really weren't aware, because you were traveling so  
11 fast. Answer: I have said that.

12                   So using her own words, the law, the rules of the road the  
13 Court has given you, she was driving too fast, following too close, and  
14 not paying full attention, not only to Desire, but to the pedestrians,  
15 because she had an obligation to those pedestrians, in the same way  
16 Desire did. Because what would happen if somebody walked across the  
17 street in front of Desire, and she swung out and changed lanes like she  
18 was trying to do, in part, and hit that pedestrian?

19                   There's a reason these rules exist, because they involve the  
20 life safety of our community. And it's up to you, ladies and gentlemen,  
21 as you enforce these rules. You enforce these rules. And we're asking  
22 you to do that in this case. And the Defendant admitted she caused this  
23 collision, which we consider -- we think is significant.

24                   And, finally, the Defendant said on the same day, May 29th  
25 of 2019, almost four and a half -- three and a half years after this, you

1 said you accepted responsibility for hitting the car. I have said that I  
2 accepted the responsibility that I hit her. I have said that.

3 And, finally, I think this case is one of common sense. If the  
4 Judge tells you, that you can exercise your common sense. And it's like,  
5 well, listening to the evidence that you all bring to the process. Your  
6 own life experience and common sense, your experience of driving out  
7 on the road. And you can do that here. And what's clear in my mind in  
8 this case, is common sense tells you the Defendant was negligent. She  
9 just wasn't paying attention. She had a bad night, but unfortunately, in a  
10 blink of an eye when you're not paying close attention, people get hurt if  
11 the rules of the road aren't followed. And that's what happened here.

12 So the first question, was the Defendant negligent? We  
13 believe, yes. So the next question for you, was the Defendant's  
14 negligence the proximate cause of the injuries to the Plaintiffs? And  
15 instruction number 37 is the instruction of proximate cause. Now, I want  
16 to spend a minute with this, so you understand it.

17 It says when I use the expression proximate cause, I mean  
18 that cause which is a natural and continuous sequence, unbroken by any  
19 intervening cause, produces the injury complained of, and without which  
20 the result would not have occurred. It need not be the only cause, or the  
21 last or nearest cause. It is sufficient to have occurred within some other  
22 cause acting at the same time, which in combination causes the injury.  
23 What does that mean to you?

24 But for the crash, Desire's, as well as Guadalupe's injuries  
25 would not have occurred. If it had not been for that crash, we're not here

1 talking today. So we focused so much on Desire's, so we're going to -- I  
2 want to kind of give you the -- remember, the overview of what I told  
3 you, the roadmap at the beginning of this case. The starting point was  
4 Desire was pain free, had no problems, required no medical treatment.  
5 The Defense -- they have their medical records dating back to 2010.  
6 They have records from 2011, 2012, 2013. They even have her personal  
7 gynecological records. And everybody agreed that she was pain free,  
8 was in need of no medical treatment. But as of -- after October 30th,  
9 2015, was the start of her severe pain. Her disc injury was confirmed  
10 with the first injection on January 2nd, confirmed again on April 1st.

11 She was recommended for surgery the first time on May  
12 17th, 2016. She had a second accident, which didn't change any of the  
13 need for surgery. She had a neck fusion, and ultimately in September --  
14 she had a second opinion by Dr. Garber, about the neck fusion surgery  
15 which we've been talking about extensively the last two weeks and what  
16 the consequences of all that is for Desire.

17 And so October 30th, 2015, really begins a cascade of events  
18 for Desire and Guadalupe. But had that crash not happened, we're not  
19 talking about this, and we're not talking about spinal surgery, we're not  
20 talking about future spine surgery, and living a life of pain and  
21 discomfort, and affecting the quality of your life.

22 We did that through clinical and medical correlation. We  
23 didn't want to just say, we wanted to prove it to you through our medical  
24 records and medical doctors. And so we presented three doctors,  
25 clinical correlation. We have all of the medical records in evidence. We

1 have Dr. Rosler, who confirmed the source of the pain, the first surgeon,  
2 Dr. Khavkin, who testified and recommended a two-level fusion, and Dr.  
3 Garber, who ultimately did the surgery -- the successful surgery on  
4 September 1st, 2016. But we did, we felt in a detailed way, so that you  
5 had a firm understanding of everything that went on, so that you could  
6 make an informed decision in this case.

7           And what's interesting is Dr. Khavkin, he came in and was  
8 very supportive of Desire, and her surgery, and the need for surgery.  
9 And he didn't get to do the surgery. So she's not going back to him for  
10 any reason. He saw her one time. He was owed 900 bucks for his bill,  
11 but he was the one who -- the neurosurgeon trained at John Hopkins. I  
12 thought he was extremely essential to the case, in the sense of he had no  
13 stake in the outcome. And gave you, I think, a very good detailed  
14 analysis of why Desire was surgical, and why it was caused by this  
15 collision. All of it ties together, but I thought he was particularly  
16 interesting, and that's why I put him in the middle, because he was the  
17 second witness to testify, actually, as well.

18           But I think the starting point is -- for you is in the weeks and  
19 months prior to the crash, Desire was pain free. She had an accident  
20 back in 2010 -- on June 16th, 2010. This is her drawing. Had some head  
21 pain, and some neck pains, low back pain. Did she report that to her  
22 doctor? She didn't report the neck pain, but I'm not sure if she  
23 remembered it or not. I don't think it even matters if she did, because  
24 she was 19 at the time and made a full recovery. She had a neck MRI on  
25 July 12th, 2010, completely normal.

1                   And in the five -- almost five-and-a-half years before -- five  
2 years and three months before this, there was no doctor visits, no  
3 chiropractor visits. And what does that mean? That means there's five  
4 years and three months, almost 64 months, 276 weeks, 1,935 days of no  
5 documented medical problems, neck pain, need for surgery, need for  
6 treatment. So your starting point is that there is no evidence of any  
7 injuries, symptoms, or treatment, before this crash, which in any way  
8 contributed to it.

9                   And Dr. Rosler, we asked him -- we asked every doctor to  
10 rule out the 2010 crash. Dr. Rosler said -- based upon your review of  
11 those medical records, was that incident from May of 2010? Does that in  
12 any way explain the cause of any symptoms we've been talking about?  
13 His answer was no. Dr. Garber, have you been able to effectively rule  
14 out to a reasonable degree of medical probability that this prior accident  
15 caused or contributed to the need for surgery. It has no relation to the  
16 need for surgery following the October 30, 2015 accident in my opinion.

17                  Dr. Wong, the Defense expert. The 2010, does -- that motor  
18 vehicle collision does not explain her symptoms that she reported after  
19 October 30th, 2015, correct? Answer, correct. That's your opinion to a  
20 reasonable degree of medical probability? Answer: This is -- that's  
21 medically not significant to this case, is it, in your opinion? I don't think  
22 it's the cause. I don't think that's the cause of her symptoms after the  
23 2015 incident.

24                  So any discussion about 2010 is quite frankly irrelevant,  
25 because the expert witnesses tell you, even the Defense expert

1 witnesses tell you that. So throughout this, as we're summarizing this  
2 evidence for you, I'm going to point to evidence that the Defense experts  
3 used, and testified to, to support my position.

4 Dr. Schifini. The medical records you reviewed after the 2010  
5 accident in no way explains any of her symptoms after October '15,  
6 correct? I would say that's an accurate, answer. And that opinion is to a  
7 reasonable degree of medical probability? It is. Why is it important to  
8 use those words reasonable degree of medical probability? Because it's  
9 -- it's consistent with the preponderance of the evidence, right? More  
10 probably true than not true. That's why we tie that standard in. That's  
11 very important for you to understand, because as we talk about this  
12 evidence in the future, so can Dr. Schifini say things to a reasonable  
13 degree of medical probability? Because that's the standard. All the  
14 others doctors used it. He didn't, and I'll show you how in a few  
15 minutes.

16 So October 30th, 2015, starts a whole series of events. It's  
17 almost like this domino theory. Once Desire is injured, we push over the  
18 first domino. She starts -- this inflammatory process takes over. She  
19 develops pain and symptoms in her neck, down her left arm. Goes for  
20 chiropractor visits, to an MRI, to the pain doctor for an injection, for a  
21 second injection, for a recommendation for surgery, and ultimately to  
22 surgery of a fusion, at nearly 25 years old. And we're going to talk about  
23 the long-term implications of that, because this domino effect is going to  
24 continue on, really for the rest of her life.

25 It really started down this process. So what happens after

1 October 30, 2015, Desire had 24 doctor visits, 30 chiropractor visits, 6 x-  
2 ray and MRIs, two spine injections, and one spinal fusion surgery. And  
3 this is Dr. Wong's testimony, because you recall those questions, if you  
4 assume an injury -- remember, we were asking to assume an injury with  
5 Dr. Schifini. Dr. Wong said -- just so we're clear, he used the word if.  
6 You agree more likely than not, that my client sustained an injury to her  
7 body in the October 30th, 2015 motor vehicle collision? Yes. You agree  
8 to that? Yes. To a reasonable degree of medical probability, that's your  
9 opinion, she suffered an injury? Yes. So that debate's over. But what's  
10 the problem is once you -- once you become symptomatic, the neck pain  
11 and the arm pain, that remains.

12           It never goes away. So that's the first domino, which led to  
13 the doctor's visits, the MRI, the injection, the need for surgery. And  
14 Desire had to investigate where was the -- did the Doctor had to  
15 investigate where was the pain coming from.

16           Dr. Rosler, December 16th, 2015, left-sided neck pain. Pain  
17 into the arm. Numbness into the hands. Where was it coming from? He  
18 did an exam. He talked about he found clinical correlation on his exam  
19 findings. Decrease in sensation along the C6-7 disc nerve. He was  
20 concerned about left upper extremity radiculitis, or radiculopathy. That's  
21 the nerve root irritation.

22           The MRI. Dr. Lewis confirmed that there's a disc protrusion  
23 at C6-7. Abnormal. Dr. Rosler, he looked at the same film. He found a  
24 bilateral disc protrusion at the left C7 nerve root. Dr. Khavkin does his  
25 own review. He confirms a C6-7 disc problem. Dr. Garber, another

1 neurosurgeon in our community, MRI of the spine reveals a left-sided  
2 C6-7 disc protrusion, which is a herniation.

3           Now there's all this discussion about is there a protrusion or  
4 not. Four local doctors, who were involved in this care, all said that they  
5 found a protrusion. Dr. Wong said -- so you indicated earlier when you  
6 testified in this discussion that you're not arguing or disagreeing with the  
7 radiologist? I'm not disagreeing with the radiologist. While he has a  
8 different read, he says he's not disagreeing with the radiologist, Dr.  
9 Lewis. Dr. Lewis was actually kind of refreshing. I've never -- I thought it  
10 was an interesting day, the Defense would call him. He had no idea why  
11 he was coming to court. All he does is review the imaging. He has no  
12 idea why the patient is having an MRI. No knowledge. He just sits in the  
13 room, and he looks at these images all day and documents what he  
14 finds.

15           And somehow he's -- the way they played him out is like he's  
16 some hacker. He's a Board Certified. He trained at Vanderbilt, which is  
17 one of the finest medical universities in the United States. Mount Cedar-  
18 Sinai in New York City, another world-class hospital, board-certified  
19 radiologist, and he found that pathology. But more importantly, three  
20 other medical specialists did in our community, as well.

21           Dr. Wong said chemical irritation from discs can cause  
22 symptoms. That we know there's a protrusion, which is a herniation,  
23 there could be irritation coming from a nerve root, correct, without  
24 compression. I mean just because he may not see it directly  
25 compressing on a nerve, once a disc is herniated, that can cause a

1 chemical irritation. So there's a theory that you can have chemical  
2 irritation from the disc. It can cause symptoms, it can cause numbness,  
3 it can cause tingling. And radicular symptoms down in the arm.

4           So Dr. Rosler, he just wanted to find out where are the  
5 symptoms coming from, so he scheduled an injection. January 7th,  
6 2016, he confirms the diagnosis with his injection on January 7th, 2016.  
7 He does a selective nerve root block on the left side, finding the source of  
8 the pain. Dr. Lewis, who's never seen any of this before. He -- I showed  
9 him that record, and I said how -- how has the diagnosis now been  
10 officially established, because the pain went away in that distribution.  
11 So for the first time he saw medical records in this case correlated to his  
12 MRI findings and confirmed that establishes a diagnosis of a disc  
13 protrusion causing symptoms in Desire's left arm.

14           So we showed you clinical correlation. We have a collision,  
15 onset of symptoms, continuous and ongoing, MRI, injections, and  
16 reduction in pain.

17           Now, Dr. Wong's, he's even said that all -- all of the care that  
18 Desire received up through February 2016, was reasonable and  
19 appropriate. Why is that important? Because that includes the MRI, that  
20 includes the injections, in which he had an excellent response. You don't  
21 do injections for soft tissue injuries. You don't order an MRI if you  
22 suspect a soft tissue injury. So that was critically important that he  
23 relates all the treatment through that date.

24           Even Dr. Schifini had to say -- the chiropractic care was  
25 reasonable and appropriate? Yes. Your call for an MRI was reasonable?

1    Yep, because she had left arm symptoms. The chiropractor had a  
2    reasonable -- was reasonable in ordering it. Reasonable in referring to  
3    Dr. Rosler. Reasonable for Dr. Rosler to do an injection because of the  
4    neck pain and the arm symptoms. So all of it was reasonable.

5               And then Dr. Schifini confirms that the focus of that injection  
6    was to determine if the nerve root exiting the C6-7 disc, whether that  
7    may be a source of the symptoms. He said I agree with that, yes. It was  
8    reasonable for him and Dr. Rosler to make that recommendation given  
9    her presented symptoms and complaints, based on her symptoms? Yes.  
10   So even her -- even Dr. Schifini has now agreed that the injection was  
11   reasonable, which established the diagnosis, though he doesn't want to  
12   admit that was related to the collision, though.

13              Question to Dr. Wong. Was it reasonable for him to make  
14   that recommendation? Yes. Because he's trying to -- based on the  
15   symptoms and again trying to clinically correlate it. Dr. Wong has  
16   importantly also said, giving me this argument that when all of her  
17   symptoms went away, she was pain free. She was only pain free  
18   because she was on medication, and that steroid injection. Dr. Wong  
19   even agrees that injections, he said are typically temporary.

20              Dr. Schifini, the other Defense expert said, you tell patients  
21   that you may get some benefit even after that, for a period of weeks or  
22   months? Yes. And you also tell them to set their expectation, that after  
23   the steroid wears off, the pain may come back, and you'll come back and  
24   see me? Yes. So we know those injections are temporary.

25              So what happens when the Defense gets up here and says

1 everything through February 2016, clean. That doesn't tell the whole  
2 story. That's the problem. There's no other injury, there's no other  
3 explanation, because Desire's symptoms come back, and she goes back  
4 to see Dr. Rosler on March 29th, 2016, because her symptoms came  
5 back. And they're in the arm, in the hand. And the same process starts  
6 all over again.

7           And Dr. Schifini says. Doctor, for the sake of argument, I  
8 could go through each and every record from the chiropractor from  
9 January of 2016, all documenting symptoms in the left arm and hand,  
10 right? You agree that's consistent and continuous. So if there's any  
11 discussion up here earlier or later, about those not being consistent or  
12 continuous, you know that that's not accurate, because even the Defense  
13 experts, they agree that they -- that it has been.

14           Dr. Schifini even went on to say, the patient describes  
15 symptoms February 1st, symptoms into the arm and hand, okay.  
16 February 3rd, no longer has symptoms in the hand. So that's when --  
17 that's after the selective nerve root block? Yes -- or, excuse me, it is.  
18 And when she goes back for a period after leaving the chiropractor, she  
19 goes back to Dr. Rosler in March, and she has symptoms in the left hand  
20 and arm again, for which Dr. Rosler recommends a repeat injection, just  
21 to confirm that's the problem. He does another injection on April 11th,  
22 2016, again confirming the problems of the C7 nerve.

23           Dr. Schifini, this is important for you to understand, by May,  
24 by every medical account, Desire is in chronic pain. Chronic pain is pain  
25 that lasts more than three years or even longer on the outside six

1 months. And what's important about that is that people who are in  
2 chronic pain, their sleep is affected. They have altered mood. They have  
3 depression. It deprives them of sleep, causes them to become more  
4 fatigued, and the pain makes it worse. And the pain becomes worse. It's  
5 really a vicious cycle that Desire had to live through.

6 And by May, when she's offered surgery for the first time,  
7 she's in chronic pain by everybody's standard. Not only have our  
8 experts all agreed to that, I'm showing you even where the Defense has  
9 agreed to that.

10 July 10th, 2016. I want to compare and have a discussion  
11 with you briefly about the July 2016 collision. While she had one, it  
12 didn't change anything for her. It didn't change the course of events.  
13 She was already determined to be surgical before then. What I'm  
14 showing you here is the medical records before and after.

15 June 21, 2016, neck pain, nine out of ten. July 26, 2016, 16  
16 days later -- pain -- neck pain, eight to nine out of ten. Same exam  
17 findings. Identical. Nothing new happened. I only bring that to your  
18 attention; I want to use -- the Defense testimony -- our experts don't  
19 believe it caused anything as you know. But let's use the Defense  
20 expert, Dr. Schifini. You agree that before the 2016 collision and after,  
21 Desire's pain in her neck and symptoms in her arm were the same as  
22 after? Yes.

23 No difference. No doctor testified that the July 2016 accident  
24 change Desire's condition at all, none of our experts and none of the  
25 Defense experts and that is the evidence that you've been given, and you

1 must make a decision based upon it. September 1st, 2015, Desire faces,  
2 undergoes the first surgery of her C6-7 disc at Valley Hospital.

3 Now, I wanted you to know that that decision for her to have  
4 the surgery was reasonable. Dr. Garber's recommendation was also  
5 reasonable, not by his own testimony and everybody -- all of our experts,  
6 but Dr. Wong, the only other surgeon who testified.

7 And so once she's fused, you're not critical of Desire for  
8 following the treatment recommendation of Dr. Garber, correct?

9 Answer, I'm not critical of him, no. In any way, correct? Answer, no.

10 So while he may -- his own preference may not to do a  
11 surgery, he's not critical of Dr. Garber and it was reasonable for him to  
12 make the recommendation and reasonable for Desire to follow that  
13 recommendation. And importantly, the operative record, also part of  
14 other testing and data -- part of our clinical correlation, Dr. Garber finds  
15 two distinct fragments of disc consistent with a disc herniation, which  
16 were causing Desire symptoms from the beginning.

17 That is objective. He's the only one who saw that. It's the  
18 most direct visualization. MRI is not perfect. It doesn't show everything,  
19 but that does. When he took it out with his own hands and saw it with  
20 his own eyes, that's all the evidence that you would need, and it  
21 confirms the diagnosis dating back to December of 2015. And more  
22 importantly, as we kind of started out the discussion, Desire got great  
23 relief from the surgery. And what does that tell you? It shows that her  
24 response to treatment of the neck pain and the arm numbness having  
25 gone away tells this outcome, the medical outcome in this case.

1 Even Dr. Wong says she, meaning Desire, reported  
2 significant relief after the surgery. Yes, that indicates that the surgery  
3 helped her.

4 Yeah, I guess that's one way to look at it. Dr. Schifini,  
5 according to medical records that he looked at before and after the  
6 surgery, she had a very good, an excellent surgical outcome. That was  
7 what was documented. Yes, she had significant relief of her symptoms  
8 and responded well.

9 So when we go back to the question, was the Defendant's  
10 negligence a cause of the damage to the Plaintiffs? Of course. And we  
11 think at the end of the day that even -- you heard Mr. Winner being  
12 critical of Mr. Powell, referral to the chiropractor. Well, you heard from  
13 Dr. Schifini -- we're going to see, and I'll show you this in a few  
14 moments. That referral was reasonable. The chiropractic care was  
15 reasonable. The MRI is reasonable for both of the clients. All the care  
16 was reasonable.

17 They have a team of lawyers over here. Ms. Tate has had  
18 three lawyers every day. They spent 80,000, almost \$80,000 in expert  
19 witnesses, almost 80,000 for this case. So -- and everybody has a right  
20 to be represented and so does our clients and thank goodness they do  
21 have representation. They needed it from the beginning.

22 Instruction 16. This is the one about expert witnesses. And I  
23 want -- I've never really talked about this instruction during a trial, but I  
24 think it's important here. It says a witness who has special knowledge  
25 can testify as an expert. They can give an opinion as to any matter in

1 which he or she is skilled. Your -- you should consider the expert  
2 opinion and weigh the reasons, if any, given for it. You're not bound by  
3 such an opinion. Give it the weight which you deem it entitled, whether  
4 it be great, slight and you may reject it. Why is that important? Why?  
5 Because Dr. Schifini both for Desire and for Guadalupe says this.

6           So then you have no opinion that Desire was hurt to  
7 reasonable degree of medical probability in this crash? Answer, correct.  
8 Question, you have no opinion that Desire was not hurt to a reasonable  
9 degree of medical probability in this case, correct? I think by default,  
10 yes, that's true.

11           So he gives you nothing to help you. What does he do? He  
12 takes no position. He's just going to take some shots here and there at  
13 all the doctors who did participate, did help them get better, were trying  
14 to make a difference. You'll have to decide why he's motivated to only  
15 say -- because if you conclude Desire and Guadalupe is hurt, then that  
16 treatment was all reasonable. That's why they don't -- they don't want to  
17 open that door.

18           But that gives you nothing. Every other doctor had stated to  
19 a reasonable degree of medical probability their opinions. We had to do  
20 that, because you have -- we have to prove to you and meet our  
21 standard, more likely true than not true. And that's why we did that.  
22 And that's critical to you.

23           And I think you reject pretty much everything he says. But  
24 throughout this case, it's interesting -- we've all heard of red herrings.  
25 Those are like fish, like in these old hunts back in England, they would --

1 you know, to throw the dogs off scent, they would put out red herrings  
2 of fish out in the fields to try to get them, you know, off track.

3 So I think the Defense has had a bunch of red herrings in this  
4 case that they've thrown out here to try to distract you from the truth of  
5 this case and the finding of the truth. And the first one was no injury at  
6 the scene.

7 Dr. Schifini. Even he, given his position, it's not uncommon  
8 to see patients who at the scene of a motor vehicle accident don't report  
9 they're injured or need medical treatment. Answer, that's correct.  
10 Something you see frequently. Answer, very frequently. Question to Dr.  
11 Schifini, no matter where you're injured in the body, whether it be a disc  
12 or some body part, the body's going to go through this inflammatory  
13 process that's going to take some time for the body to start to heal and  
14 have pain. Answer, yes. That's why often times it take hours or even a  
15 day or two for someone to start to feel the symptoms. Yes.

16 So when Desire started reporting symptoms the next  
17 morning, that was within the time period where people can start  
18 developing symptoms and have problems. Answer, yes, it is.

19 Same for Guadalupe. So that's a red herring. Waiting for a  
20 police report. Yes, of course, why wouldn't you? There's over \$4,000  
21 worth of damage to her car. How's this going to be handled? Why not?  
22 In fact, she was doing the right thing. She thought she was doing the  
23 right thing. Whether she was doing it right or not, she wanted it,  
24 because she's worried about the damage to her car. Look at it. Who's  
25 going to fix that?

1                   Smoked out taillights. That's a cosmetic feature. Many cars  
2 have cosmetic features on them. Doesn't affect the operation. And  
3 Jorge, Desire's husband, talked about the headlights and said they  
4 worked -- the taillights, and they worked fine. They've never -- he never  
5 had a problem with the taillights ever. The blinkers. You could see  
6 them. They lit up at day or night. They had no problem. Meant nothing.  
7 But they're trying to throw you off like oh, that was a contributing factor.  
8 That did nothing.

9                   The Defendant clearly saw Desire, chose not to stop. She  
10 saw her at the last second, unfortunately, because she wasn't paying full  
11 attention. And more importantly, the Defendant's testimony is forgetting  
12 these tail -- this plastic lens cover.

13                  If you'd been paying closer attention, you could have slowed  
14 your speed and avoided this.

15                  Answer, I could have, yes.

16                  And finally, you said you accept responsibility for hitting her  
17 car?

18                  I've said that I've accepted responsibility that I've hit her  
19 vehicle. I've said that.

20                  So smoked out taillights, that is nothing more than a red  
21 herring.

22                  Damage above and below the bumper. That's irrelevant. It  
23 was a significant collision with substantial damage to both cars. That  
24 discussion -- the only thing that matters is where they hurt or were their  
25 symptoms caused by this crash? That's the only thing that's before you.

1 And we believe the evidence has been overwhelming that's when every  
2 -- all of this started.

3 Jorge's video. In the opening statement, Mr. Winner said  
4 this, the Plaintiff's husband came to the scene and in kind of angry words  
5 examined the car and was mad, saying somebody was going to have to  
6 pay for it."

7 That's not true. Kind of what you given opening statements;  
8 those are kind of like the promises to the jury. That didn't happen.  
9 Number one, it didn't happen. Two, the video was made at home. He  
10 was using words, because he was upset and frustrated, but no one ever  
11 said someone's going to have to pay for that. You listened to that video  
12 last week and those words aren't on there. He said that, because he  
13 wanted to paint, in addition to Desire and Guadalupe, Jorge in a negative  
14 light to this whole idea that they're liar, cheats and fraud not worthy of  
15 your belief or your consideration. He called their car a low rider, another  
16 statement we believe to try to minimize the effect that it's had on this  
17 family and their life.

18 Jorge's video wasn't taken at the scene. He never said  
19 someone's going to have to pay for it, shows the full extent of the  
20 damage. And Mr. Winner was asking questions of Jorge about are you  
21 married? Are you not married? While they're technically not married,  
22 they hold themselves out as husband and wife. They've been together  
23 since Desire was 18. They raise children together.

24 And here's his -- I call it his wedding ring. Whatever you  
25 want to call it, it's right there in the video. But that was an effort to be

1 demeaning and it's really reflecting the attitude of the case. They've  
2 been together, and she's been the mother of Jorge's kids from a prior  
3 relationship for more than ten years. They deserve more respect than  
4 that.

5               Lawyer referral. This is really who cares? Let me  
6 demonstrate it through the evidence, not just my words. Dr. Schifini.

7               So you don't have a problem if a lawyer sends you a patient,  
8 right? Answer, no, he doesn't have a problem, when they -- with what  
9 happens on their side. So while there's a discussion of Mr. Powell being  
10 referred, it's not a problem with you to say I think this physical therapy  
11 group, private practice facility is a good one, sending people. There's  
12 nothing wrong with that. You're not critical of that are you? The answer,  
13 no. Because you make referrals to lawyers? Yes. And he -- Dr. Schifini  
14 refers people to me or has, because you want people to have good  
15 representation.

16              So that issue has no effect, whether it's how they get there,  
17 as long as the care is appropriate, that's what your focus is?

18              Yes.

19              And I bring that to your attention, because there's been all  
20 kinds of discussion about that. That's the evidence. That's not the  
21 lawyers talking. That's actually the evidence by the experts involved.  
22 That's their expert. And the question is, in fact -- about going to Dr.  
23 Garber, whether Mr. Powell sent her there or the other doctor sent here  
24 there. Dr. Schifini even says it's irrelevant to him how she got there.  
25 That's the state of the evidence. So the lawyer referral issue is to make

1 you feel somehow there's something nefarious going on here.  
2 Thankfully she's had good representation from the beginning, because  
3 she's obviously needed it.

4 Dr. Khavkin's letter outlining the costs of what these  
5 surgeries are. What happens is at times, if someone needs a surgery in  
6 the future, we need to come to court with how much is it going to cost,  
7 so that we can let you know, so you can make a decision how much to  
8 award in damages for costs of future (sic), so that's common.

9 Even Dr. Schifini, we asked him about cost letter. Do you do  
10 those in your practice? He says, I do. And there's nothing inappropriate  
11 or wrong with that? No. Sometimes if somebody has a surgery and  
12 doesn't particularly know the cost, then we have an actual bill. If you've  
13 already given the surgery, it's irrelevant. We know the bill. But if it  
14 hasn't happened -- if it's going to happen in the future, the only way the  
15 Court or the lawyers or people who can function is what's the cost of that  
16 going to be in the future? You need that information. We get that  
17 information for you, in case it goes this far, so you can make a decision.  
18 Dr. Schifini has no problems with this.

19 But when Mr. Winner said that Desire is referred to Dr.  
20 Khavkin for a surgical cost letter, like that's somehow inappropriate,  
21 that's not accurate, is it? He goes, she was referred to a neurosurgical  
22 consultation. I think that's more appropriate. That's their witnesses  
23 talking. Dr. Khavkin is board certified as a fellowship trained from John  
24 Hopkins University neurosurgeon and he deserves more respect than  
25 that.

1           Liens. Some of the treatment has been on a lien, but there's  
2 nothing wrong with that at all. It means if they don't pay. If -- whatever  
3 your verdict is, the monies that you award have to go back to pay the  
4 physicians for their services. And if you don't find anything for them,  
5 then they still owe the money.

6           Because here's what Dr. Schifini said. These are their own  
7 doctor on this issue. In your practice, you attend to patients on a lien?  
8 That's correct. And you expect to be paid regardless of what happens,  
9 don't you? Correct. And there's nothing wrong with at the time treating  
10 patients on a lien basis? No. Nothing illegal about it? No. And you're  
11 not critical of my clients being treated in some on a lien, some not on a  
12 lien? Answer, that's correct.

13           So when Mr. Winner stands here and talks about any liens,  
14 you know you can disregard that, because their -- even their expert, even  
15 Dr. Schifini's position is there's nothing wrong with that.

16           So dealing with all of those [indiscernible], what are we here  
17 for? We're here for full accountability. And the way we do that is we  
18 establish fault, which is what we've done and the accountability for all  
19 the harm that's been caused. And that is full responsibility. And that's  
20 what we're here for.

21           And I want to refer you as we kind of sort this discussion,  
22 refer you through Instruction Number 8 that a verdict never may be  
23 based on sympathy or prejudice. So you can't have sympathy for either  
24 party. Respectfully, Desire's got a nice, loving family. She's not here for  
25 sympathy. She has sympathy and empathy at home. This case is about

1 an accounting. Instruction -- you can't have sympathy actually for either  
2 party. Here to make a decision based only on the evidence and return a  
3 verdict to balance out all the harms and the losses that the Defendant  
4 has caused without regard for sympathy for either side.

5 Instruction 42 says you're not to discuss or even consider  
6 whether either party has carrying insurance. That has no impact on your  
7 decision. So if during deliberations someone brings up that topic, just  
8 respectfully tell them, as you know, from the Court's instruction Number  
9 42, we can't consider that. Don't consider what happens, where the  
10 money comes from or what happens court. Your job is to solely decide  
11 what are the damages here in court and that's it.

12 Past medical expenses. Start there. The past medical -- it  
13 talks about what you can award. There's various categories of damages  
14 and one of them is the reasonable medical expense that the Plaintiffs  
15 have incurred as a result of the collision. Okay. That's for the past. And  
16 for Desire, that's 100 -- you may want to take a few notes on some of  
17 this -- \$180,617.62. That's how much she's already incurred in past  
18 medical expenses, so those monies would be to pay for those charges,  
19 expenses that have already occurred.

20 When you go back into your deliberation, there's going to be  
21 a verdict form. And the first question is what are the damages for both  
22 Desire and Guadalupe? For Desire, the question is she has \$180,617.62  
23 in past medical expenses we're asking you to award her that's already  
24 been incurred.

25 Guadalupe. While a lot of the time and attention has been on

1 Desire, Guadalupe was also injured. She also had to spend months in  
2 treatment and therapy, her own life disruption. And Desire -- excuse  
3 me -- Guadalupe incurred \$10,204.18 and even assuming the injuries in  
4 Dr. Schifini's analysis, all of her treatment was reasonable for what the  
5 services she got. So \$10,204.18 for Guadalupe is her past medical  
6 expense. So we're asking when you go to the verdict form on item  
7 number 2 -- or for numb -- number 2 for Plaintiff, Guadalupe Parra-  
8 Mendez, \$10,204.18.

9 Future medical damages. In addition to the ones in the past,  
10 you can order the medical expense which you believe the Plaintiff will  
11 reasonably incur in the future as a result of this collision. And I'm just  
12 going to show a few records. There's a clear change in the MRI. Clearly  
13 before in 2010, everything was normal. She now has a disc protrusion,  
14 had a problem at C6-7, had another problem at C5-6, so there's a clear  
15 change.

16 Dr. Khavkin testified how -- did you make a recommendation  
17 based her history, the exam and reviewing the imaging? He said yes,  
18 and that she's tried multiple conservative treatments and he  
19 recommends that she have a surgery, which is what she did. But he also  
20 talked about, knew from the beginning that she was going to need  
21 another surgery at some point in her lifetime, Desire. And as a young  
22 person like that, there's a very high probability she's going to need to get  
23 it done sometime in the future.

24 So even Dr. Khavkin from the very beginning understood  
25 that and explained that adjacent segment disease process to Desire.

1 Unfortunately for Desire, her age works against her in this case.

2 Someone who has the surgery that young is going to have undergo a  
3 lifetime of these complications. We asked Dr. Khavkin, do you have a  
4 custom and practice to discuss adjacent segment disease and  
5 breakdown with your patients? Yes.

6 We do that with every patient we have, and he did the same  
7 thing with Desire, so she had a big decision to make, before she had the  
8 surgery. Do I do a two-level fusion, or do I do a one-level fusion? She  
9 chose the more conservative option, potentially, of a one-level fusion,  
10 but it wasn't without its own risks. What happened is it was required to  
11 be a one-level fusion.

12 What we learned through the trial was C5-6 and C6-7, 92  
13 percent of all spine surgeries in the neck are at those two levels. Desire's  
14 already had C6-7 done. Where did we get that information from?  
15 Actually, Dr. Wong. He told us that 92 percent happen at C5-6 and C6-7  
16 and that's where Desire's problem are now and where they're going to  
17 be in the future.

18 We asked Dr. Wong, do you agree that a C5-6 and a C6-7 for  
19 a 23 year-old girl, that would be a very invasive operation?

20 Well, you try not do it on somebody so young, but it does  
21 happen on pathology.

22 I asked him why don't you do it? Well, we try not operate on  
23 younger people in general.

24 Why?

25 Because they're young.

1 Well, the reason why is because of this adjacent segment  
2 disease. It starts its own domino effect. That's how age works against  
3 her. As we know, as we get older, our 40s and our 50s, things that  
4 happened younger, it starts to manifest themselves (sic) and what Desire  
5 will have to face down the road in her lifetime are these issues. But  
6 that's why Dr. Wong -- he wouldn't be forthcoming and tell you exactly  
7 why, but he knows that's the reason why is because you're going to do a  
8 surgery on somebody so young, you know you're setting yourself up for  
9 a lifetime of those issues. We know Desire has damage at C5-6, which  
10 means that that level is going to break down at an even faster rate. Dr.  
11 Khavkin testified about that for you.

12 Dr. Garber, so you're saying because Desire has a problem  
13 with C5-6 already, because of the trauma of this accident, that that disc is  
14 going to break down even faster than the 3 percent you're talking about  
15 become symptomatic. Dr. Wong even said about C5-6 it would be a risk  
16 factor and could increase the risk of adjacent segment disease at C5-6,  
17 because she already has pathology or a problem there.

18 Dr. Garber, so it's my expert opinion within a reasonable  
19 degree of medical probability that the need for surgery at C5-6 is going  
20 to happen much sooner than that. Quite frankly, 15 to 20 years, in my  
21 estimation.

22 Dr. Garber went on to say that if he believes that she's going  
23 to have -- require adjacent segment surgery by the time she's 40,  
24 because she already has a problem at C5-6. And finally, on the issue of  
25 C5-6 fusion in the future, Dr. Schifini, he even agrees more likely than not

1 at some point in her future, she's going to require an adjacent segment  
2 surgery of C5-6, yes. Answer, all right. So in that respect, you do agree  
3 with Dr. Garber? So even the Defense expert agrees to that.

4 And Dr. Wong, he told us he can't rule out that Desire won't  
5 succumb to C5-6 fusion surgery in the future. We asked him, you can't  
6 rule that out she won't succumb to surgery at some point in her lifetime?  
7 The answer, that's correct.

8 And finally, not just with our experts but with the Defense  
9 experts, you agree that it's typical for spinal surgeons to recommend to a  
10 patient they live with their symptoms until they're at their wits end  
11 before succumbing to surgery? We know with certainty Desire's going  
12 to have to live to her wits end again. Go through this whole process  
13 again for a C5-6 surgery.

14 The only question is what day. So she has to live with this  
15 idea of what day. What day do the symptoms come back? What day  
16 does my problem start over again, that I'm having a hard time managing  
17 myself, my kids, my moodiness comes back and frustration, depression,  
18 anxiety, the fear, the worry, knowing that at some point, it's going to get  
19 to a point where she's going to require the surgery in the future. That's a  
20 daunting prospect for somebody who's 28 years old and has four --  
21 whose had -- gave birth to their son. What happens when I'm -- how do I  
22 take care of him? Can I live the life the way I'd like to with him? So it's a  
23 question of not if, it's when.

24 In using this 3 percent per year analysis, clearly by 20 years  
25 it's more probably true than not true she's going to require that surgery,

1 because she already has a problem at C5-6. So Dr. Garber talked about  
2 that at some point, she's going to have -- and after she has that surgery,  
3 the C5-6 surgery -- well, he's talking about what happens once the  
4 process starts over, the pain comes back, develops chronic pain. There's  
5 doctor's visits, physical therapy, conservative care, ultimately at some  
6 point, surgery. And so she has to go through all of these issues again.  
7 And the cost of the surgery at C5-6 is \$237,540.

8           How do I know that? Remember when the doctors told us  
9 that. But we also had an economist we didn't call for you, but we  
10 entered a stipulation that says the pres -- we were going to call a Dr.  
11 Terrence Claretti [phonetic], who's a finance or economic professor at  
12 UNLV, who would have testified that the present value cost of that  
13 surgery was \$237,540 and he agreed that Desire Evans had a life  
14 expectancy, according to governmental statistics, of 54.8 years.

15           And what -- Instruction Number 5 tells you if the parties  
16 stipulate to a fact, you can accept that as evidence, regard that as  
17 proved. That would have been the evidence that we presented to you  
18 and we just streamlined it and put it in the form of a stipulation. So for  
19 future medical expenses, when you go back to your verdict form, we're  
20 going to be asking for \$237,540 for that future C5-6 surgery, which is a  
21 certainty to happen. Pain, suffering and loss of enjoyment in life. I want  
22 to read the instruction for you. It says the physical and mental pain,  
23 suffering, anguish and disability and loss of enjoyment of life endured by  
24 the Plaintiff from the date of the collision to the present.

25           It's not just the physical pain. It's also the emotional pain,

1 the psychological pain that the law gives weight to. The law values --  
2 puts a high value on people's life and this instruction tells you that  
3 mental pain, suffering and anguish is just as compensable as someone  
4 that has physical pain. And somebody who has a chronic pain cycle, like  
5 Desire, where you have pain, you're guarded. You don't move as much.  
6 In her case, she gained 20 pounds.

7           She's on medications, steroid injections. She wasn't  
8 functioning the way she wanted to. She was frustrated. She felt  
9 helpless at times. She developed her own depression. That's not to be  
10 held against her. That's what happened to her. So what is the price of  
11 pain? And for those people who are in pain, time often stands still. And  
12 the value of health, we believe is something you don't know -- appreciate  
13 the value, until it's taken from you. And so the value of health is how it's  
14 felt after a disease.

15           That's an old philosopher talking about health. And I just like  
16 the quote, because it's when you're taken -- your good health is taken  
17 away from you that you feel its effects. We're really talking about what  
18 is the value of good health and for Desire at 25 years old, she faced a  
19 decision that no 25-year-old should have to face undergoing a spine  
20 surgery, because of the long term implications, the severity of the pain  
21 and by the time she's 40, her kids will still be very, very young,  
22 particularly the two younger ones. And she's not going to be able to  
23 participate in her life.

24           She already has lost out on a lot. She doesn't participate  
25 in -- she still does her very best, but the law places a high value on good

1 health and living your life and enjoying your life and the quality of your  
2 life. And so when you go back on your verdict form, ladies and  
3 gentlemen, we're asking for everything that Desire has gone through in  
4 the past, her suffering, her disability and loss of enjoyment in her life,  
5 having to undergo this, we're asking for past damages of \$1 million  
6 dollars for the decision she's had to make.

7 For Guadalupe, she underwent three months of therapy,  
8 pain, exhaustion, limitations, which also deserves compensation. She  
9 had her own life disruption. May not -- thankfully, she made a full  
10 recovery. And so for her, we're asking for \$40,000, based on the  
11 evidence that was presented to you.

12 Future pain and suffering, loss of enjoyment of life for Desire.  
13 We're not seeking anything for Guadalupe, because she made a full  
14 recovery. But the law understands that physical and mental pain and  
15 suffering and anguish and loss of enjoyment of life may be experienced  
16 in the future. And Desire's going to have to undergo a tremendous  
17 amount of pain and limitation and chronic pain.

18 Instruction Number 44 talks about that she has an average  
19 life expectancy of 54.8 years and so she has a long road to go. And after  
20 she has that second surgery, by the time she's age 40, her mid-40s, that  
21 adjacent segment disease process is going to start all over again and  
22 she's going to have to live with that. Under the Court's instructions, we  
23 only can ask for -- asking you for the cost of one surgery. What happens  
24 is as Desire's adjacent segment disease is affecting C4-5, that's going to  
25 become symptomatic and ongoing pain.

1                   And Dr. Garber testified, and once she has that surgery, does  
2 all of this process start over again? The adjacent segment process start  
3 over again for her?

4                   Yes.

5                   Is that your opinion to a reasonable degree of medical  
6 probability? And so these percentages, whether two, three or four, that  
7 would apply even after the second surgery?

8                   Answer, yes. Even Dr. Schifini -- and Doctor, once the two  
9 levels are fused and the adjacent segment disease or breakdown process  
10 would start over at C4-5.

11                  Yes.

12                  And your option is just to live with it, if you can't have  
13 surgery. So she has, after almost another 30 plus years of life to go and  
14 that -- not only one surgery, but it's going to prompt the whole what day.  
15 What day does it come back again. What day do I have to live with this  
16 chronic pain? And if you're not going to -- can't do anything about it,  
17 then you have to live with that suffering, so it actually makes the  
18 suffering worse. It actually makes it worse not having anything further  
19 done. And so actually, that actually makes your damages greater.

20                  And she's going to have to live with this adjacent segment  
21 disease issue while she's raising her new infant. She's going to be doing  
22 the best that she can, but it's -- the pain's going to begin at C4-5. It's  
23 going to affect her sleep, arms and hands and it's going to ultimately  
24 affect the quality of her life. And she's going to have to get to a point of  
25 reaching wit's end again and staying there. And that's not's a -- that's a

1 likelihood.

2 I think this quote is interesting by Henry David Thoreau that  
3 the price of anything is the amount of life you'd exchange for it. And  
4 Desire's -- because of this collision has had to give up a lot of life, not  
5 only in the past, but she's going to have to give up a lot of life in the  
6 future. And this if everything goes perfectly and there's no  
7 complications, because the most precious thing we have is time, but we  
8 can't come back.

9 This is Desire's only chance. So after we're done here,  
10 Desire's going to go on living her life and we have to plan for the future  
11 now. And so the time over which Desire is going to experience her  
12 pain -- I want to give you an idea of what 54 years means. Fifty-four  
13 years ago, gas prices were 31 cents a gallon, 5 cents for a stamp. The  
14 cost for a new home was \$21,500. Hogan's Heroes was on TV, debuted.

15 The Sound of Music was first released and the Who released  
16 their debut album, My Generation. Brendan likes classic rock, so he put  
17 that in there. Lyndon B. Johnson was the president. The Vietnam  
18 conflict. 1968 Mexico Olympics. President Nixon was president. Munich  
19 Olympics, 1972. Roe v. Wade which is -- regardless of anybody's  
20 position, it was decided in the early 1970s. The first man walked on the  
21 moon. Watergate scandal. President Nixon resigns. Vice President Ford  
22 became president. Montreal Olympics in 1976. Star Wars was released.  
23 Elvis Presley, the king of rock died.

24 Jimmy Carter became president. We had the Iran hostage  
25 crisis. President Regan was elected. The Seoul Olympics in 1988. The

1 fall of the Berlin Wall. The election of George W. Bush. Nelson Mandela  
2 was freed after 27 years in prison in South Africa, apartheid. The fall of  
3 Saddam Hussein. The first Desert Storm in the early 90s. President  
4 Clinton was elected. The Barcelona Olympics in 1992. The O.J. Simpson  
5 with the slow speed white Bronco chase in Los Angeles. The Atlanta  
6 Olympics in 1996. Princess Lady Diana dies.

7           The Sydney 2000 Olympics happened. George H.W. Bush  
8 was President. 911, which is almost 18 years ago now. The -- we  
9 invaded Iraq and successfully overthrew the Saddam Hussein regime.  
10 The Athens Olympics 2004. I'm a Boston Red Sox fan. They won the  
11 World Series after almost an 80 year drought. George H.W. Bush was  
12 elected again. Hurricane Katrina happened. Beijing 2008. The first  
13 African-American president, Barrack Obama was elected to office.  
14 Michael Jackson passed away.

15           We captured Osama Bin Laden after many years. President  
16 Obama was elected to a second term. We had the London Olympics in  
17 2012. We had the Boston Marathon bombing, the Malaysian flight that  
18 disappeared. Never found the plane. If you're a football fan, we had  
19 deflate gate. That's Brendan's. He likes the Patriots. We had the ability  
20 to have gay rights marriage. The confederate flag was taken down in  
21 South Carolina. President Donald Trump was elected. Rock Star Prince  
22 died, and Las Vegas Golden Knights emerged.

23           That's 54 years. But I want to give you a context of it kind of  
24 going forward. We'll have looked back, but let's look forward. What  
25 does it mean to have 54 years of life? A baby's going to be born. It's

1 going to be an infant. It's going to go to preschool, going to graduate  
2 elementary school, graduate high school. That kid is then going to  
3 graduate college, start his first job, get married, start a family. That baby  
4 is now going to be an infant. That baby is now going to go to preschool.  
5 That baby's going to graduate elementary school, high school and  
6 college and start a career.

7           That's 54 years. That's two people's lives. That's what she  
8 has to look forward to, but this is her only chance. We can't come back.  
9 And Desire has a long road ahead to deal with these medical issues that  
10 we've been talking about. And that's if everything goes smoothly. So  
11 we have to plan for it now. There's going to be lots of sunsets and sun  
12 rises in her lifetime and she's going to do the best she can, but  
13 unfortunately, because of all of this, a substantial amount of her life is  
14 affected and will be affected forever.

15           And so for the future, for the next 54 years, having to  
16 undergo one adjacent segment surgery and life with chronic pain to the  
17 point of having to manage to her wits end for the rest -- likely the rest of  
18 her life, we're going to be ask you, ladies and gentlemen, for that period  
19 of time for \$2 million for Desire's future suffering, disability and loss of  
20 enjoyment of life. So when you go back into the jury room, the first  
21 thing you do is select a foreperson as your person in court who does  
22 your speaking.

23           You have the verdict forms to fill out. We've talked about  
24 those. There's one other question on the back. You decide the damages  
25 first. It says, "Having found for the plaintiff, Desire Evans and against the

1 Defendant, we further find," it says the percentage of negligent fault on  
2 the part of the Defendant and the percentage of fault on the part of  
3 Desire. You don't do any reduction for damages. We believe the  
4 evidence is it's 100 percent the Defendant and zero percent on Desire.  
5 Guadalupe is obviously fault-free. She has no fault, because she's a  
6 passenger.

7 And that's 100 percent. And when you're done with them,  
8 you have your foreperson sign it and return it to the Bailiff, who will  
9 bring it to the Court. Once three of you -- or excuse me -- six of you  
10 reach an agreement, you have a verdict, so it doesn't require to be  
11 unanimous. Just six of you can agree. And once you have that, you  
12 have a verdict. And just remember, ladies and gentlemen, you make  
13 your decisions based upon the preponderance of the evidence.

14 More likely true than not. Is this when all of these cascaded  
15 events started that put Desire and Guadalupe down this path. Kind of  
16 like in Hockey. There's eight people. You get to -- you make the call.  
17 You make this important decision that affects these lives. Actually, our  
18 only protection is the law. That's why we have the process. That's why  
19 we have these rules and that's why we have juries to enforce them.

20 And we're asking you to hold the Defendant fully  
21 accountable, because injustice anywhere is a threat to justice  
22 everywhere, in the words of Martin Luther King. And we're asking you,  
23 based on the evidence, to make just and fair verdict. Thank you for your  
24 time and your attention. I look forward to hearing from you. Thank you.

25 THE COURT: Mr. Winner, are you ready? Everybody good?

1 Does anybody need a two minute break?

2 MR. WINNER: Can we approach, please?

3 THE COURT: Sure.

4 [Sidebar begins at 10:52 a.m.]

5 MR. WINNER: He needs my PowerPoint before --

6 THE COURT: Oh, he hasn't reviewed it yet?

7 MR. WINNER: No, your ruling was --

8 THE COURT: No, I understand.

9 MR. PRINCE: Just give it to me. I'll read it fast. I don't want  
10 you to stop.

11 MR. WINNER: Okay. I changed four screens while you were  
12 talking, so he's printing four new pages.

13 THE COURT: So do you want to --

14 MR. PRINCE: Just give it me and let's go. I'll make an  
15 objection as I go. I don't want --

16 THE COURT: You don't want a restroom break?

17 MR. PRINCE: Huh-uh.

18 THE COURT: Well, I don't want that. I want you to -- I'm not  
19 going to have a mistrial right now, so take two minutes and look through  
20 it. I'll let you --

21 MR. PRINCE: Well, give me what you have, so I can I can  
22 look at it quickly.

23 MR. WINNER: Okay.

24 [Sidebar ends at 10:53 a.m.]

25 MR. WINNER: Court's indulgence, Your Honor, please.

1 THE COURT: Sure. They need just two minutes to catch up  
2 to do something they have to do between arguments.

3 UNIDENTIFIED SPEAKER: Can we take a five minute?

4 THE COURT: Yep. Yeah, make it two, so then it's five, right?

5 UNIDENTIFIED SPEAKER: Yeah.

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

14 THE BAILIFF: All rise for the jury.

15 [Recess at 10:54 a.m., recommencing at 11:02 a.m.]

16 [Outside the presence of the jury.]

17 THE COURT: Mr. Prince, did you finish going through his  
18 Power Point?

19 MR. PRINCE: I did.

20 THE COURT: And, are you good, or --

21 MR. PRINCE: It looks like it's fine to me.

22 THE COURT: Okay.

23 Somebody want to see if they're ready?

24 UNKNOWN MALE: Pardon?

25 THE COURT: Poke your head out for me, please, and see if --

1 Oh, all right.

2 Never mind, we don't have Mr. Winner, yet.

3 Thank you. You're good.

4 [Pause]

5 THE COURT: Mr. Winner, did you know if the Marshals out  
6 there -- do they have everybody?

7 MR. WINNER: He's standing right here.

8 Do you want me to ask him?

9 THE COURT: Please; thanks.

10 MR. WINNER: We're still waiting on one.

11 THE COURT: Okay. Thank you.

12 Yvette, we were on when Mr. Prince acknowledged that he  
13 had no issues with the Power Point, right?

14 MR. WINNER: Your Honor, I'm gonna' log to the Court a  
15 revised Power Point; I'm gonna' write revised on it.

16 THE COURT: Okay. That's the one you showed?

17 MR. WINNER: Yes.

18 THE COURT: And then you said there -- you have rebuttal  
19 Power Point. Did you tell me you didn't have a rebuttal Power Point?

20 MR. PRINCE: No.

21 THE COURT: Okay.

22 MR. PRINCE: I mean, if I do I'll just create some slides -- no,  
23 no, I don't, no I don't.

24 THE COURT: Okay.

25 You'll just show slides you've already shown, is that what

1 you're saying?

2 MR. PRINCE: Or some testimony or something, yeah.

3 MR. WINNER: I wrote for the record, revised Power Point,  
4 June 3rd, 2019, and signed it.

5 THE COURT: Thank you.

6 MR. WINNER: So, you know that I gave you one last week  
7 and -- or, did I give you one last week?

8 COURT RECORDER: No, I don't think we got one.

9 MR. WINNER: Okay. I gave Yvette one, and then so,  
10 anyway, that's -- that's the --

11 [Counsel confer]

12 MR. WINNER: Judge, do you mind if I put the screen here so  
13 I can see what --- is that okay with you?

14 THE COURT: Huh?

15 MR. WINNER: Judge, do you mind if I put the screen here so  
16 I can see [indiscernible]?

17 THE COURT: That's fine. I can see right here --

18 THE BAILIFF: Good, Judge.

19 THE COURT: -- and I don't think the jury cares to see me --  
20 We're good to go.

21 THE BAILIFF: All rise for the jury.

22 [Inside the presence of the jury.]

23 THE COURT: Okay, ladies and gentlemen, we're gonna' hear  
24 from the Defense, and then after that we will hear from the Plaintiff  
25 again, because they have the burden of proof; they get to open and close

1 the arguments. All right?

2 DEFENDANT'S CLOSING STATEMENT

3 MR. WINNER: Is it still morning? Whether there's time left in  
4 the morning, let me say good morning.

5 This is the last opportunity I have to speak to you; so, I want  
6 to thank you for your service, and thank you for the time you've spent  
7 there.

8 Babylyn Tate, as we have seen, has sat here every day for  
9 three weeks and one day, waiting for your -- waiting for your decision.

10 So, this is why we're here. We're here because of this event,  
11 right here, we're here. There's was no dispute that an accident  
12 happened. There's no dispute an accident happened, and there's no  
13 dispute that the front of Babylyn Tate's Acura came into contact with the  
14 back of a Honda Accord.

15 If Babylyn Tate is responsible, she wants to be responsible, if  
16 she's responsible. She doesn't believe she is; she's not sure she is. But,  
17 she said from the beginning, if I caused any damage, I want to pay for  
18 every nickel of the damage I caused, and I'm responsible for hitting the  
19 back of the car. But, that doesn't make her negligent, and we're gonna'  
20 talk about that.

21 Right after this accident happened, what did Babylyn Tate  
22 do? Babylyn is a nurse. Babylyn needed to ran [sic] to the other car to  
23 make sure everyone was okay. Her concern was for everyone else -- her  
24 concern was for everyone else. And, she said, I'm sorry, I'm sorry, baby,  
25 I'm so sorry, are you okay? I'm sorry.

1                   What we have here today, why are we here? It's a \$180,000  
2 apology; that's why we're here. An apology. Plus more in the future,  
3 for an apology.

4                   What have we learned? Well, October 23rd, 2015, Babylyn  
5 Tate was following other traffic. She was driving west on Flamingo, she  
6 was completely unimpaired, she was well rested, she was not using her  
7 cell phone, she was not distracted; she was not in a hurry. She was  
8 familiar with the area; she knew where she was going. At some point,  
9 she moved a bit over into the right lane, because she thought it was the  
10 safe thing to do.

11                   She's in the right-hand lane; approaching this turn into lane -  
12 - this four lanes. She's approaching. Another car in front of her moved  
13 to the left. One of you asked, did that car abruptly swerve to the left?  
14 And she said, no, it didn't, it just moved to the left. But, after it moved to  
15 the left, she saw the Plaintiff's car abruptly stopping, or stopped, right in  
16 front of her -- right in front of her. And what she didn't see were any  
17 lights -- there weren't any brake lights.

18                   Babylyn slammed on her brakes -- slammed on her brakes  
19 and swerved to the left. She was, she said over and over again, driving  
20 at a safe distance. Mr. Prince tried to make fun of her with her estimates  
21 about distance, and her estimates about time. She said there was more  
22 than enough room between my car and the car in front of me that  
23 another car could have moved in and out. She swerved to her left, and  
24 the front of her contacted the left rear of the Plaintiff's car.

25                   So, what have we learned? We learned that Babylyn was

1 surprised by the sudden stopping. We learned that she alertly braked  
2 hard, and she swerved. The impact was modest; there was no air bags.  
3 Babylyn's purse didn't even come off of her seat.

4 Jury instruction 25. I'm gonna' ask you to write that down  
5 and think about it. Jury instruction 25. The mere fact that there was an  
6 accident, and that someone was injured, does not prove that anyone  
7 acted negligently. Liability is not presumed; it must be established by a  
8 preponderance of the evidence.

9 Jury instruction 26. Negligence just means a failure to do  
10 something which a reasonably careful person would do. What did they  
11 prove Babylyn Tate did? What they proved Babylyn Tate did, was drive  
12 at or below the speed limit, driving west on Flamingo; saw a car move  
13 out of the way in front of her, and saw the Plaintiff slamming on her  
14 brakes without a turn signal. And Babylyn slammed on her brakes and  
15 swerved to the left; tried to avoid the collision, hit her at a very modest  
16 speed, and then apologized and offered her help.

17 What did Babylyn do that wasn't ordinary here; that wasn't  
18 reasonable care? What did Babylyn do that any of us might have done?  
19 The law does not require Babylyn to be extraordinarily cautious.

20 I'm gonna' ask you to pay attention to this, jury instruction  
21 number 28. It is not negligent -- it is not negligent to fail to assume that  
22 somebody else is not gonna' follow the law. It is not negligent to not  
23 anticipate that somebody is gonna' slam on her brakes without a turn  
24 signal in the middle of the street; under a green light. That is not  
25 negligent. That might cause an accident to happen but that doesn't

1 mean you get to sue the person behind you for negligence. It is not  
2 negligent.

3 Jury instruction number 35. Every motor vehicle must be  
4 equipped with tail lamps mounted on the rear, which when lighted, emit  
5 a red signal -- red light, plainly visible from a distance of 500 feet to the  
6 rear. But, the evidence shows that these were smoked out. Plaintiff's  
7 windows were also tinted; the car was lowered. Why?

8 Mr. Parra said that he had those taillights after-market  
9 smoked and adjusted, at an audio shop. Was he concerned for safety, or  
10 concerned for whether it looked cool?

11 What else have we learned? They've been involved in two  
12 accidents hit from the rear end with those same smoked-out taillights.  
13 This one and another one.

14 A signal and intention to turn right or left or otherwise turn  
15 the vehicle from a direct course, shall be given continuously, for 100 feet.  
16 Babylyn Tate's story has been the same since the day of the accident,  
17 three days after the accident, after deposition, and the trial. There was  
18 no turn signal, I saw no turn signal, I saw nothing; no one signaled the  
19 turn. Someone slammed on her brakes in front of me at a red light -- or,  
20 I'm sorry, at a green light -- at a green light.

21 A driver shall not stop or suddenly decrease the speed of a  
22 vehicle, without first giving an opportune -- an appropriate signal to the  
23 driver immediately to the rear.

24 It seems to me -- I'm a father, and, it seems to me, as an  
25 adult, as a parent; as a citizen, the most important moments in our lives

1 occur, not when we think ourselves but when we think of others. And, as  
2 we grow, and as we mature, sometimes as we become parents; as we  
3 become responsible for other people, as I become responsible for other  
4 people, we learn that, as we grow and we mature, we learn that the  
5 world isn't about us. The world is around us -- the world is around us.

6 And -- the world is around us -- and recognizing the world  
7 being around us means we have to recognize the value of others. And,  
8 that's really what these safety rules are about, aren't they? Why do we  
9 have taillights on cars at all? Why do we require to -- people to signal  
10 right turns and use their brake lights? Why do we do that? Is it for the  
11 safety of us, or is it for the safety of the person coming from behind?

12 Who among us hasn't slammed on brakes? We talked about  
13 this in jury selection. Who among us hasn't seen a driver in front of us  
14 do something unexpected or crazy, in front of us -- cut us off?

15 MR. PRINCE: Objection, golden rule violation.

16 Move to strike that.

17 THE COURT: Granted, rephrase.

18 MR. WINNER: Who hasn't been in the position of having a  
19 car in front of him, or her, slam on his brakes --

20 MR. PRINCE: Objection, again --

21 MR. WINNER: -- and do something inappropriate?

22 MR. PRINCE: -- golden rule violation, move to strike it.

23 THE COURT: Sustained.

24 MR. WINNER: And, we talked about this in jury selection, it  
25 might happen to anyone. Someone slamming on brakes, not signaling,

1 in the middle of the street; under a green light. And, if I were to slam on  
2 my brakes -- if I were to slam on my brakes, under a green light, without  
3 giving a turn signal -- without giving a turn signal, I might expect the  
4 person from behind -- without giving a signal to that person from behind  
5 -- I might expect an accident's gonna' happen, and I might expect  
6 somebody's gonna' bump into me.

7 But, you know what? If I slam on my brakes in the middle of  
8 the street, without giving a turn signal, and I do that under a red light;  
9 with no pedestrian there, I don't think I have a right to sue the person  
10 behind me; claiming they were negligent because they happen to be the  
11 car behind.

12 Instruction number 26. Ordinary or reasonable care is  
13 ordinary prudence. If you believe an ordinary prudent -- ordinarily  
14 prudent person driving the speed limit, paying full attention to the traffic  
15 in front of her -- paying full attention to the traffic in front of her, might,  
16 when confronted with a car slamming on its brakes without signaling a  
17 right turn at a green light, if an ordinary, prudent person might not be  
18 able to avoid that collision, even when paying full attention to the road,  
19 there's no negligence.

20 Think about it, what is the difference between anyone who  
21 has seen a driver do something crazy in front of him, and skidded, and  
22 swerved, and came within two inches of hitting the back of that vehicle?  
23 What's the difference between that, and moving two feet further, other  
24 than dumb luck? Other than dumb luck.

25 And do we live in a community where that dumb luck should

1 get somebody sued for personal injuries? Not the extraordinary cautious  
2 individual. The response from the Plaintiff is, I slammed on my brakes at  
3 a green light, for a pedestrian that wasn't there; no one else could see.  
4 Babylyn Tate has said from the beginning, there were no pedestrians in  
5 the crosswalk. I saw no signal; I saw no pedestrians. I bumped into the  
6 back of her, under a green light; there were no pedestrians, and she  
7 wasn't signaling; using a turn signal that apparently the driver behind  
8 her couldn't see.

9           And, think about this, a pedestrian nobody else could see.  
10 The passenger in the Plaintiff's car said the pedestrian wasn't there. The  
11 passenger in the Plaintiff's car said that pedestrian was four lanes away,  
12 about to enter the intersection. And for that, the Plaintiff slammed on  
13 her brakes and got bumped from behind, by someone who wasn't  
14 expecting it, and is bringing a suit, not for bumping from behind, but for  
15 negligence. For the lady behind her not acting as a reasonably prudent,  
16 cautious person would.

17           I would suggest to you under those circumstances, Babylyn  
18 Tate acted exactly as a reasonably cautious human being would. And  
19 she should not be here being sued for negligence. Negligence. What  
20 did Guadalupe Parra tell us? She said, Desire slammed on her brakes.  
21 She wasn't really on her phone and paying attention, she was texting,  
22 but Desire slammed on her brakes; she didn't see anything around her.  
23 There was no pedestrian in the crosswalk.

24           No pedestrian in the crosswalk, and recalled they were  
25 making a right turn onto Linq -- making a right turn onto Linq. She saw

1 one pedestrian that was about to enter the crosswalk, and it was on the  
2 far side of the intersection, four lanes away, under a green light, which  
3 caused her driver to -- her words -- slam on her brakes. Is there any  
4 surprise that no pedestrian in the crosswalk -- no pedestrian in the  
5 crosswalk, turn signal or not, under a green light, for slamming on your  
6 brakes, might -- might cause somebody driving carefully from behind  
7 you, to bump into you?

8               Why is it that we have taillights at all? Is it for the safety of  
9 ourselves? Is just about us? Or, is it for the safety of everybody else; is  
10 it for the safety behind us? Has anybody been out on the highway and  
11 seen when a -- a big tractor-trailer gets pulled over on to the shoulder of  
12 the highway? In broad daylight, you can see that tractor-trailer miles off  
13 -- half a mile off. But, they have to put out triangles (indicating); they  
14 have to put out flares, they put those triangles back, for, what, a quarter  
15 of a mile? They put flares out, they put flashers on (indicating). Why?  
16 It's for the safety of everybody else on the road. Because, nobody  
17 expects driving down the highway, that something is going to be at a  
18 dead stop.

19               Babylyn Tate had nobody -- no reason to believe -- no reason  
20 to believe that the car in front of her would be at a dead stop, without a  
21 turn signal on, without a pedestrian there; under a green light. She was  
22 not negligent. And, Guadalupe took no pictures, talked to no  
23 pedestrians, and no witnesses stopped and talked to them. She thought  
24 it didn't seem necessary.

25               So, Babylyn traveling at a safe distance behind the car in

1 front of her, who moved -- he didn't swerve, she said, he didn't swerve.  
2 But, he moved into the other lane, and saw abrupt stopping, or abrupt  
3 braking here.

4 Has the Plaintiff proven by a preponderance of the evidence,  
5 that Babylyn Tate was negligent? Was negligent, for failing to anticipate  
6 that somebody else was going to violate the law? The answer is, no,  
7 they haven't proven she was negligent at all.

8 Before you even reach the question of comparative  
9 negligence -- comparative negligence, what Desire Evans-Waiau might  
10 have done differently to avoid the collision -- before you even reach that  
11 question, you have to answer the question -- have they proven to you by  
12 a preponderance of the evidence, based on the facts they've given to you  
13 -- have they proven to you that Babylyn Tate was negligent? They don't  
14 need to prove to you that an accident happened, we admitted that it did.  
15 We admitted that the front of Babylyn's car came into contact with the  
16 rear of theirs. They need to prove that she did something unreasonable.  
17 That she behaved unreasonably. That she did something wrong. Have  
18 they proven that to you? When the two Plaintiffs can't even keep their  
19 story straight, have they proven that to you? I'd suggest to you the  
20 answer is, no. And, when you answer that question, no, return your  
21 verdict, because your job is done.

22 What else do we know? Desire's excuse for slamming on the  
23 brakes in the middle of traffic, under a green light, is that a pedestrian  
24 was there. And, none of the other parties to the case saw any  
25 pedestrian. It's not our burden of proof, it's hers. And her own

1 passenger didn't see the pedestrian.

2           Jury instruction 36. A driver shall not stop or suddenly  
3 decrease speed, without giving the appropriate signal. Do you think  
4 that's a safety rule that exists just for the Plaintiff? Or, does that exist for  
5 the people driving behind her? Does it exist for everybody else? It's a  
6 safety rule to consider all the other drivers on the road; including, and  
7 especially, the driver behind her.

8           An unexcused violation of this law constitutes negligence as  
9 a matter of law. Okay? That means the burden is on the Plaintiff to  
10 show what her excuse was. Her excuse was, a pedestrian that no one  
11 else could see, that didn't stop, that Babylyn Tate said, the day of the  
12 accident, three days after the accident, after deposition, and at trial, there  
13 was no pedestrian in the crosswalk. And her own passenger said at trial,  
14 there was no pedestrian in the crosswalk. None. There was somebody  
15 about to enter, four lanes away. Which prompted her to slam on her  
16 brakes, under a green light.

17           I suggested to you at the beginning of the case that this  
18 seems like a situation where somebody didn't quite know where she was  
19 going. With three kids in the back of the car and toddling off to go to The  
20 LINQ to go trick-or-treating -- oh, my gosh, this is my turn, slammed on  
21 her brakes without signaling, got bumped from behind, and the stories  
22 started changing -- the story started changing.

23           The Plaintiffs have the burden of proof. If they haven't  
24 proven to you that there was a pedestrian she stopped for, and  
25 respectfully, this isn't even a close call. Her own passenger saw no

1 pedestrian in the crosswalk. Babylyn has said from the beginning, there  
2 were no pedestrians there; none in the crosswalk. If she doesn't have  
3 that burden, the case is over. You find for the Defendant, and we go  
4 home.

5           The facts of the accident. Well, the damage appears to be  
6 over the bumper, here, again, this car is lowered, and, under the bumper  
7 here, although there's some above. We know that Babylyn braked hard;  
8 so, the nose of her car would have dipped down a bit. No air bag  
9 deployed; this happened at modest speed. Babylyn was completely  
10 uninjured. And, as she said, the purse sitting on her passenger seat,  
11 didn't even slide off the seat.

12           We just talked about this. The violation of the law may be  
13 excusable or justifiable, but the burden is on the proof -- burden of proof  
14 is on the person who violated the law. The person who slammed to a  
15 stop under a green light. Slammed to a stop, under a green light, and  
16 got bumped into from behind. The burden is on her to prove what her  
17 excuse was. Her excuse was, I stopped for a pedestrian in the crosswalk.  
18 Her own passenger said, there was no pedestrian in the crosswalk, and it  
19 wasn't even nearby. It was four lanes away. And Babylyn Tate said,  
20 there was no pedestrian in the crosswalk.

21           Respectfully, if you answer the question that they haven't  
22 met their burden of proof on that excuse, you must find for the  
23 Defendant, and we're done, and we go home.

24           Babylyn Tate, what do we know about Babylyn? Well, she's  
25 a nurse. She's worked as a triage ER nurse. She did not believe it was

1 much of an impact but, she was raised to be polite; she apologized. I'm  
2 sorry this happened. Her immediate concern was for everyone else.  
3 She said she was sorry that it happened. She did not, actually do a  
4 physical examination, as an ER triage nurse would have done. She did  
5 not do a physical examination of everyone, but she did watch them. And  
6 she talked to them. And they all said we are perfectly fine, and we are  
7 uninjured -- uninjured. They all appeared to have normal gaits; they  
8 were walking normally; they showed no evidence of pain. She would  
9 have been very surprised to learn that anybody was hurt; she was not.

10           The Plaintiff said she was fine; showed no signs of injury.  
11 The Plaintiff told her, I'm fine, I don't want any help, everybody in my car  
12 is fine, we're going trick-or-treating, but I'm demanding that the police  
13 arrive, because I want a report in case I need it later. Why? She  
14 admitted on the stand, she was told by the police, we're not coming,  
15 nobody was injured, you don't need a report, we don't want to come;  
16 there's no reason to come if nobody was injured.

17           And she said, oh, no, I'll wait as long as it takes. And she  
18 waited how long? Two hours with her kids strapped in the car seats in  
19 the back; who were not hurt. Nobody -- nobody was claiming to be hurt  
20 at this point. But wanted to wait for two hours with her kids strapped in  
21 the car seats in the back, to wait to get a piece of paper from a cop. Two  
22 hours. And then she walked for 10 minutes to go trick-or-treating at The  
23 LINQ and ride the High Roller.

24           At this point, the case ought to be over, right?

25           Jury instruction number 13. If you are to believe a witness

1 has misrepresented any fact, you are free to disregard everything else  
2 that that witness says. Everything Babylyn Tate has said to you from the  
3 very beginning -- from the day the accident happened, through the  
4 statement, through the deposition, and here in trial, has been consistent.  
5 What the Plaintiff has said, has not.

6           Traveling 35 miles an hour before the impact. Were you  
7 going 35? Mr. Prince tried to get her to say she was going 35 at the  
8 moment of impact. No, I hit my brakes; so, it's not 35. Her air bags  
9 didn't even go off. How much room had she had needed to stop? A  
10 couple of feet?

11           The car in front of her moved left. You saw her when a car  
12 swerved to your left? Correct. The light was green; not red. At the time  
13 that you were attempting to cross Linq; going west on Flamingo, what  
14 color was your traffic light? Green. Did you see any pedestrian in the  
15 crosswalk? I did not see anybody crossing, I saw people standing on the  
16 corner but nobody crossing.

17           You saw her car not moving or moving very slowly? She  
18 slammed on her brakes in front of me. She used no turn signal. Did you  
19 ever see the Plaintiff, Ms. Evans, use her turn signal? I did not see any  
20 turn signal. This is her testimony. The Plaintiff had no visible brake  
21 lights. You didn't notice brake lights? I did not. I saw a stop abruptly;  
22 so, I braked as fast as I could. She slammed on her brakes, and she  
23 swerved left. I slammed on my brakes as fast as I could; as hard as I  
24 could. Did you try to avoid coming into contact with the Plaintiff car? I  
25 tried to avoid it, I braked as hard as I could. The lane to my left was

1 blocked; I could have caused two accidents.

2           Who's more believable? Babylyn's same recollection. She's  
3 told the same story every time anybody's asked. The day of the accident,  
4 the statement three days later, written discovery; deposition in trial. But,  
5 the Plaintiffs' friends and family keep changing their story and they keep  
6 telling different stories. Those are not red herrings. Those are facts.  
7 Those are facts.

8           Jury instruction number 35. Every motor vehicle must be  
9 equipped with at least two tail lamps mounted on the rear to emit a red  
10 light, plainly visible for a distance of 500 feet to the rear. Again, were  
11 they worried about safety, or were they worried about how cool the car  
12 looked, buying those lights from a non-dealer shop? It was involved in  
13 two rear end accidents. What did Jorge Parra Mendez tell you? Blacked  
14 out taillights from an auto body shop, and it was involved in two  
15 separate rear end accidents.

16           A driver shall not suddenly stop or suddenly decrease the  
17 speed of a vehicle without giving an appropriate signal to the driver of  
18 any vehicle immediately to the rear. This is common sense, and it's  
19 thinking about other people. It's thinking about the people driving  
20 behind you. It doesn't mean when you don't signal, and you slam on  
21 your brakes, for a pedestrian that isn't there, you get to sue the person  
22 behind you.

23           I slammed on my brakes in order to turn right but, there was  
24 no visible turn signal. I had to stop for a pedestrian. This is flatly  
25 contradicted by Babylyn, who said there was no pedestrian there, and

1 even by the other Plaintiff.

2 After the accident, Babylyn said she was sorry, the Plaintiff  
3 said she was fine; not hurt. The Plaintiff said everyone in her car was  
4 fine. She left those kids strapped in car seats for -- three kids strapped in  
5 car seats for two hours. Plaintiff was told the police did not want to  
6 come, nobody was injured, we don't want to come; we're backed up. We  
7 don't want to come. There's no reason for us to come. And, the Plaintiff  
8 insisted the police come anyway, in case she needed a report later.

9 (Whereupon, an audio recording, was played in open court at 11:34  
10 a.m. and transcribed as follows:)

11 UNKNOWN MALE: All right, brah, so, we go the car right  
12 here --

13 MR. WINNER: This is hours later.

14 UNKNOWN MALE: You can see the fuckin' bumper is fuckin'  
15 totaled. Look at the shape of this fuckin' big ass dent right here, too.  
16 The lights are obviously out. Light's fuckin' out here. I don't know how  
17 the fuck this happened but look, a big ass dent here, a big ass dent here.  
18 Fuck.

19 [Audio ends at 11:35 a.m.]

20 MR. WINNER: Well, you've already seen this; I'll skip  
21 through it. Three days later, everybody in the car, all five people in the  
22 car were trumbled [sic] off to Align Chiropractic by Paul Powell.  
23 Everybody in the car. The chiropractor saw them on a litigation lien. He  
24 was referred by a lawyer to Align. She complained of symptoms in her  
25 head, her arm, her shoulder, her low back, her middle back; her neck. All

1 symptoms that she did not notice on the day of the accident. And, in fact  
2 told the nurse -- told the nurse, Babylyn Tate, she had no injuries at all.

3 Both Plaintiffs, oddly, were diagnosed with exactly the same  
4 things. Both, the chiropractor claimed to find, pain all the way down the  
5 left arm; all the way to the left hand. Every spine is different, Mr. Prince  
6 told us on opening statement. But apparently, every diagnosis at Align  
7 Chiropractic, is the same. Treating, again, on a litigation lien. The  
8 chiropractor ordered x-rays and MRIs of the neck, of the low back; of the  
9 left shoulder.

10 Jury instruction number 8. You can all see what happened  
11 here and you did not check your common sense at the door. You did not  
12 check your common sense at the door. And, we're relying on your  
13 common sense, and we're asking you to use it.

14 You cannot base any part of your verdict on speculation or  
15 on sympathy. Okay. First visit to Align Chiropractic, this is November  
16 3rd, 2015, normal alignment, normal, normal, normal; no abnormalities  
17 whatsoever. And, then Dr. Keith Lewis did an MRI, where he claimed to  
18 find a two to three millimeter disc bulge. And we've heard a bit about  
19 that, and we'll talk about it later. He said, I try to measure millimeters,  
20 because chiropractors in another personal injury case asked me to do  
21 that. There's a two to three millimeter margin of error for these things.

22 And, do you remember when he was on the stand, Dr. Lewis,  
23 who was -- I guess I have to apologize for bringing him here; that was  
24 interesting. I asked him, have you ever testified that there's a two to  
25 three millimeter margin of error? And he said, why would I ever say

1 that? And I said, well, did you say it about a month ago in another case?  
2 And I had to show it to him. And he said, well, yeah, yeah, I guess I did  
3 say that.

4 Keith Lewis and Align MRI. Both the Plaintiffs, Guadalupe  
5 and Desire -- both the Plaintiffs have the same disc bulges on MRI. Look  
6 at that, isn't that remarkable? C5/6, C6/7; C5/6, C6/7, disc bulges. One  
7 shoulder MRI, claimed to find problems there, too. Bursitis,  
8 impingement, and bone bruise. There's a lumbar MRI of Ms. Parra. Oh,  
9 look -- look at everything he claimed to find here.

10 All the abnormalities, all the disc protrusions. Little bulges or  
11 protrusions are found on every spinal MRI he ordered. But, there's no  
12 signs of recent trauma on any of them. Keith Lewis said there's a two to  
13 three millimeter margin of error -- two to three millimeters. A dime is  
14 1.35 millimeters thick. So, you could imagine how thin that is.

15 So, a pain management doctor -- two pain management  
16 doctors, really, plus Dr. Wong, can't find a disc herniation at all on the  
17 MRI. Dr. Schifini said, I don't see any disc problem at all, and Dr. Wong  
18 said, I don't see any disc problem at all. But, two to three millimeters,  
19 according to the radiologist; that's where the margin of error is.

20 His question and answer at trial, Dr. Keith Lewis, why might  
21 the interpretation of adding in a number of one, to two to three  
22 millimeters be unnecessary for the interpretation. Do you remember he  
23 was talking about being asked to do that? He said well, if you're talking  
24 about a disc bulge, generally disc bulges are very common and  
25 asymptomatic, and we all have them. Meaning they don't mean

1 anything.

2 If you look at different radiology reports that describe the  
3 same findings, you'll see plus or minus two to three millimeters in  
4 certain cases. Meaning according to Dr. Wong, according to Dr. Schifini  
5 and according to Dr. Lewis, the 2010 MRI, the 2015 MRI may have looked  
6 exactly the same. Two different radiologists read them.

7 Here's the shoulder MRI. She testified under oath she didn't  
8 strike her shoulder on anything inside the car. She struck her shoulder  
9 on nothing. She did not notice any injury to her neck or shoulder either.  
10 The shoulder MRI showed no contusion, a suggestion of shoulder  
11 impingement syndrome, bursitis.

12 Dr. Schifini testified that was not injured in the accident. It  
13 was not injured in the accident. There was no external bone contusion;  
14 no external bruising. That's from something else. Could be consistent  
15 with repetitive motion as Dr. Rosler told us.

16 Steady improvement in her complaints. By 12/16 she was  
17 improved. 12/30 feeling improvement. 1/4, feeling improvement, able to  
18 do more activities. 12/12, one out of ten pain (indiscernible). 1/14/16,  
19 one to two neck, full range of motion. 1/18/2016, two out of ten neck.  
20 February 2016 discharged, maximum medical improvement, full range of  
21 motion and minimal symptoms. Symptom free.

22 Look at this. These all decrease until she saw Dr. Rosler.  
23 She was down to two or three out of ten before she got the injection with  
24 Dr. Rosler. And as she told Dr. Rosler, chiropractic treatment has failed.  
25 I asked Dr. Rosler, did you even look at those records, and he said, I have

1 them, but I didn't look at them. And I said well, if she had improved all  
2 the way down to two or three out of ten before she got the injection,  
3 why'd you do the injection. And he said I don't know. You'd have to ask  
4 her that because she told me chiropractic had failed.

5           There it is. Response from the Plaintiff, I forgot to tell my  
6 doctors about that MRI from the earlier accident, even though they asked  
7 me. I didn't go back to any of those doctors who saw me before the  
8 earlier accident. But that's irrelevant. It's not irrelevant. And Dr. Schifini  
9 explained why it's not irrelevant. And even Dr. Rosler, their doctor said  
10 oh, yes. I would have wanted to see that. I want to see that MRI.

11           February of 2016 Plaintiff Desire discharged by the  
12 chiropractor at maximum medical improvement. She had full range of  
13 motion of her neck, full range of motion of her back, her pain was one  
14 out of ten. The chiropractor testified under oath the Plaintiff responded  
15 very well to treatment, and it was extremely effective. It didn't fail. It  
16 was extremely effective. By the time she got the injection in her neck the  
17 symptoms were almost gone.

18           The chiropractor testified the treatment was quite successful.  
19 She was free to return for monthly maintenance and she was free to  
20 return any time she wanted, and he never heard from her again.

21           Now she was sent by Align Chiropractic to see a pain  
22 management doctor, even though all of her symptoms were much  
23 improved. This was on a litigation lien. He tested her left shoulder, her  
24 arm. Her left shoulder tested positive for a Hawkins sign. That would be  
25 an orthopedic injury to her shoulder. You heard from Dr. Schifini she did

1 not strike her shoulder on anything inside of the car. There's no  
2 evidence of any injury to the shoulder in this accident. There's no injury  
3 of any orthopedic shoulder injury of the accident. Many things can  
4 cause that. And that can cause symptoms all the way down the arm,  
5 which she experienced here.

6 Left orthopedic shoulder issues, bursitis bone contusion all  
7 on the left side. Coincidentally the same side where she's complaining  
8 of complaints that lead her to go see a spine surgeon, okay.

9 In review of the report of Align, look at the report of the MRI  
10 and he did an injection, but he said I didn't study the chiropractic  
11 records. I didn't know she responded well to treatment. Why she told  
12 me she hadn't, I don't know why she told you that. You'd have to ask  
13 her. And the pain continued decreasing after she got the injection.

14 What did Rosler tell us? He said, when she got that injection  
15 or just before she had two out of ten pain. That would be mild or  
16 minimal. This is before he gave an injection. He could not explain. He  
17 had no explanation for why she reported complaints from two out of ten  
18 to eight out of ten the day she went in to get the injections. She told the  
19 chiropractic had failed. He said that might not be true. Soft tissue  
20 injuries can be superimposed over preexisting minor bulges. We saw  
21 absolutely no herniated disc on that report, none.

22 Evans claimed the chiropractic treatment had failed. That's  
23 what she told him. That's what she told Rosler. She told Rosler she had  
24 never in her life had neck symptoms in her past. That is demonstratively  
25 and provably false. Why did she tell him these things? He also said he

1 would want this information and 50 percent of his opinion is based on  
2 what the patient chooses to tell him. Why did she deny this and why did  
3 she deny this? Except she got a report that she gets a few ten or \$20,000  
4 more in medical treatment added to her personal injury claim and  
5 somebody else gets to pay for it.

6 Different radiologists -- Rosler told us this. Different  
7 radiologists can read the same MRI differently. There's an interpretation  
8 variability. Small bulges are very common in a woman this age. Rosler  
9 said the kind of bulges that the radiologist claimed to see on that 2015  
10 MRI he doesn't know how old they were, they would not be uncommon,  
11 they would not be unusual. They're benign in most people. Most of  
12 them don't cause symptoms.

13 After the Plaintiff's 2016 accident with the ambulance ride he  
14 ordered her a P-cervical MRI (phonetic) and that recommendation was  
15 ignored.

16 February 18, 2016 four days after her friend was discharged,  
17 she is pain free in her cervical spine. No tenderness to the cervical and  
18 thoracic spine, full range of motion, negative orthopedic chests. Left  
19 shoulder exam is within normal limits. The chiropractor had testified the  
20 treatment was extremely effective; she responded very well. And no  
21 complaints for the following seven weeks, 49 days.

22 What we see next is May 17th, 2016 when she was referred  
23 to Dr. Khavkin who saw her exactly one time. Now look what she filled  
24 in here on her pain diagram. She had pain in her head, she had pain in  
25 her shoulders, she had pain going down both arms including her right

1 arm. She had pain in her mid-back, she had pain in her low back. She  
2 had pain going down both legs all the way to her feet. She had pain  
3 going down both arms in the front and in the front of both legs. That's  
4 what she told Dr. Khavkin. That was 89 days, the low back pain after it  
5 had disappeared from chiropractic treatment.

6 The symptoms now in the other arm. She had never  
7 complained about it before and that was 200 days after the car accident,  
8 200 days. The pain down both legs was 200 days after the car accident.  
9 Now when she told Dr. Khavkin she had these symptoms in the right arm  
10 and these symptoms in the low back and these symptoms down both  
11 legs, when she told Dr. Khavkin on that one visit with him, that one visit  
12 with him that led to a surgical cost letter sent to her lawyer that one visit  
13 with him was she telling the truth? Was she telling the truth?

14 I have never stood in a courtroom and called another human  
15 being a liar. And I'm not going to start today. I'm not going to start  
16 today. But when the Plaintiff in this case suing my client, Babylyn Tate,  
17 when she goes into doctor, after doctor, after doctor and tells them  
18 things that are provably false and tells you things that are provably false.

19 When she tells Khavkin, I've had these symptoms ever since  
20 the car accident and that is provably false information she gives the  
21 doctor in order to get a surgery letter from her. I'm not calling her a liar.  
22 I'm saying she's not playing fair. She's not playing fair with you. She's  
23 not playing fair with you. And she's certainly not playing fair to the  
24 woman who sat here for three weeks in court listening to it and being  
25 blamed for it.

1                   She saw Dr. Khavkin, who seemed like a nice enough fellow  
2 one time. Evans told Khavkin that chiropractic had failed. That's  
3 completely false. She told him that the injections had failed. That's  
4 completely false. He signed her up on a litigation lien that day and wrote  
5 a letter to her attorney saying she needed expensive surgery based on  
6 what she had told him and that it's all Babylyn Tate's fault. Was this the  
7 truth? Was this the truth? And what were her motivations for saying so?

8                   Dr. Khavkin swore under oath that everything on the MRI  
9 could have already been there before the MVA, before the car accident.  
10 Shows no obvious signs of trauma. It's not uncommon for a woman the  
11 Plaintiff's age to have an MRI that looks just like that. Admits there are  
12 many conditions that might cause the Plaintiff's left arm symptom.  
13 These conditions are very common. He saw her once and he didn't test  
14 for them and her nerve testing was normal.

15                  You remember he -- we talked about this with Dr. Schifini.  
16 She had testing of the deltoid muscle, pin prick testing in another muscle  
17 and another muscle. Dr. Schifini said that is not consistent with a C6-C7  
18 nerve root problem. What it is consistent with is an orthopedic injury to  
19 the shoulder that was not caused by this accident.

20                  Khavkin told us that he never questioned what the Plaintiff  
21 told him. He just took her at her word. He didn't investigate what she  
22 was saying was true. He wrote a cause letter for attorneys. He can't tell  
23 the age of the bulges. Most of them are not from trauma. Most bulges  
24 are very common. They happen over time. Everybody has them. It's  
25 not a surprising find. Most people with herniated discs don't know they

1 have them. He relies 100 percent on what the Plaintiff tells him in order  
2 to arrive at a causation opinion.

3 Desire did not tell him that she had had prior neck pain and  
4 injury. She did not tell him that she had had suspected radiculopathy in  
5 the past. She did not tell him that she had been sent to an MRI in the  
6 past. She did not tell him she had been to a chiropractor and a pain  
7 doctor in the past. She left all of that out. And in fact, when he asked  
8 her, have you ever had symptoms in your neck before, ever had  
9 symptoms in your neck before her answer was no. I never have.

10 He told her the chiropractic had failed, but chiropractic had  
11 been very effective. He didn't tell her -- or she didn't tell him that her  
12 complaints were appearing for the first time in 90 days and some of  
13 them were for the first time ever, some of them were brand new.

14 So this is important here I think. We can see why. July 10,  
15 2016 she's rear-ended again. July 10th of 2016 in the same car with the  
16 black taillights, right. She's taken by ambulance to Sunrise Hospital why,  
17 because she had sudden onset of neck pain. That's important too, isn't  
18 it. We heard about that. Sudden immediate onset of neck pain. That's  
19 July 10, 2016. Sudden immediate onset of low back pain. Under oath,  
20 and we talked about this. Under oath Plaintiff, Desire Evans swore the  
21 morning before this accident happened her left arm felt fine and that she  
22 had full range of motion in the neck the morning before this second  
23 accident happened. But the second accident happened July 10, 2016. It  
24 was bad enough that she had to be taken by ambulance to Sunrise  
25 Hospital with immediate onset of symptoms.

1 Two days after the ambulance arrived and the visit to the ER  
2 with an immediate onset of symptoms she's sent to the star witness  
3 Jason Garber. Jason Garber on referral from Paul Powell. And you  
4 heard him on the stand saying well, I was referred from Dr. Rosler. So  
5 didn't you ask the patient who referred you? Well, I'm not sure. You  
6 know, we showed him his own records. She was referred by Paul Powell  
7 and he gets referrals from Paul Powell.

8 She again told Garber the chiropractic had failed. Told  
9 Garber that the injections had failed. And Garber told her she needed  
10 surgery. Why did she tell Garber that? Why would she tell Garber that  
11 the chiropractic had failed? What we know is what we saw after the 2015  
12 accident her symptoms were completely better in three months, weren't  
13 they? By the time three months went back she went to the chiropractor,  
14 they got better, they got better, they got better, they got better, they  
15 were gone. They were all better in three months. All better in three  
16 months.

17 You have here July 12, 2016 she told Dr. Garber, I've had all  
18 these complaints down both arms, down both legs, my back, my mid-  
19 back, my neck. I've had all of these symptoms since October 30th, 2015.  
20 That's false. That's provably false. It's not in the medical information in  
21 front of you. Why would she say that to him? So that he could write a  
22 letter saying she needed surgery and blame it on her. Blame it on her.  
23 That's why Paul Powell made the referral.

24 Garber was asked get a repeat MRI. Get a repeat MRI. She  
25 had immediate onset of symptoms after that 2016 rear-ender. It was bad

1 enough she had to be taken by ambulance to Sunrise. Get a repeat MRI.  
2 Garber ignored her. He did not order any nerve testing. Simple,  
3 inexpensive testing, he didn't order it. He accepted what the Plaintiff told  
4 him, which was provably, demonstratively false. And he scheduled her  
5 for a surgery.

6 Now think about this. The 2015 accident that we're here to  
7 talk about, if we believe she was injured at all, she was all better from  
8 chiropractic treatment in three months, right? And that first visit to the  
9 chiropractor, the first visit to the chiropractor they said you'll need about  
10 three months of treatment. And both she and Guadalupe were better in  
11 three months, so they were discharged. Three months for a soft tissue  
12 injury to go away, three months.

13 She had a bad enough accident July 10, 2016 she was sent to  
14 the emergency room. Did they allow three months to go by? No. He  
15 wrote a report, blamed Babylyn for the cost of his bill. And in about five  
16 or six weeks she was under the knife getting surgery. She didn't even  
17 get a chance to heal from the second accident.

18 Where did he tell us? Well, he said, well a bulge is a bulge.  
19 The morning he testified here he was in an arbitration hearing testing for  
20 Paul Powell. Through all this he respects Dr. Wong. What's the  
21 response from the Plaintiff to all this? Ignore the medical evidence.  
22 Ignore all the things, the false things she told her doctors. Ignore that.  
23 She forgot. It's irrelevant, it's not important. Ignore the chiropractor.

24 The loudest evidence in this case. The loudest evidence in  
25 this case is the silence from Dr. McCauley, the chiropractor who said

1 under oath this chiropractic was extremely effective. And she never  
2 went back to him. She never went back to him. And she went to a series  
3 of other doctors including a surgeon her lawyer made her go see who  
4 told him chiropractic failed. Give me a surgical cost letter.

5 Ignore Dr. Wong. Ignore Dr. Schifini. Ignore that Dr. Rosler  
6 reported -- requested a repeat MRI but she never went to get it. Ignore  
7 all that. Ignore those disc fragments that Rosler claimed to find in  
8 September of 2016 were not present before July of 2016. They were not  
9 present on that MRI.

10 What did she tell her doctors? I have never in my life had  
11 neck pain before this accident in response to a question they asked her.  
12 Have you ever had this neck pain before? Have you ever experienced  
13 neck pain in your life before? She'd been to at least two, maybe three  
14 doctors and sat through an MRI of her neck before and made a personal  
15 injury claim for her neck before and her answer was no. Never in my  
16 life. That was false and she knew it was false.

17 She said, my treatment with the chiropractor failed. Provably  
18 false, completely false. I've had all this pain, neck pain (indiscernible)  
19 down both arms, pain down both legs ever since the accident happened.  
20 And those symptoms were all knew or had resolved months earlier when  
21 she went to see the surgeon. False, false, false.

22 Again, back to the jury instruction. If a witness has  
23 misrepresented any material fact you can disregard everything else she  
24 says. And I've never called anyone a liar in court and I'm not going to  
25 start now, but that's not fair to you, that's not playing with you and it is

1 not playing fair with the woman she's trying to take money from.

2 Jury instruction number 13, the credibility or believability of  
3 a witness. His or her relationship to the parties, his fears or his interests  
4 or feelings, his opportunity to observe. Well, she knew that she sat  
5 through an MRI and treated for her neck. She knew the chiropractic had  
6 been successful. If you believe that she has misrepresented any material  
7 fact in the case, you may disregard the entire testimony of that witness.  
8 And again, this is the only witness who claims to have seen a pedestrian  
9 on the crosswalk.

10 So Professor Jeff Wong who's the chief of the USC Spine  
11 Service. He's the former director of the UCLA Spine Service. He's a  
12 professor of orthopedic surgery and neurosurgery. He trains spinal  
13 fellows. He's considered an international authority. He is expensive. He  
14 was considered -- he is considered an international authority in the field  
15 of spine medicine. He lectures all over the world. He's been rated one of  
16 the top 28 spine surgeons in the United States with good reason. He did  
17 agree to independently review films and records and though this lawsuit  
18 was filed after that surgery has happened, he also performed an  
19 examination.

20 He closely examined all of the MRI films, he looked at the x-  
21 rays, he looked at the treatment notes, he looked at the charts. Even  
22 looked at the deposition transcript. He's written 50 scholarly papers on  
23 MRIs alone. Written textbook articles on reading spinal MRIs.

24 So he explained that Evans had very, very mild, very, very  
25 mild preexisting disc disease in the cervical spine. It was very mild.

1 Exactly what one would expect from someone this age. Can identify no  
2 sign of injury anywhere on the MRI, she had a normal MRI for a woman  
3 her age, but nothing on the MRI or the x-ray was caused by Babylyn  
4 Tate. He sees traumatic disc injuries commonly.

5           What did he talk about? He treats sports injuries; he treats  
6 car accidents. He said, disc injuries that are traumatic happen  
7 immediately. You have exclusive pain immediately. If you're on a tennis  
8 court, if you're on a football field, if you're on a basketball court you have  
9 to be carried off the court. It is painful immediately. It isn't painful three  
10 days later; it isn't painful when your husband gets mad about the car. It  
11 isn't painful when your lawyer sends you to a chiropractor three days  
12 later. If it's a traumatic disc injury you know about it immediately.

13           And this appears nothing, nothing like that. The only  
14 diagnosis he could possibly relate to the accident would be whiplash.  
15 And by the way, by the way, the disc fragments that Dr. Garber talks so  
16 much about that he claimed to find during his surgery when he was in  
17 there poking around that they were absolutely not present in 2015. They  
18 were not there. Those disc fragments were not there, provably not there.

19           You remember what he said here? He actually put -- Dr.  
20 Garber put out I think it was slide 11 of 15 of the -- I think it was 11 of 15,  
21 or 14 of 15, 11 of 15 were the slides that Dr. Garber put up and Dr. Wong  
22 explained to you how misleading that was because that was the only  
23 slide just based on the angle of the -- angle of the camera. That's the  
24 only one --

25           MR. PRINCE: Objection; move to strike, Your Honor. He's

1 not showing 11 of 15, he's showing 8 of 15.

2 MR. WINNER: I am showing a different slide.

3 MR. PRINCE: Yeah.

4 MR. WINNER: Dr. Garber showed 11 of 15 and Dr. Wong  
5 talked about how misleading that was. But there was a little smudge or  
6 a little angle there that if you look at it and squint your eyes could look  
7 like a little disc bulge. And even Garber said, looking at this I can't see  
8 any nerve root entrapment. I can't -- I know it's in there; I just can't see  
9 it. Wong said that was misleading.

10 Wong went through multiple images. Multiple images. Do  
11 you remember what he said? He said if you took these images of the  
12 disc, these axial images, these are the saggital images, if you took the  
13 axial images of the discs and you hid the labelling of them and you  
14 shuffle them up, not one of the doctors in this case could claim to find an  
15 abnormality or any injury on them. There's none.

16 The C6, the C7 nerves, the C4, the C5 nerves, none of them  
17 were entrapped. None of them were effaced. This is a normal MRI.  
18 There's no bulge, there's no protrusion, this is completely normal. See  
19 that? And even the misleading one, 11 of 15, even the misleading one,  
20 the 11 of 15, the -- if you look at it the right way it sort of shows there's a  
21 little something on one side. Do you remember what else he said? He  
22 said that little something on the one side is on the right side, not the left  
23 side. There's nothing here to explain the symptoms.

24 He also said Professor Wong is one of five doctors in the  
25 United States that is allowed to write questions for the American

1 Academy of Orthopedic Surgeons. One of five doctors in the United  
2 States who examines and certifies and allows to decide what orthopedic  
3 surgeons in the United States are allowed to be board certified. He said  
4 if anybody, anybody looking at this MRI claimed to find anything on it  
5 that was surgical he would flunk him.

6 And that's not a close call. And there are no disc fragments  
7 anywhere here. The disc fragments were found after a 2016 accident  
8 that took her to the hospital. But Dr. Garber chosen by Mr. Powell, Dr.  
9 Garber says, it's because of this 2015 accident where you can't see them.

10 Is that fair? Should Babylyn Tate pay for that? Does  
11 anybody think that Babylyn Tate should pay for that? No matter how  
12 impressive Mr. Prince's presentation, you've seen a two or three-week  
13 infomercial. No matter how impressive the presentation, does anybody  
14 think that Babylyn Tate should pay for no disc fragments here and disc  
15 fragments that showed up later after another accident where they refuse  
16 to get another MRI, even though their own doctor told them to.

17 Disc fragments they claim to find were not present in 2015.  
18 Between the 2015 MRI and her visit to Garber she did have a second  
19 accident. That second accident brought up immediate onset of  
20 symptoms. And all he can say is, something changed between the  
21 September 1st surgery and the 2015 MRI, something did change because  
22 there are 100 percent no disc fragments, no disc protrusion, no  
23 abnormalities of any kind on the 2015 MRI.

24 The theory about future surgery, the adjacent segment  
25 breakdown Dr. Wong explained that. He said it's nonsense. It's not

1 supported by current medical knowledge. Even if you believe that that  
2 surgery was related somehow to the accident with Babylyn, and it's not,  
3 and he told you very forcefully and convincingly that it's not, even if you  
4 believe that, the future surgery is nonsense. The overwhelming majority  
5 of patients who undergo a single level disc surgery they recover almost  
6 immediately. They're on their feet right away. There's very little  
7 recovery time and they overwhelming never have to go back to get a  
8 second surgery.

9           And the response from the Plaintiff, Dr. Wong once said  
10 something different in a deposition 13 years ago. He said that's not the  
11 current medicine; that's not the current learning. The Plaintiff's story,  
12 everybody is different. The three days after the accident everybody in  
13 the car went to the same chiropractor Align. Everybody referred by an  
14 attorney. Seen on litigation liens. They all had the same diagnoses.

15           Joe Schifini, a local guy went to school here. He's an  
16 established pain management guy. He's treated thousands of patients.  
17 She has no objective sign of any injury, neither Plaintiff does. The  
18 injections performed by Rosler were needlessly expensive and just like  
19 Dr. Wong, he said those injections told him exactly nothing, nothing,  
20 nothing. No diagnostic value. Dr. Wong said the same thing. If you  
21 have a little bit of a soft tissue injury, if you have a little bit of a stinger, if  
22 your muscles are a little sore and you do that kind of injection that's  
23 going to get rid of your symptoms. It doesn't mean anything. And it will  
24 lead to unnecessary surgery.

25           He said the Plaintiff gave false information to all of her

1 doctors. She is an unreliable historian. She told things to her doctors  
2 that she should have known were false. She probably did know they  
3 were false, and she gave them false information. She told them many  
4 things that were false. She also said yes.

5           The doctors who testified for her, Dr. Garber was picked by  
6 her attorney. Is that itself, is there anything necessarily wrong with that?  
7 No. Is the fact that she misremembered some things, is there anything  
8 necessarily wrong with that? Yes, kind of. Is the fact that this is on a  
9 lien, is there anything necessarily wrong with that? Not necessarily. But  
10 we asked him, put all of those things together and what do you see, and  
11 he said, I can't even say they were injured at all. What Dr. Schifini said  
12 is, I can't even give an opinion that either of these plaintiffs was  
13 legitimately injured at all. At all.

14           The testing Rosler did was unnecessary, had little diagnostic  
15 value, he overcharged for it and it has nothing to do with the car  
16 accident. Babylyn Tate should not be blamed for it.

17           Desire Evans has been in three accidents in her life, either as  
18 a driver or a passenger. Only three and we know about all three. And in  
19 all three of those accidents, in all three of those accidents she's made a  
20 personal injury claim against someone else. After the 2015 accident she  
21 didn't return to any of her previous doctors. Her answer why is -- I  
22 thought it was irrelevant; I couldn't remember their names. And she  
23 made provably false claims to every doctor she saw afterwards, and she  
24 let her lawyer pick at least two of her doctors.

25           Plaintiff Guadalupe, she was fine at the scene. She's seen

1 walking and talking with no discomfort. Both plaintiffs were. Desire was  
2 seen walking around smoking a cigarette. No discomfort at all and  
3 talking on her phone. Both were sent by the same attorney to Align  
4 Chiropractic and Align MRI. All went together there on 11/2 of '15. They  
5 were both diagnosed with exactly the same things by Keith Lewis who  
6 claimed to find something wrong on every MRI that Dr. Wong and Dr.  
7 Schifini couldn't see.

8           The difference between Guadalupe Parra-Mendez is they're  
9 both sent for MRIs and they both go. They're both sent to get injections.  
10 Guadalupe doesn't really particularly want to get injections I don't think.  
11 And Dr. Rosler says you know, you need to go get another MRI and you  
12 need to go see a surgeon. And to her credit Guadalupe Parra says, I'm  
13 not going to a surgeon.

14           For tingling in her arm and she testified the tingling in her  
15 arm was gone two weeks after the accident. And months after the  
16 tingling in the arm went away somebody decided you need to go run up  
17 some more medical bills. Go see a surgeon and she didn't go. Two  
18 weeks after the accident everything is much improved. It's only one over  
19 ten in her back. That's 11/13 of 2015.

20           Ask yourself why she was sent for thousands more in  
21 treatment, thousands more in MRIs, thousands more in pain  
22 management visits? Why? I even asked her, did you think it was odd  
23 that you were sent to get more MRIs and sent to so many more doctor  
24 visits after your pain was down to one out of ten. She said, yes. I did  
25 think it was odd. Apparently her fellow plaintiffs did not.

1                   Guadalupe Parra-Mendez, all the way down to 211. Desire  
2 Evans all the way down to 111, both responded very well to chiropractic  
3 treatment. Diagnoses were exactly the same. The MRIs are exactly the  
4 same. The treatment recommendation for three months are exactly the  
5 same.

6                   Imagine for a moment that Babylyn Tate has admitted that  
7 she did cause -- she was involved in an accident. She admitted that. She  
8 said she was sorry at the scene. She said the front of her Acura came  
9 into contact with the back of the Plaintiff's car, with the back of the  
10 Plaintiff's car. And if it's her fault, and I think there's more than enough  
11 reason for you to find her not negligent and I believe you should find her  
12 not negligent since the Plaintiff hasn't proven their case, she wants to  
13 pay for any damages she owes.

14                  But think about this. If -- you know, when I was a kid when  
15 many of us were kids, if we made a mistake, if there was an accident, if  
16 we broke somebody's window, we were taken over to the neighbor's  
17 house and we were told we needed to make it right. And Babylyn is  
18 happy to make it right. She wants to make it right, but she wants to pay  
19 what she owes, not what she doesn't owe.

20                  Imagine for a moment that if a window were broken by a  
21 baseball well, I want to pay for the window and the person said oh, oh,  
22 oh, oh so you're sorry about this, good. What we'd like you to do then,  
23 what we'd like you to do then is come over the house and clean up the  
24 glass that's on the floor as well as you know, replace the window. Well,  
25 okay. I guess I can do that. I'll vacuum up all the glass. And then you're

1 told well, before you got over here to vacuum up the glass it rained a  
2 little bit and now the carpet is wet do we want you to clean that up too.  
3 So you go over and clean up the carpet.

4 And after that well, the rain that came in caused the carpets  
5 to be kind of moldy so now we need to replace the carpets in the house;  
6 we want you to pay for that too. And guess what, we just checked for  
7 termites and we have termites in the house. Well, how in the world did  
8 this cause termites? Well, I don't know. For five years before you broke  
9 our window and we didn't see any termites, so it must have been you.  
10 Pay to fix the termites.

11 At some point, at some point should somebody feel taken  
12 advantage of? She said she was sorry after an accident and that's why  
13 she's here. That was \$180,000 apology or a \$3.4 million apology.

14 Have the Plaintiffs proven by a preponderance of the  
15 evidence that either of them was legitimately injured, truly injured? Mr.  
16 Prince quoted some out of context quotes from Dr. Schifini, but Dr.  
17 Schifini himself said, no, I don't have an opinion they were injured. They  
18 said too many things that weren't true. There's too many things about  
19 this that look funny. There's too many reasons to believe that this is not  
20 a legitimate injury claim.

21 I can't tell you that either one of them was injured. And  
22 when they're all -- everybody in the car, the three kids in car seats and  
23 both Plaintiffs are trundled of to a chiropractor because her boyfriend,  
24 her husband is angry about the car. Have they really proven to you that  
25 there was a legitimate injury to anybody? My suggestion to you is no.

1                   So if you believe the accident, if you believe the accident is  
2 Babylyn's fault, you know, I would strongly, strongly urge you, strongly  
3 urge you to find this was simply an accident that happened and nothing,  
4 nothing, Babylyn Tate did rose to the level of unreasonable conduct.  
5 She just reacted suddenly to a situation in front of her that was created  
6 by the Plaintiff for a pedestrian that wasn't there.

7                   It's the duty of a person who has been injured to use  
8 reasonable diligence in caring for her injuries and reasonable means to  
9 prevent their aggravation to accomplish healing. When one does not  
10 use reasonable diligence to care for her injury and they're aggravated by  
11 a result of such failure, it ain't the Defendant's fault.

12                  So when she went to see Dr. Khavkin and told him a bunch  
13 of things that were provably false, told him a bunch of things that  
14 weren't true and he wrote a cost letter, do you think she was using  
15 reasonable diligence in caring for her injuries or was she trying to  
16 increase the value of her personal injury claim?

17                  When she went to see Dr. Garber and she told him, I've got  
18 these symptoms down both arms, I have these symptoms in the low  
19 back and down both legs and I've had them ever since October 30th of  
20 2015 and chiropractic failed, and injections failed. All of those things  
21 provably false and she knew they were false when she said them. And  
22 some of those symptoms had appeared, just appeared for the first time.

23                  Is she using reasonable diligence in caring for her injuries or  
24 is she trying to get somebody else to pay for an elective overnight  
25 procedure?

1                   What's fair and reasonable? If you believe there was an  
2 injury, if you believe there was an injury, and I don't believe you should  
3 reach this point, if you believe there was an injury, this is what Dr.  
4 Schifini added up. Dr. Schifini's total is \$14,826 for Desire  
5 Evans-Waiau. He reduced a couple of these charges as being excessive  
6 and that's the amount he feels is appropriate if you believe there was  
7 any injury at all.

8                   With Plaintiff Guadalupe Mendez, the amount is \$10,204.18  
9 thus according to Dr. Schifini who looked at the reasonableness and  
10 necessity of the medical charges. That is if you believe there was a  
11 legitimate injury and the guy who wrote this report said, I do not have an  
12 opinion that either of these Plaintiffs was injured. There are too many  
13 questions and too many reasons to believe that they weren't.

14                  During jury selection we talked about the value of the dollar.  
15 All of you agreed that you help with household budgets. Right. All of us  
16 agree that the value of a dollar in this courtroom would be the same as  
17 the value of the dollar outside the courtroom. Okay. The value of the  
18 dollar outside the courtroom is this, if the average family of four makes  
19 \$50,000 a year, if the average family of four saves \$50,000 a year makes  
20 \$50,000 a year and let's pretend that family never had to pay a mortgage,  
21 never had to pay rent, never had to buy groceries, never ever to pay for a  
22 barber, never had to hail a cab, never went to the movies, never went to  
23 a restaurant, never paid a bill. It would take that family that makes  
24 \$50,000 a year, if they never paid for any clothing, they never paid for  
25 children's clothing, never paid for schoolbooks, they never made a car

1 payment, they never paid for gas, they never paid for electricity, it would  
2 save that family of four 20 years to save \$1 million.

3 Most people in today's world, most people in today's world  
4 even those doing the best they can being as frugal as they can, if they  
5 manage to have another \$5,000 in the bank at the end of the year --

6 MR. PRINCE: Your Honor, can we --

7 MR. WINNER: -- they didn't have at the beginning of the  
8 year.

9 MR. PRINCE: I have an objection I want to make.

10 THE COURT: Mr. Winner, there's an objection.

11 [Sidebar begins at 12:26 p.m.]

12 MR. PRINCE: I'm lodging an objection to these arguments  
13 about saving money and extra money and earning that that's how you  
14 get to a million dollars a year because it goes to whether or not the  
15 Defendant would be paid to satisfy the [indiscernible].

16 That is not in a consideration for this jury and I want to move  
17 to strike those comments, the value of the dollar about saving money,  
18 have an extra \$5,000 to save. I mean, that all goes to the ability to pay or  
19 satisfy. He's trying to have the jury consider something not part of the  
20 instructions. Suggesting that who could ever pay for this and how long  
21 it would saddle like the Defendant in some way.

22 MR. WINNER: No, that's not the point at all.

23 MR. PRINCE: And I think --

24 MR. WINNER: That's the value of the dollar.

25 MR. PRINCE: It's the clear inference of that.

1 MR. HENRIOD: \$3 million dollars and how long 50 years is  
2 and the march through history will show that it's going to cost \$3 million  
3 to make somebody whole in all that amount of time allows us to put into  
4 perspective that how much is saved over 30 years. How much is enough  
5 to compensate someone over that amount of time.

6 MR. PRINCE: They're talking about what a reasonable  
7 person would they make --

8 MR. HENRIOD: And it's not just an arbitrary --

9 MR. PRINCE: -- and how expenses -- and take out all your  
10 expenses, how could they --

11 MR. HENRIOD: -- \$3 million. A million dollars is still a lot of  
12 money.

13 THE COURT: I don't -- and I don't know if there is law --

14 MR. WINNER: It's just value of a dollar.

15 THE COURT: -- in this area, but I do think that the way that  
16 it's being argued is assuming facts not in evidence. I don't know, you  
17 know, you're pulling statistics and how much they make.

18 You can certainly say \$3 million is a lot of money and maybe  
19 some other arguments like that, but I don't understand being able to do  
20 the specifics of what you're doing. To me that would have been --

21 MR. WINNER: Well, I'm saying if --

22 THE COURT: I just think there's less objectionable ways to  
23 argue the value of the dollar.

24 MR. PRINCE: How much longer do you have, Tom?

25 MR. WINNER: I'm almost done.

1 THE COURT: I mean, it's perspective and common sense.

2 MR. WINNER: I'm talking about perspective and common  
3 sense and --

4 MR. HENRIOD: And a common experience [indiscernible].

5 MR. WINNER: Move to strike any income, earning and  
6 saving. I guess that's what I'm saying because it goes to the thought  
7 process of ability to pay and it's the direct implication of that. So that's  
8 my objection.

9 MR. WINNER: It has nothing to do with ability to pay. It's --

10 THE COURT: Okay. Well, I'm going to sustain it.

11 MR. WINNER: Okay.

12 MR. PRINCE: Thank you.

13 THE COURT: I'm going to disregard for both things.

14 MR. WINNER: Can I talk about --

15 THE COURT: Wait, he left.

16 MR. WINNER: Can I talk about savings?

17 THE COURT: He left.

18 MR. WINNER: What most people save?

19 THE COURT: He left. Mr. Prince?

20 MR. WINNER: Can I talk about what the average family -- if  
21 what the average family manages to save over the course of a year, how  
22 much time it would take to accumulate a million dollars?

23 MR. PRINCE: No, because he has no evidence of that in the  
24 evidence. There's no evidence of that.

25 THE COURT: Yeah. I don't know --

1 MR. WINNER: No. It's if.

2 MR. PRINCE: No. It's speculating at this point, Judge, about  
3 what an average household can save.

4 MR. WINNER: He just said \$3 million and based on what?

5 MR. PRINCE: Because that's what I said was fair. I didn't use  
6 any timetable. You're using like the ability to pay and someone earning  
7 money and saving.

8 MR. WINNER: It's not ability to pay. It's the value of a dollar.

9 MR. PRINCE: No. And the value of a dollar is adjusted for  
10 inflation. It has nothing to do with the value of a dollar how much  
11 somebody saves. It has nothing to do with the value of the dollar. It  
12 goes to capacity to pay, these arguments.

13 MR. WINNER: It goes to the value of the dollar.

14 MR. PRINCE: How much somebody saves has nothing to do  
15 with the value of a dollar.

16 THE COURT: I think it goes to a little bit of both.

17 MR. PRINCE: No. It goes to purchasing. Value of a dollar is  
18 purchasing power. It has nothing to do with people saving money and  
19 how much they can save. So it's all improper argument in the same way  
20 you just sustained the objection.

21 Judge, I've got to literally be at the Supreme Court in one hour.

22 THE COURT: I understand.

23 MR. HENRIOD: But, I mean purchasing power. Dr. Schifini  
24 talked about what the cost of gas was, we talked about the price of a  
25 home.

1 MR. PRINCE: That's more just historical perspective. It is  
2 more just --

3 MR. HENRIOD: All of this is about the value of a dollar.

4 THE COURT: I'm sustaining it to a point, but I'm going to let  
5 you do very limited that if for example a family made 50,000, it would  
6 take them this long to save this much money. Not that this is the  
7 average income, not that all this other stuff --

8 MR. WINNER: Okay.

9 MR. PRINCE: What's the --

10 THE COURT: -- statistically.

11 MR. PRINCE: What's --

12 THE COURT: To put it in perspective on some level how  
13 much money it is, it's a lot of money.

14 MR. WINNER: Okay.

15 MR. PRINCE: Okay.

16 THE COURT: Okay.

17 [Sidebar ends at 12:29 p.m.]

18 THE COURT: Sustained with the explanation I gave.

19 MR. WINNER: If that average family of four managed at the  
20 end of the year to have \$5,000 more in the bank than they have the  
21 previous year, they'd be doing -- that's better than most of us. That's  
22 \$5,000 at the end of the year that they didn't have the previous year. A  
23 lot of people aren't able to do that.

24 And if that family was able to save \$5,000 a year, how long  
25 would it take them to save \$1 million? It would take them 200 years to

1 save a million dollars. That's how much money they're asking for. 200  
2 years. A million dollars. That's 1/3 of one element of one of the  
3 damages they're claiming in this case.

4 It would take them 600 years to save \$3 million. That's not  
5 Monopoly money they're asking for. They're asking for real money.  
6 Real money.

7 I would suggest to you that if Desire Evans experienced  
8 some discomfort or some pain in her neck, if you believe she was  
9 injured, if she experienced any pain or discomfort in her neck, if you  
10 believe she was injured, that was gone within three months. I would  
11 expect fair compensation and pain and suffering over that period for  
12 having a neck that felt a little sore and she didn't have to miss any work  
13 would be about \$5,000. I would say the same for Guadalupe.

14 If you believe, and I'm not suggesting you should believe,  
15 that she had to have a surgery that required her to spend one night in  
16 the hospital. We heard about that, didn't we? Her husband was not  
17 there at the hospital and then he was there at the hospital and that he  
18 dropped her at the curb. One night in the hospital when she would be  
19 on her feet and told that you're going to have a full and complete  
20 recovery just like professional athletes do, just like Peyton Manning  
21 does, and you'll be back on your feet in a matter of weeks or months.  
22 You'll be back to the way you were.

23 What kind of pain and suffering is that worth? What kind of  
24 pain and suffering is that realistically worth? Would the Plaintiff be able  
25 to save \$5,000 over that period?

1 MR. PRINCE: Objection. Relevance. Move to strike, Your  
2 Honor.

3 MR. WINNER: \$10,000?

4 THE COURT: Sustained. It would be disregarded.

5 MR. WINNER: What's that three months' worth realistically  
6 to make her whole? \$5,000 that she didn't have before? \$10,000 that she  
7 didn't have before?

8 MR. PRINCE: Objection, move to strike. Improper argument,  
9 Your Honor.

10 THE COURT: Sustained.

11 MR. PRINCE: Improper argument with how much --

12 THE COURT: Approach.

13 [Sidebar begins at 12:33 p.m.]

14 MR. PRINCE: All this is improper conduct.

15 MR. WINNER: What's the problem with that?

16 MR. PRINCE: Well, it's improper saying that the money she  
17 didn't have before. She doesn't know the status of my client like well,  
18 didn't have any money. I mean, so how can he make an argument the  
19 things she didn't have before? The money she didn't have before.

20 MR. HENRIOD: I think what he was doing is it's pointing out  
21 its general damages. It's not talking about loss of income; it's not talking  
22 about --

23 MR. WINNER: I'll withdraw, the money she didn't have  
24 before. I'll say, additional money. That's all I meant by it.

25 MR. PRINCE: All of this is improper argument.

1 MR. WINNER: Okay. I'll say additional money, if that's all  
2 right.

3 THE COURT: Sustain it. You can change it.

4 MR. WINNER: Okay.

5 [Sidebar ends at 12:34 p.m.]

6 THE COURT: Sustained.

7 MR. WINNER: For one night in the hospital, one night in the  
8 hospital, where she would be expected to recover quickly, at least  
9 according to the most qualified professor in the case will never need to  
10 go back for more treatment. Where she will recover quickly. She will be  
11 back on her feet. She would be back to her normal activities. If she were  
12 an athlete, she'd be back on the court. What's that worth? I suggest  
13 that's worth about \$10,000. \$15,000 in addition and that's just for the  
14 pain and suffering and inconvenience.

15 Mr. Prince made some comment about the money that was  
16 paid to Dr. Wong and Schifini. Professor Wong came here. He had  
17 charged \$20,750 to do an IME and more was paid to Schifini. Well,  
18 you're right about that. Somebody just got up here and said after this  
19 accident in which nobody was hurt, and I would respectfully suggest to  
20 you that poor Babylyn Tate was not negligent. Somebody just asked you  
21 to hand them several million dollars. Several million dollars for that.

22 If Babylyn's responsible for this accident, she's responsible  
23 for the damage that she caused. If you believe there was an injury, I'm  
24 not saying you should, by the end of February she's paid her bill. She's  
25 paid her bill. That's enough. She's paid her bill.

1 But before you reach that point you need to find, before you  
2 reach that point, you need to find that she was negligent. That she  
3 behaved somehow less than an ordinary prudent pertinent person would  
4 act. She did not. She was following at a safe distance. She was  
5 following at a safe distance behind someone who slammed on her  
6 brakes under a green light without operating a blinker, with no  
7 pedestrian.

8 Even the Defendant Babylyn Tate nor the Plaintiff saw any  
9 pedestrian in the crossway. She has no excuse for slamming on the  
10 brakes in the middle of an intersection and she has no right to sue  
11 somebody who couldn't quite get stopped behind her. She was not  
12 negligent.

13 She's not proven to you that she suffered any damage. With  
14 respect, the burden of the proof rests with the Plaintiff and only the  
15 Plaintiff. Mr. Prince talked to you about a football field and the 50 yard  
16 line, I think that's a good analogy. The Plaintiff starts out on the 1 yard  
17 line. The 1 yard line. They have to get all the way past the 50 one and  
18 there's another team on the field.

19 Unless the truth of the allegation is proved by a  
20 preponderance of the evidence, you should all find the same to be not  
21 true. What that means is simply this, they have to tip the scales. It's  
22 preponderance of the evidence. If you're 50/50 on whether Babylyn Tate  
23 was negligent, if you're 50/50 on that and you can't tip the scale, you  
24 must find for the Defendant.

25 If you're 50/50 on whether the Plaintiff was injured and you

1 can't tip the scale one way or another, you're 50 50 and can't quite  
2 decide, you must find for the Defendant. You must find the same to be  
3 not true. The burden of proof rests with the Plaintiff and the Plaintiff  
4 alone.

5           Babylyn Tate has been here for three weeks. Three weeks.  
6 Having been accused of all manner of things. Having been accused of  
7 being uncaring. This hospice volunteer. Having been accused all  
8 manner of things. Having been accused of causing a minor accident that  
9 should term someone here, we heard into a millionaire. A millionaire. A  
10 millionaire. And she sat here every day. Every day.

11           I know you're tired of listening to me talk. I would be tired of  
12 listening when we talk too. I'm going to close with this, I'm going to say  
13 two things to Babylyn Tate. I'm going to take two things to Babylyn Tate  
14 when I get finished. This is the last time I have to visit with you before  
15 you return your verdict. I'm going to say two things to her. I'm going to  
16 say one, Babylyn, I did the best I can for you. If I fell short in some way  
17 you can hold that against me, don't hold that against her. Babylyn, I did  
18 the best I can for you. I hope I can tell her that and I know I can tell her; I  
19 know I can tell her she can trust you. She can trust you. I trust you.

20           I believe in the jury system. I believe in the jury system with  
21 all my heart. The only thing standing between Babylyn Tate and what  
22 they're asking for is you and your common sense. And we trust you to  
23 do what's fair and what's right and what's reasonable and Babylyn and I  
24 will be right here waiting for when you come back. Thank you.

25           THE COURT: Mr. Prince?

1                    PLAINTIFF'S REBUTTAL CLOSING ARGUMENT

2                    MR. PRINCE: Yes. Okay. My goal always is to do this in 15  
3 to 20 minutes. You'll be done at 1:00 no matter what. So I can promise  
4 you that.

5                    And just as I said to you at the beginning, I'm a little not  
6 surprised in any way, it's all about the Defense thinking that my clients  
7 are liars, cheats and frauds. That's exactly what they said. They won't  
8 use the word, but I'm using the words for them because that's exactly  
9 their position.

10                  And somehow Desire has the fortitude, thought and the  
11 brilliance to put herself through all this treatment and a life changing  
12 event of a reconstructive cervical spine fusion all because of this. I can  
13 assure you this, she wished this all went away in three months and just  
14 all went about her life rather than undergoing all of this business.

15                  And the keep -- after hearing those statements by Mr.  
16 Winner, it's a darn good thing she's had a lawyer right from day -- from  
17 the beginning, right? She needed one. She needed one here, someone  
18 who is effective here before you to tell her story because people and  
19 people like her have to have their story told.

20                  These doctors have to take away time, these local doctors  
21 and people who treat people in our community, the doctors, Dr. Khavkin,  
22 Dr. Rosler, Dr. Garber who treat people right here in our community. Not  
23 have to fly into Los Angeles, have no office here. They have to come to  
24 talk to people like you to tell them the story. The story. You have to hear  
25 the evidence; in this case it was compelling. You've heard nothing other

1 than this denigration of my clients that they're somehow liars, cheats  
2 and frauds. They would have rather gone trick or treating that night and  
3 never saw you, had to deal with this. Had to deal with years of being  
4 called these things, be demeaned and minimized.

5 But now we're equal here. We're on equal footing and we  
6 think we've proven to you this case. I want to talk to you about a few  
7 things and I knew this was going to happen. All of a sudden the clients  
8 say one thing, this is what I see, and then lawyers saying another thing.

9 Well, let's see what exactly what Ms. Tate had to say. Mr.  
10 Winner says she's not at fault. Let's look at what she says. My question  
11 in front of you May 29th, 2019, I showed the actual page and line where  
12 this comes from.

13 If you had been paying close attention to the road in front of  
14 you and saw that she was stopped in the process of making a turn, you  
15 could have slowed your speed down sooner and avoided this, correct?  
16 Answer, I could have, yes. She's telling you that. Those are her words.  
17 That's negligence. If you can avoid, that's negligence. She said she's  
18 accepted responsibility -- you said you accept responsibility for hitting  
19 her car. I said I've accepted the responsibility I hit her vehicle. I said  
20 that. Responsible means I'm involved. I need to be -- now -- we're  
21 talking now about an accounting.

22 But the way they try to avoid and deflect is try to like I'm  
23 going to fight this and blame all this on Desire for alleging stopping in  
24 the middle of the street. But she didn't stop in the middle of the street.  
25 She was at an intersection. And when she came there, it was at a red

1 light. Behind another car. With her brake -- with her turn signal on.  
2 Sadly, the Defendant didn't see that for whatever reason.

3           And there were pedestrians on that side. It doesn't matter  
4 what -- well, Guadalupe was texting. She's already distracted. It only  
5 matters what Desire saw. If Desire saw a pedestrian, she was required  
6 to stop. That is the law. Even -- even -- how are you ever wrong by  
7 stopping for a pedestrian? If I think somebody's going to come out onto  
8 the street, I'm going to stop. I just want to be sure -- I'd rather be safe  
9 than sorry. Because you'd rather have her do that, than running  
10 somebody over in a crosswalk. It's not like this is the middle of the street  
11 and like you're at a controlled intersection with two crosswalks. Now I  
12 want to show you -- answer me this, because remember you can't  
13 speculate as to anything.

14           What evidence -- what evidence did you have that the brake  
15 lights, the taillights, or the turn signals weren't working correctly? Even  
16 with the lens cover. Did you have one witness to say that? No. You  
17 have George who says no, everything worked perfectly. You have the  
18 car I guess about a year and a half. It was cosmetic only, and  
19 functioning. Let me show you this. I want to show you this picture.

20           November 3rd, 2015, just follow that date for a second. 10:32  
21 a.m. Same date, November 3rd, 2015, 8:46 a.m. You know who took  
22 those pictures? The Defense. They inspected this car within two hours  
23 of each other on the same day. Where is one witness to say that those  
24 lights weren't working right? Where's one witness? Bring them. They  
25 had their chance.

1                   Desire testified we were stopped in the car at a red light.  
2 Turn signal on and I was waiting to make my turn. That's their pictures  
3 they produced to us right there. There's the time stamp within two  
4 hours of each other. Who's misleading who? I only say that because  
5 they have every opportunity -- they have the -- they have the car; they  
6 could have any test done they wanted to. They spent \$80,000 on  
7 medical experts, where's somebody who's an automotive expert to talk  
8 about these issues? So with that being said, I'm just pointing this out to  
9 you that they had every opportunity. There is no such evidence, and  
10 you're not entitled to speculate.

11                   The car in front of Ms. Tate changed lanes. You know, the  
12 first time she's ever said that was here in the trial. Now I told her I read  
13 your deposition numerous times, and you have it in front of you. Can  
14 you tell me anywhere in your deposition, where you said the car in front  
15 of you, when you got in the right lane, in my client's car, never said that.  
16 Did you ever say in your deposition there was a car between your car  
17 and my client's car that made a lane change. And she said I did not.  
18 Really, they're asking her about -- the only thing we care about is what  
19 happened in this crash. Nothing more.

20                   So for that reason -- I only bring that to your attention, she  
21 could have forgotten. Maybe Desire forgot. She was 19 when her 2010  
22 accident occurred. 19 and she made a full recovery. Was her  
23 recollection perfect? Obviously, it wasn't. We can't deny that at all. Was  
24 she trying -- she told the doctors about her 2010 accident. Every one of  
25 them. She said I thought it was my back. It doesn't change anything.

1 And nor does this really change anything. I'm just pointing out there  
2 could be differences in recollection. Differences in things you might say,  
3 and under what circumstances. And I'm pointing it out to you because  
4 that is not evidence of Desire, or anyone else lying.

5 I'm not saying it's even her lying. It's like we were asking her  
6 a series of questions and she didn't speak on that issue for us. And we  
7 learned for the very first time here. Pedestrians. The Defendant told us  
8 she saw the pedestrians. Desire told her that she saw the pedestrians  
9 that night. And she's driving west, I believe, but she sees them on the  
10 sidewalk. She knows it's a busy night. And she never says that she  
11 couldn't see his turn signal, or even brake lights, or taillights. Because  
12 there's three things happening, right?

13 You have running lights, your taillights, because her lights  
14 are on. Your brake light, which would even make it even brighter, and  
15 then you have a right turn signal. So there's three things happening.  
16 The only time she ever saw Desire's car was immediately before impact.  
17 Nothing before. And that car is stopped in its lane. There's nothing  
18 blocking her view. So there's nothing that Desire did leading up to those  
19 moments, cut in front of you, brake in the middle of the road, or anything  
20 like that, that caused any problems with your driving. No. Desire was  
21 already in the intersection, stopped in the process of a turn. So there  
22 was nothing that she did, to cause any of this.

23 Dr. Lewis. I'm bringing this up, because I think some of the  
24 things were taken out of context with Dr. Lewis. He was asked about  
25 have you ever testified in a deposition that millimeters requested

1 chiropractors. He said no. We have to measure things. All radiologists  
2 measure things. Because we want to tell whoever ordered the x-rays  
3 what we find. You may need to compare it down the line. You may to  
4 compare it in six months, or a year, or five years. There's nothing wrong  
5 with that. He said there could be a large margin of error. He says, I  
6 didn't say there was a large margin of error. My job is to report it  
7 accurately. Describe any abnormality I see.

8                   And then finally, you testified two or three millimeters  
9 margin of error is common. Well, when you have something that's four  
10 centimeters, I mean like three or four inches long, yeah, it might be an  
11 error. But not something that we're talking about like a disc bulge or  
12 disc protrusion. So when you're talking about this, that's apples and  
13 oranges. They clearly weren't on the same page with that.

14                  And I point that out to you, because Mr. Winner's saying  
15 there's a two to three millimeter margin of error. I remember what Dr.  
16 Lewis said, what did I see a ghost. Because I saw it. I reported a  
17 protrusion. And everybody else in Las Vegas, Nevada who treated  
18 Desire, they also found the same thing.

19                  MR. WINNER: Excuse me, I object to the four centimeters  
20 being four inches. There's two and a half centimeters.

21                  THE COURT: Sustained.

22                  MR. PRINCE: Okay. The shoulder. So Mr. Winner talks  
23 about the shoulder. Let's just refer to what Dr. Schifini said. I want to -- I  
24 knew this was coming so I prepared this part of the testimony. So when  
25 Mr. Winner's talking about impingement syndrome, that's not present on

1 the MRI imaging. Answer: Well, it's also a clinical diagnosis, too. That's  
2 exactly our point. Not everything is going to be seen on an MRI. You  
3 can see it on imagine. But it's examination. It doesn't have to show up.  
4 Right. Because the MRI doesn't tell you the whole story, does it?  
5 Answer: It doesn't. But no doctor, no physician, ever diagnosed her  
6 with impingement syndrome.

7 I don't know that that's true. But I will agree with you that it  
8 wasn't a big feature of any diagnosis, and it may not be existent. So  
9 when he's saying that's the explanation of the hand and arm symptoms,  
10 that's wrong. And it certainly wasn't Dr. Schifini's opinion. And Dr.  
11 Schifini went one step further. And one thing you can do is a selective  
12 nerve block or a transfer epidural injection. And if that resolved the  
13 symptoms, that's not likely coming from the shoulder. I would agree.  
14 So when Desire has her injection both in January and April, that rules  
15 out any shoulder problems.

16 So if I need to clarify that in any way, their own doctor  
17 resolves that. And finally, dealing with our response to treatment, that a  
18 cervical fusion isn't going to resolve or heal symptoms coming from  
19 shoulder problem. Answer, correct.

20 So that is nothing more than a red herring. And nobody ever  
21 diagnosed her with any [indiscernible] problem. She had consistent  
22 symptoms in her arm until she had her injections. Got what she needed.  
23 Testified to that at the time of the trial. I'm showing you that, just to  
24 show you I have the record of it.

25 And he agreed that after February 3rd she didn't have

1 symptoms in her hand following her injection, that's the only reason  
2 why the symptom resolved. Injections are always temporary. Pain can  
3 come back. That's exactly what happened here. If Dr. McAuley was so  
4 important in this case, why didn't Defense call him. Every doctor said  
5 the chiropractor care was reasonable. Every single one.

6           What was he necessary for? Why was he here? Rebuttal, if  
7 anything. He did excellent. He did give temporary relief. So when  
8 Doctors say it failed, that's doctors words. She got some benefit from it,  
9 but it didn't resolve everything. That's what they mean by failure. When  
10 you fail conservative treatment, you try other options. And they didn't.  
11 The symptoms came back. And that's what we're talking about when it  
12 comes to failure. Those are doctor's words. Those aren't Desire's  
13 words.

14           She also had the neck and arm symptoms from the  
15 beginning. And you don't need nerve compression to have chemical  
16 irritation of the disc, coming from the disc, which is exactly what was  
17 happening in Desire's case. Dr. Wong will testify that she's got the risk  
18 of adjacent second disease at C5-6 and increased risk because of her  
19 problem already there. Dr. Wong can't even -- even though he's  
20 international renowned, he was a hired expert in this case. They paid a  
21 lot of money.

22           He has a long time relation with Mr. Winner, more than 15  
23 years. He's testified in Las Vegas more than 150 times or been hired 150  
24 times on behalf of the Defense in these cases and makes hundreds of  
25 thousands of dollars a year. He's made in the millions coming to Las

1 Vegas, over the last 10, 15 years. In the millions. He's got real incentive  
2 to come out here and do exactly this, right. Medical outcome tells not  
3 only Desire's story, but Guadalupe's as well. She had excellent  
4 treatment, or excellent response to all of her care.

5 And contrary to Mr. Winner, we don't start at the one-yard  
6 line. Then the scales would be like this, right? They start out ahead.  
7 We start out equal. We just have to move. We think we tip the thing on  
8 the side. We think we've given you an overwhelming amount of  
9 evidence. But we have to start at the same space.

10 So we don't start out like this imbalance like this. The scales  
11 of justice don't work that way. We start out equal. We have the burden  
12 to move it, if it's more likely true than not true.

13 MR. WINNER: Your Honor, I object. We don't start out even.  
14 The Plaintiff has the burden.

15 MR. PRINCE: I'm saying we have the burden. I understand  
16 that. But we don't start out at the one yard line. You don't start out  
17 ahead.

18 THE COURT: Overruled.

19 MR. PRINCE: I know you've heard a lot. But I want to take  
20 one other minute to take -- talk about cherry picking. Sometimes when  
21 you find something in a case, you try to use it to your advantage. It can  
22 be taken out of context and it can be used to create confusion.

23 Referring to 278. This pain diagram, for whatever reason,  
24 it's from Dr. Khavkin in May '17. When you're in chronic pain, you  
25 remember I asked Dr. Schifini this. By May of 2016, was Desire in

1 chronic pain. He said yes. Somedays you feel terrible, fatigue, tired, you  
2 haven't slept well. You pain level is like your body is on fire. That's the  
3 only -- we're not claiming any of this, other than the neck and the left  
4 arm, was caused by this accident. Was she having a bad day? No  
5 question. Is that representative of what goes on in the entirety of this  
6 case? No, they just showed this record over and over.

7           Now let's go to Dr. Khavkin's note, where he says I don't  
8 really look at the pain diagram, I rely on my interview with the patient.  
9 274, I believe. From the very same day, May 17th, go to chief complaint.  
10 Says cervical pain with tingling into the arms. That's what this case has  
11 always been about. Dr. Khavkin understood that. That's what he  
12 examined. Greg, why don't you just go down to the history and present.  
13 He's talking about her arm symptoms, her neck symptoms, and how she  
14 -- the treatment with Dr. Rosler will resolve her pain, following the  
15 injections.

16           So looking at that diagram, we're not making that claim,  
17 we're not suggesting that the back or leg pain is caused by this. What  
18 we are talking about is the neck and the arm, which is what this case has  
19 been about from the beginning. The other injuries went away. We have  
20 no problem with that. So just so you understand that. That's cherry  
21 picking. When you find something like that, just try to distract you. I  
22 don't think that's very meaningful. So when you do that, that's not  
23 enough evidence.

24           If there is any question, I want to look at page 25. This is the  
25 last record before the July 2016 collision. And she was not pain free.

1 And I want to just show you this, because this is the evidence that we do  
2 have. June 21st, 2016, Desire is returning continuing to pain of neck  
3 pain, nine out of ten, and lower back pain. So she still had ongoing  
4 complaints. While the chiropractor care did help, it did not resolve it.

5 If the chiropractor care was going to resolve this, it would  
6 have done it months ago. Why is she still going to the doctor? Is she  
7 just that much of a masochist, if she's that sophisticated that she's going  
8 so undergo a life-altering surgery, and commit fraud, to make money.  
9 She's not here to become a millionaire. What she is here for is  
10 accounting. And you're not to consider anybody's financial condition.  
11 You're only to consider what are the harms suffered by my clients.  
12 You're not to consider insurance or any of that, for any reason. Because  
13 that's outside of this courtroom.

14 What you are to do, and what there is a high value on is  
15 somebody's good health. Living a pain free life. Not having to endure a  
16 life of potential misery, symptoms -- particularly in her later years. That  
17 is valuable. Almost invaluable.

18 And that's what we're here talking about, because of the high  
19 value the law places on people's health, and the quality of their life.  
20 She only has one life, like all of us. One life. And when someone takes  
21 that from you, the law places a high value on that. And so do we, as a  
22 society. We place a high value on people's health and wellness, physical  
23 or otherwise.

24 So, thank you for your time and your attention. I promised  
25 you 1:00. And I look forward to your verdict.

1 THE COURT: Thank you. The Clerk will now swear the  
2 officers to take charge of the jurors and the alternate jurors.

3 Ladies and gentlemen, as y'all know civil jury is composed of  
4 eight members -- well, I don't know if y'all know, but whether you know  
5 or not, a civil jury is composed of either members and there are ten of  
6 you here. Two of you will serve as alternates. You are not discharged  
7 from your jury service. Your service may still be needed if one of the  
8 other jurors is no longer able to participate in deliberations.

9 Will counsel please approach quick?

10 [Sidebar begins at 1:00]

11 THE COURT: I just want to confirm that it's 9 and 10, right?

12 MR. WINNER: Yes.

13 MR. PRINCE: Yes.

14 THE COURT: We agreed on that before.

15 MR. PRINCE: Your Honor, I'm going to ask if I can be  
16 excused, because I have to be in the district courtroom.

17 THE COURT: Absolutely.

18 MR. PRINCE: I know, I'm just going to in front of the jury, say  
19 you are excused.

20 THE COURT: That's fine.

21 MR. PRINCE: Because I don't want them to feel like I'm --

22 THE COURT: You're fine. You're good.

23 MR. PRINCE: Okay.

24 THE COURT: Go ahead.

25 MR. PRINCE: No, I'm going to do it in front of the jury. I'm

1 going to say, as you know I have to be in front of the Supreme Court at  
2 1:30.

3 MR. WINNER: No, don't go talking yourself up. She's about  
4 to discharge them.

5 MR. PRINCE: No, Judge.

6 [Indiscernible - parties talking over each other.]

7 MR. WINNER: Do you have anything else to read to them?

8 THE COURT: You should be out in two minutes. This is all I  
9 have.

10 MR. PRINCE: Okay.

11 MR. WINNER: Just say he has an important engagement.

12 THE COURT: We're all done. We're all done.

13 MR. WINNER: Two minutes.

14 [Sidebar ends at 1:00 p.m.]

15 THE COURT: The alternate jurors are number 9, Mr. Ryan  
16 Schult and number 10, Ms. Gabriella Lopez. Please leave your names  
17 and numbers with my JEA, so that you can be contacted if you are  
18 required to continue the deliberation process. The Clerk will now swear  
19 in the jurors and the alternate jurors.

20 Attorneys please make sure you leave your numbers with the  
21 Court. Swear in the officers first, please.

22 [The Clerk swore in the Marshal to take charge of the jury.]

23 THE COURT: Okay, take them to their deliberations.

24 Alternate jurors just make sure we have your numbers, okay. Thank you,  
25 all. And for you alternates, we'll be -- we'll let you know ultimately,

1 either way.

2 [The jury retired to deliberate at 1:02 p.m.]

3 THE COURT: Counsel make sure your numbers -- we have  
4 your numbers. We still have jurors in the courtroom. Can you guys  
5 wait until the jury leaves, please?

6 Let me just -- during this recess, you are admonished not to  
7 talk or converse among yourselves, or with anyone else on any subject  
8 connected with this trial. Read, or watch, or listen to any report of the  
9 commentary of the trial.

10 Any person connected with the trial, by any medium of  
11 information, including without limitation, newspapers, television, the  
12 internet, or radio, and/or form or express any opinion on any subject  
13 connected with the trial until the case is finally submitted to you. Just  
14 don't discuss it with anyone until you get a call from Kelly that we have a  
15 verdict, or you get called back. Okay.

16 Thank you guys all so much for your time and your patience.

17 [Recess at 1:04 p.m., recommencing at 3:20 p.m.]

18 [Outside the presence of the jury.]

19 THE COURT: Good afternoon. How was the Supreme Court?

20 MR. PRINCE: It was good.

21 THE COURT: Good.

22 MR. PRINCE: They were good.

23 THE COURT: Do you all have a preference -- is this the same  
24 as what I'm used to? Do I need to do anything -- do we poll in a civil  
25 suit?

1 MR. PRINCE: We'll want to poll; yes.

2 THE COURT: Okay.

3 MR. WINNER: Usually, yes. Yeah.

4 THE COURT: Do you all want to talk to them after?

5 MR. PRINCE: Likely.

6 MR. WINNER: Likely, yes. What commonly happens is the  
7 Court will tell the jurors, you are free to speak with the attorneys after,  
8 you are not required to do so.

9 THE COURT: Okay. And where do you want to do that?

10 MR. WINNER: In jury services down in the --

11 MR. PRINCE: Well, on this floor. The third floor.

12 THE COURT: Right over there?

13 MR. WINNER: Oh, yeah. We're on the third floor.

14 MR. PRINCE: Yeah.

15 THE COURT: Okay. Anything else I need to do?

16 MR. WINNER: No.

17 THE COURT: Okay.

18 MR. WINNER: You can have the Foreman, or the Clerk read  
19 the verdict.

20 MR. PRINCE: Well, the Clerk usually handles the verdict.

21 THE COURT: All right. We're ready.

22 THE CLERK: Okay. We're ready.

23 MR. PRINCE: The Defense Exhibit DD went back, right? Just  
24 the single exhibit that they have?

25 THE CLERK: Yes.

1 MR. PRINCE: Okay.

2 [Pause]

3 THE MARSHAL: All rise for the jury.

4 [In the presence of the jury.]

5 THE COURT: Okay, ladies and gentlemen. Has the jury  
6 selected a Foreperson? Mr. Sweikert, has the jury -- you're the  
7 Foreperson?

8 THE FOREPERSON: Yes.

9 THE COURT: Has the jury reached a verdict?

10 THE FOREPERSON: Yes.

11 THE COURT: Will you please hand it to the Marshal? The  
12 Clerk will now read the verdict out loud.

13 THE CLERK: District Court Clark County Nevada, Desire  
14 Evans-Waiau, individually, Guadalupe Parra-Mendez, individually,  
15 Plaintiffs v. Babylyn Tate, individually, Defendant, case number A-16-  
16 736457-C, department number 18, general verdict form, general verdict  
17 for Defendant. We, the jury, find for the Defendant, Babylyn Tate, and  
18 against Plaintiffs, Desire Evans-Waiau and Guadalupe Parra-Mendez,  
19 signed by Jury Foreperson, Dylan Sweikert; date, June 3rd, 2019.

20 THE COURT: Would you please poll the jury?

21 THE CLERK: Ladies and gentlemen of the jury, is and are this  
22 your verdict, as read?

23 THE JURY: Yes.

24 THE CLERK: Juror Number 1, Ms. Connie Cundiff [phonetic];  
25 is this your verdict, as read?

1 JUROR NUMBER 1: Yes.

2 THE CLERK: Juror Number 2, Stephanie Lemaster, is this  
3 your verdict, as read?

4 JUROR NUMBER 2: Yes.

5 THE CLERK: Mr. Brian Horner, Juror Number 3, is this your  
6 verdict, as read?

7 JUROR NUMBER 3: Yes, for the majority.

8 THE CLERK: Juror Number 4, Jennifer Cimino, is this your  
9 verdict, as read?

10 JUROR NUMBER 4: Yes.

11 THE CLERK: Number 5, Ms. Bianca Hawara, is this your  
12 verdict, as read?

13 JUROR NUMBER 5: Yes.

14 THE CLERK: Juror Number 6, Mr. Terry Strickler, is this your  
15 verdict, as read?

16 JUROR NUMBER 6: Yes.

17 THE CLERK: Number 7, Mark Ralston, is this your verdict, as  
18 read?

19 JUROR NUMBER 7: Yes.

20 THE CLERK: And Juror Number 8, Mr. Dylan Sweikert, is this  
21 your verdict, as read?

22 JUROR NUMBER 8: Yes.

23 THE COURT: The Clerk will now record the verdict in the  
24 minutes of the Court.

25 Ladies and gentlemen, as you know, the right to trial by jury

1 is one of our basic fundamental constitutional guarantees. On behalf of  
2 counsel and the parties in the 8th Judicial District Court, I wish to thank  
3 you for your careful deliberation in which you gave this case. This  
4 process could not happen without your participation, and I sincerely  
5 thank you for taking part in its process. I hope that this was a rewarding  
6 experience for you, and that you know an integral part, you are the  
7 system. Thank you very much for your service.

8           The question may arise as to whether you may now talk to  
9 other persons regarding this matter. I advise you that you may, if you  
10 wish to talk, talk to other persons and discuss your deliberation which  
11 you gave in this case. You are not required to do so. So if anybody bugs  
12 you, let us know, but a lot of times, the attorneys or people kind of want  
13 feedback on how it went.

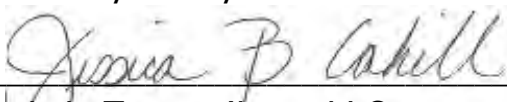
14           On behalf of us, me and my staff, I thank you so much for  
15 coming out, and I hope it was a relatively positive experience for you  
16 overall. Thanks again for your time, folks. Anything else?

17           MR. WINNER: No. Thank you.

18           THE COURT: You're excused. Thank you. Court is in  
19 recess.

20                           [Proceedings concluded at 3:26 p.m.]

21           ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
23 best of my ability.

24             
25           Maukele Transcribers, LLC  
              Jessica B. Cahill, Transcriber, CER/CET-708

22

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JUN 03 2019 3:25 PM

BY, Dara Yorke  
DARA YORKE, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

BABYLYN TATE, INDIVIDUALLY,

Defendants.

Case No. A-16-736457-C

Dept. No. 18

**GENERAL VERDICT FOR DEFENDANT**

We, the jury, find for defendant Babylyn Tate and against plaintiffs  
Desire Evans-Waiau and Guadalupe Parra-Mendez.

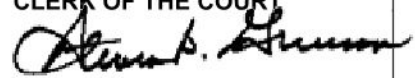
Dylan Sweikert  
JURY FOREPERSON

6-3-19  
DATE

A-16-736457-C  
VER  
Verdict  
4839968



23



1 THOMAS E. WINNER  
Nevada Bar No. 5168  
2 CAITLIN J. LORELLI  
Nevada Bar No. 14571  
3 ATKIN WINNER & SHERROD  
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4 Las Vegas, Nevada 89102  
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6 [clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)  
*Attorneys for Defendant Babylyn Tate*

7  
8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NV

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

14 Plaintiffs.

15 vs.

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

18 Defendant.

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

**NOTICE OF ENTRY OF JUDGMENT  
UPON JURY VERDICT**

19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 YOU WILL PLEASE TAKE NOTICE that the attached Judgment Upon Jury Verdict  
21 was entered by the Court on the 15<sup>th</sup> day of July, 2019.

22 DATED this 15<sup>th</sup> day of July, 2019.

23 ATKIN WINNER & SHERROD

24  
25 /s/ Caitlin J. Lorelli  
Thomas E. Winner  
26 Nevada Bar No. 5168  
Caitlin J. Lorelli  
27 Nevada Bar No. 14571  
1117 South Rancho Drive  
28 Las Vegas, Nevada 89102  
*Attorneys for Defendant Babylyn B. Tate*

1 CERTIFICATE OF SERVICE

2 I certify that on this 15<sup>th</sup> day of July, 2019, the foregoing **NOTICE OF ENTRY OF**  
3 **JUDGMENT UPON JURY VERDICT** was served on the following by ☐ Electronic Service  
4 pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐  
5 overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las  
6 Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as  
7 follows:

8 Paul D. Powell  
9 The Powell Law Firm  
6785 West Russell Road, Suite 210  
10 Las Vegas, NV 89118  
*Attorneys for Plaintiffs*

11 Dennis M. Prince  
12 Eglet Prince  
400 S. 7<sup>th</sup> Street, 4<sup>th</sup> Floor  
13 Las Vegas, NV 89101  
*Attorneys for Plaintiffs*

14  
15  
16 /s/ Colette Thorne  
17 An employee of ATKIN WINNER & SHERROD  
18  
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ORIGINAL

Electronically Filed  
7/15/2019 3:55 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 THOMAS E. WINNER  
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6 [clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)  
*Attorneys for Defendant*  
7 *Babylyn Tate*

8 EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff(s)

vs.

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

Defendant(s)

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

JUDGMENT UPON JURY VERDICT

20  
21 This action came on for trial before the Court and a jury, Honorable Mary Kay Holthus,  
22 Eighth Judicial District Court Judge, presiding, and the issues having been duly tried and the jury  
23 having duly rendered its verdict,

24 IT IS ORDERED ADJUDGED AND DECREED that the Plaintiffs take nothing, that the  
25 action be dismissed on the merits, and that the Defendant, Babylyn Tate, recover of the plaintiffs,  
26

27 ///

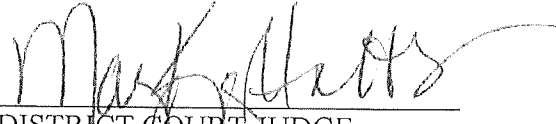

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|-----------------------------------------------------------------|-------------------------------------------------------------|
| <input type="checkbox"/> Non-Jury<br>Disposed After Trial Start | <input type="checkbox"/> Jury<br>Disposed After Trial Start |
| <input type="checkbox"/> Non-Jury<br>Judgment Reached           | <input checked="" type="checkbox"/> Jury<br>Verdict Reached |
| <input type="checkbox"/> Transferred before Trial               | <input type="checkbox"/> Other - _____                      |

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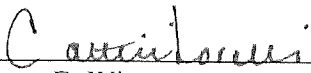
DESIRE EVANS-WAIAU AND GUADALUPE PARRA MENDEZ, her costs of action.

DATED this 11<sup>th</sup> day of July, 2019.

  
DISTRICT COURT JUDGE  


Submitted by:

Atkin Winner & Sherrod

  
Thomas E. Winner  
Nevada Bar No. 5168  
Caitlin J. Lorelli  
Nevada Bar No. 14571  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Defendant*  
*Babylyn Tate*

24



1 **NOAS**  
2 DENNIS M. PRINCE  
3 Nevada Bar No. 5092  
4 KEVIN T. STRONG  
5 Nevada Bar No. 12107  
6 **PRINCE LAW GROUP**  
7 8816 Spanish Ridge Avenue  
8 Las Vegas, Nevada 89148  
9 Tel. (702) 534-7600  
10 Fax (702) 534-7601  
11 Attorneys for Plaintiffs  
12 *Desire Evans-Waiiau and*  
13 *Guadalupe Parra-Mendez*

Electronically Filed  
Aug 19 2019 02:11 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

8 **EIGHTH JUDICIAL DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 DESIRE EVANS-WAIAU, individually;  
11 GUADALUPE PARRA-MENDEZ,  
12 individually; JORGE PARRA-MEZA, as  
13 guardian for MAYRA PARRA, a minor;  
14 JORGE PARRA-MEZA, as guardian for  
15 AALIYAH PARRA, a minor; and JORGE  
16 PARRA-MEZA, as guardian for SIENNA  
17 PARRA, a minor,

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

**NOTICE OF APPEAL**

16 Plaintiffs,

17 vs.

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

20 Defendant.

21  
22 PLEASE TAKE NOTICE that Plaintiffs DESIRE EVANS-WAIAU and GUADALUPE  
23 PARRA-MENDEZ hereby appeal to the Supreme Court of Nevada from:

- 24 1. All judgments and orders in this case;  
25 2. Order Regarding Plaintiffs' Motions in Limine filed on April 22, 2019, the Notice of Entry  
26 of which was filed and served on April 22, 2019, attached as **Exhibit "1,"**  
27 3. Order Regarding Defendant Tate's Motions in Limine filed on April 24, 2019, the Notice  
28 of Entry of which was filed and served on April 26, 2019, attached as **Exhibit "2;"**



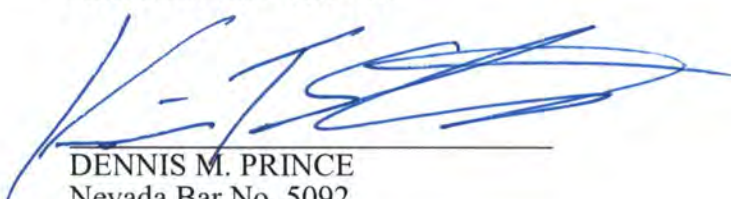
Prince Law Group  
8816 Spanish Ridge  
Las Vegas, NV 89148

- 1 4. Verdict, which was filed on June 3, 2019, attached as **Exhibit “3;”**  
2 5. Judgment upon Jury Verdict filed July 15, 2019, the Notice of Entry of which was filed and  
3 served on July 15, 2019, attached as **Exhibit “4;”** and  
4 6. All other appealable orders and rulings, as well as all interlocutory orders and rulings made  
5 appealable by entry of any of the foregoing orders or judgments.

6 DATED this 14<sup>th</sup> day of August, 2019.

7 Respectfully Submitted,

8 **PRINCE LAW GROUP**

9  
10 

11 DENNIS M. PRINCE  
12 Nevada Bar No. 5092  
13 KEVIN T. STRONG  
14 Nevada Bar No. 12107  
15 8816 Spanish Ridge Avenue  
16 Las Vegas, Nevada 89148  
17 Attorneys for Plaintiffs  
18 *Desire Evans-Waiiau and*  
19 *Guadalupe Parra-Mendez*  
20  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of **PRINCE LAW GROUP**, and that on the 14 day of August, 2019, I caused the foregoing document entitled **NOTICE OF APPEAL** 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 E-Filing System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Thomas E. Winner  
Caitlin J. Lorelli  
**ATKIN WINNER & SHERROD**  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
Tel. (702) 243-7000  
Fax: (702) 243-7059  
Attorneys for Defendant  
*Babylyn Tate*

  
\_\_\_\_\_  
An Employee of PRINCE LAW GROUP

# EXHIBIT 1

*Steven D. Grierson*

EGLET  PRINCE

1 NEO  
2 DENNIS M. PRINCE, ESQ.  
3 Nevada Bar No. 5092  
4 JACK F. DEGREE, ESQ.  
5 Nevada Bar No. 11102  
6 EGLET PRINCE  
7 400 S. 7th Street, 4th Floor  
8 Las Vegas, Nevada 89101  
9 E-Mail: eservice@egletlaw.com  
10 T: 702.450.5400  
11 F: 702.450.5451

12 -and-  
13 PAUL D. POWELL, ESQ.  
14 Nevada Bar No. 7488  
15 THE POWELL LAW FIRM  
16 6785 W. Russell Road, Suite 210  
17 Las Vegas, NV 89118  
18 E-Mail: paul@tplf.com  
19 T: 702.28.5500  
20 F: 702.728.5501  
21 *Attorneys for Plaintiffs Desire Evans-Waiiau*  
22 *and Guadalupe Parra-Mendez*

23 IN THE EIGHTH JUDICIAL DISTRICT COURT

24 CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-737457-C

DEPT. NO.: XVII

NOTICE OF ENTRY OF ORDER  
REGARDING PLAINTIFFS' MOTIONS  
IN LIMINE

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

3 DATED this 22nd day of April, 2019.

4 **EGLET PRINCE**

5  
6 /s/ Jack F. DeGree  
7 DENNIS M. PRINCE, ESQ.  
8 Nevada Bar No. 5092  
9 JAMES A. TRUMMELL, ESQ.  
10 Nevada Bar No. 14127  
11 400 S. 7th Street, 4th Floor  
12 Las Vegas, Nevada 89101  
13 *Attorneys for Plaintiffs Desire Evans-Walau*  
14 *and Guadalupe Parra-Mendez*  
15  
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**CERTIFICATE OF SERVICE**

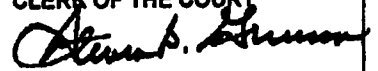
Pursuant to NRCP 5(b), I certify that I am an employee of the EGLET PRINCE and that on April 22, 2019, I did cause a true and correct copy of **NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFFS' MOTIONS IN LIMINE** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master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

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

  
An Employee of EGLET PRINCE

# **EXHIBIT 1**

# **EXHIBIT 1**



1     ORDR

2                                 EIGHTH JUDICIAL DISTRICT COURT

3                                 CLARK COUNTY, NEVADA

4     EVANS-WAIAU ET AL.

5  
6                 vs.

Case No.

A-16-736457-C

7     BABLYN TATE

Dept. No.

XVIII

9  
10                                 **ORDER REGARDING PLAINTIFFS' MOTIONS IN LIMINE**

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

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

MARY KAY HOLTHUS  
DISTRICT JUDGE  
DEPARTMENT XVIII

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

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

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

25 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
26  
27  
28

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

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

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

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

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

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
9 Motion in Limine No. 8: Exclude Reference to Attorney Advertising (Except for Limited  
10 References During Voir Dire) is **GRANTED**. The parties, their respective counsel, and their  
11 respective witnesses shall be precluded from offering any references to attorney advertising  
12 during the trial. The parties and their counsel shall be permitted to explore the topic of  
13 attorney advertising with prospective jurors during voir dire only.  
14  
15

16 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
17 Motion in Limine No. 9: Exclude Closing Argument that Plaintiffs are Requesting More  
18 Money than They Expect to Receive is **GRANTED**. Defendant and her counsel shall be  
19 precluded from making any closing argument or statement that Plaintiffs, during closing  
20 argument, requested more money in damages than they expect to receive from the jury.  
21 Defendant and her counsel are only permitted to make fact-based arguments against any  
22 requested damages award Plaintiffs' counsel makes in his closing argument.  
23  
24

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

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

5  
6 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
7 Motion in Limine No. 11: Exclude Reference to Plaintiffs' Counsel Working with Plaintiffs'  
8 Treating Physicians on Unrelated Cases is **GRANTED, IN PART** and **DENIED, IN**  
9 **PART**. Defendant and her counsel are permitted to ask questions of Plaintiffs' medical  
10 providers regarding the existence of any past working relationship with Plaintiffs' counsel  
11 involving medical liens only. Defendant and her counsel are precluded from offering any  
12 statement, argument or reference about Plaintiffs' medical providers involvement or  
13 treatment of other past clients of Plaintiffs' counsel for any other purpose.  
14

15  
16 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
17 Motion in Limine No. 12: To Limit Defendants' Retained Experts' Testimony to the  
18 Opinions and Bases Set Forth in Their Expert Reports is **GRANTED, IN PART** and  
19 **DENIED, IN PART**. The parties' retained experts' testimony at trial is solely limited to the  
20 opinions and bases set forth in their reports and deposition testimony, and reasonable  
21 inferences therefrom. The parties' retained experts may change the opinions outlined in their  
22 reports or deposition testimony only if new information, theories, arguments, or conclusions  
23 are presented during the trial that were not known or considered at the time the experts  
24 drafted any of their initial reports or supplemental reports thereto.  
25

26  
27 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
28

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

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

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

20 NRCP 16.1(a)(2)(B) requires retained experts to provide a complete statement of their  
21 opinions and the bases supporting those opinions in their expert reports. Defendant retained  
22 two medical experts in this case: Jeffrey Wang, M.D., and Joseph Schifini, M.D. Dr. Wang  
23  
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1 and Dr. Schifini do not offer an independent alternative causation theory for Evans-Waiiau's  
2 present injuries to a reasonable degree of medical probability in their respective reports.  
3 Therefore, Defendant has not established a causal connection between Evans-Waiiau's prior  
4 cervical spine injury or prior 2010 motor vehicle accident and her current injuries and pain  
5 complaints allegedly caused by the subject motor vehicle collision.  
6

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

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

1 have testified to the contrary.

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

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

18  
19 (1) Defendant, her counsel, and her witnesses are precluded from offering any  
20 statement, argument or reference that Plaintiff Guadalupe Parra-Mendez ("Parra-Mendez")  
21 was terminated from her employment at The Cromwell Hotel and Casino. The documentary  
22 evidence produced establishes that Parra-Mendez was not terminated from The Cromwell,  
23 but instead resigned.  
24

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

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

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

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

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

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

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

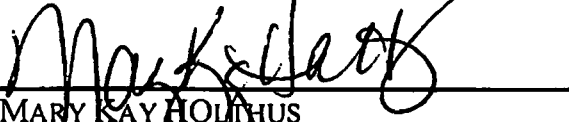
16 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Court's  
17 decision on Plaintiff's Motion in Limine No. 19: To Exclude Sub Rosa Surveillance Video  
18 of Plaintiff Desire Evans-Waiiau and Any Testimony or Reference to the Same is deferred  
19 until the time of trial, to permit the Court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

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

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

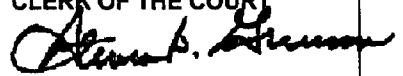
**IT IS SO ORDERED**

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

  
MARY KAY HOLTHUS  
DISTRICT COURT JUDGE

MARY KAY HOLTHUS  
DISTRICT JUDGE  
DEPARTMENT XVIII

# EXHIBIT 2



1 NEOJ  
2 THOMAS E. WINNER  
3 Nevada Bar No. 5168  
4 CAITLIN J. LORELLI  
5 Nevada Bar No. 14571  
6 ATKIN WINNER & SHERROD  
7 1117 South Rancho Drive  
8 Las Vegas, Nevada 89102  
9 Phone (702) 243-7000  
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11 [twinner@awslawyers.com](mailto:twinner@awslawyers.com)  
12 [clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)

13 Attorneys for Defendant  
14 Babylyn B. Tate

15 EIGHTH JUDICIAL DISTRICT COURT

16 CLARK COUNTY, NEVADA

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

24 Plaintiffs

25 vs.

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

Defendants

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

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

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the attached Order Regarding Defendant

///

///

///

///


///

///

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

2 DATED this 25 day of April, 2019.

4 ATKIN WINNER & SHERROD

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

CERTIFICATE OF SERVICE

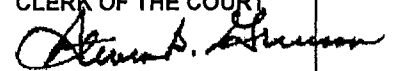
I certify that on this 26 day of April, 2019, the foregoing **NOTICE OF ENTRY OF ORDER REGARDING DEFENDANT TATE'S MOTIONS IN LIMINE** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐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

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

And

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

  
An employee of ATKIN WINNER & SHERROD



1 **ORDR**  
2 THOMAS E. WINNER  
3 Nevada Bar No. 5168  
4 CAITLIN J. LORELLI  
5 Nevada Bar No. 14571  
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12 [clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)

13 *Attorneys for Babylyn B. Tate*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

24 Plaintiff(s)

25 vs.

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

Defendant(s)

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

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

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

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

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
5 Motion *in Limine* No. 1: Regarding Specific Statements and Claims of the Parties is  
6 **GRANTED, IN PART and DENIED, IN PART.** Part (B) – Defendant Tate's Observations and  
7 Triage at Accident Scene - Defendant Tate is permitted to testify about what she observed after  
8 the subject accident occurred, including the actions of the Plaintiffs post-accident. Meaning,  
9 Defendant Tate is permitted to opine she does not believe Plaintiffs sustained any injury based  
10 upon her observations. In rendering her observations post-accident, Defendant Tate is not  
11 permitted to testify she performed a triage or a medical procedure.<sup>1</sup> Part (C) – Injuries of Minor  
12 Children – Evidence of injury to minor children is permissible to establish severity of impact  
13 only. Evidence of lack of injury to Defendant Tate is permissible to establish severity of impact.  
14 Evidence of minor children's medical expenses is inadmissible; relevance outweighed by unfair  
15 prejudice.<sup>2</sup> Part (D) – Plaintiff Evans-Waiiau's Subsequent Injuries – The defense may argue that  
16 neither the subject accident nor the subsequent accident on July 10, 2016 is the cause of Plaintiff  
17 Evans-Waiiau's surgery. The defense is permitted to have experts testify there was an increase in  
18 symptoms as set forth by the reports.<sup>3</sup> However, Plaintiff Evans-Waiiau's 2018 Complaint,  
19 relative to the July 10, 2016 subsequent accident, wherein she alleges injuries to her shoulders  
20 and back, is not a verified complaint and the statements contained therein are deemed legal  
21 conclusions made by counsel rather than party admissions. The Court finds Plaintiff Evans-  
22 Waiiau's cervical recommendation was made prior to the 2016 accident and that Defendant  
23 Tate's experts do not opine the 2016 caused or contributed to the alleged injuries sustained in the  
24  
25

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

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

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

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

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

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

22  
23  
24 <sup>4</sup> See Minute Order on 1/18/2019.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

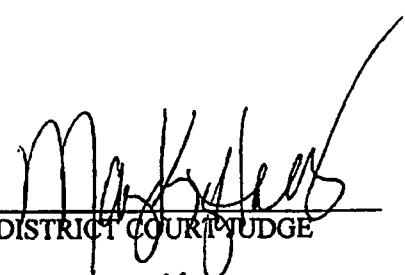
<sup>16</sup> See Minute Order 10/3/2018.

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

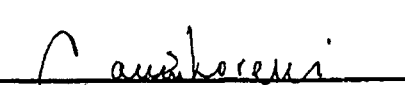
10  
11 IT IS SO ORDERED.  
12 DATED this 23 day of April, 2019.

13  
14  
15 DATED this 20 day of April, 2019.  
16 Approved as to Form and Content:  
17 EGLET PRINCE

18 DENNIS M. PRINCE, ESQ.  
19 Nevada Bar No. 5092  
20 TRACY A. EGLET, ESQ.  
21 Nevada Bar No. 6419  
22 KEVIN T. STRONG, ESQ.  
23 Nevada Bar No. 12107  
24 400 South 7th Street, 4th Floor  
25 Las Vegas, Nevada 89101  
26 Tel. (702) 450-5400  
27 Fax (702) 450-5451  
28 Attorneys for Plaintiffs  
*Desire Evans-Waiau and*  
*Guadalupe Parra-Mendez*

  
DISTRICT COURT JUDGE

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

  
THOMAS E. WINNER, ESQ.  
Nevada Bar No. 5168  
CAITLIN J. LORELLI, ESQ.  
Nevada Bar No. 14571  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
Tel. (702) 243-7000  
Fax (702) 243-7059  
Attorneys for Defendant  
*Babylun Tate*

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

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

# EXHIBIT 3

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JUN 03 2019 3:25 PM

BY, Dara Yorke  
DARA YORKE, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

BABYLYN TATE, INDIVIDUALLY,

Defendants.

Case No. A-16-736457-C

Dept. No. 18

GENERAL VERDICT FOR DEFENDANT

We, the jury, find for defendant Babylyn Tate and against plaintiffs  
Desire Evans-Waiau and Guadalupe Parra-Mendez.

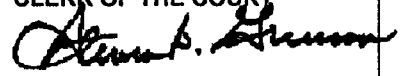
Dylan Sweikert  
JURY FOREPERSON

6-3-19  
DATE

A-16-736457-C  
VER  
Verdict  
4839968



# EXHIBIT 4



1 THOMAS E. WINNER  
Nevada Bar No. 5168  
2 CAITLIN J. LORELLI  
Nevada Bar No. 14571  
3 ATKIN WINNER & SHERROD  
1117 South Rancho Drive  
4 Las Vegas, Nevada 89102  
Phone (702) 243-7000  
5 Facsimile (702) 243-7059  
[twinner@awslawyers.com](mailto:twinner@awslawyers.com)  
6 [clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)  
*Attorneys for Defendant Babylyn Tate*

7  
8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NV

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

14 Plaintiffs.

15 vs.

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

18 Defendant.

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

**NOTICE OF ENTRY OF JUDGMENT  
UPON JURY VERDICT**

19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 YOU WILL PLEASE TAKE NOTICE that the attached Judgment Upon Jury Verdict  
21 was entered by the Court on the 15<sup>th</sup> day of July, 2019.

22 DATED this 15<sup>th</sup> day of July, 2019.

23 ATKIN WINNER & SHERROD

24 /s/ Caitlin J. Lorelli

25 Thomas E. Winner  
Nevada Bar No. 5168  
26 Caitlin J. Lorelli  
Nevada Bar No. 14571  
27 1117 South Rancho Drive  
Las Vegas, Nevada 89102  
28 *Attorneys for Defendant Babylyn B. Tate*

CERTIFICATE OF SERVICE

I certify that on this 15<sup>th</sup> day of July, 2019, the foregoing **NOTICE OF ENTRY OF JUDGMENT UPON JURY VERDICT** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

Paul D. Powell  
The Powell Law Firm  
6785 West Russell Road, Suite 210  
Las Vegas, NV 89118  
*Attorneys for Plaintiffs*

Dennis M. Prince  
Eglet Prince  
400 S. 7<sup>th</sup> Street, 4<sup>th</sup> Floor  
Las Vegas, NV 89101  
*Attorneys for Plaintiffs*

/s/ Colette Thorne  
An employee of ATKIN WINNER & SHERROD

ORIGINAL

Electronically Filed  
7/15/2019 3:55 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

THOMAS E. WINNER  
Nevada Bar No. 5168  
CAITLIN J. LORELLI  
Nevada Bar No. 14571  
ATKIN WINNER & SHERROD  
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[twinner@awslawyers.com](mailto:twinner@awslawyers.com)  
[clorelli@awslawyers.com](mailto:clorelli@awslawyers.com)  
*Attorneys for Defendant*  
*Babylyn Tate*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff(s)

vs.

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

Defendant(s)

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

JUDGMENT UPON JURY VERDICT

This action came on for trial before the Court and a jury, Honorable Mary Kay Holthus,  
Eighth Judicial District Court Judge, presiding, and the issues having been duly tried and the jury  
having duly rendered its verdict,

IT IS ORDERED ADJUDGED AND DECREED that the Plaintiffs take nothing, that the  
action be dismissed on the merits, and that the Defendant, Babylyn Tate, recover of the plaintiffs,

///

|                                                                 |                                                             |
|-----------------------------------------------------------------|-------------------------------------------------------------|
| <input type="checkbox"/> Non-Jury<br>Disposed After Trial Start | <input type="checkbox"/> Jury<br>Disposed After Trial Start |
| <input type="checkbox"/> Non-Jury<br>Judgment Reached           | <input checked="" type="checkbox"/> Jury<br>Verdict Reached |
| <input type="checkbox"/> Transferred before Trial               | <input type="checkbox"/> Other - _____                      |

1 ///

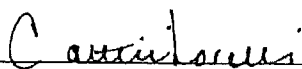
2 DESIRE EVANS-WAIAU AND GUADALUPE PARRA MENDEZ, her costs of action.

3 DATED this 11<sup>th</sup> day of July, 2019.

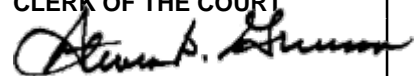
4   
5 DISTRICT COURT JUDGE  
6 

7 Submitted by:

8 Atkin Winner & Sherrod

  
Thomas E. Winner  
Nevada Bar No. 5168  
Caitlin J. Lorelli  
Nevada Bar No. 14571  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Defendant*  
*Babylun Tate*

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ASTA  
DENNIS M. PRINCE  
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KEVIN T. STRONG  
Nevada Bar No. 12107  
**PRINCE LAW GROUP**  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Tel. (702) 534-7600  
Fax (702) 534-7601  
Attorneys for Plaintiffs  
*Desire Evans-Waiiau and*  
*Guadalupe Parra-Mendez*

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

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

**CASE APPEAL STATEMENT**

Plaintiffs,

vs.

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

Defendant.

Pursuant to NRAP 3(f)(1), Plaintiffs/Appellants DESIRE EVANS-WAIAU and  
GUADALUPE PARRA-MENDEZ hereby submit the following Case Appeal Statement.

**A. District Court Case Number and Caption Showing the Names of All Parties to the Proceedings:**

Desire Evans-Waiiau; Guadalupe Parra-Mendez, Plaintiffs<sup>1</sup>  
Babylyn Tate, Defendant  
Case No. A-16-736457-C  
Department No. XVIII

<sup>1</sup> Plaintiffs Jorge Parra-Meza, as guardian for Mayra Parra; Jorge Parra-Meza, as guardian for Aaliyah Parra; and Jorge Parra-Meza, as guardian for Sienna Parra resolved their claims and are no longer parties to the action.



1 B. Names of Judges Who Entered Orders or Judgment Being Appealed:

2 The Honorable Senior Judge Nancy Becker

3 The Honorable Judge Michael P. Villani

4 The Honorable Judge Mary K. Holthus<sup>2</sup>

5 C. Name of Each Appellant and Name and Address of Counsel for Each Appellant:

6 Plaintiffs/Appellants Desire Evans-Waiiau and Guadalupe Parra-Mendez are represented by  
7 the following counsel:

8 Dennis M. Prince  
9 Kevin T. Strong  
10 PRINCE LAW GROUP  
11 8816 Spanish Ridge Avenue  
12 Las Vegas, Nevada 89148  
13 Tel. (702) 534-7600  
14 Fax (702) 534-7601

15 D. Name of Each Respondent and Name and Address of Appellate Counsel for Respondent, if Known:

16 Respondent is Babylyn Tate. Ms. Tate's appellate counsel is unknown. Ms. Tate was  
17 represented in the district court by the following trial counsel:

18 Thomas E. Winner  
19 Caitlin J. Lorelli  
20 ATKIN WINNER & SHERROD  
21 1117 South Rancho Drive  
22 Las Vegas, Nevada 89102  
23 Tel. (702) 243-7000  
24 Fax: (702) 243-7059

25 E. Whether an Attorney Identified in Response to Subparagraph (D) is Not Licensed to Practice Law in Nevada and if so, Whether the District Court Granted that Attorney Permission to Appear Under SCR 42, Including a Copy of Any District Court Order Granting that Permission:

26 All the retained attorneys in the district court action are licensed to practice law in Nevada.

27 F. Whether Appellants were Represented by Appointed or Retained Counsel in the District Court, and whether Appellants are Represented by Appointed Counsel on Appeal:

28 Retained counsel represented Plaintiffs/Appellants before the district court and represents Plaintiffs/Appellants on appeal.

<sup>2</sup> The Honorable Judge Nancy Becker and The Honorable Judge Michael P. Villani issued rulings on the parties' respective Motions *in limine*. The Honorable Judge Mary K. Holthus presided over the jury trial and issued multiple evidentiary rulings throughout the trial.

1 G. Whether Appellants were Granted Leave to Proceed *in forma pauperis*:

2 Plaintiffs/Appellants were not granted leave to proceed *in forma pauperis*.

3 H. Date Proceedings Commenced in District Court:

4 Plaintiffs/Appellants filed their Complaint in this matter on May 10, 2016.

5 I. Brief Description of the Nature of the Action and Result in District Court, Including the Type of Judgment or Order Being Appealed and the Relief Granted by the District Court:

6 This is a personal injury action that arises from a motor vehicle collision that occurred on  
7 October 30, 2015. Plaintiff/Appellant Desire Evans-Waiiau traveled westbound on Flamingo Road  
8 towards The Linq in a 1998 Honda Accord. Plaintiff/Appellant Guadalupe Parra-Mendez sat in the  
9 right front passenger's seat of the Honda. Defendant/Respondent Babylyn Tate also traveled  
10 westbound on Flamingo Road directly behind Plaintiffs/Appellants in a 2014 Acura RDX.  
11 Plaintiff/Appellant Evans-Waiiau's vehicle was stopped for a red light at the intersection of Flamingo  
12 Road and Linq Lane behind one car. Plaintiff/Appellant Evans-Waiiau's right signal was activated  
13 indicating her intent to turn right onto Linq Lane. After the vehicle in front of Plaintiff/Appellant  
14 Evans-Waiiau turned right, she moved her vehicle forward to turn right. As Plaintiff/Appellant Evans-  
15 Waiiau was about to turn right, multiple pedestrians allegedly entered the crosswalk, which forced her  
16 to stop her vehicle. Defendant/Respondent Tate then hit the back of Plaintiff/Appellant Evans-  
17 Waiiau's vehicle. Plaintiffs/Appellants Evans-Waiiau and Parra-Mendez allegedly sustained injuries  
18 from the collision.

19 On April 22 and 24, 2019, the district court entered orders regarding the parties' respective  
20 motions *in limine* addressing a wide variety of evidentiary matters. On April 22, 2019, a jury trial  
21 commenced for five (5) days and resulted in a mistrial. On May 14, 2019, a second jury trial began  
22 and lasted for thirteen (13) days. During both the first jury trial and second jury trial, the district court  
23 issued various evidentiary rulings and rulings on multiple trial briefs filed by the parties, respectively.  
24 On June 3, 2019, the jury rendered its verdict in favor of Defendant/Respondent Tate and against  
25 Plaintiffs/Appellants Evans-Waiiau and Parra-Mendez. On July 15, 2019, Judgment upon Jury Verdict  
26 was filed, the Notice of Entry of which was filed and served on the same day.

27 J. Whether the Case was Previously Subject of an Appeal to or Original Writ Proceeding in the Supreme Court and if so, the Caption and Supreme Court Docket Number of the Prior Proceeding:

28 This is the first appeal in this case. There were no prior appeals or original writ proceedings.



1 K. Whether the Appeal Involves Child Custody or Visitation:

2 This case does not involve child custody or visitation.

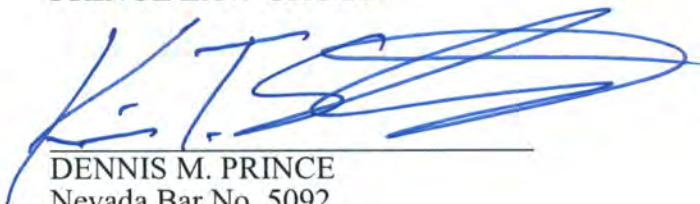
3 L. Whether the Appeal Involves the Possibility of Settlement:

4 This appeal involves the possibility of settlement.

5 DATED this 14<sup>th</sup> day of August, 2019.

6 Respectfully Submitted,

7 **PRINCE LAW GROUP**

8 

9  
10 DENNIS M. PRINCE  
Nevada Bar No. 5092  
11 KEVIN T. STRONG  
Nevada Bar No. 12107  
12 8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
13 Attorneys for Plaintiffs  
14 *Desire Evans-Waiiau and*  
*Guadalupe Parra-Mendez*



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of **PRINCE LAW GROUP**, and that on the 14 day of August, 2019, I caused the foregoing document entitled **CASE APPEAL STATEMENT** 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 E-Filing System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

Thomas E. Winner  
Caitlin J. Lorelli  
**ATKIN WINNER & SHERROD**  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
Tel. (702) 243-7000  
Fax: (702) 243-7059  
Attorneys for Defendant  
*Babylyn Tate*



\_\_\_\_\_  
An Employee of PRINCE LAW GROUP



**CASE SUMMARY****CASE NO. A-16-736457-C**

**Desire Evans-Waiiau, Plaintiff(s)**  
**vs.**  
**Babylyn Tate, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 18**  
 Judicial Officer: **Holthus, Mary Kay**  
 Filed on: **05/10/2016**  
 Case Number History:  
 Cross-Reference Case Number: **A736457**

**CASE INFORMATION**

**Statistical Closures**  
 07/15/2019 Verdict Reached

Case Type: **Negligence - Auto**

Case Status: **07/15/2019 Closed**


**DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number A-16-736457-C  
 Court Department 18  
 Date Assigned 01/07/2019  
 Judicial Officer Holthus, Mary Kay

**PARTY INFORMATION**

|                  |                                | <i>Lead Attorneys</i>                                         |
|------------------|--------------------------------|---------------------------------------------------------------|
| <b>Plaintiff</b> | <b>Evans-Waiiau, Desire</b>    | <b>Prince, Dennis M</b><br><i>Retained</i><br>702-534-7600(W) |
|                  | <b>Parra-Mendez, Guadalupe</b> | <b>Prince, Dennis M</b><br><i>Retained</i><br>702-534-7600(W) |
| <b>Defendant</b> | <b>Tate, Babylyn</b>           | <b>Atkin, Trevor L.</b><br><i>Retained</i><br>7022437000(W)   |

**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

|            |                                                                                                                                                                                                                          |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/10/2016 |  <b>Complaint</b><br>Filed By: Plaintiff Evans-Waiiau, Desire<br><i>Complaint</i>                                                     |
| 05/11/2016 |  <b>Initial Appearance Fee Disclosure</b><br>Filed By: Plaintiff Evans-Waiiau, Desire<br><i>Initial Appearance and Fee Disclosure</i> |
| 05/11/2016 |  <b>Demand for Jury Trial</b><br>Filed By: Plaintiff Evans-Waiiau, Desire<br><i>Demand for Jury Trial</i>                             |
| 06/28/2016 |  <b>Affidavit of Service</b><br>Filed By: Plaintiff Evans-Waiiau, Desire<br><i>Affidavit of Service</i>                               |
| 08/08/2016 |  <b>Initial Appearance Fee Disclosure</b>                                                                                             |

# CASE SUMMARY

CASE NO. A-16-736457-C

Filed By: Defendant Tate, Babylyn  
Initial Appearance Fee Disclosure (N.R.S. Chapter 19)

08/08/2016



Answer to Complaint

Filed by: Defendant Tate, Babylyn  
Answer to Complaint

09/13/2016



Commissioners Decision on Request for Exemption - Granted  
Commissioner's Decision on Request for Exemption - Granted

10/05/2016



Early Case Conference List of Witnesses & Production of Docs  
Filed By: Defendant Tate, Babylyn  
Defendant Tate's Early Case Conference List of Witnesses and Production of Documents

10/20/2016



Joint Case Conference Report  
Filed By: Plaintiff Evans-Waiau, Desire  
Joint Case Conference Report

11/30/2016



Scheduling Order  
Scheduling Order

12/01/2016



Order Setting Civil Jury Trial  
Order Setting Civil Jury Trial and Calendar Call

03/20/2017



Motion  
Filed By: Plaintiff Evans-Waiau, Desire  
Plaintiffs' Motion to Deem Admissions Admitted

03/27/2017



Notice of Association of Counsel  
Filed By: Defendant Tate, Babylyn  
Notice of Association of Counsel

04/03/2017



Opposition and Countermotion  
Filed By: Defendant Tate, Babylyn  
Defendant's Opposition to Plaintiff's Motion to Deem Admissions Admitted, and Countermotion to Enlarge Time to Respond to Written Discovery, and to Withdraw and Amend Admissions

04/17/2017



Reply in Support  
Filed By: Plaintiff Evans-Waiau, Desire  
Waiau Reply In Support Of her Motion to Deem Admissions Admitted and Opposition to Counter Motion to Enlarge Time

04/19/2017



Request  
Filed by: Defendant Tate, Babylyn  
Defendant's Request For Prior Pleadings and Discovery

04/24/2017



Reply in Support  
Filed By: Defendant Tate, Babylyn  
Defendant's Reply in Support of Countermotion to Enlarge Time to Respond to Written Discovery, and to Withdraw and Amend Admissions

06/30/2017



Stipulation and Order to Extend Discovery Deadlines  
Filed By: Plaintiff Evans-Waiau, Desire

# CASE SUMMARY

CASE NO. A-16-736457-C

*Stipulation and Order to Extend Discovery and Continue Trial (First request)*

07/05/2017



Notice of Entry of Order

Filed By: Plaintiff Evans-Waiiau, Desire

*Notice of Entry of Order*

07/06/2017



Amended Order Setting Jury Trial

*Amended Order Setting Jury Trial*

09/29/2017



Stipulation and Order

Filed by: Defendant Tate, Babylyn

*Stipulation & Order to Extend Discovery Deadlines and Request New Trial Date*

10/03/2017



Notice of Entry of Stipulation and Order

Filed By: Defendant Tate, Babylyn

*Notice of Entry of Stipulation & Order to Extend Discovery and Request New Trial Date - Second Request*

10/05/2017



Amended Order Setting Jury Trial

*Amended Order Setting Jury Trial*

10/11/2017



Notice of Association of Counsel

Filed By: Defendant Tate, Babylyn; Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna

*Notice of Association of Counsel*

11/06/2017



Stipulation and Order

*Stipulation and Order Regarding NRCP 35 Medical Examination of Plaintiff By Dr. Wang*

11/08/2017



Notice of Entry of Order

*Notice of Entry Of Stipulation and Order Regarding NRCP 35 Medical Examination of Plaintiff by Dr. Jeffrey Wang*

01/26/2018



Notice of Deposition

Filed By: Defendant Tate, Babylyn

*Amended Notice of Deposition of Dr. Yevgeniy Khavkin*

02/27/2018



Stipulation and Order

Filed by: Defendant Tate, Babylyn

*Stipulation & Order to Extend Discovery Deadlines - Third Request*

03/01/2018



Notice of Entry of Stipulation and Order

Filed By: Defendant Tate, Babylyn

*Notice of Entry of Stipulation & Order to Extend Discovery Deadlines - Third Request*

03/13/2018



Notice

Filed By: Defendant Tate, Babylyn

*Notice of Potential Trial Conflict*

03/29/2018














Stipulation and Order to Extend Discovery Deadlines

Filed By: Defendant Tate, Babylyn

*Stipulation & Order to Extend Discovery Deadlines - Fourth Request*

# CASE SUMMARY

CASE NO. A-16-736457-C

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 04/03/2018 |  Notice of Entry<br>Filed By: Defendant Tate, Babylyn<br><i>Notice of Entry of Stipulation &amp; Order to Extend Discovery Deadlines - Fourth Request</i>                                                                                                                                                                                                                                                                                 |
| 07/23/2018 |  Affidavit<br>Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Affidavit of Kevin T. Strong, Esq., In Compliance with EDCR 2.47</i>                                                                                                                                                                                                                                                                      |
| 07/23/2018 |  Motion in Limine<br>Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna<br><i>Plaintiffs' Motion in Limine Nos. 1-11</i>                                                                                                                                                                                                  |
| 07/23/2018 |  Motion in Limine<br>Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna<br><i>Plaintiffs' Motion in Limine No. 12: To Limit Defendant's Retained Experts' Testimony To The Opinions And Bases Set Forth In Their Expert Reports</i>                                                                                       |
| 07/23/2018 |  Motion in Limine<br>Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna<br><i>Plaintiffs' Motion in Limine No 13: to Exclude Argument, Reference, or Expert Opinion that Plaintiff Desire Evans-Waiiau's Neck Pain was Symptomatic During the Immediate Years Prior to and Immediately Before the Subject Collision</i>   |
| 07/23/2018 |  Motion in Limine<br>Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna<br><i>Plaintiffs' Motion in Limine No. 14 to Preclude Defendant from Characterizing Plaintiff Desire Evans-Waiiau's Neck Pain Following the Subsequent July 10, 2016 Motor Vehicle Accident as Anything Other than a Temporary Exacerbation</i>  |
| 07/23/2018 |  Motion in Limine<br>Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna<br><i>Plaintiffs' Motion in Limine No. 14 to Preclude Defendant from Characterizing Plaintiff Desire Evans-Waiiau's Neck Pain Following the Subsequent July 10, 2016 Motor Vehicle Accident as Anything Other than a Temporary Exacerbation</i> |
| 07/23/2018 |  Motion in Limine<br>Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna<br><i>Plaintiffs' Motion in Limine No. 16 to Limit Testimony and Opinions of Defendant's Retained Medical Expert, Joseph J. Schifini, M.D.</i>                                                                                                  |
| 07/23/2018 |  Motion in Limine<br>Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna<br><i>Plaintiffs' Motion in Limine No. 17: to Exclude Reference to and Evidence of Medical Liens</i>                                                                                                                                            |
| 07/23/2018 |  Motion in Limine<br><i>Plaintiffs' Motion in Limine No 18: for Judicial Notice of Life Expectancy Table</i>                                                                                                                                                                                                                                                                                                                            |
| 07/24/2018 |  Motion in Limine<br>Filed By: Defendant Tate, Babylyn                                                                                                                                                                                                                                                                                                                                                                                  |

# CASE SUMMARY

CASE NO. A-16-736457-C

*Defendant's Motion in Limine No. 1: Regarding Specific Statements of the Parties*

07/24/2018



Motion in Limine

Filed By: Defendant Tate, Babylyn

*Defendant's Motion in Limine No. 2: To Prohibit the Use of Unfairly Prejudicial Trial Tactics*

07/24/2018



Motion in Limine

Filed By: Defendant Tate, Babylyn

*Defendant's Motion in Limine No. 4: To Prohibit Questions Regarding Verdict Amounts During Voir Dire, and to Impose Reasonable Limitations on the Scope and Duration of Voir Dire (Parts 1-2)*

07/24/2018



Motion in Limine

Filed By: Defendant Tate, Babylyn

*Defendant's Motion in Limine No. 3: To Admit and Exclude Certain Information Regarding the Plaintiffs' Claims for Damages (Parts 1-4)*

07/24/2018



Motion in Limine

Filed By: Defendant Tate, Babylyn

*Defendant's Motion in Limine No. 5: Regarding Expert Testimony*

07/31/2018



Notice of Attorney Lien

Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna  
*Notice of Attorney Lien*

08/02/2018



Pre-Trial Disclosure

Party: Defendant Tate, Babylyn

*Defendant's NRCP 16.1 Pretrial Disclosures*

08/03/2018



Pre-Trial Disclosure

Party: Defendant Tate, Babylyn

*First Supplement to Defendant's NRCP 16.1 Pre Trial Disclosure*

08/06/2018



Pre-Trial Disclosure

Party: Defendant Tate, Babylyn

*Second Supplement to Defendant's NRCP 16.1 Pretrial Disclosure*

08/06/2018



Pre-Trial Disclosure

Party: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna

*Plaintiff's Pretrial Disclosure Pursuant to NRCP 16.1(a)(3)*

08/09/2018



Opposition

Filed By: Defendant Tate, Babylyn

*Defendant's Opposition to Plaintiffs' Motion in Limine No 13 to Exclude Argument, Reference or Expert Opinion that Plaintiff Desire Evans-Waiiau's neck pain was symptomatic during the Immediate Years Prior to and Immediately Before the Subject Collision*

08/09/2018



Opposition to Motion

Filed By: Defendant Tate, Babylyn

*Defendant's Babylyn Tate's Opposition to Plaintiff's Motion in Limine No. 17: to Exclude Reference to and Evidence of Medical Liens*

08/10/2018



Opposition

# CASE SUMMARY

CASE NO. A-16-736457-C

08/10/2018



Opposition

Filed By: Plaintiff Evans-Waiau, Desire  
*Plaintiffs' Opposition To Defendant's Motion In Limine No. 1: Regarding Specific Statements And Claims Of The Parties*

08/10/2018



Opposition

Filed By: Plaintiff Evans-Waiau, Desire  
*Plaintiffs' Opposition To Defendant's Motion In Limine No. 2: To Prohibit The Use Of Unfairly Prejudicial Trial Tactics*

08/10/2018



Opposition

Filed By: Plaintiff Evans-Waiau, Desire  
*Plaintiffs' Opposition To Defendant's Motion In Limine No. 4: To Prohibit Questions Regarding Verdict Amounts During Voir Dire, And To Impose Reasonable Limitations On The Scope And Duration Of Voir Dire*

08/10/2018



Opposition

Filed By: Plaintiff Evans-Waiau, Desire  
*Plaintiffs' Opposition To Defendant's Motion In Limine No. 5: Regarding Expert Testimony*

08/13/2018



Opposition to Motion

Filed By: Defendant Tate, Babylyn  
*Defendant's Opposition to Plaintiffs' Motion in Limine No 15 to Exclude Irrelevant and/or Unduly Prejudicial Information*

08/14/2018



Opposition to Motion in Limine

Filed By: Defendant Tate, Babylyn  
*Defendant Babylyn Tate's Opposition to Plaintiffs' Motion in Limine No. 12: To Limit Defendant's Retained Experts' Testimony to the Opinions and Bases Set Forth in Their Reports*

08/14/2018



Opposition to Motion in Limine

Filed By: Defendant Tate, Babylyn  
*Defendant Babylyn Tate's Opposition to Plaintiffs' Motion in Limine No. 14: Regarding Plaintiff Evans-Waiau's Neck Pain Following Her July 10, 2016 Motor Vehicle Accident*

08/14/2018



Opposition to Motion in Limine

Filed By: Defendant Tate, Babylyn  
*Defendant Babylyn Tate's Opposition to Plaintiff's Motion in Limine No. 18: For Judicial Notice of Life Expectancy Table*

08/14/2018



Opposition to Motion in Limine

Filed By: Defendant Tate, Babylyn  
*Defendant Babylyn Tate's Opposition to Plaintiff's Motion in Limine No. 16: Regarding the Opinions Given by Dr. Schifini*

08/14/2018



Opposition to Motion in Limine

Filed By: Defendant Tate, Babylyn  
*Defendant Babylyn Tate's Opposition to Plaintiffs' Motions in Limine Nos. 1-11*

08/20/2018



Pre Trial Information

Filed by: Defendant Tate, Babylyn  
*Defendant's Pretrial Memorandum*

# CASE SUMMARY

CASE NO. A-16-736457-C

08/20/2018



Pre-trial Memorandum

Filed by: Plaintiff Evans-Waiiau, Desire  
*Plaintiffs' Pretrial Memorandum*

08/22/2018



Errata

Filed By: Defendant Tate, Babylyn  
*Errata to Defendant's Opposition to Plaintiffs' Motions in Limine Nos. 13, 15 and 17*

08/22/2018



Reply in Support

Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna  
*Plaintiffs' Reply In Support Of Motion In Limine No. 12: To Limit Defendant's Retained Experts' Testimony To The Opinions And Bases Set Forth In Their Expert Reports*

08/22/2018



Reply in Support

Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna  
*Plaintiffs' Reply In Support Of Motion In Limine Nos. 1-11*

08/22/2018



Reply in Support

Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna  
*Plaintiffs' Reply In Support Of Motion In Limine No. 14: To Preclude Defendant From Characterizing Plaintiff Desire Evans-Waiiau's Neck Pain Following The Subsequent July 10, 2016 Motor Vehicle Accident As Anything Other Than A Temporary Exacerbation*

08/22/2018



Reply in Support

Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna  
*Plaintiffs' Reply in Support of Motion in Limine No. 15: to Exclude Irrelevant and/or Unduly Prejudicial Information*

08/22/2018



Reply in Support

Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna  
*Plaintiff's Reply In Support Of Motion In Limine No. 17: To Exclude Reference To And Evidence Of Medical Liens*

08/22/2018



Reply in Support

Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna  
*Plaintiff's Reply In Support Of Motion In Limine No. 16: To Limit Testimony And Opinions Of Defendant's Retained Medical Expert, JosephJ. Schifini, M.D.*

08/22/2018



Reply in Support

Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna  
*Reply In Support Of Motion In Limine No. 18: For Judicial Notice Of Life Expectancy Table*

08/22/2018



Reply in Support

Filed By: Defendant Tate, Babylyn  
*Defendant's Reply in Support of Her Motion in Limine No. 1: Regarding Specific Statements and Claims of the Parties*

08/22/2018



Reply in Support

# CASE SUMMARY

CASE NO. A-16-736457-C

Filed By: Plaintiff Evans-Waiiau, Desire; Plaintiff Parra-Mendez, Guadalupe; Subject Minor Parra, Mayra; Subject Minor Parra, Alliyah; Subject Minor Parra, Sienna  
*Plaintiffs' Motion In Limine No. 13: To Exclude Argument, Reference, Or Expert Opinion That Plaintiff Desire Evans-Waiiau's Neck Pain Was Symptomatic During The Immediate Years Prior To And Immediately Before The Subject Collision*

08/22/2018



Amended Order Setting Jury Trial  
*Amended Order Setting Jury Trial*

08/23/2018



Reply in Support  
Filed By: Defendant Tate, Babylyn  
*Defendant's Reply in Support of Her Motion in Limine No. 5: Regarding Expert Testimony*

08/23/2018



Reply in Support  
Filed By: Defendant Tate, Babylyn  
*Defendant's Reply in Support of Her Motion in Limine No. 4: To Prohibit Questions Regarding Verdict Amounts During Voir Dire, and to Impose Reasonable Limitations on the Scope and Duration of Voir Dire*

08/23/2018



Reply in Support  
Filed By: Defendant Tate, Babylyn  
*Defendant's Reply in Support of Her Motion in Limine No. 3: To Admit and Exclude Certain Information Regarding the Plaintiffs' Claims for Damages*

08/23/2018



Reply in Support  
Filed By: Defendant Tate, Babylyn  
*Defendant's Reply in Support of Her Motion in Limine No. 2: To Prohibit the Use of Unfairly Prejudicial Trial Tactics*

08/30/2018



Notice  
Filed By: Defendant Tate, Babylyn  
*Notice of Potential Trial Conflict*

09/28/2018



Supplement  
Filed by: Defendant Tate, Babylyn  
*Supplement to Notice of Potential Trial Conflict*

10/10/2018



Recorders Transcript of Hearing  
*Recorder's Transcript of Hearing: All Pending Motions Heard on October 3, 2018*

10/15/2018



Pre-Trial Disclosure  
Party: Plaintiff Evans-Waiiau, Desire  
*Plaintiff's Pretrial Disclosure Pursuant to NRCP 16.1(a)(3)*

10/28/2018



Pre-trial Memorandum  
Filed by: Plaintiff Evans-Waiiau, Desire  
*Plaintiff's Pretrial Memorandum*

10/29/2018



Pre-trial Memorandum  
Filed by: Defendant Tate, Babylyn  
*First Supplement to Defendant's Pretrial Memorandum*

10/31/2018



Amended Order Setting Jury Trial  
*Amended Order Setting Jury Trial*

# CASE SUMMARY

CASE NO. A-16-736457-C

|            |                                                                                                                                                                                                                                                                                                                |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11/07/2018 |  Pre-Trial Disclosure<br>Party: Defendant Tate, Babylyn<br><i>Third Supplement to Defendant's N.R.C.P. 16.1 (a)(3) Petrial Disclosures</i>                                                                                    |
| 11/09/2018 |  Stipulation and Order<br>Filed by: Defendant Tate, Babylyn<br><i>Stipulation &amp; Order to Continue Trial</i>                                                                                                               |
| 11/13/2018 |  Notice of Entry of Stipulation and Order<br>Filed By: Defendant Tate, Babylyn<br><i>Notice of Entry of Stipulation &amp; Order to Continue Trial</i>                                                                         |
| 12/21/2018 |  Notice<br>Filed By: Defendant Tate, Babylyn<br><i>Notice of Trial Conflict</i>                                                                                                                                               |
| 12/21/2018 |  Affidavit<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Affidavit Of Kevin T. Strong, Esq. In Compliance With EDCR 2.47</i>                                                                                               |
| 12/21/2018 |  Motion in Limine<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' Motion In Limine No. 19: To Exclude Sub Rosa Surveillance Video Of Plaintiff Desire Evans-Waiau And Any Testimony Or Reference To The Same</i> |
| 12/26/2018 |  Motion in Limine<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiff's Motion In limine No. 20: To Exclude The Testimony And Opinions Of Defendant's Retained Expert Kevin Kirkendall, CPA</i>                      |
| 01/04/2019 |  Supplement<br>Filed by: Defendant Tate, Babylyn<br><i>Third Supplement to Defendant's NRCP 16.1(a)(3) Pretrial Disclosures</i>                                                                                             |
| 01/07/2019 | Case Reassigned to Department 18<br><i>Judicial Reassignment - From Judge Villani to Judge Holthus</i>                                                                                                                                                                                                         |
| 01/07/2019 |  Pre-Trial Disclosure<br>Party: Plaintiff Evans-Waiau, Desire<br><i>Plaintiff's Pretrial Disclosure Pursuant to NRCP 16.1(a)(3)</i>                                                                                         |
| 01/22/2019 |  Pre-Trial Disclosure<br>Party: Defendant Tate, Babylyn<br><i>Fourth Supplement to Defendant's NRCP 16.1(a)(3) Pretrial Disclosure</i>                                                                                      |
| 01/22/2019 |  Opposition to Motion in Limine<br>Filed By: Defendant Tate, Babylyn<br><i>Defendant Babylyn Tate's Opposition to Plaintiffs' Motion in Limine No. 19: Regarding Sub Rosa Surveillance of Plaintiff Desire Evans-Waiau</i>  |
| 01/23/2019 |  Opposition to Motion in Limine<br>Filed By: Defendant Tate, Babylyn<br><i>Defendant Babylyn Tate's Opposition to Plaintiffs' Motion in Limine No. 20: Regarding the Opinions of Kevin Kirkendall, CPA</i>                  |

# CASE SUMMARY

CASE NO. A-16-736457-C

|            |                                                                                                                                                                                                                                                                                                                                    |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 02/08/2019 |  Notice<br>Filed By: Defendant Tate, Babylyn<br><i>Notice of Potential Trial conflict</i>                                                                                                                                                         |
| 02/15/2019 |  Notice<br><i>Notice of Association of Counsel</i>                                                                                                                                                                                                |
| 03/22/2019 |  Supplement<br>Filed by: Defendant Tate, Babylyn<br><i>Fifth Supplement to Defendant's NRCP 16.1(a)(3) Pretrial Disclosures</i>                                                                                                                   |
| 04/03/2019 |  Reply in Support<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' Reply In Support Of Motion In Limine No. 19: To Exclude Sub Rosa Surveillance Video Of Plaintiff Desire Evans-Waiau Any Any Testimony Or Reference To The Same</i> |
| 04/03/2019 |  Reply in Support<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' Reply In Support Of Motion In Limine No. 20: To Exclude The Testimony And Opinions Of Defendant's Retained Expert, Kevin Kirkendall, CPA</i>                       |
| 04/05/2019 |  Pre-trial Memorandum<br>Filed by: Defendant Tate, Babylyn<br><i>Second Supplement to Defendant's Pretrial Memorandum</i>                                                                                                                         |
| 04/11/2019 |  Notice<br>Filed By: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Notice of EDCR 2.67 Conference</i>                                                                                                                   |
| 04/16/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Transcript of Hearing: All Pending Motions Heard on December 5, 2018</i>                                                                                                                      |
| 04/16/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiff's trial Brief to Pre-Instruct the Jury</i>                                                                                                                              |
| 04/16/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' Trial brief Regarding Restrictions on Peremptory Challenges</i>                                                                                                       |
| 04/16/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' trial Brief Regarding Challenges for Cause</i>                                                                                                                        |
| 04/16/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Trial Brief Regarding Jury Instructions on the Sudden Emergency Doctrine</i>                                                                                                      |
| 04/16/2019 |  Brief<br><i>Trial Brief Regarding Defendant's Right to Contest Plaintiffs' Prima Facie Showing of Causation and Damages and Offer of Proof</i>                                                                                                 |
| 04/17/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Transcript Re: Calendar Call: Plaintiffs' Motion in Limine 19; Plaintiffs' Motion in</i>                                                                                                      |

# CASE SUMMARY

CASE NO. A-16-736457-C

*Limine 20 - April 10, 2019*

|            |                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 04/17/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Trial Brief Regarding Precluding Cumulative Testimony Fro Defendant's Retained Experts</i>                                                                                                                                                               |
| 04/18/2019 |  Trial Brief<br>Filed By: Defendant Tate, Babylyn<br><i>Defendant's Responsive Trial Brief to Plaintiffs Trial Brief to Pre-Instruct the Jury</i>                                                                                                                                                                      |
| 04/19/2019 |  Jury Instructions<br>Party: Defendant Tate, Babylyn<br><i>Defendant's Proposed Jury Instructions and Verdict Forms</i>                                                                                                                                                                                                |
| 04/19/2019 |  Proposed Voir Dire Questions<br>Filed By: Defendant Tate, Babylyn<br><i>Defendant's Proposed Voir Dire</i>                                                                                                                                                                                                            |
| 04/19/2019 |  Trial Brief<br><i>Defendant's Trial Brief Requesting that Plaintiffs Be Precluded from Referencing Unrelated Cases in Which Defendnat Tate's Experts Appeared and Testified</i>                                                                                                                                       |
| 04/19/2019 |  Trial Brief<br>Filed By: Defendant Tate, Babylyn<br><i>Defendant's Trial Brief Requesting Pliantiffs be Precluded from Mentioning Media Reports or Senate Investigation of Defense EXpert Dr. Jeff Wang and Preclude Plaintiffs from Referencing Adminsitrativ Matters Pertaining to Defense Expert Dr. Jeff Wang</i> |
| 04/19/2019 |  Trial Brief<br>Filed By: Defendant Tate, Babylyn<br><i>Defendnat's Trial Brief Requesting Plaintiffs Be Precluded from Mentioning or Presenting Evidence of Media Reports of UCLA Regents Settlement Payouts over Financial Conflicts at ucla in Relation to Dr. Jeff Wang</i>                                      |
| 04/19/2019 |  Trial Brief<br>Filed By: Defendant Tate, Babylyn<br><i>Defendnat's Trial Brief on Voir Dire</i>                                                                                                                                                                                                                     |
| 04/19/2019 |  Trial Brief<br>Filed By: Defendant Tate, Babylyn<br><i>Defendnat's Trial Brief on Differential Diagnosis and Causation</i>                                                                                                                                                                                          |
| 04/19/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Trial Brief Regarding Treating Physicians and Retained Medical Experts</i>                                                                                                                                                                             |
| 04/19/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' Trial Brief in Opposition to Defendant Tate's Trial Brief on Voir Dire</i>                                                                                                                                                                 |
| 04/22/2019 |  Order<br>Filed By: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Order Regardig Plaintiffs' Motions in LImine</i>                                                                                                                                                                          |
| 04/22/2019 |                                                                                                                                                                                                                                                                                                                                                                                                         |

# CASE SUMMARY

CASE NO. A-16-736457-C

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            |  Notice of Entry of Order<br>Filed By: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Notice of Enry of Order Regarding Plaintiffs' Motions in Limine</i>                                                                                                                                                                                            |
| 04/22/2019 |  Trial Brief<br>Filed By: Defendant Tate, Babylyn<br><i>Defendant Tate's Opposition to Plaintiff's Trial Brief to Preclude Alleged Cumulative Medical Testimony from the Defendant's Retained Experts</i>                                                                                                                                                                    |
| 04/23/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' Opposition to Defendant Tate's Brief Requesting that Plaintiffs be Precluded from Mentioning or Presenting Evidence of Media Reports of UCLA Reggents Settlnment Payouts Over Financial Conflicts at UCLA in Relation to Defense Expert Jeffrey Wang, M.D.</i>                                     |
| 04/23/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' Opposition to Defendant Tate's Trial Brief Requesting that Plaintiffs be Precluded from Mentioning Media Reports or Senate Investigation on Defense Expert Jeffrey Wang, M.D. and ro Preclude Plaintiff from refereneing Administrative Matters Pertaning to Defense Expert Jeffrey Wang, M.D.</i> |
| 04/23/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs Trial Brief In Opposition To Trial Brief Regarding Defendant s Right To Contest Plaintiffs Prima Facie Showing Of Causation And Damages</i>                                                                                                                                                         |
| 04/24/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs trial Brief in Opposition to Defendant Tate's Trial Brief Requesting that Plaintiffs be Precluding [SIC] From Referencing Unrelated Cases in Which Defendant Tate's Experts Appeared and Testified</i>                                                                                            |
| 04/24/2019 |  Stipulation and Order<br>Filed by: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Stipulation and Order Regarding Motions in Limine</i>                                                                                                                                                                                                           |
| 04/24/2019 |  Order<br>Filed By: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Order Regarding Defendant Tate's Motions in Limine</i>                                                                                                                                                                                                                          |
| 04/24/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' Trial Brief in Opposition to Defendant Tate's Trial Brief on Differential Diagnosis and Causation</i>                                                                                                                                                                                            |
| 04/25/2019 |  Jury List                                                                                                                                                                                                                                                                                                                                                                 |
| 04/26/2019 |  Notice of Entry of Order<br>Filed By: Defendant Tate, Babylyn<br><i>Notice of Entry of Order Regarding Defendant Tate's Motions in Limine</i>                                                                                                                                                                                                                             |
| 04/26/2019 |  Notice of Entry of Order<br>Filed By: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Notice of Entry of Order Regarding Defendant Tate's Motions in Limine</i>                                                                                                                                                                                    |

# CASE SUMMARY

CASE NO. A-16-736457-C

|            |                                                                                                                                                                                                                                                                                                                    |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 04/26/2019 |  Notice of Entry of Order<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Notice of Entry of Stipulation and Order Regarding Motions in Limine</i>                                                                               |
| 04/29/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Transcript Re: Jury Trial - Day 5</i>                                                                                                                                           |
| 04/29/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Rough Draft Transcript Re: Jury Trial - Day 2 - April 23, 2019</i>                                                                                                              |
| 05/06/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Rough Draft Transcript Re: Jury Trial - Day 3 - August 24, 2019</i>                                                                                                             |
| 05/06/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Rough Draft Transcript Re: Jury Trial - Day 4 - April 25, 2019</i>                                                                                                              |
| 05/13/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Trial Brief Regarding Defense Counsel May Not State A Traffic Accident Report Nor Citation Was Not Given At The Scene Of The Collision</i>                          |
| 05/13/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Trial Brieg Regarding Defense Counsel Is Precluded From Stating Or Implying Plaintiff Should Not Have Insisted An Officer Should Come To The Scene For A Report</i> |
| 05/15/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Trial Brief Regarding Admissibility Of Defendant s Liability Insurance To Rebut Defendant s Alleged Medical Buildup Argument Or Inference</i>                     |
| 05/16/2019 |  Opposition<br>Filed By: Defendant Tate, Babylyn<br><i>Defendant's Opposition to Plaintiffs' Trial Brief Regarding Plaintiffs' Insistence that an Officer Come to the Scene for a Report</i>                                    |
| 05/16/2019 |  Notice of Hearing<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Notice of Hearing on Motion for Attorney Fees and Costs Based on Defense Counsel's Professional Misconduct</i>                                              |
| 05/16/2019 |  Trial Brief<br><i>Trial Broef to Pre-Instruct Jury on NRS 484E.030</i>                                                                                                                                                         |
| 05/16/2019 |  Trial Brief<br>Filed By: Defendant Tate, Babylyn<br><i>Trial Brief Regarding Admissibility of Defendant's Liability Insurance</i>                                                                                              |
| 05/17/2019 |  Motion for Protective Order<br>Filed By: Defendant Tate, Babylyn<br><i>Defendant's Motion for Protective Order and Objection to Subpoenas on Order Shortening Time</i>                                                         |

# CASE SUMMARY

CASE NO. A-16-736457-C

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|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/17/2019 |  Clerk's Notice of Hearing<br><i>Notice of Hearing</i>                                                                                                                                                                                                          |
| 05/20/2019 |  Opposition to Motion For Protective Order<br>Filed By: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Plaintiffs Opposition To Defendant Tate s Motion For Protective Order And Objection To Subpoenas On An Order Shortening Time</i> |
| 05/21/2019 |  Trial Brief<br>Filed By: Defendant Tate, Babylyn<br><i>Defendant's Trial Brief to Exclude DMV Manuals and Training from Use During Trial, and to Prohibit Questions Based on the "Reptile Script"</i>                                                          |
| 05/22/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>TRIAL BRIEF REGARDING COMPUTATIONS OF PLAINTIFF EVANS-WAIAU'S FUTURE DAMAGES</i>                                                                                                                  |
| 05/22/2019 |  Opposition<br>Filed By: Defendant Tate, Babylyn<br><i>Opposition to "Trial Brief Regarding Computations of Plaintiff Evans-Waiau's Future Damages"</i>                                                                                                         |
| 05/22/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Plaintiff's Opposition to Defendant Tate's Trial Brief to Exclude DMV Manuals and Training from Use During Trial, and to Prohibit Questiones Based on the "Reptile Script"</i>                    |
| 05/23/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Trial Brief Regarding Physicians and retained Experts' Opinions on Future Care Treatment</i>                                                                                                    |
| 05/28/2019 |  Motion<br>Filed By: Defendant Tate, Babylyn<br><i>Defendant's Motion to Permit Dr. Jeffrey Wang to Testify Out of Order, if Necessary, on Order Shortening Time</i>                                                                                          |
| 05/28/2019 |  Amended Certificate of Service<br>Party: Defendant Tate, Babylyn<br><i>Amended Certificate of Service of Defendant Tate's Motion to Permit Dr. Jeff Wang to testify Out of Order on Order Shortening Time</i>                                                |
| 05/28/2019 |  Stipulation and Order<br>Filed by: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Stipulation and Order Regarding Cost of One Level Cervical Spine Fusion Surgery and Plaintiff's Future Life Expectancy</i>                         |
| 05/29/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Rough Draft Transcript - Jury Trial - Day 1 - Partial Transcript (Proceedings from 3:51:55 p.m. to 4:58:24 p.m.) - May 14, 2019</i>                                                                         |
| 05/29/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Rough Draft Transcript of: Jury Trial - Day 4 - May 17, 2019</i>                                                                                                                                            |
| 05/29/2019 |  Order to Show Cause                                                                                                                                                                                                                                          |

# CASE SUMMARY















CASE NO. A-16-736457-C

## Order to Show Cause

|            |                                                                                                                                                                                                                                                                                 |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/30/2019 |  Affidavit of Service<br>Filed By: Defendant Tate, Babylyn<br><i>Affidavit of Service regarding Order to Show Cause for Dr. Keith Lewis</i>                                                    |
| 05/30/2019 |  Trial Brief<br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Trial Brief To Strike Defense Medical Expert Witness, Joseph Schifini, M.D. S Testimony</i>                                      |
| 05/31/2019 |  Jury Instructions<br>Party: Defendant Tate, Babylyn<br><i>Defendant's Proposed Jury Instructions, Not Agreed Upon</i>                                                                         |
| 05/31/2019 |  Jury Instructions<br>Party: Defendant Tate, Babylyn<br><i>Defendant's Supplemental Proposed Jury Instructions, Not Agreed Upon</i>                                                            |
| 05/31/2019 |  Jury Instructions<br>Party: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' Proposed Jury Instructions, Not Agreed Upon</i>                                                                   |
| 05/31/2019 |  Jury Instructions<br>Party: Plaintiff Evans-Waiau, Desire<br><i>Plaintiffs' Proposed Jury Instructions, Agreed Upon</i>                                                                       |
| 06/03/2019 |  Opposition<br>Filed By: Defendant Tate, Babylyn<br><i>Opposition to Motion for Attorneys Fees and Costs Based on Counsel's [Purported] Professional Misconduct on Order Shortening Time</i> |
| 06/03/2019 |  Verdict                                                                                                                                                                                     |
| 06/03/2019 |  Jury Instructions                                                                                                                                                                           |
| 06/07/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Rough Draft Transcript Re: Jury Trial - Day 3 - April 24, 2019</i>                                                                         |
| 06/07/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Rough Draft Transcript Re: Jury Trial - Day 4 - April 25, 2019</i>                                                                         |
| 06/07/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Transcript Re: Jury Trial - Day 5 - April 26, 2019</i>                                                                                     |
| 06/07/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Rough Draft Transcript Re: Jury Trial - Day 6 - May 21, 2019</i>                                                                           |
| 06/07/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Rough Draft Transcript Re: Jury Trial - Day 7 - May 22, 2019</i>                                                                           |
| 06/07/2019 |  Recorders Transcript of Hearing<br><i>Recorder's Transcript Re: Jury Trial - Day 10 - May 29, 2019</i>                                                                                      |

# CASE SUMMARY

CASE NO. A-16-736457-C

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|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 06/07/2019 |  <b>Recorders Transcript of Hearing</b><br><i>Recorder's Transcript Re: Jury Trial - Day 11 - May 30, 2019</i>                                                                                                   |
| 06/07/2019 |  <b>Recorders Transcript of Hearing</b><br><i>Recorder's Transcript Re: Jury Trial - Day 12 - May 31, 2019</i>                                                                                                   |
| 06/07/2019 |  <b>Recorders Transcript of Hearing</b><br><i>Recorder's Transcript Re: Jury Trial - Day 13 - June 3, 2019</i>                                                                                                   |
| 06/18/2019 |  <b>Reply in Support</b><br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Reply In Support Of Plaintiffs Motion For Attorney Fees And Costs Based On Defense s Professional Misconduct</i>                       |
| 07/15/2019 |  <b>Judgment Upon Jury Verdict</b><br>Filed By: Defendant Tate, Babylyn<br><i>Judgment Upon Jury Verdict</i>                                                                                                     |
| 07/15/2019 |  <b>Notice of Entry of Judgment</b><br>Filed By: Defendant Tate, Babylyn<br><i>Notice of Entry of Judgment Upon Jury Verdict</i>                                                                                 |
| 07/16/2019 |  <b>Memorandum of Costs and Disbursements</b><br>Filed By: Defendant Tate, Babylyn<br><i>Memorandum of Costs and Disbursements</i>                                                                               |
| 07/18/2019 |  <b>Notice of Firm Name Change</b><br>Filed By: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Notice of Firm Name Change</i>                                                          |
| 07/18/2019 |  <b>Notice of Change</b><br>Filed By: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Notice of Change of Lead Counsel and Change of Contact Information for Dennis M. Prince, Esq.</i> |
| 07/18/2019 |  <b>Notice of Change</b><br>Filed By: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Notice of Change of Lead Counsel and Change of Contact Information for Dennis M. Prince, Esq.</i> |
| 07/19/2019 |  <b>Notice</b><br>Filed By: Plaintiff Evans-Waiau, Desire; Plaintiff Parra-Mendez, Guadalupe<br><i>Notice of Disassociation of Counsel</i>                                                                     |
| 07/31/2019 |  <b>Notice of Attorney Lien</b><br><i>Notice of Attorney Lien</i>                                                                                                                                              |
| 08/14/2019 |  <b>Notice of Appeal</b><br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Notice of Appeal</i>                                                                                                                 |
| 08/14/2019 |  <b>Case Appeal Statement</b><br>Filed By: Plaintiff Evans-Waiau, Desire<br><i>Case Appeal Statement</i>                                                                                                       |




# CASE SUMMARY

CASE NO. A-16-736457-C

## DISPOSITIONS


- 06/03/2019 **Verdict** (Judicial Officer: Holthus, Mary Kay)  
Debtors: Desire Evans-Waiiau (Plaintiff), Guadalupe Parra-Mendez (Plaintiff)  
Creditors: Babylyn Tate (Defendant)  
Judgment: 06/03/2019, Docketed: 06/10/2019
- 07/15/2019 **Judgment Upon the Verdict** (Judicial Officer: Holthus, Mary Kay)  
Debtors: Desire Evans-Waiiau (Plaintiff), Guadalupe Parra-Mendez (Plaintiff)  
Creditors: Babylyn Tate (Defendant)  
Judgment: 07/15/2019, Docketed: 07/16/2019
- 07/15/2019 **Order of Dismissal** (Judicial Officer: Holthus, Mary Kay)  
Debtors: Desire Evans-Waiiau (Plaintiff), Mayra Parra (Subject Minor), Alliyah Parra (Subject Minor), Sienna Parra (Subject Minor)  
Creditors: Babylyn Tate (Defendant)  
Judgment: 07/15/2019, Docketed: 07/16/2019

## HEARINGS

- 04/26/2017 **Motion to Deem Requests for Admissions Admitted** (3:00 AM) (Judicial Officer: Villani, Michael)  
*Plaintiffs' Motion to Deem Admissions Admitted*
- 04/26/2017 **Opposition and Countermotion** (3:00 AM) (Judicial Officer: Villani, Michael)  
*Defendant's Opposition to Plaintiff's Motion to Deem Admissions Admitted, and Countermotion to Enlarge Time to Respond to Written Discovery, and to Withdraw and Amend Admissions*
- 04/26/2017  **All Pending Motions** (3:00 AM) (Judicial Officer: Villani, Michael)  
Minute Order - No Hearing Held;  
Journal Entry Details:  
*CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Paul Powell, Esq. and Nickolas Amon, Esq./05/02/17.;*
- 01/24/2018 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Villani, Michael)  
*Vacated - per Stipulation and Order*
- 02/05/2018 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Villani, Michael)  
*Vacated - per Stipulation and Order*
- 06/13/2018 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Villani, Michael)  
*Vacated - per Stipulation and Order*
- 06/25/2018 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Villani, Michael)  
*Vacated - per Stipulation and Order*
- 08/22/2018  **Calendar Call** (9:00 AM) (Judicial Officer: Villani, Michael)  
Matter Heard;  
Journal Entry Details:  
*Colloquy regarding scheduling. Counsel anticipate two weeks. Pursuant to representations, COURT ORDERED, matter SET for status check; trial date VACATED and RESET. 9/19/18 8:30 AM STATUS CHECK: TRIAL READINESS 10/31/18 9:00 AM CALENDAR CALL 11/13/18 10:00 AM JURY TRIAL ;*
- 08/28/2018  **Minute Order** (1:43 PM) (Judicial Officer: Villani, Michael)  
*Minute Order Re: Continuance of Pltfs' and Deft's Motions in Limine*  
Minute Order - No Hearing Held; Minute Order Re: Continuance of Pltfs' and Deft's Motions in Limine


# CASE SUMMARY

CASE NO. A-16-736457-C

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | <p>Journal Entry Details:<br/> <i>Plaintiffs Motions in Limine 1-18 and Defendant s Motions in Limine 1-5 currently set for hearing on Wednesday, September 5, 2018 at 8:30 a.m. are CONTINUED to Wednesday, October 3, 2018 at 8:30 a.m. CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, April Watkins, to all registered parties for Odyssey File &amp; serve. aw;</i></p>                                                                                                                                  |
| 09/04/2018 | <p><b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Villani, Michael)<br/> <i>Vacated</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 09/19/2018 | <p> <b>Status Check</b> (8:30 AM) (Judicial Officer: Hardcastle, Kathy)<br/> <i>Status Check: Trial Readiness</i><br/> Matter Heard; Status Check: Trial Readiness<br/> Journal Entry Details:<br/> <i>Upon Court's inquiry, Mr. Winner stated he believes case will be ready for trial. COURT ORDERED, calendar call date STANDS.;</i></p>                                                                                                                |
| 10/03/2018 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br/> <i>Plaintiffs' Motion in Limine Nos. 1-11</i><br/> Matter Continued;<br/> Per 10/29/18 email from law clerk<br/> Per 10/30/18 email from law clerk</p>                                                                                                                                                                                                                                                                                                         |
| 10/03/2018 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br/> <i>Plaintiffs' Motion In Limine No. 12: To Limit Defendant's Retained Experts' Testimony To The Opinions And Bases Set Forth In Their Expert Reports</i><br/> Denied;</p>                                                                                                                                                                                                                                                                                      |
| 10/03/2018 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Villani, Michael)<br/> <b>10/03/2018, 12/05/2018</b><br/> <i>Plaintiffs' Motion in Limine No. 13 to Exclude Argument, Reference, or Expert Opinion that Plaintiff Desire Evans-Waiiau's Neck Pain was Symptomatic During the Immediate Years Prior to and Immediately Before the Subject Collision</i><br/> Matter Continued;<br/> Motion Granted;<br/> Matter Continued;<br/> Motion Granted;</p>                                                                                 |
| 10/03/2018 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Villani, Michael)<br/> <b>10/03/2018, 12/05/2018</b><br/> <i>Plaintiffs' Motion in Limine No. 14 to Preclude Defendant from Characterizing Plaintiff Desire Evans-Waiiau's Neck Pain Following the Subsequent July 10, 2016 Motor Vehicle Accident as Anything Other than a Temporary Exacerbation</i><br/> Matter Continued;<br/> Per 10/29/18 email from law clerk<br/> Granted in Part;<br/> Matter Continued;<br/> Per 10/29/18 email from law clerk<br/> Granted in Part;</p> |
| 10/03/2018 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br/> <i>Plaintiffs' Motion in Limine No. 15 to Exclude Irrelevant and/or Unduly Prejudicial Information</i><br/> Matter Continued;<br/> Per 10/29/18 email from law clerk<br/> Per 10/30/18 email from law clerk</p>                                                                                                                                                                                                                                                |
| 10/03/2018 | <p><b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br/> <i>Plaintiffs' Motion in Limine No. 16 to Limit Testimony and Opinions of Defendant's Retained Medical Expert, Joseph J. Schifini, M.D.</i><br/> Matter Continued;</p>                                                                                                                                                                                                                                                                                         |

# CASE SUMMARY

CASE NO. A-16-736457-C

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|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | Per 10/29/18 email from law clerk<br>Per 10/30/18 email from law clerk                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 10/03/2018 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br><i>Plaintiffs' Motion in Limine No. 17: to Exclude Reference to and Evidence of Medical Liens</i><br>Matter Continued;<br>Per 10/29/18 email from law clerk<br>Per 10/30/18 email from law clerk                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 10/03/2018 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br><i>Plaintiffs' Motion in Limine No. 18: for Judicial Notice of Life Expectancy Table</i><br>Denied;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 10/03/2018 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Villani, Michael)<br><b>10/03/2018, 12/05/2018</b><br><i>Defendant's Motion in Limine No. 1: Regarding Specific Statements and Claims of the Parties</i><br>Matter Continued;<br>Per 10/29/18 email from law clerk<br>Motion Denied;<br>Matter Continued;<br>Per 10/29/18 email from law clerk<br>Motion Denied;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 10/03/2018 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br><i>Defendant's Motion in Limine No. 2: To Prohibit the Use of Unfairly Prejudicial Trial Tactics</i><br>Granted in Part;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 10/03/2018 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br><i>Defendant's Motion in Limine No. 4: To Prohibit Questions Regarding Verdict Amounts During Voir Dire, and to Impose Reasonable Limitations on the Scope and Duration of Voir Dire (Parts 1-2)</i><br>Matter Continued;<br>Per 10/29/18 email from law clerk<br>Per 10/30/18 email from law clerk                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 10/03/2018 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br><i>Defendant's Motion in Limine No. 3: To Admit and Exclude Certain Information Regarding the Plaintiffs' Claims for Damages (Parts 1-4)</i><br>Matter Continued;<br>Per 10/29/18 email from law clerk<br>Per 10/30/18 email from law clerk                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 10/03/2018 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br><i>Defendant's Motion in Limine No. 5: Regarding Expert Testimony</i><br>Matter Continued;<br>Per 10/30/18 email from law clerk                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 10/03/2018 |  <b>All Pending Motions</b> (10:00 AM) (Judicial Officer: Becker, Nancy)<br>Matter Heard;<br>Journal Entry Details:<br><i>James Trummell, Esq., present on behalf of Plaintiff. PLAINTIFFS' MOTIONS IN LIMINE NOS. 1-11 As to excluding medical records prior to the motor vehicle accident, COURT ORDERED, to the extent that Plaintiffs want to prohibit Dr. Schifini or Dr. Wang from making statements, Motion GRANTED IN PART and DENIED IN PART as it is suggested that somehow there were records out there that weren't given and it is believed that is not an issue; however, Dr. Schifini can state the fact that someone may not have gone for treatment which does not mean they did not have symptoms. As to the secondary gain evidence and the issue that it's a psychological diagnosis, COURT FURTHER ORDERED, GRANTED to the extent that they can not say malingering or secondary gain evidence; to the extent that Dr. Schifini or Dr. Wang want to simply say that the medical records don't support that she received an acute traumatic spinal injury as a result of this accident and at most she received a</i> |

**CASE SUMMARY****CASE NO. A-16-736457-C**

sprained strain, Motion GRANTED; Motion DENIED to the extent that somehow this is limited to a psychiatrist or other people with mental health or psychological background. As to Plaintiff's Motion in Limine No. 4, COURT ORDERED, Motion CONTINUED for argument. As to Plaintiff's Motion in Limine No. 5, COURT ORDERED, Motion DENIED. As to Plaintiff's Motion in Limine No. 6, Court noted the law clearly says that you cannot make arguments solely for the basis of inflaming the passion of the jury and this Court is not going to grant the Motion as there will not be a forced objection. As to Plaintiff's Motion in Limine No. 7, Motion GRANTED IN PART and DENIED IN PART; an attorney being sought and retained is not attorney/client privilege; however, when an attorney is retained and/or when visited does not come in. As to Plaintiff's Motion in Limine No. 8 and attorney advertising limited to voir dire, COURT ORDERED, Motion GRANTED; however, it should not be mentioned in the remainder of the trial or obsessed upon in voir dire. As to Plaintiff's Motion in Limine No. 9, COURT STATED that would be improper argument and ORDERED, Motion GRANTED. As to Plaintiff's Motion in Limine No. 10 and asking limited questions in voir dire as to employment, COURT ORDERED, Motion GRANTED; any further direction is to come from Judge Villani. As to Plaintiff's Motion in Limine No. 11, to the extent of cross-examination and wanting to talk about having a relationship in terms of doing cases on medical liens, COURT STATED there is a broad basis for asking these kinds of questions and it should be allowed; trying to talk about other cases would not be allowed. PLAINTIFFS' MOTION IN LIMINE NO. 12: TO LIMIT DEFENDANT'S RETAINED EXPERTS' TESTIMONY TO THE OPINIONS AND BASES SET FORTH IN THEIR EXPERT REPORTS COURT ORDERED, Motion DENIED to the extent that the experts are limited only to what they said in their reports; however, expert is free to change their opinion based upon new information that was presented at trial or that was presented to them subsequent to the report. PLAINTIFFS' MOTION IN LIMINE NO. 13 TO EXCLUDE ARGUMENT, REFERENCE, OR EXPERT OPINION THAT PLAINTIFF DESIRE EVANS-WAIAU'S NECK PAIN WAS SYMPTOMATIC DURING THE IMMEDIATE YEARS PRIOR TO AND IMMEDIATELY BEFORE THE SUBJECT COLLISION COURT ORDERED, Motion CONTINUED. PLAINTIFFS' MOTION IN LIMINE NO. 14 TO PRECLUDE DEFENDANT FROM CHARACTERIZING PLAINTIFF DESIRE EVANS-WAIAU'S NECK PAIN FOLLOWING THE SUBSEQUENT July 10, 2016 MOTOR VEHICLE ACCIDENT AS ANYTHING OTHER THAN A TEMPORARY EXACERBATION COURT ORDERED, Motion CONTINUED. PLAINTIFFS' MOTION IN LIMINE NO. 15 TO EXCLUDE IRRELEVANT AND/OR UNDULY PREJUDICIAL INFORMATION COURT ORDERED, Motion CONTINUED. PLAINTIFFS' MOTION IN LIMINE NO. 16 TO LIMIT TESTIMONY AND OPINIONS OF DEFENDANT'S RETAINED MEDICAL EXPERT, JOSEPH J. SCHIFINI, M.D. COURT ORDERED, Motion CONTINUED. PLAINTIFFS' MOTION IN LIMINE NO. 17: TO EXCLUDE REFERENCE TO AND EVIDENCE OF MEDICAL LIENS COURT ORDERED, Motion CONTINUED. PLAINTIFFS' MOTION IN LIMINE NO. 18: FOR JUDICIAL NOTICE OF LIFE EXPECTANCY TABLE COURT ORDERED, Motion DENIED. DEFENDANT'S MOTION IN LIMINE NO. 1: REGARDING SPECIFIC STATEMENTS AND CLAIMS OF THE PARTIES COURT ORDERED, Part C & D of Motion CONTINUED; as to what the Defendant charging nurse states in terms of her observations, Motion GRANTED IN PART and DENIED IN PART, as she can talk about what she observed about the two Defendant's post-accident, as to the opinion that it is not believe that the Defendant's had sustained any injury based upon her observations; however, cannot testify to doing a triage or a medical procedure in that observation; DENIED as to the extent of her testifying to something using words like triage or other medical terminology under the circumstances. DEFENDANT'S MOTION IN LIMINE NO. 2: TO PROHIBIT THE USE OF UNFAIRLY PREJUDICIAL TRIAL TACTICS COURT ORDERED, Motion GRANTED to the extent that if counsel going to use specific words, counsel has to use them in the context of their fact-driven argument. In regards to avoiding responsibility argument, COURT ORDERED, Motion GRANTED IN PART and DENIED IN PART; GRANTED to the extent that you cannot argue that this matter is in trial because they re trying to avoid responsibility. As to the term "safety rules", COURT ORDERED, Motion DENIED. As to conscience of the community, COURT ORDERED, it is not to be argued that the jury is the conscience of the community; Motion DENIED to exclude just the general argument that when you violate the rules of the road you re endangering people on the roadway in general; Motion GRANTED to the extent that you cannot make an argument that suggests that other people were threatened or harmed just by the conduct of the Defendant in this case unless you have facts to show that. DEFENDANT'S MOTION IN LIMINE NO. 3: TO ADMIT AND EXCLUDE CERTAIN INFORMATION REGARDING THE PLAINTIFFS' CLAIMS FOR DAMAGES (PARTS 1-4) COURT ORDERED, as to dealing with treatment on medical liens COURT ORDERED, Motion DEFERRED and to be heard at the time Plaintiff's Motion in Limine number 17 as they all involve the same topic. As to the Motion to Exclude the Per Diem Argument, COURT ORDERED, Motion DENIED. As to, continued medical specials, COURT ORDERED, medical specials to the May 4th, 2018 are not to be limited, except that if there have been no disclosures thereafter, it is to be limited. As to speculative damage, COURT ORDERED, Motion to Exclude is DENIED as it is too vague. DEFENDANT'S MOTION IN

# CASE SUMMARY

CASE NO. A-16-736457-C

LIMINE NO. 4: TO PROHIBIT QUESTIONS REGARDING VERDICT AMOUNTS DURING VOIR DIRE, AND TO IMPOSE REASONABLE LIMITATIONS ON THE SCOPE AND DURATION OF VOIR DIRE (PARTS 1-2) COURT ORDERED, Motion CONTINUED. DEFENDANT'S MOTION IN LIMINE NO. 5: REGARDING EXPERT TESTIMONY COURT ORDERED, Motion GRANTED to the extent that a treating physician has now reviewed documents and wants to act as a rebuttal witness or done things outside of the scope of treatment, then, no, they can't do that. As to Dr. Khavkin, Motion DENIED and will not be excluded as being cumulative. Court noted a continued date will be served to the parties upon review of the Court's calendar.;

10/31/2018

**CANCELED Calendar Call (9:00 AM)** (Judicial Officer: Villani, Michael)  
Vacated

11/01/2018



**Minute Order (12:30 PM)** (Judicial Officer: Villani, Michael)

Minute Order - No Hearing Held;  
Journal Entry Details:


The Court having reviewed the pleadings and finds the factual and legal argument is sufficient to rule on the motions as follows: Plaintiffs Omnibus Motion in Limine No. 1 Granted. All hypothetical questions must be based upon evidence adduced at trial. All experts are limited to their opinions contained within their reports, deposition testimony. Plaintiffs Omnibus Motion in Limine No. 4 Granted. Plaintiff's treating physicians can testify consistent with FCH1, LLC Rodriguez, 335 P.3d 183 (2014) Specifically, they are allowed, if properly, disclosed pursuant to NRCp 16.1 (a)(2)(B), to testify as to causation, diagnosis, prognosis, future treatment and extent of disability. Also, they are able to defend their own treatment. Plaintiff's Motion in Limine No. 13: To Exclude Argument, Reference, or Expert Opinion that Plaintiff Desire Evans-Waiiau s Neck Pain was Symptomatic During the Immediate Years Prior to and Immediately Before the Subject Collision The Court requests oral argument on Wednesday, November 21, 2018 at 8:30 a.m. Plaintiff's Motion in Limine No. 14: To Preclude Defendant From Characterizing Plaintiff Desire Evans-Waiiau s Neck Pain Following the Subsequent July 10, 2016 Motor Vehicle Accident as Anything Other than a Temporary Exacerbation The Court requests oral argument on Wednesday, November 21, 2018 at 8:30 a.m. Plaintiff's Motion in Limine No. 15: To Exclude Irrelevant and/or Unduly Prejudicial Information a) Termination from the Cromwell: Unless Defendant can establish that Plaintiff was terminated as opposed to resigned the evidence is excluded. The mere fact that Plaintiff thought she was terminated is contrary to the documentary evidence received from the Cromwell specifically stating that Plaintiff resigned. b) Termination from Bed Bath and Beyond and Spacecraft: Since neither Plaintiff or Defendant's experts address Plaintiff's termination from Bed Bath and Beyond and SPACECRAFT in relationship to Plaintiff's earning capacity, it is deemed irrelevant and is excluded. c) Injuries, if any, relating to the May 10, 2010 and July 10, 2016 may be relevant based upon the various expert's' opinions. The fact that Plaintiff previously filed claims" or "lawsuit" is irrelevant and therefore, excluded. Plaintiff's Motion in Limine No. 16: To Limit Testimony and Opinions of Defendant's Retained Medical Expert, Joseph J. Schifini, M.D. Dr. Schifini can rely on the photographs and property damage reports regarding Plaintiff's vehicle as one item in forming his opinions. Since the appraisal reports identifies the areas of damage from the accident and the cost of repair for the same he can testify accordingly as to the basis of his opinion. The fact that the vehicle had prior damage is not part of his opinion and is therefore irrelevant and excluded. Plaintiff's Motion in Limine No. 17 To Exclude Reference to and Evidence of Medical Liens: Granted in part and denied in part. Evidence of insurance, Medicare, Medicaid, Obamacare, etc. is precluded as well as any evidence that that liens were sold to a third party for any type of a discount or other write off issues. See Khoury v. Seastrand, 377 P.3d 81 (2016). Evidence that treatment may have been provided on a lien basis is allowed. Defendant's Motion in Limine No. 1: Regarding Specific Statements of the Parties c. Testimony regarding alleged injuries to the minor children: Denied. Evidence that Plaintiff's children were injured the accident is relevant to the issue of severity of the impact between the two vehicles. If Plaintiff is seeking to elicit the fact that her passengers were injured then Defendant can elicit testimony that she was not injured. The amount of medical expenses incurred by the children are excluded as said relevant information is outweighed by the unfair prejudicial value. d. The Court requests oral argument on Wednesday, November 21, 2018 at 8:30 a.m. Defendant's Motion in Limine No. 3: To Admit and Exclude Certain Information Regarding the Plaintiffs Claims for Damages Part 1: Evidence of Treatment on a Litigation Lien is admissible. See the Court's above ruling on Plaintiff's Motion in Limine No.17 To Exclude Reference to and Evidence of Medical Liens. The court previously ruled on Parts 2-4 on 10/3/2018. Defendant's Motion in Limine No. 4: To Prohibit Questions Regarding Verdict Amounts During Voir Dire, and to Impose Reasonable Limitations on the Scope and Duration of Voir Dire (Parts 1-2) Inquiring from a juror regarding verdict amounts is allowed

# CASE SUMMARY

CASE NO. A-16-736457-C

so long as the questioning does not rise to the level of juror indoctrination. Mentioning from the outset of voir dire a range or specific amount Plaintiff is seeking is permissible. See *Khoury v Seastrand*. The Court has presided over numerous personal injury trials and has found that some attorneys seek to challenge a juror for cause merely because they could not award a "large or substantial verdict amount" without emphasizing to the juror "if said amount was supported by the evidence and law." The parties are free to question a juror's life experience to determine any bias. In *Whitlock v Salmon*, 104 Nev. 210 (1988), the Nevada Supreme Court stated that the trial court has inherent power to govern its own procedures and to place upon the parties reasonable limitations on voir dire. The Court will address the extent and length of voir dire during the trial. Defendant's Motion in Limine No. 5: Regarding Expert Testimony (Parts 1-4) Part 3: Granted. All experts in this case are limited to their expert reports and deposition testimony. The parties are aware that an expert is not merely allowed to parrot their reports but do have some latitude in explaining the foundation of their opinions. If either party believes that the other is seeking to elicit information or opinions that are outside of the mandates of NRCP 16.1 they are to object at the time of the trial. However, an expert is free to modify his or her opinion based on new information that they learn during the course of trial. Part 4: See the Court's above ruling on Plaintiff's Omnibus Motion in Limine No. 1. The Court previously ruled on Parts 1-2 on 10/3/2018. Counsel for each party is directed to submit a proposed order for their respective motions consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve hvp/11/01/18;


11/13/2018 **CANCELED Jury Trial** (10:00 AM) (Judicial Officer: Villani, Michael)  
Vacated

12/05/2018  **All Pending Motions** (8:30 AM) (Judicial Officer: Villani, Michael)

Matter Heard;

Journal Entry Details:

**DEFENDANT'S MOTION IN LIMINE NO. 1: REGARDING SPECIFIC STATEMENTS AND CLAIMS OF THE PARTIES ... PLAINTIFFS' MOTION IN LIMINE NO. 14 TO PRECLUDE DEFENDANT FROM CHARACTERIZING PLAINTIFF DESIRE EVANS-WAIAU'S NECK PAIN FOLLOWING THE SUBSEQUENT July 10, 2016 MOTOR VEHICLE ACCIDENT AS ANYTHING OTHER THAN A TEMPORARY EXACERBATION ... PLAINTIFFS' MOTION IN LIMINE NO. 13 TO EXCLUDE ARGUMENT, REFERENCE, OR EXPERT OPINION THAT PLAINTIFF DESIRE EVANS-WAIAU'S NECK PAIN WAS SYMPTOMATIC DURING THE IMMEDIATE YEARS PRIOR TO AND IMMEDIATELY BEFORE THE SUBJECT COLLISION** James Trummell, Esq., also present on behalf of Defendant. Arguments by counsel regarding Plaintiff's Motion in Limine No. 14, Plaintiff's Motion in Limine No. 13 and Defendant's Motion in Limine No. 1. **COURT ORDERED, Motion in Limine No. 14 GRANTED** to the extent that defense is free to argue that neither the subject accident nor the July 10th accident is the cause of the surgery and Defense is allowed to have the experts that's in the reports testify that there was an increase in symptoms. **COURT FURTHER ORDERED, Motions in Limine No. 13 and Motions in Limine No. 1, TAKEN UNDER ADVISEMENT. ;**

01/18/2019  **Minute Order** (3:00 PM) (Judicial Officer: Villani, Michael)

*Defendant's Motion in Limine No. 1: Regarding Specific Statements and Claims of the Parties...Plaintiffs' Motion in Limine No. 13 to Exclude Argument, Reference, or Expert Opinion that Plaintiff Desire Evans-Waiau's Neck Pain was Symptomatic During the Immediate Years Prior to and Immediately Before the Subject Collision*

Decision Made;

Journal Entry Details:

*Plaintiff's Motion in Limine No. 13: To Exclude Argument, Reference, or Expert Opinion that Plaintiff Desire Evans-Waiau's Neck Pain was Symptomatic During the Immediate Years Prior to and Immediately Before the Subject Collision and Defendant's Motion in Limine No. 1D: Plaintiff Evans-Waiau's Subsequent Injuries and Claims Are Relevant and Admissible came before this Court on December 5, 2018 Oral Calendar at 8:30 a.m. The Court took the matter under advisement and now rules as follows: Plaintiff's Motion in Limine No. 13: To Exclude Argument, Reference, or Expert Opinion that Plaintiff Desire Evans-Waiau's Neck Pain was Symptomatic During the Immediate Years Prior to and Immediately Before the Subject Collision At issue is a motor vehicle accident that occurred in 2010, 5 years prior to the subject accident. After the 2010 accident, Plaintiff received 2 months of chiropractic treatment*

# CASE SUMMARY

CASE NO. A-16-736457-C

and underwent one medical examination with a physician that diagnosed her with possible cervical radiculopathy. The evidence shows that Plaintiff did not undergo any further treatment for neck pain between July 13, 2010 and October 30, 2015. "In order for evidence of a prior injury or preexisting conditions to be admissible, a defendant must present by competent evidence a causal connection between the prior injury and the injury at issue." *FGA, INC. v. Giglio*, 128 Nev. 271, 283 (2012). Further, once the plaintiff has demonstrated a prima facie case and met his or her burden, the defendant can traverse the plaintiff's case in three ways. The defendant may (1) cross-examine the plaintiff's expert, (2) contradict the expert's testimony with his own expert, and/or (3) propose an independent alternative causation theory. *Id.* If the defendant chooses the third approach, his or her expert's testimony is subject to the reasonable degree of medical probability. *Williams v. Eight Judicial Dist. Court*, 127 Nev. 518, 530 (2011). There is no evidence to establish that the 2010 accident was the cause of the alleged injuries sustained in the subject collision. Defendant's two medical experts (Dr. Wang and Dr. Schifini) do not opine to an alternative theory of causation in their respective reports. Neither doctor opined that Plaintiff's prior cervical spine injury is the cause of her current injuries or pain complaints. Neither expert has established a causal connection between the 2010 accident and the subject accident to the injuries claimed. Moreover, if expert testimony is offered to contradict the plaintiff's expert's opinion, the testimony must be supported by competent medical research and relevant evidence. *FGA, Inc.*, 128 Nev. at 284. "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." *Williams*, 127 Nev. 518 at 531. Although both experts reviewed Plaintiff's medical records from the 2010 accident, it does not appear that Defendant's retained experts consider Plaintiff's theory of medical causation in their reports. Defendant's experts opine that Plaintiff did not suffer an acute, traumatic injury to her cervical disc. Since Defendant's experts did not consider plaintiff's theory of causation or provide the 2010 accident as an alternative theory of causation in their reports, Plaintiff's motion is GRANTED and Defendants are precluded from arguing that Plaintiff was symptomatic in the immediate years prior to the subject accident unless disclosed witnesses have testified to the contrary. Defendant's Motion in Limine No. 1D: Plaintiff Evans-Waiiau's Subsequent Injuries and Claims Are Relevant and Admissible At issue is a July 10, 2016 accident that Plaintiff was involved in which occurred nine months after the subject accident. Defendant references a portion of a 2018 Complaint that Plaintiff filed for the 2016 accident where she alleges injuries to her shoulders and back. The Court notes that the Complaint in A777152 is not a verified complaint. The Court does not find the statements in said Complaint to be a party admission but rather legal conclusions made by Plaintiff's attorney. Additionally, Evans-Waiiau's cervical recommendation was made prior to this 2016 accident. Moreover, Defendant's experts do not opine that the 2016 accident caused or contributed to the alleged injuries sustained in the subject collision. For those reasons, Defendant's Motion in Limine 1D is DENIED. The Court previously addressed the issue of the 2016 accident on 12/5/18 when the Court granted Plaintiffs' Motion in Limine to preclude defendant from characterizing Evans-Waiiau's neck pain following the subsequent July 10, 2016 accident as anything other than a temporary exacerbation. The Court ruled that the Defense experts are free to testify that there was an increase in symptoms after the 2016 accident. Counsel for Plaintiff is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. LAW CLERK NOTE: The delay in this decision was due to a calendaring error. CLERK'S NOTE: A copy of the foregoing minute order has been electronically distributed to all registered parties.//ob/01/18/19 ;

01/30/2019



**Calendar Call (9:00 AM)** (Judicial Officer: Holthus, Mary Kay)

Matter Heard;

Journal Entry Details:

*James Trummell, Esq., also present on behalf of Plaintiff. Mr. Prince announced parties are ready for trial. Colloquy regarding scheduling issues and conflicts. COURT ORDERED, trial dates VACATED and RESET; all pending motions VACATED and RESET. 04/10/19 9:00 AM CALENDAR CALL & ALL PENDING MOTIONS 04/22/19 9:00 AM JURY TRIAL;*

02/11/2019

**CANCELED Jury Trial (9:00 AM)** (Judicial Officer: Villani, Michael)

*Vacated - per Judge*

04/10/2019

**Motion in Limine (9:00 AM)** (Judicial Officer: Holthus, Mary Kay)

*Plaintiffs' Motion In Limine No. 19: To Exclude Sub Rosa Surveillance Video Of Plaintiff Desire Evans-Waiiau And Any Testimony Or Reference To The Same*

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Denied;

04/10/2019

**Motion in Limine** (9:00 AM) (Judicial Officer: Holthus, Mary Kay)

*Plaintiff's Motion In limine No. 20: To Exclude The Testimony And Opinions Of Defendant's Retained Expert Kevin Kirkendall, CPA*

Withdrawn;

04/10/2019

**Calendar Call** (9:00 AM) (Judicial Officer: Holthus, Mary Kay)

Matter Heard;

04/10/2019



**All Pending Motions** (9:00 AM) (Judicial Officer: Holthus, Mary Kay)

Matter Heard;

Journal Entry Details:

CALENDAR CALL...PLAINTIFF'S MOTION IN LIMINE NO.19: TO EXCLUDE SUB ROSA SURVEILLANCE VIDEO OF PLAINTIFF DESIRE EVANS-WAIAU AND ANY TESTIMONY OR REFERENCE TO THE SAME...PLAINTIFF'S MOTION IN LIMINE NO. 20: TO EXCLUDE THE TESTIMONY AND OPTIONS OF DEFENDANT'S RETAINED EXPERT KEVIN KIRKENDALL, CPA Mr. Winner advised his experts are available on May 6, 7, and 8, 2019; which two would be coming from out of state and two are local. Mr. Prince indicated he was trial ready if it were to start on April 22, 2019. Further, Mr. Prince indicated he anticipated a couple of days to pick the jury. Court inquired if Mr. Prince wanted to start the trial on April 29, 2019; however, he noted he has another trial starting May 20, 2019 and needed at least a week between to prepare. Court advised parties could start the trial at 1:00 pm on April 22, 2019. Both parties agreed. Upon Court's inquiry, Mr. Prince indicated he was anticipating 3 weeks for trial. Court noted it would be dark May 2 and 3, 2019. PLAINTIFF'S MOTION IN LIMINE NO.19: TO EXCLUDE SUB ROSA SURVEILLANCE VIDEO OF PLAINTIFF DESIRE EVANS-WAIAU AND ANY TESTIMONY OR REFERENCE TO THE SAME Mr. Prince indicated the instant Motion is in reference to video that was taken post surgery. Further statements by Mr. Prince requesting it be excluded due to being impeachment and couldn't use. Mr. Winner disagreed and stated Plaintiff is more than capable of work activities and the video was relevant to support their claims; therefore, it would be inappropriate to exclude it. Following colloquy between parties, Court advised it was inclined to not keep the video out as a matter of law. COURT ORDERED, the instant Motion was hereby DENIED. PLAINTIFF'S MOTION IN LIMINE NO. 20: TO EXCLUDE THE TESTIMONY AND OPTIONS OF DEFENDANT'S RETAINED EXPERT KEVIN KIRKENDALL, CPA Mr. Prince indicated the instant Motion be withdrawn. COURT SO ORDERED. ;

04/22/2019



**Jury Trial** (1:00 PM) (Judicial Officer: Holthus, Mary Kay)

**04/22/2019-04/26/2019**

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Mistrial;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE JURY: Court inquired if there was an expert from the defense side that would base symptoms of the 2010 accident including the radiculopathy, with the probability that the instant case had the same injuries. Mr. Winner indicated those words weren't not used. Mr. Winner advised the expert stated it looked as though the Plaintiff had the same symptoms from before; therefore, it was a relevant fact. Arguments by Mr. Prince. Court noted 2010 was out. Mr. Henriod inquired if that meant that it was not to be mentioned. COURT ORDERED, 2010 was out per Judge Villani, which the ruling STANDS and that matter is not to be mentioned in opening statements. Colloquy between parties regarding opening statements. JURY PRESENT: Pre-Jury instructions read. Opening statements by Mr. Prince. Upon Court's inquiry, Mr. Prince requested the EXCLUSIONARY RULE INVOKED. CONFERENCE AT BENCH. Mr. Winner requested that the statement regarding Deft. not admitting to what she did, be stricken. COURT SO ORDERED. Opening statements by Mr. Degree. OUTSIDE THE PRESENCE OF THE JURY JURY PRESENT: CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY: Juror #9 questioned by counsel as to work relation with Deft. Following statements by Juror #9, Mr. Prince indicated he was concerned with Juror #9 possibly working with the Deft; however, Juror #9 had no recollection of seeing Deft. at his work location. Following colloquy, COURT ORDERED,

## CASE SUMMARY

CASE NO. A-16-736457-C

Juror #9 to remain on the Jury panel. Statements by Mr. Prince. JURY PRESENT: CONFERENCE AT BENCH. Opening statements by Mr. Winner. OUTSIDE THE PRESENCE OF THE JURY: Mr. Prince indicated Mr. Winner had filed Motions by his office excluding citations; however, Mr. Winner mentioned in his opening statement that neither side received a citation. Mr. Prince further indicated that statement was misconduct and there was no way to fix it; therefore, requested a mistrial. Arguments by Mr. Winner in opposition stating that *Frias v. Valle* indicated if someone were to get a ticket that would be inadmissible. MATTER TRAILED. MATTER RECALLED. Court noted upon reading the *Frias* case it was an error to admit police report. Further Court noted, the argument was to be keep it out; however, not only did Mr. Winner say it, but said it in all caps. Court believed the statement was planted in jurors minds and there was no way to unring that bell; therefore, COURT ORDERED, a MISTRIAL was hereby declared. Mr. Prince requested that the page of Mr. Winner's powerpoint at question, be admitted as a Court's exhibit. Arguments by Mr. Henriod indicating Plaintiff counsel should have filed a Motion in Limine in reference to the police report; however, they didn't. Mr. Winner noted the police officers didn't see the accident as a big deal; therefore, they didn't write a ticket. Mr. Prince advised he wanted to start over with a new trial and file new Motions. Further, Mr. Prince requested a status check to set a new trial date. Mr. Henriod indicated Mr. Prince could file whatever Motions needed; however, Mr. Henriod didn't think there were any fees warranted. Further, Mr. Henriod stated the way it was handled, there wasn't a clear violation. Following colloquy, Statements by Mr. Winner indicating he wasn't in agreeance with the Court's ruling. JURY PRESENT: Court advised the Jury that the trial had concluded and they were excused. OUTSIDE THE PRESENCE OF THE JURY: COURT ORDERED, matter SET for a status check to agree on a new trial date. 4/30/19 9:00 AM STATUS CHECK: RE-TRIAL SETTING;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Mistrial;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court noted it had previously ruled; however, parties were trying to amend the ruling set forth. Mr. Henriod indicated he was seeking clarification. Statements by Mr. Henriod in regards to Judge Villani's order, which was in reference to Plaintiff's Motion in Limine in regards to 2010 accident. Court inquired about the reason for Mr. Henriod bringing in 2010 accident. Further statements by Mr. Henriod. Following colloquy, COURT ORDERED, the 2016 accident was in. Furtherl, Court excused Juror 774. PROSPECTIVE JURY PANEL PRESENT: Voir dire continued. CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court inquired if there were any objections to Jury Instructions, which Mr. Prince indicated he had an objection to Jury Instruction #7. Colloquy between parties. PROSPECTIVE JURY PANEL PRESENT: Voir dire conducted. The parties passed the panel for cause. Peremptory challenges conducted. Preliminary instructions read to the twenty prospective jurors by the Court. A jury and two alternates SELECTED and SWORN. COURT RECESSED for the evening; TRIAL CONTINUED. 4/26/19 10:00 AM TRIAL CONTINUED;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Mistrial;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court inquired if there were any additions to briefing; further indicated it didn't see anything erroneous. Court noted it did see a road for impeachment and it had concerns with 2016 accident. Mr. Winner advised the 2016 accident was out for the second plaintiff. Colloquy between parties regarding 2016 accident as related to the first plaintiff. Statements by Mr. Prince as to keeping 2016 accident out. Arguments by Mr. Henriod in opposition. Further statements by Mr. Prince suggesting the 2010 accident not be discussed; however, the 2016 accident would come in for a limited purpose. Court indicated the orders by Judge Villani were sufficient on their face; therefore, COURT ORDERED, Judge Villani's ruling STANDS. Mr. Henriod inquired if 2010 accident could be mentioned at all; which, Court noted not unless Deft. opened the door on those issues or for impeachment purposes. PROSPECTIVE JURY PANEL PRESENT: Voir dire continued. CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL PROSPECTIVE JURY PANEL PRESENT: Voir dire continued. COURT RECESSED for the evening; TRIAL CONTINUED. 4/25/19 1:00 PM JURY TRIAL CONTINUED;

# CASE SUMMARY

CASE NO. A-16-736457-C

Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Mistrial;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL:* Upon Court's inquiry, Mr. Prince indicated they would be filing an opposition on the current day. Court noted all prospective jurors excused on April 22, 2019 were at the request of parties. *PROSPECTIVE JURY PANEL PRESENT:* Voir dire conducted. *CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL:* Colloquy between parties regarding questions that were asked during Voir Dire, and Mr. Winner indicated it would be difficult for him to ask follow up questions if he were to wait a few days. Court inquired if at the present time, Mr. Prince had any jurors anticipated for cause challenge, which Mr. Prince advised he didn't. Mr. Winner indicated if Mr. Prince believed there were grounds for cause, then he would like the opportunity to follow up before moving on. Colloquy between parties regarding for cause challenge and readiness to proceed. Mr. Prince noted he wanted to get more on the record for challenge to be clear. *PROSPECTIVE JURY PANEL PRESENT:* Voir dire conducted. *CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL:* Court noted it had looked at the trial brief; however, further inquired if parties were looking to bring in the 2016 accident. Mr. Prince indicated there were limitations to bringing in 2016. Statements by Mr. Winner regarding the 2010 accident. *COURT RECESSED for the evening; TRIAL CONTINUED. 4/24/19 1:00 PM JURY TRIAL CONTINUED;*

Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Mistrial;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL:* Colloquy regarding procedures. Court noted it provided both parties with copies of the Order prepared by the Court with Motion In Limine. Court indicated proposed orders should have been done before calendar call. Mr. Prince concurred, indicating it should have been done and parties are trial ready; however, they would have time following proceedings to resolve issues. Colloquy between parties regarding trial brief which was received prior to the start of trial. Mr. Henriod indicated Defense anticipated making an oral Motion to consider admissibility before opening statements on causation and Prima Facie. Mr. Prince indicated counsel was arguing for the Court to reconsider Judge Villani's ruling. Mr. Henriod advised the Court it was allowed to fix any error before entry of final judgement. Colloquy between parties regarding the effects of what would be allowed in. Mr. Prince indicated it wouldn't effect jury selection and could be done before opening statements. Upon Court's inquiry, Mr. Prince noted jury should be informed trial would last three weeks due to the Court's calendar. Colloquy between parties regarding expert witnesses schedules. Further colloquy regarding questions for the jury. *PROSPECTIVE JURY PANEL PRESENT:* Roll call taken by the Clerk. Voir dire oath ADMINISTERED. Voir dire conducted. *CONFERENCE AT BENCH. Jurors excused and replaced. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL. PROSPECTIVE JURY PANEL PRESENT:* Voir dire conducted. *OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL:* Statements by Mr. Prince regarding Motions in Limine. Order Regarding Plaintiff's Motions in Limine SIGNED IN OPEN COURT. *COURT RECESSED for the evening; TRIAL CONTINUED. 4/23/19 1:00 PM JURY TRIAL CONTINUED;*

04/30/2019



**Status Check (9:00 AM)** (Judicial Officer: Holthus, Mary Kay)

Matter Heard;

Journal Entry Details:

*Counsel announced ready for trial. Due to expert availability, COURT ORDERED, trial date SET 5/14/19 1:00pm.;*

05/14/2019



**Jury Trial (1:00 PM)** (Judicial Officer: Holthus, Mary Kay)

**05/14/2019-05/17/2019, 05/20/2019-05/23/2019, 05/28/2019-05/31/2019, 06/03/2019**

Trial Continues;  
Trial Continues;

# CASE SUMMARY

CASE NO. A-16-736457-C

Trial Continues;  
Trial Continues;  
TIME CHANGE  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY PANEL: Mr. Prince indicated his closing powerpoint had been updated and he supplied opposing counsel with a copy. Mr. Winner indicated he objected to the testimony of Dr. Garber. Court noted it didn't believe there was previously an objection to that. JURY PANEL PRESENT: Plaintiff RESTED. Defense RESTED. Court read jury instructions 1 through 50 to the Jury Panel. Closing arguments by Mr. Prince. CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL. JURY PANEL PRESENT: Closing arguments by Mr. Winner. CONFERENCE AT BENCH. Court Marshal and Judicial Executive Assistant SWORN to take charge of the jury. The Jury RETIRED TO DELIBERATE at the hour of 1:01 PM. OUTSIDE THE PRESENCE OF THE JURY PANEL. JURY PANEL PRESENT: The Jury RETURNED with a VERDICT for the DEFENDANT at 3:25 PM. The Jury polled at the request of Mr. Prince. Court thanked and excused the Jury. COURT RECESSED. ;*

Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
TIME CHANGE  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY PANEL: Colloquy regarding Proposed Jury Instructions. Jury instructions settled on the record. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL. Colloquy between parties regarding Adjacent Segment issue. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. Jury panel excused. OUTSIDE THE PRESENCE OF THE JURY PANEL: Jury instructions further settled on the record. COURT RECESSED for the weekend; TRIAL CONTINUED. 6/3/19 9:00 AM TRIAL CONTINUED ;*

Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
TIME CHANGE  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY PANEL: Parties indicated there was an issue with*

# CASE SUMMARY

CASE NO. A-16-736457-C

*Jury Instructions and Court noted it would have to do it the following morning. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL. Colloquy between parties regarding Jury Instructions. Statements by Mr. Prince objecting to video with audio coming in due to hearsay. Following colloquy, COURT ORDERED, video was now coming in. Mr. Winner mentioned the Motion regarding the Sub Rosa video which hadn't been ruled on; further noting if Mr. Prince was not opening door Mr. Winner would drop it. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL: Mr. Winner indicated parties speaking about video not being relevant; therefore, requested that video be viewed. Mr. Prince noted there was no basis at that point. COURT ORDERED, based on testimony, Motion to Exclude Sub Rosa Video was hereby GRANTED. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. COURT RECESSED for the evening; TRIAL CONTINUED. 5/31/19 10:00 AM TRIAL CONTINUED ;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

TIME CHANGE

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY PANEL: Parties agreed to billing records. Mr. Prince noted it wasn't a disk issue and he wanted to see billing. Court noted it would put away Motion for Protective Order. Colloquy regarding doctor's examination of Plaintiff. Following colloquy, Mr. Winner indicated he was having issues contacting Keith Lewis who was set to be a witness. Colloquy between parties regarding proof of service. Court noted it would like to set a Show Cause Hearing. JURY PANEL PRESENT: Babylyn Tate's Deposition PUBLISHED IN OPEN COURT. Testimony and exhibits presented (see worksheet). CONFERENCE AT BENCH. Questions submitted by jurors. OUTSIDE THE PRESENCE OF THE JURY PANEL. Mr. Prince had questions regarding why Mr. Winner objected his demonstrative slide. Arguments by Mr. Winner in support of his objection stating the demonstrative slide depicted what Deft. was doing at the time. Following colloquy, Mr. Prince indicated in response to juror questions, he would like to put Deft. back on the stand to speak about lane change at Koval. Court noted the Deposition was already in; therefore, COURT ORDERED, Mr. Prince's request was hereby DENIED, due to the evidence already being in. JURY PANEL PRESENT: Testimony presented (see worksheet). Gudalupe Parra-Mendez's Deposition PUBLISHED IN OPEN COURT. CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL: Colloquy between parties regarding billing for Dr. Shifini. Court noted it would be allowing full compensation. COURT RECESSED for the evening; TRIAL CONTINUED. 5/30/19 1:00 PM TRIAL CONTINUED ;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

TIME CHANGE

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY PANEL: Statements by Mr. Prince regarding a lien and the fact that parties have agreed to a curative instruction. Colloquy between parties*

# CASE SUMMARY

CASE NO. A-16-736457-C

regarding Motion for Protective Order Regarding Dr. Wang and the billing. Court noted the service to Mr. Winner's office for Dr. Wang was not proper service. Further colloquy between parties. Arguments by Mr. Prince in opposition to Mr. Winner's Motion for Protective Order. Court FINDS it to be more probative and didn't believe it was relevant; further, doesn't have anything to do with Dr. Wang's medical opinion. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL: Statements by Mr. Winner regarding Plaintiff's Video Exhibit #79. Mr. Prince indicated the video was taken at Plaintiff's home. Colloquy between parties regarding whether the video was taken at Plaintiff's home or the scene of the accident. Video played outside the presence of the jury. Colloquy between parties, COURT ORDERED, video could come in without audio. Statements by Mr. Winner. Further colloquy between parties regarding deposition that Plaintiff's husband coming to scene of accident. COURT FURTHER ORDERED, statements by Plaintiff's husband were inadmissible. JURY PANEL PRESENT: Deposition PUBLISHED IN OPEN COURT (see worksheet). Testimony presented (see worksheet). CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL: Statements by Mr. Winner regarding Dr. Garber's testimony. Arguments by Mr. Prince regarding Dr. Wang's testimony and disc protrusion. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL: Mr. Winner indicated Keith Lewis was subpoenaed to appear at the instant court hearing; however, he might have violated the subpoena. Statements by Mr. Prince. COURT RECESSED for the evening; TRIAL CONTINUED. 5/29/19 10:30 AM TRIAL CONTINUED ;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

TIME CHANGE

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy between parties regarding letters from Prospective Juror #399, #323 and #450. PROSPECTIVE JURY PANEL PRESENT: Voir dire continued. CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court noted it wanted both parties to exchange powerpoints for opening statements to make sure there were no issues or possible mistrials. PROSPECTIVE JURY PANEL PRESENT: Voir dire conducted. CONFERENCE AT BENCH. Prospective Jurors excused. The parties passed the panel for cause. Peremptory challenges conducted. A jury and two alternates SELECTED and SWORN. COURT RECESSED for the evening; TRIAL CONTINUED. 5/21/19 1:00 PM TRIAL CONTINUED;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

TIME CHANGE

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE JURY PANEL: Colloquy between parties regarding adjacent segment disease. Court advised Mr. Prince he must keep that portion general. JURY PANEL PRESENT: Testimony and exhibits presented (see worksheet). CONFERENCE AT

# CASE SUMMARY

CASE No. A-16-736457-C

*BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL: Mr. Henriod indicated there was now an issue with the third surgery, which was not disclosed; therefore Plaintiff's Motion for sanctions for the Mistrial should be denied. Colloquy between parties. COURT RECESSED for the weekend; TRIAL CONTINUED. 5/28/19 1:00 PM TRIAL CONTINUED ;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

TIME CHANGE

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY PANEL: Mr. Prince moved to the admission of Exhibit #81. COURT ORDERED, admission was GRANTED. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL: Court inquired when Mr. Prince became aware Plaintiff was seeking second surgery. Mr. Prince indicated it was before the mistrial. Further statements by Mr. Prince. Court further inquired why that was not mentioned at the last trial. Mr. Prince advised the Court he stated it in his opening statement. Court noted it was not to a degree of medical certainty; therefore, COURT ORDERED, the second surgery would not be allowed in. Further colloquy between parties regarding second surgery. JURY PANEL PRESENT: Testimony presented (see worksheet). CONFERENCE AT BENCH. COURT RECESSED for the evening; TRIAL CONTINUED. 5/23/19 1:00 PM TRIAL CONTINUED ;*

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

TIME CHANGE

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY PANEL: Colloquy regarding Opening powerpoint. Following colloquy, Court noted as to trial brief to Exclude DMV Manual COURT ORDERED, it was inclined to GRANT that portion limited to reptile information. Statements by Mr. Winner. Further, Mr. Winner indicated after reviewing Mr. Prince's powerpoint, he noted slide 35 through 39 was argumentative; however, Court advised it didn't see any issues with them. Arguments by Mr. Winner. Statements by Mr. Prince. JURY PANEL PRESENT: Jury Instructions read. EXCLUSIONARY RULE INVOKED. CONFERENCE AT BENCH. Opening Statements by Mr. Prince. CONFERENCE AT BENCH. Opening Statements by Mr. Degree. OUTSIDE THE PRESENCE OF THE JURY PANEL: Mr. Prince indicated he had objections to Mr. Winner's Opening powerpoint as to statute and the fact of it being argumentative. COURT ORDERED, objection was OVERRULED. Arguments by Mr. Prince regarding mentions of a litigation lien. Mr. Henriod indicated it was admissible and had fact to it. Further arguments by Mr. Prince . Following colloquy, Court noted that information was still coming in. Statements by Mr. Winner indicating Mr. Prince previously only disclosed an amount of \$285,000.00 which he was seeking; however, that amount suddenly doubled at the beginning of trial. Mr. Prince concurred. Statements by Mr. Prince supporting why amount*

# CASE SUMMARY

CASE NO. A-16-736457-C

increased. Court noted to Mr. Winner, that he would need to object during statements. Following colloquy, Arguments between counsel regarding 2010 accident; which, Court advised parties they would need to brief that issue. Colloquy between parties as to what Mr. Prince was seeking in medical care and when second surgery came up. Mr. Prince noted it was during conversation with doctor. Court inquired if Plaintiff was still treating, which Mr. Prince indicated not actively. JURY PANEL PRESENT: Opening statements by Mr. Winner. OUTSIDE THE PRESENCE OF THE JURY PANEL: Parties stipulated to the admission of exhibits. JURY PANEL PRESENT: Testimony and exhibits presented (see worksheets). CONFERENCE AT BENCH. COURT RECESSED for the evening; TRIAL CONTINUED. 5/22/19 1:00 PM TRIAL CONTINUED ;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

TIME CHANGE

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy between parties regarding witness. PROSPECTIVE JURY PANEL PRESENT: Voir dire conducted. CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy between parties regarding Deft. accepting the responsibility for damage. Mr. Winner indicated Mr. Prince used frivolous defense; however, when Mr. Winner used it in one sense, Mr. Prince was ready to make a sanction. Further arguments by Mr. Winner. Court noted Mr. Prince did violated the order regarding attorney advertising; however, it was at Mr. Prince's request. Further colloquy between parties regarding Deft.'s responsibility in the accident. Court noted both parties have violated Court's order; therefore, if parties would agree on responsibility argument coming in; however, if not, Court would sustain and strike comment. Mr. Prince indicated he agreed to bring the comment in; however, Mr. Winner indicated he didn't want it in. Following colloquy, COURT ORDERED, any statement or question in regards to Deft. accepting responsibility be STRICKEN. PROSPECTIVE JURY PANEL PRESENT: Voir dire conducted. CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy between parties. PROSPECTIVE JURY PANEL PRESENT: Voir dire conducted. CONFERENCE AT BENCH. COURT RECESSED for the weekend; TRIAL CONTINUED. 5/20/19 10:00 AM TRIAL CONTINUED;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

TIME CHANGE

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy between parties regarding excusal letters from Prospective Juror #385, Prospective Juror #293, and Prospective Juror #352; which #293 and #352 were excused by agreement of counsel. Statements by Mr. Winner indicated Mr. Prince told Plaintiff to go to the doctor. Court noted it believed that certain evidence could come in. Arguments by Mr. Winner regarding attorney referral to doctor. Statements by Mr. Prince. Following colloquy regarding lawyer advertising, COURT ORDERED, Motion regarding Lawyer advertising was hereby MOOT and parties

# CASE SUMMARY

CASE NO. A-16-736457-C

could not voir dire about lawyer advertising. Statements by Mr. Prince. Court requested that Mr. Prince not use the word insurance. Mr. Winner advised if insurance was brought up in questioning, he would request a mistrial. Outside the presence of other prospective jurors, Prospective juror #385 CANVASED; FURTHER, COURT ORDERED, Prospective Juror #385 released as stipulated by parties. PROSPECTIVE JURY PANEL PRESENT: Voir dire conducted. CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Upon Court's inquiry, Prospective Juror #279 CANVASED. CONFERENCE AT BENCH. Court noted, based on statements by Prospective Juror #279, it believed she could not be fair. COURT ORDERED, Prospective Juror #279 REMOVED for cause. Arguments by Mr. Winner. PROSPECTIVE JURY PANEL PRESENT: CONFERENCE AT BENCH. COURT RECESSED for the evening; TRIAL CONTINUED. 5/17/19 10:00 AM TRIAL CONTINUED;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

TIME CHANGE

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Prospective Juror #392 questioned and parties stipulated for juror to be excused. PROSPECTIVE JURY PANEL PRESENT: CONFERENCE AT BENCH. Voir dire conducted. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy between parties regarding jurors behavior. Juror #309 presented letter to the Court. Mr. Prince objected to the excusal of juror. Mr. Prince indicated he would be requesting a cause challenge for Prospective Juror #277. Mr. Winner objected. Mr. Prince further indicated a cause challenge for #304 which Mr. Winner objected. Mr. Prince indicated he was requesting Prospective Juror #307 for cause. Statements by Mr. Winner. Following colloquy, Mr. Prince withdrew cause challenge for Prospective Juror #307. PROSPECTIVE JURY PANEL PRESENT: Voir dire conducted. CONFERENCE AT BENCH. COURT RECESSED for the evening; TRIAL CONTINUED. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Arguments by Mr. Prince regarding insurance and why Plaintiff got an attorney. Mr. Winner noted if Mr. Prince were to ask about liability insurance there would be a mistrial. Colloquy between parties. Further arguments between counsel regarding insurance. COURT ORDERED, parties to have brief to the submitted by 10:00 am on May 16, 2019. 5/16/19 1:00 PM TRIAL CONTINUED ;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

TIME CHANGE

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy regarding procedures. Mr. Prince indicated Motions were delivered based on mistrial and defense counsel was served with them on May 14, 2019; further, requested a hearing date. Court inquired why it was set on order shortening time; however, the Court would need to do more research. Colloquy between parties. COURT ORDERED the following Briefing Schedule: Mr. Winner to file Opposition by June 3, 2019, Mr. Prince to file Reply by June 18, 2019, and matter SET for Argument. Court noted it didn't believe it was orally presidial ; therefore,

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

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

|            |                                                                                                                                                                                                                                                                                                                                                         |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | <i>would give Deft. a chance to brief it. Mr. Prince noted he would like another pre-instruction. Arguments by Mr. Winner. PROSPECTIVE JURY PANEL PRESENT: Roll call taken by the Clerk. Voir dire oath ADMINISTERED. Voir dire conducted. COURT RECESSED for the evening; TRIAL CONTINUED. CONTINUED TO: 5/15/19 1:00 PM 6/25/19 11:00 AM HEARING;</i> |
| 05/28/2019 | <b>Motion</b> (12:45 PM) (Judicial Officer: Holthus, Mary Kay)<br><i>Defendant Tate's Motion to Permit Dr. Jeffrey Wang to testify out of order, if necessary on Order Shortening Time</i>                                                                                                                                                              |
| 05/30/2019 | <b>Hearing</b> (12:00 PM) (Judicial Officer: Holthus, Mary Kay)<br><i>Order to Show Cause</i><br>Vacate - Moot;                                                                                                                                                                                                                                         |
| 06/19/2019 | <b>CANCELED Motion for Protective Order</b> (9:00 AM) (Judicial Officer: Holthus, Mary Kay)<br><i>Vacated</i><br><i>Defendant's Motion for Protective Order and Objection to Subpoenas on Order Shortening Time</i>                                                                                                                                     |
| 06/25/2019 | <b>CANCELED Hearing</b> (11:00 AM) (Judicial Officer: Holthus, Mary Kay)<br><i>Vacated - per Attorney or Pro Per</i><br><b>HEARING: ATTORNEY'S FEES AND COSTS</b>                                                                                                                                                                                       |
| 08/21/2019 | <b>Motion for Attorney Fees and Costs</b> (9:00 AM) (Judicial Officer: Holthus, Mary Kay)                                                                                                                                                                                                                                                               |

DATE

FINANCIAL INFORMATION

|                                          |             |
|------------------------------------------|-------------|
| <b>Subject Minor</b> Parra, Alliyah      |             |
| Total Charges                            | 30.00       |
| Total Payments and Credits               | 30.00       |
| <b>Balance Due as of 8/15/2019</b>       | <b>0.00</b> |
| <b>Subject Minor</b> Parra, Mayra        |             |
| Total Charges                            | 30.00       |
| Total Payments and Credits               | 30.00       |
| <b>Balance Due as of 8/15/2019</b>       | <b>0.00</b> |
| <b>Subject Minor</b> Parra, Sienna       |             |
| Total Charges                            | 30.00       |
| Total Payments and Credits               | 30.00       |
| <b>Balance Due as of 8/15/2019</b>       | <b>0.00</b> |
| <b>Defendant</b> Tate, Babylyn           |             |
| Total Charges                            | 247.50      |
| Total Payments and Credits               | 247.50      |
| <b>Balance Due as of 8/15/2019</b>       | <b>0.00</b> |
| <b>Plaintiff</b> Evans-Waiiau, Desire    |             |
| Total Charges                            | 294.00      |
| Total Payments and Credits               | 294.00      |
| <b>Balance Due as of 8/15/2019</b>       | <b>0.00</b> |
| <b>Plaintiff</b> Parra-Mendez, Guadalupe |             |
| Total Charges                            | 30.00       |
| Total Payments and Credits               | 30.00       |
| <b>Balance Due as of 8/15/2019</b>       | <b>0.00</b> |

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

County, Nevada

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

(Assigned by Clerk's Office)

XVII

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

|                                                 |                                    |
|-------------------------------------------------|------------------------------------|
| Plaintiff(s) (name/address/phone):              | Defendant(s) (name/address/phone): |
| Desire Evans-Waiiau, Guadalupe Parra-Mendez,    | Babylyn Tate                       |
| Jorge Parra-Meza, as guardian for Mayra Parra   |                                    |
| Jorge Parra-Meza, as guardian for Aaliyah Parra |                                    |
| Jorge Parra-Meza, as guardian for Sienna Parra  |                                    |
| Attorney (name/address/phone):                  | Attorney (name/address/phone):     |
| Paul Powell, Esq. - The Powell Law Firm         | N/A                                |
| 6785 W. Russell Road, Suite 210                 |                                    |
| Las Vegas, Nevada 89118                         |                                    |
| (702) 728-5500                                  |                                    |

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

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

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

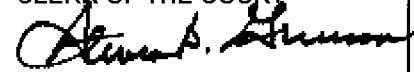
5/10/2016

Date

/s/ Paul Powell

Signature of initiating party or representative

See other side for family-related case filings.



1     ORDR

2                                 EIGHTH JUDICIAL DISTRICT COURT

3                                 CLARK COUNTY, NEVADA

4     EVANS-WAIAU ET AL.

5                                 vs.

Case No.

A-16-736457-C

6     BABLYN TATE

Dept. No.

XVIII

9  
10                                 **ORDER REGARDING PLAINTIFFS' MOTIONS IN LIMINE**

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

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

MARY KAY HOLTHUS  
DISTRICT JUDGE  
DEPARTMENT XVIII

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

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
4 Motion in Limine No. 2: Exclude Reference to Any Absence of Medical Records Before the  
5 Subject Collision is **GRANTED, IN PART** and **DENIED, IN PART**. Defendant, her  
6 counsel, and her witnesses are precluded from offering any statement, argument or reference  
7 that suggests other medical records of Plaintiffs exist and that they were not provided with  
8 those medical records. Defendant's retained medical experts may testify that their medical  
9 causation opinions and opinions regarding Plaintiffs' need for future medical treatment  
10 remain unchanged even in the absence of prior medical records.  
11

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
13 Motion in Limine No. 3: Exclude Reference to Plaintiffs Being Malingerers, Magnifying  
14 Symptoms, or Manifesting Secondary Gain Motives Because There is No Competent  
15 Evidence to Support Such Reference is **GRANTED, IN PART** and **DENIED, IN PART**.  
16 Defendant's retained medical experts are precluded from offering any testimony, opinions or  
17 references that Plaintiffs are malingerers, symptom magnifiers, or manifest secondary gain  
18 motives because those opinions are not contained within their reports, not because they lack  
19 the qualifications as a psychiatrist or psychologist to offer the opinions. Defendant's  
20 retained medical experts are allowed to rely on the medical records and the timing of  
21 Plaintiffs' respective pain complaints to support their medical causation opinions so long as  
22 those opinions are contained within their respective reports or deposition testimony.  
23  
24

25 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiffs'  
26  
27  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 NRCP 16.1(a)(2)(B) requires retained experts to provide a complete statement of their  
21 opinions and the bases supporting those opinions in their expert reports. Defendant retained  
22 two medical experts in this case: Jeffrey Wang, M.D., and Joseph Schifini, M.D. Dr. Wang  
23  
24  
25  
26  
27  
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1 and Dr. Schifini do not offer an independent alternative causation theory for Evans-Waiiau's  
2 present injuries to a reasonable degree of medical probability in their respective reports.  
3 Therefore, Defendant has not established a causal connection between Evans-Waiiau's prior  
4 cervical spine injury or prior 2010 motor vehicle accident and her current injuries and pain  
5 complaints allegedly caused by the subject motor vehicle collision.  
6

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

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

1 have testified to the contrary.

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

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

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

20 (2) Defendant, her counsel, and her witnesses are precluded from offering any  
21 statement, argument or reference that Plaintiff Desire Evans-Waiiau ("Evans-Waiiau") was  
22 terminated from her employment with Bed Bath & Beyond and Spacecraft Components  
23  
24  
25  
26  
27  
28

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

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

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

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

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

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

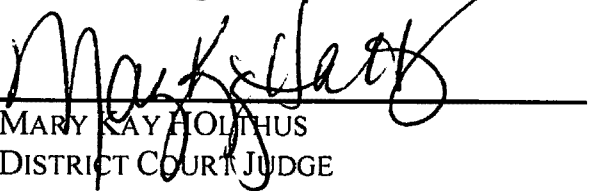
17 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Court's  
18 decision on Plaintiff's Motion in Limine No. 19: To Exclude Sub Rosa Surveillance Video  
19 of Plaintiff Desire Evans-Waiiau and Any Testimony or Reference to the Same is deferred  
20 until the time of trial, to permit the Court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

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Plaintiff's  
24 Motion in Limine No. 20: To Exclude the Testimony and Opinions of Defendant's Retained  
25 Expert, Kevin Kirkendall, CPA, is withdrawn. The parties have agreed in open court that Mr.  
26 Kirkendall shall not offer any testimony or opinions regarding the legal standard for  
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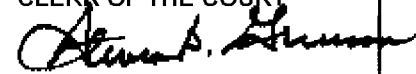
admissible expert testimony pursuant to *Hallmark v. Eldridge*, 124 Nev. 492 (2008).

**IT IS SO ORDERED**

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

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

MARY KAY HOLTHUS  
DISTRICT JUDGE  
DEPARTMENT XVIII



1 **NEO**  
2 **DENNIS M. PRINCE, ESQ.**  
3 Nevada Bar No. 5092  
4 **JACK F. DEGREE, ESQ.**  
5 Nevada Bar No. 11102  
6 **EGLET PRINCE**  
7 400 S. 7th Street, 4th Floor  
8 Las Vegas, Nevada 89101  
9 E-Mail: [eservice@egletlaw.com](mailto:eservice@egletlaw.com)  
10 T: 702.450.5400  
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12 -and-  
13 **PAUL D. POWELL, ESQ.**  
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15 **THE POWELL LAW FIRM**  
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21 *Attorneys for Plaintiffs Desire Evans-Waiiau*  
22 *and Guadalupe Parra-Mendez*

23 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

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

**Plaintiffs,**

**vs.**

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

**Defendants.**

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

**DEPT. NO.: XVII**

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

...

...

...

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

3 DATED this 22nd day of April, 2019.

4 **EGLET PRINCE**

5  
6 /s/ Jack F. DeGree  
7 DENNIS M. PRINCE, ESQ.  
8 Nevada Bar No. 5092  
9 JAMES A. TRUMMELL, ESQ.  
10 Nevada Bar No. 14127  
11 400 S. 7th Street, 4th Floor  
12 Las Vegas, Nevada 89101  
13 *Attorneys for Plaintiffs Desire Evans-Waiiau*  
14 *and Guadalupe Parra-Mendez*  
15  
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**CERTIFICATE OF SERVICE**

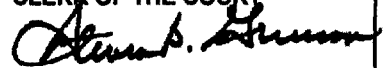
Pursuant to NRCP 5(b), I certify that I am an employee of the EGLET PRINCE and that on April 22, 2019, I did cause a true and correct copy of **NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFFS' MOTIONS IN LIMINE** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master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

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

  
An Employee of EGLET PRINCE

# **EXHIBIT 1**

# **EXHIBIT 1**



1    ORDER

2                                    EIGHTH JUDICIAL DISTRICT COURT  
3                                    CLARK COUNTY, NEVADA

4    EVANS-WAIAU ET AL.

5  
6                    vs.

Case No.                    A-16-736457-C

7    BABLYN TATE

Dept. No.                    XVIII

8  
9  
10                    **ORDER REGARDING PLAINTIFFS' MOTIONS IN LIMINE**

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

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

MARY KAY HOLTHUS  
DISTRICT JUDGE  
DEPARTMENT XVIII

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 NRCP 16.1(a)(2)(B) requires retained experts to provide a complete statement of their  
21 opinions and the bases supporting those opinions in their expert reports. Defendant retained  
22 two medical experts in this case: Jeffrey Wang, M.D., and Joseph Schifini, M.D. Dr. Wang  
23  
24  
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1 and Dr. Schifini do not offer an independent alternative causation theory for Evans-Waiiau's  
2 present injuries to a reasonable degree of medical probability in their respective reports.  
3 Therefore, Defendant has not established a causal connection between Evans-Waiiau's prior  
4 cervical spine injury or prior 2010 motor vehicle accident and her current injuries and pain  
5 complaints allegedly caused by the subject motor vehicle collision.  
6

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

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

1 have testified to the contrary.

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

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

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

20 (2) Defendant, her counsel, and her witnesses are precluded from offering any  
21 statement, argument or reference that Plaintiff Desire Evans-Waiiau ("Evans-Waiiau") was  
22 terminated from her employment with Bed Bath & Beyond and Spacecraft Components  
23  
24  
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1 Corp. and the reasons for those terminations. This information is irrelevant because  
2 Defendant's experts fail to address these terminations in relation to Evans-Waiiau's earning  
3 capacity.

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

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

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

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

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

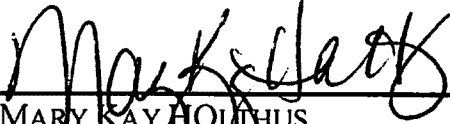
17 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Court's  
18 decision on Plaintiff's Motion in Limine No. 19: To Exclude Sub Rosa Surveillance Video  
19 of Plaintiff Desire Evans-Waiiau and Any Testimony or Reference to the Same is deferred  
20 until the time of trial, to permit the Court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

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

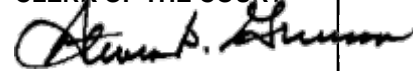
admissible expert testimony pursuant to *Hallmark v. Eldridge*, 124 Nev. 492 (2008).

**IT IS SO ORDERED**

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

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

MARY KAY HOLTHUS  
DISTRICT JUDGE  
DEPARTMENT XVIII



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

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff(s)

vs.

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

Defendant(s)

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

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

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

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

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Tate's  
 5 Motion *in Limine* No. 1: Regarding Specific Statements and Claims of the Parties is  
 6 **GRANTED, IN PART and DENIED, IN PART.** Part (B) – Defendant Tate's Observations and  
 7 Triage at Accident Scene - Defendant Tate is permitted to testify about what she observed after  
 8 the subject accident occurred, including the actions of the Plaintiffs post-accident. Meaning,  
 9 Defendant Tate is permitted to opine she does not believe Plaintiffs sustained any injury based  
 10 upon her observations. In rendering her observations post-accident, Defendant Tate is not  
 11 permitted to testify she performed a triage or a medical procedure.<sup>1</sup> Part (C) – Injuries of Minor  
 12 Children – Evidence of injury to minor children is permissible to establish severity of impact  
 13 only. Evidence of lack of injury to Defendant Tate is permissible to establish severity of impact.  
 14 Evidence of minor children's medical expenses is inadmissible; relevance outweighed by unfair  
 15 prejudice.<sup>2</sup> Part (D) – Plaintiff Evans-Waiiau's Subsequent Injuries – The defense may argue that  
 16 neither the subject accident nor the subsequent accident on July 10, 2016 is the cause of Plaintiff  
 17 Evans-Waiiau's surgery. The defense is permitted to have experts testify there was an increase in  
 18 symptoms as set forth by the reports.<sup>3</sup> However, Plaintiff Evans-Waiiau's 2018 Complaint,  
 19 relative to the July 10, 2016 subsequent accident, wherein she alleges injuries to her shoulders  
 20 and back, is not a verified complaint and the statements contained therein are deemed legal  
 21 conclusions made by counsel rather than party admissions. The Court finds Plaintiff Evans-  
 22 Waiiau's cervical recommendation was made prior to the 2016 accident and that Defendant  
 23 Tate's experts do not opine the 2016 caused or contributed to the alleged injuries sustained in the  
 24  
 25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22  
23 <sup>10</sup> See Minute Order 10/3/2018.

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

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

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

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

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

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