

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

BARRY JAMES RIVES, M.D.; and  
LAPAROSCOPIC SURGERY OF NEVADA,  
LLC,

Appellants/Cross-Respondents,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents/Cross-Appellants.

BARRY JAMES RIVES, M.D.; and  
LAPAROSCOPIC SURGERY OF NEVADA,  
LLC,

Appellants,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents.

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**APPELLANTS' APPENDIX**  
**VOLUME 21**

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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADATITINA FARRIS, ET AL.,  
Plaintiffs,CASE#: A-16-739464-C  
DEPT. XXXI

vs.

BARRY RIVES, M.D.,  
Defendant.BEFORE THE HONORABLE JOANNA S. KISHNER  
DISTRICT COURT JUDGE  
MONDAY, OCTOBER 21, 2019**RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 6**

## APPEARANCES:

For the Plaintiff:

KIMBALL JONES, ESQ.  
JACOB G. LEAVITT, ESQ.  
GEORGE F. HAND, ESQ.

For the Defendant:

THOMAS J. DOYLE, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

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FOR THE PLAINTIFF

MARKED

RECEIVED

None

FOR THE DEFENDANT

MARKED

RECEIVED

None

Q

1 Las Vegas, Nevada, Monday, October 21, 2019

2  
3 [Case called at 9:03 a.m.]

4 [Outside the presence of the jury]

5 THE CLERK: On the record.

6 THE COURT: Okay. We're on the record outside the  
7 presence of the jury in Farris vs. Rives and Laparoscopic Surgery of  
8 Nevada, case 739464. Right before we went on the record, the Court was  
9 asking because there was a motion to strike on OST, that the parties had  
10 said the Court was going to get courtesy copies this morning before trial.  
11 It's after 9:00. At least when the Court had its JEA looking multiple times  
12 this morning, there was no courtesy copies in the box at all from either  
13 Plaintiff or Defendant. And so, the Court was wondering where those  
14 promised courtesy copies were because at least they were not there as  
15 of, I guess, the latest I understand my JEA checked was around 8:40ish  
16 this morning when the Court got on the bench. But then, of course, I  
17 was doing other stuff getting ready for your trial today, so I've been on  
18 the bench and we didn't see any courtesy copies at all. So, you all both  
19 promised.

20 MR. JONES: Yes, Your Honor. I just checked with my  
21 paralegal. It was sent with Legal Wings, we thought it was going to be  
22 here by 8:00, but it is not, obviously.

23 THE COURT: Did you all specifically direct them that it had to  
24 be here before 8:00?

25 MR. JONES: That was my understanding, and he said that

1 he is reaching out to them to verify. So, I don't --

2 THE COURT: So --

3 MR. JONES: It's not here, obviously, so it didn't get done.

4 And whether it's because I directed him to do it or Legal Wings or my -- it  
5 doesn't matter. It's on us, and it should have been done, Your Honor. I  
6 apologize.

7 THE COURT: Defense counsel.

8 MR. DOYLE: I have a courtesy copy of our opposition to the  
9 motion to strike the trial briefs. Our opposition to the other motion isn't  
10 due until tomorrow morning at 9:00 so we don't have a courtesy copy of  
11 that yet.

12 THE COURT: Right. But why didn't we have our courtesy  
13 copy of that one earlier? I may be incorrect, but wasn't -- all I know is  
14 you all were getting me courtesy copies. Your exact timeframes on the  
15 different courtesy copies, all I know is the Court was in here incredibly  
16 early to try and read whatever was supposed to be read and there was  
17 just nothing in the box, at least related to this case. There was lots of  
18 other things in the box so that I had other things to do. But I'll be glad to  
19 take the courtesy copy.

20 MR. DOYLE: Thank you.

21 THE COURT: I'll take Defendant's opposition. And  
22 obviously, can't read what I don't have from Plaintiffs, so I will not be  
23 doing what we need to do. So, what's up with the other motion you all  
24 wanted done. So, I'm not sure what you all's timing, and what you're  
25 anticipating in light of scheduling.

1           So, let's walk through where we are. Let's start with  
2 witnesses because it looks like you're behind on witnesses and all sorts  
3 of things. First off, I did not see an audio/visual transmission request  
4 come across either. I did look at my daily filings. So, did you all do an  
5 audio/visual request for Dr. Hurwitz?

6           MR. JONES: We are doing that this morning. We didn't  
7 think it needed to be filed this morning.

8           THE COURT: Okay. So, it just hasn't been done yet.

9           MR. JONES: That's correct, Your Honor.

10          THE COURT: Okay. So, the Court hasn't seen it because it  
11 hasn't been done yet, okay. So, the Court will take a look at that when it  
12 comes across. But remember, everyone's got to follow the rules on that,  
13 and you do what you need to do, and the Court will evaluate it. But if  
14 you don't get it done and there's specific requirements that need to be  
15 done, and you all need to follow the rules on that.

16          So when -- if you're doing that, when are you anticipating --  
17 the Court is taking no position, but when are you planning on doing that  
18 audio/visual? Court taking no position, no advance rulings, I'm just  
19 asking potential scheduling, in no way making any rulings at all.

20          MR. JONES: Wednesday morning is what we expect, Your  
21 Honor. We have asked him when he can make himself available on  
22 Friday when we left, and he said that he believed Wednesday, and he  
23 would get back to us today for confirmation.

24          THE COURT: I'm sure you all are --

25          MR. JONES: Oh, when will it be filed; it will be filed today,

1 Your Honor.

2 THE COURT: I'm sure you all are checking timeframes and  
3 everything. Court takes no position. I'm sure you all are checking the  
4 rules and timeframes and everything. Okay. So, is there going to be an  
5 objection, or has Defense decided one way or another?

6 MR. DOYLE: Defense has not decided one way or the other,  
7 Your Honor. But it's difficult --

8 THE COURT: There's timeframes.

9 MR. DOYLE: The difficulty it imposes is I have our general  
10 surgery expert, Dr. Juell, scheduled for Wednesday morning.

11 THE COURT: Well, I'm sure you can appreciate with the  
12 issues that were raised by Defense counsel for its untimely issues with  
13 regards to Dr. Hurwitz's deposition that took a good part of Friday  
14 afternoon and how the Court's going to have to be considerate with  
15 Plaintiffs' timing issues because that was Defense bringing up something  
16 that Defense was supposed to have taken care of at the time of the  
17 calendar call. The Court takes no position.

18 MR. DOYLE: I understand. But my understanding Dr.  
19 Hurwitz was here and available earlier in the day.

20 THE COURT: It's not before the Court right now, right.  
21 Because -- Marshal, do we have all our jurors?

22 THE MARSHAL: No. We're still missing one.

23 THE COURT: Okay. So, I still have a few moments.

24 So, I haven't seen what I haven't seen. So, you all don't get  
25 things filed, I can't address them. Be glad to address them. I mean if



1 there's a stipulation among the parties that you all have agreed to  
2 something, I can address it right now. In the absence of a stipulation,  
3 you know I have to go pursuant to the rules. Is there a stipulation that  
4 you both want me to address it right now, or do I need to go pursuant to  
5 the rules.

6 MR. JONES: Pursuant to the rules, Your Honor.

7 MR. DOYLE: Yes.

8 THE COURT: Okay. So, that's what I'm saying. The nice  
9 thing is, when people cooperate and do stipulations, I'm more than glad  
10 to handle things immediately and very quickly. But when people say  
11 that they are not agreeing and stipulating, then you all create your own  
12 challenges for your own timeframe issues. You understand that, right.  
13 You're making it harder on yourselves heading to the chase of things,  
14 right.

15 MR. JONES: We do, Your Honor.

16 THE COURT: You understand that works both ways, right.

17 MR. JONES: We do.

18 THE COURT: When counsel nicely cooperate among each  
19 other, it usually works out quicker, better for both clients, all clients,  
20 right.

21 MR. JONES: Absolutely agree.

22 THE COURT: Allows the Court to handle your things quickly,  
23 efficiently and effectively, right, do you understand that?

24 MR. JONES: Absolutely, Your Honor.

25 MR. DOYLE: Yes, Your Honor.

1 THE COURT: Okay. Because I'm ready to jump into it right  
2 now if you all both wanted the Court to do so, but if you don't follow the  
3 rules then. Let me know. But remember there's only so many hours in a  
4 particular day, and how much time you want to use for trial and how  
5 much time you all want to do for doing this stuff is your choice. Okay.  
6 Do we have all of our jurors. We have all our jurors.

7 So, how much time more do you need to switch those?

8 UNIDENTIFIED SPEAKER: I have two more exhibits to thread  
9 through, Your Honor.

10 THE COURT: Okay. That means the Marshal can slowly get  
11 the jury, and then we can bring them in, and we can get started. Who's  
12 your first witness of the day?

13 MR. LEAVITT: Dr. Barchuk.

14 THE COURT: Barchuk. Okay. Is that witness available?

15 MR. LEAVITT: He is, Your Honor.

16 THE COURT: Okay. So then, why don't we have -- outside in  
17 the hallway, or would you like the witness to be on the stand when the  
18 jury comes in?

19 MR. LEAVITT: On the stand preferably, Your Honor.

20 THE COURT: Okay. Then I will give counsel -- just needs, I  
21 think, another --

22 UNIDENTIFIED SPEAKER: Forty seconds.

23 THE COURT: No worries. It's going to take a second or so.  
24 So, Marshal, can you slowly get Dr. Barchuk. Mr. Hand is going to get  
25 Dr. Barchuk. Okay.

1 [Pause]

2 THE COURT: So, the Doctor is here. So, the witness please  
3 go to the stand. Marshal, if you could slowly go get our jury, and then  
4 peek your head in just to make sure everybody's ready. And counsel, I  
5 am presuming from Plaintiffs' side since you said your clients were not  
6 going to be here, that if any day you are wishing us to wait for your  
7 clients, you're going to let the Court know, correct?

8 MR. JONES: That is correct.

9 MR. LEAVITT: That's correct.

10 THE COURT: Okay. Perfect. Feel free to go to the stand. So,  
11 what you have now, just to let you know, in light of the change that each  
12 of you all did, is now Plaintiffs, you know you have your two sets of  
13 binders. You have your Exhibit 1 in one binder, right, and 2 through 18  
14 in yours.

15 MR. JONES: Correct.

16 THE COURT: Counsel for Defense, yours is broken up into  
17 two binders, but it is -- do you know your breakdown of numbers?

18 MR. DOYLE: No. I'd have to look at it.

19 THE COURT: Okay. Defense has broken down into two  
20 binders, as well. So, that's why there's four.

21 MR. HAND: Could I take a look at them, so I know the  
22 lettering?

23 THE COURT: Do you have any objection if he takes a look at  
24 it?

25 MR. DOYLE: No.

1 THE COURT: That probably makes sense, so we know the  
2 lettering. Thank you so much. Okay. So, Defendant's is --

3 MR. HAND: Their Volume 1 is A through double L. And then  
4 the remainder are in Volume 2.

5 THE COURT: Okay. Just one second. So, is everybody  
6 ready? Yes. Jurors all set, everything's ready; yes? Do you all need a  
7 moment; are we ready? Okay. Thank you so much.

8 THE MARSHAL: All rise for the jury.

9 [Jury in at 09:13 a.m.]

10 [Within the presence of the jury]

11 THE MARSHAL: All jurors are accounted for. Please be  
12 seated.

13 THE COURT: Appreciate it. Well welcome, ladies and  
14 gentlemen. Hopefully you all had a nice relaxing weekend where it was  
15 gorgeous weather part of the time, or most of the time, depending on  
16 what you like in weather, right.

17 At this juncture, same thing we're trying to, save a moment  
18 or so, got the witness on the stand, but I'm still going to ask counsel for  
19 Plaintiff, would you like to call your next witness, please.

20 MR. HAND: Yes, Your Honor. Plaintiff calls Alex Barchuk,  
21 M. D.

22 THE COURT: And right before the Clerk swears in the  
23 witness. Same thing that we talked about before. For the convenience  
24 of witnesses, we are once again interrupting the testimony of one  
25 witness and going to the next witness, just for scheduling purposes. So,

1 we'll circle back to some other witnesses, okay. So, Madam Clerk, can  
2 you please swear in the witness.

3 THE CLERK: Yes, Your Honor. Raise your right hand.

4 ALEX BARCHUK, PLAINTIFFS' WITNESS, SWORN

5 THE CLERK: Thank you. Please be seated. Could you please  
6 state and spell your name for the record.

7 THE WITNESS: Alex Barchuk, B-A-R-C-H-U-K.

8 THE CLERK: Thank you.

9 THE COURT: Okay, counsel. You may commence at your  
10 leisure, and I see we already gave you a pocket mic, so feel free to be  
11 where you'd like to be.

12 MR. HAND: Thank you, Judge.

13 DIRECT EXAMINATION

14 BY MR. HAND:

15 Q Good morning, Dr. Barchuk.

16 A Good morning.

17 Q We've met before, is that true?

18 A Yes.

19 Q You know I'm George Hand, one of the attorneys for Titina  
20 and Patrick Farris?

21 A Yes.

22 Q Are you a medical doctor?

23 A Yes.

24 Q What kind of doctor are you?

25 A My specialty is physical medicine and rehabilitation.

1 Q And can you explain what that is?

2 A It's a specialty that deals with severe injuries, such as spinal  
3 cord injury, traumatic brain injury, traumatic amputations. Anything that  
4 affects somebody's function. So, if somebody gets in a bad car accident,  
5 or they have some kind of neurological disorder, like multiple sclerosis  
6 or Parkinson's disease, where their function is declining, we're the  
7 specialty that basically deals with that decline and also deals with pain  
8 management.

9 Q What states are you licensed to practice medicine in?

10 A California.

11 Q And when were you licensed?

12 A I was licensed, I think, back in 1986.

13 Q I'd like to talk a little bit about your education. Where did you  
14 go to college?

15 A University of San Francisco.

16 Q And then medical school, where did you go?

17 A I went to Georgetown.

18 Q And did you do an internship?

19 A Yes.

20 Q Where was that?

21 A I did an internal medicine internship at St. Mary's in San  
22 Francisco.

23 Q Okay. How about a residency?

24 A Residency at Stanford.

25 Q What is a residency?

1           A     Residency is, after internship, the physicians specialize in  
2 something. So, I decided to specialize in physical medicine  
3 rehabilitation, and that's where I went for my training at Stanford.

4           Q     And after you finished your residency, did you commence  
5 practice somewhere?

6           A     Yes.

7           Q     Where did you start your practice?

8           A     I started at the hospital that I'm practicing now. It's called  
9 Kentfield Rehabilitation and Specialty Hospital. It's in Marin County.  
10 And I started there right after I finished residency in 1989. I've been  
11 there for 30 years.

12          Q     And what is your title, if any, at the hospital?

13          A     I'm vice chief of staff at the hospital. I'm the medical director  
14 of the spinal cord injury program and the rehabilitation program. I also  
15 developed a program where it deals with individuals that are stuck on  
16 ventilators, and I try to figure out exactly why they can't get off these  
17 breathing machines. So, I do electro diagnostic studies. I do  
18 fluoroscopic studies. I look at their neuromuscular system to try to  
19 figure out why somebody can't wean off the ventilator.

20          Q     And do you have any certifications in any specialties?

21          A     Yes.

22          Q     Could you explain what those are?

23          A     I'm a certified life care planner. And I'm also certified in  
24 wound care.

25          Q     And are you board certified in any field?

1 A Yes.

2 Q In what field?

3 A In physical medicine and rehabilitation.

4 Q Could you tell us what it means to be board certified?

5 A You have to successfully complete your residency program.

6 Then for our certification, you had to do and pass a written examination,  
7 and then a year after practice, you have to pass an oral examination. So,  
8 I've been certified since 1990.

9 Q Have you prepared any publications regarding physical  
10 medicine and rehabilitation?

11 A Publication in wound care. I've got a paper that's pending  
12 publication. It has to do with diaphragmatic function and getting  
13 somebody off the ventilator.

14 Q You mentioned fluoroscopy; what is that?

15 A A fluoroscopy is like real time x-rays. So, fluoroscopy -- let's  
16 say I wanted to see how diaphragms are working. So, under a  
17 fluoroscopy, I could ask somebody to take a deep breath, inhale and  
18 exhale, and I could actually see the diaphragms moving. It's like a chest  
19 x-ray but it's real time. I also do a lot of swallow studies where  
20 individuals particularly with tracheostomy tubes have difficulty  
21 swallowing. And with fluoroscopy and some barium, I could see exactly  
22 when they're swallowing whether it's going into their windpipe or it's  
23 going into their esophagus into the stomach. So, it's basically real time  
24 x-ray.

25 Q You mentioned a life care plan, could you explain to us what



1 a life care plan is?

2 A So, a life care plan is basically a document that looks at the  
3 individual's problems, diagnosis, problem lists. It has to do with looking  
4 at their past medical history, doing a physical examination, finding out  
5 what the residual problems are, and then addressing those problems  
6 throughout their lifetime. It's looking at trying to prevent as much future  
7 injury as possible, have the person as functional as possible and as pain  
8 free as possible throughout their lifetime.

9 So, it's basically, from my perspective, I'm a rehabilitation doctor,  
10 it's looking at what the deficits are, and what can I do about them. And  
11 typically what happens as you get older with those type of deficits and  
12 what kind of additional help does somebody need as they get older.

13 Q How many life care plans have you prepared, Dr. Barchuk, in  
14 your career?

15 A Over a thousand.

16 Q And have you testified in court regarding life care plans?

17 A Yes.

18 Q About how many times?

19 A Over a hundred times.

20 Q And in the course of your medical practice, do you treat  
21 patients that have the same or similar conditions that Ms. Farris has?

22 A Yes.

23 Q How do you divide your time in terms of dealing with private  
24 patients and your work doing life care plans, is there a percentage?

25 A It's about 70 percent patient care and about 30 percent I

1 dedicate to life care plans.

2 MR. HAND: So, Your Honor, at this time we'd move to  
3 qualify Dr. Barchuk.

4 THE COURT: Dr. Barchuk, you'd like him to offer his  
5 opinions?

6 MR. HAND: Yes.

7 THE COURT: He may offer his opinions. Yes.

8 MR. HAND: Thank you.

9 BY MR. HAND:

10 Q Dr. Barchuk, are you being compensated for your time away  
11 from your office?

12 A Yes.

13 Q How much are you being paid?

14 A Because it's taken a full day, it's \$8,000.

15 Q Could you explain to us the steps involved in doing a life care  
16 plan, just briefly. What's the first thing you do to prepare a life care  
17 plan?

18 A I usually ask for medical records. I'll do a medical record  
19 review. Then I ask the individuals to fill out a questionnaire form. It has  
20 to do with where do they live, what kind of medications are they taking,  
21 what kind of complaints do they have, what kind of equipment do they  
22 have, how much care are they receiving at home. So, they fill out that  
23 questionnaire form, and then I review that questionnaire form when I do  
24 the examination.

25 In Ms. Farris' case, I saw her March 20th of 2018. And then, I pretty

1 much put together a problem list, and then I, individually, look at the  
2 problems that the person continues to have, and what, from my  
3 perspective, are they going to need in the future to address those  
4 problems.

5 Q So, when you interviewed Mrs. Farris, did you obtain a  
6 history?

7 A Yes.

8 Q Can you tell us what history you obtained?

9 A Well, I basically, asked her, you know, exactly what  
10 happened. I had the medical records, so I pretty much knew what  
11 happened with her. But I asked her, specifically, what kind of symptoms  
12 does she currently have. And she reviewed what kind of symptoms.  
13 And I asked, okay, how do these symptoms impact on your daily life.  
14 And then I went into prior to her injury, how was her functional status.  
15 Was she able to walk, was she able to drive a car, was she able to work,  
16 things like that. So, I review what her functional status was before, and  
17 what her current functional status is. Specifically to address these life  
18 care plan needs in the future.

19 Q Dr. Barchuk, referring to Mrs. Farris' functional status prior to  
20 the injury, did you make -- you asked her questions, for example, about  
21 her ability to bathe and shower herself, questions like that?

22 A Yes.

23 Q And in terms of her status prior to the July 15th admission at  
24 St. Rose, was she able to groom and take care of herself?

25 A Yes.

1 Q Was she able to dress herself?

2 A Yes.

3 Q Was she able to bathe and shower herself?

4 A Yes.

5 Q Was she able to go to the toilet on her own?

6 A Yes.

7 Q Was she able to stand from a seating position by herself?

8 A Yes.

9 Q Was there any problems with bed mobility, getting in and out  
10 of bed?

11 A No.

12 Q Was there any indication that she had any problems with  
13 walking or any aspect of ambulation?

14 A No.

15 Q And then when you examined her, you interviewed her  
16 regarding her current functional status, is that right?

17 A Yes.

18 Q Okay. In terms of grooming and hygiene, what was her  
19 status when you interviewed her?

20 A She said that she required some assistance. Particularly,  
21 now she's a very high fall risk so when she would take a shower,  
22 somebody would have to be at home to make sure she doesn't fall.  
23 Transferring in and out of the shower, somebody would supervise her.  
24 She was able to dress her upper body, but had some difficulty with  
25 shoes and socks, bending over because of the paralysis in her legs. And

1 she required assistance -- she wasn't able to drive with her feet anymore,  
2 so she required transportation services. She required help with  
3 housecleaning, with yard work. So, any kind of physical activities  
4 around the house, laundry, cooking, shopping, things like that, she  
5 required assistance with.

6 Q And you reviewed the medical records?

7 A Yes.

8 Q Did any of the medical providers indicate that Mrs. Farris had  
9 any difficulty walking prior to the July 15 hospitalization?

10 A No.

11 Q Did any of the medical records that you reviewed for her care  
12 prior to July 2015 indicate that she had any balance deficits?

13 A No.

14 Q So, did she have some medical issues prior to the July 15  
15 hospitalization?

16 A Yes.

17 Q And what were those?

18 A She had a history of diabetes. She was taking insulin and an  
19 oral medication for that. She had a history of elevated blood pressure,  
20 hypertension. She had a history of hyperlipidemia, meaning increased  
21 cholesterol levels. She had a history of lipoma in her abdominal wall  
22 that massed that ultimately required surgical intervention. She had  
23 some gastroesophageal reflux disease. Some problems with heartburn.  
24 She did have a history of some intermittent anxiety, as well as  
25 depression in the past. And her primary care physician was also treating

1 her. She had complaints of burning in her feet. So, she was treating her  
2 for peripheral neuropathy. She was taking something called Gabapentin,  
3 which is a medication, and she was taking Cymbalta, which is a  
4 medication for the burning in the feet.

5 Q What was the level of those medications? Was it high  
6 dosage, low dosage, some other dosage?

7 A I know she was taking basically 600 milligrams of Gabapentin  
8 twice a day, which is pretty much the dosage that you initiate the person  
9 with. It's on the low side. And then she was also taking Cymbalta. That  
10 was also --dosage was on the low side.

11 Q Now, Dr. Barchuk, those medical issues she had, such as the  
12 diabetes, high blood pressure, does your life care plan recommendations  
13 call for reimbursement for those issues?

14 A No.

15 Q So, they're excluded from your plan to care for those  
16 conditions?

17 A Correct.

18 Q Okay. And does your life care plan recommendations only  
19 call for conditions related from the July 15th hospitalization?

20 A Yes.

21 Q So, did you do a physical exam on Titina Farris?

22 A Yes.

23 Q And what kind of exam did you do?

24 A I examined her from her head all the way down to her feet. I  
25 looked at her eyes, ears, nose, throat, listened to her lungs, listened to

1 her heart, listened to her abdomen. I did range of motion testing of her  
2 neck, her back, upper extremities, lower extremities. I did a neurological  
3 examination. I checked her strength, I checked her ability to feel, her  
4 sensation. I checked her reflexes.

5 And then I did a functional evaluation. I had her get up. I had her  
6 walk. I had her walk with a walker, and I had her try to walk without a  
7 walker. I looked at her balance. So, it was a fairly comprehensive  
8 physical examination where I pretty much went through her cardiac  
9 status, her pulmonary status, and her neurological status.

10 Q Dr. Barchuk, did you test Mrs. Farris' lower extremities, her  
11 legs and feet?

12 A Yes.

13 Q How did you do that?

14 A Through manual muscle testing. I asked her to try to bend  
15 her knees up, try to extend her knees, try to flex her knees, try to bring  
16 her ankles up, try to bring her ankles down, try to bring her toes up, try  
17 to curl her toes down. And then I checked sensation. So, I checked  
18 position sense, meaning I moved her toes and ankles up and down and  
19 asked can you feel me moving it, am I pushing it up or down. I also  
20 checked temperature sensation, was she able to feel temperature. Also,  
21 light touch. Was she able to feel light touch.

22 Q What were your findings in regard to those tests?

23 A So, she basically did not have any significant neurological  
24 function below the knees. So, she wasn't able to move her feet, she  
25 wasn't able to move her toes. She had some weakness also above her

1 knees. But she was able to flex and extend her hips, but they were weak,  
2 but they weren't completely paralyzed. So, everything below the knee  
3 pretty much there was loss of sensation and a loss of movement.

4 Q And what do you attribute the medical cause of that loss of  
5 sensation, loss of function?

6 A Basically, severe nerve damage.

7 Q Okay. Caused by what?

8 A In her situation, it was something called critical illness  
9 neuropathy.

10 Q And what is that?

11 A When somebody gets very sick at the hospital, particularly if  
12 they're septic, they're on ventilators, they require antibiotics, when  
13 they're really sick, you get something called SIRS, systemic  
14 inflammatory response syndrome. So, you have this horrible  
15 inflammation throughout your body, and you're septic, basically. So,  
16 you need antibiotics, you need something to maintain your blood  
17 pressure. You could require blood transfusions. And this inflammatory  
18 process very frequently will affect nerve function.

19 So, you get inflammation of the nerves, and you get nerve  
20 damage. It's estimated individuals with sepsis that have been  
21 hospitalized, up to 70 to 80 percent will actually get this critical illness  
22 neuropathy, or myopathy. It's a very common condition. I have to  
23 diagnose it very frequently when I'm working people up and when  
24 they're stuck on the ventilator.

25 Oftentimes they're stuck on the ventilator because their nerves



1 were affected, and they have this critical illness neuropathy. So, it's a  
2 fairly common condition, particularly when there's sepsis and there's  
3 inflammatory response, and basically, you get nerve damage from it.

4 Q Dr., did you review a EMG nerve conduction study of Titina  
5 Farris?

6 A Yes.

7 Q Do you know when that was done?

8 A That was done September 14th of 2015.

9 Q What is an EMG, first of all?

10 A So, EMG is a computer that checks nerve and muscle  
11 function. I do -- I've done thousands of EMGs. So, typically what  
12 happens is, let's see an orthopedic surgeon or a neurologist is trying to  
13 figure out why does somebody have certain symptoms, so they send the  
14 person to me. And with the EMG, I try to figure out are the symptoms  
15 coming from the neck, are they coming from the back, are they coming  
16 from the nerves that go all the way to the feet.

17 So, it's a way of objectifying somebody's subjective complaints. In  
18 other words, let's say burning in the feet. You're trying to figure out,  
19 okay, where is the burning in the feet coming from. That's where the  
20 EMG is very helpful.

21 Q Okay. What's a nerve conduction test?

22 A So, a nerve conduction test, it's part of the EMG. EMG is  
23 electromyography. It's like an EKG of the muscles. So, EKG is  
24 electrocardiography, EMG is electromyography. So, it's looking at your  
25 electrical activity produced by your nerves and muscles. So, it's

1 basically like taking an EKG of the muscles. Nerve conduction studies is  
2 when you're providing an electrical impulse over a nerve and you see  
3 how that nerve conducts. And there's normal responses and there's  
4 abnormal responses. So, you're basically providing electricity to the  
5 nerve. You're seeing how it conducts down the nerve and you're looking  
6 at the response of the nerve in the muscle.

7 Q And what was the results of the EMG nerve conduction done  
8 in September 15 on Ms. Farris, Mrs. Farris?

9 A So, the nerve conduction showed that, basically, there was  
10 no nerve response below the knees. The EMG, that's the needle part, it  
11 showed that there was a lot of denervation, a lot of nerve damage, and it  
12 was below the knee. And it was Dr. Chang that did the EMG. They also  
13 tested above the knee. So, she actually had nerve damage below the  
14 knee and above the knee. And they're called positive sharp waves,  
15 fibrillation potentials. It's -- you're looking at help signals that the  
16 nerves provide. When they're being damaged, they send out these help  
17 signals, and that's basically what you're looking for.

18 Q So, this lack of nerve function, what is the practical effect on  
19 her ability to use her feet and legs because of that?

20 A That's where you get the impairment because if the nerves  
21 aren't working, you basically can't contract the muscles. So, it impairs  
22 your ability to, in her situation, get up and walk.

23 Q All right. This condition she has, is it permanent?

24 A Hers is permanent, yes.

25 Q Is there any therapy, medications, treatment that could help

1 her regain function?

2       A     The nerve damage is permanent. However, like in her  
3 situation, she has braces for her feet to try to prevent her from tripping  
4 because her feet flop down when she walks, her toes go down so you  
5 could easily trip. So, there's assistive devices that you could use to help  
6 walk. She walks with a walker because her balance is completely off.  
7 She can't feel her feet. Basically, if she closes her eyes and tries to walk,  
8 she won't be able to know where her feet are at all. So, she actually has  
9 to look down to see where her feet are. And then she has to use a walker  
10 to prevent her from falling.

11       So, there's certain assistive devices. And in her situation, some of  
12 the things that I recommend in the future, such as physical therapy, is  
13 trying to have her maintain what she has now, as long as possible.  
14 Because as she gets older, she's going to start losing more and more  
15 function. So, some of the interventions are, basically, to maintain what  
16 she has right now.

17       Q     Did you observe and test Mrs. Farris regarding her ability to  
18 stand without assistance?

19       A     Yes.

20       Q     What was your observation of her ability to stand?

21       A     It's very difficult for her to stand up. She basically has to use  
22 a walker. When you stand, you have to extend all the muscles in your  
23 legs so you're using your gluteus muscles, your hamstring muscles, your  
24 quadriceps, and it's difficult for her to stand up, particularly if she's been  
25 sitting for a period of time.

1 Q And how about her ability to get from a sitting position to a  
2 standing position, did you observe that?

3 A Yes. That's where it's difficult for her.

4 Q Okay. How about is her ability to walk unassisted, can she  
5 do that, from your observation?

6 A When she uses a walker, she is able to walk, and she doesn't  
7 walk around the house. She's at high fall risk, and when I saw her, she  
8 said she fell twice. So, basically, it's supervised walking with an  
9 assistive device, in her case, it's a walker.

10 Q And what are her residual problems as a result of this  
11 hospitalization in July 15, in a summary, what are her problems?

12 A So, weakness in the legs, and basically, paralysis below the  
13 knees, easy fatigue ability. She has some reactive low back pain.  
14 Because whenever your walking isn't quite normal, it can affect your  
15 back, it could affect your neck. She complains of some numbness in her  
16 hands. And that's very common when you're using a walker because  
17 you compress your nerves that go into your hand. In her case, it's the  
18 median nerve. You've probably heard of carpal tunnel syndrome, that's  
19 the median nerve. She has some numbness in her hands. And she has  
20 some shoulder pain, particularly on the left side. And she had a history  
21 of some shoulder issues before July of 2015, and she did require, as far  
22 as I know, two injections of cortisone in her shoulder. So, she probably  
23 has some shoulder issues with her rotator cuff.

24 But when you're using a walker, you put weight now over your  
25 wrists, your elbows and your shoulders. So, now it's exacerbated.

1    Whatever problems she was having before in her shoulders, they're  
2    made worse by using the walker.

3            Q     And did you come to an opinion, to a reasonable degree of  
4    medical probability, as to whether Mrs. Farris will need medical care in  
5    the future.

6            A     Yes.

7            Q     Okay. And did you prepare a worksheet of the required  
8    medical care and associated therapy she needs?

9            A     Yes.

10          Q     So did you break it down into categories?

11          A     Yes.

12          Q     So do you have a category called medical follow-up?

13          A     Yes.

14          Q     Could you tell us what does she need in terms of medical  
15    follow-up and how often does she need it?

16          A     So she needs to see somebody in my field, the physical  
17    medicine rehabilitation specialist, also pain specialist. So I think she  
18    should go at least four times per year. Because you have to prescribe  
19    medications, you have to adjust medications, you have to prescribe  
20    physical therapy, or occupational therapy, or do EMG studies. So every  
21    few months she should see a PMR specialist.

22                She'll need to see her primary care physician because some of  
23    these medications that she's on could actually affect her heart, her liver,  
24    her kidneys, so the primary care doctor needs to monitor that.

25                I said that she probably needs about five to ten visits with an

1 orthopedic surgeon in the future. And that's basically for her shoulder  
2 issues, made worse by use of the walker. So I put down five to ten in  
3 lifetime.

4 I put five to ten visits with a hand surgeon. And that's because  
5 throughout her life she's going to have to be using the wheelchair or a  
6 walker to get around. That puts a lot of repetitive stress to the wrists,  
7 and the hand surgeon would be the one to decompress her carpal  
8 tunnel. On my physical examination she was already having some  
9 difficulty feeling in these three fingers, and that's typically carpal tunnel  
10 syndrome. So the hand surgeon would address that.

11 I put in a psychologist and psychiatrist, one session per month for  
12 three to six months. Then anywhere from zero to eight sessions per  
13 year. And oftentimes in life you're planning -- there's a range that's put  
14 on because you have to anticipate what the person's going to need in the  
15 future. So oftentimes there's a range put on. Best case scenario, she  
16 won't need any follow-up. However, she probably will require some  
17 follow-up in the future. And that's because the depression and anxiety,  
18 she has trouble sleeping because of this chronic pain. Because of her  
19 functional decline, she can't do what she used to do in the past. So  
20 that's exacerbated her depression and anxiety.

21 I put a podiatrist in. And the podiatrist, when I saw her she had  
22 skin breakdown over the left heel, which is very common to get these  
23 skin issues when you're paralyzed, and you can't feel anything. It's very  
24 easy to get trauma to your feet. So a podiatrist needs to follow that.  
25 Also a podiatrist is good to monitor how her toenails are doing, make

1 sure that things aren't ingrown. A podiatrist also can help with her foot  
2 braces, oftentimes these foot braces can cause skin breakdown in and of  
3 themselves. So basically the podiatrist is there to monitor her feet. And  
4 I put six to twelve times a year for a year, that was because when I saw  
5 her, she had that wound. And then four to six times per year in follow-  
6 up.

7 And a lot of this is preventative. You want to prevent skin  
8 breakdown. You want to prevent things from happening, particularly  
9 with the feet, if you can't feel them. Because if something does happen,  
10 if you do get an infection in the feet, the fact that you can't feel, and the  
11 fact that you don't have a normal nerve supply, it's very difficult to treat  
12 infections. The feet can swell, particularly towards the end of the day, so  
13 infections are very difficult to treat. So it's very important -- a lot of this  
14 plan is to make sure that things don't happen in the future. And it's also  
15 to address the things that are happening.

16 A dietitian, I put in once a year. It's more difficult for her to  
17 exercise now. She has diabetes. You know, with diabetes, particularly  
18 Type 2 diabetes, you want to have a weight loss program and again,  
19 when it's difficult to walk, it's difficult to exercise. That's one of the  
20 things I put in is a pool therapy program for exercise. So a dietitian  
21 would be very helpful.

22 Q Did you make recommendations to necessary therapies?

23 A Therapies. So she'll need intermittent physical therapy  
24 throughout her life. And that's to address exacerbations -- we're talking  
25 about shoulder problems; wrist problems; as she gets older, she's going

1 to get weaker, so the physical therapist can review her palm exercise  
2 program; back problems, they could deal with back issues. So it's  
3 basically conservative management of her problems, instead of giving  
4 her, let's say, more pain medications.

5 If she was having back pain, I personally would send her to a  
6 physical therapist, have her do therapy, try to get her back pain better,  
7 instead of prescribing more pain medications.

8 So she'll need physical therapy in the future. I put an occupational  
9 therapy in. Occupational therapy has nothing to do with work.  
10 Occupational therapy has to do with your ability to dress yourself and  
11 also equipment, such as, a wheelchair, or any kind of bathroom  
12 modifications. So occupational therapists work with activities of daily  
13 living, equipment, and also hand therapy.

14 So because of her symptoms in the hand, and because she's using  
15 a walker, a hand therapist can address her carpal tunnel syndrome. You  
16 don't have to do decompression right away. You can do some injections  
17 to try to get the inflammation down. And then you go through hand  
18 therapy. So that's why I put occupational therapy.

19 I put in massage therapy and massage therapy very helpful for  
20 nerve pain. Particularly whenever you have nerve pain, you have trouble  
21 with swelling. And if you're in a wheelchair towards the end of the day  
22 your feet tend to swell a lot. So massage therapy, retrograde massage  
23 therapy, can be very helpful. Also to address your back pain, massage  
24 therapy helpful.

25 I put in acupuncture therapy. She's tried acupuncture therapy a



1 couple of times, she said she felt it was helpful. And acupuncture  
2 therapy has been shown to help with this chronic nerve pain. And again,  
3 it's putting -- it's providing her with treatment instead of taking more  
4 pain medications. It's trying to address her chronic pain issues through  
5 massage, through acupuncture therapies, and physical therapy.

6 And then I put back then she required a wound clinic because she  
7 had the skin breakdown which, apparently, that's gotten better. And she  
8 doesn't need that anymore.

9 Q You put down emergency room visits. You ordered it one  
10 time a year. Why is that?

11 A Emergency room visits, because she's at high fall risk, and  
12 she also has days that she's in severe pain. So occasionally she'll  
13 probably have to go to the emergency room. I put zero to one time per  
14 year. So sometimes she won't have to do it, but other times she will  
15 have to use it the emergency room.

16 Q Dr. Barchuk, did you make an assessment as to necessary  
17 procedures she will have to undergo in the future?

18 A Yes.

19 Q Okay. Can you explain that to us?

20 A So the procedures, I put in joint injections and trigger point  
21 injections, and that's something that the pain management doctor can  
22 do. Again, instead of giving her more pain medications you could do  
23 some injections. For carpal tunnel you could do some steroid injections  
24 for her left shoulder. You could do some steroid injections.

25 I put in electrodiagnostic studies. If she was my patient, I would do

1 an EMG of her legs and EMG of her hands to see the degree of her carpal  
2 tunnel syndrome. Because the EMG helps you to quantitate the amount  
3 of nerve damage that's going on.

4 I put in arthroscopy, particularly at the left shoulder. Because at  
5 some point that's just going to get worse. If she's putting -- pushing a  
6 wheelchair, she's using a walker, that shoulder, as she gets older, it's  
7 going to get worse. So probably at some point an orthopedic doctor is  
8 going to have to go in there and clean things up.

9 I put an MRI and x-rays of the shoulder, low back. When you have  
10 nerve damage, the nerves supply electricity to your skin and to your  
11 muscles and to your bones. So whenever you have nerve damage, your  
12 skin gets thinner, your muscles atrophy and your bones atrophy. So  
13 you're at higher risk for breaking things, and you're higher risk for  
14 developing arthritis.

15 So because she has this severe nerve damage issue, if she was to  
16 fall, she would be at higher risk for breaking something, particularly  
17 below her knee.

18 So x-rays would be important to monitor that. Bone density  
19 studies are good to monitor that. Also MRI scans. MRI scans basically if,  
20 let's say, her left shoulder gets worse. MRI I could actually see inside the  
21 left shoulder to see what's going on.

22 Same thing with lower extremity pain. She may not even feel -- if  
23 she tripped and fell, she may not even feel that she has a fracture. So  
24 then you'd have to get x-rays or MRI scans to evaluate her pain  
25 complaints.

1           Q     Dr. Barchuk, did you make an assessment as to necessary  
2 equipment that would be required for Mrs. Farris?

3           A     Yes.

4           Q     Can you explain that to us?

5           A     So she has a manual wheelchair right now. She could push  
6 it for very short distances. And if she was to go on an incline or decline,  
7 that puts a lot of pressure on your wrists and also of your shoulder. So  
8 not only does she need a manual wheelchair, she really should have an  
9 electric wheelchair or scooter to help her get around. And that prevents  
10 some of the wear and tear, particularly of the wrist and shoulders.

11           She requires the walker. She also has a cane at home, but she's  
12 basically using the walker at home. A reacher I put down. If she was to  
13 drop something, with a reacher it's easier to pick it up. It could prevent  
14 falls.

15           Eventually her home should be wheelchair accessible, because as  
16 she gets older -- nerves deteriorate through our lifetime. If you have a  
17 completely normal complement of nerves, even as you get older, you  
18 start losing nerves. But if, say, you have nerve injury, as you get older,  
19 you lose nerves a lot quicker. So functionally she's going to age a lot  
20 quicker than somebody with quote/unquote normal nerves at her age.

21           And particularly also, because of the extent of the injury, and the  
22 fact that she had some injury to the nerves above the knee, her ability to  
23 walk will get worse as she gets older.

24           Now, she needs foot braces, and that's because of her foot drop.  
25 She needs heel protector pads when she's laying in bed because the

1 heels you get skin breakdown very easily in the heel area.

2 I put in a Hoyer lift. A Hoyer lift lasts one to three years of her  
3 lifetime, so this is in her seventies. It's going to get much more difficult  
4 to transfer, and it will be much more difficult for an attendant to help her  
5 transfer. And that's where a Hoyer lift come in.

6 If you want to go from bed to wheelchair, you just put a sling  
7 under the person, and it's like a hoist. And you hoist them up, and you  
8 transfer them to the wheelchair. And it prevents injury to the person,  
9 also prevents injury to the attendant that's taking care of the person.

10 And I think that's about it as far as equipment.

11 Q Were there any special bathroom accommodations she  
12 needs?

13 A In the bathroom: shower hose, shower chair, she really  
14 should -- will need to continue to sit in the bathroom. Standing in the  
15 bathroom is very high risk for falling. So she really should be sitting  
16 when she's taking a shower.

17 Q How about a cane? Does she need any special cane or  
18 anything like that?

19 A She has a cane, but at this point she really should be using a  
20 walker.

21 Q So is there a thing or a term used in physical medicine we  
22 have activities of daily living?

23 A Yes.

24 Q Can you explain what that is?

25 A So activities of daily living is basically what you do

1 throughout the day. Dressing, grooming, hygiene, upper body dressing,  
2 and lower body dressing.

3 Q Did you make an assessment as to whether Mrs. Farris  
4 requires an attendant or assistant to help her with her activities of daily  
5 living?

6 A She does require assistance, yes.

7 Q Could you explain what she needs currently in terms of  
8 assistance by an attendant currently? What would she need now?

9 A So needs some assistance with the dressing, grooming,  
10 hygiene, make sure she doesn't fall when she's taking a shower; needs  
11 assistance with just chore services, household chore services -- laundry,  
12 cooking, cleaning, any kind of gardening services, home maintenance  
13 type of services.

14 So all these things she can't do right now. So she needs  
15 attendant's services and chore services.

16 Q Would that amount of attendant require time increase as she  
17 ages?

18 A Yes.

19 Q Okay. Can you explain that to us?

20 A Because as she ages, neurologically she's going to become  
21 more and more disabled. And she will basically be a wheelchair-bound  
22 later on in life. So she probably won't be able to walk anymore as she  
23 gets older. And that's, again, because she's had very significant nerve  
24 damage below the knee, she has some nerve damage above the knee  
25 also. And as she gets older, it's going to become more and more

1 difficult for her to walk. So she'll be more and more dependent on  
2 wheelchair mobility.

3 So in that case you need modifications to the house to make sure  
4 that she can access the bathroom. . Make sure she can get in and out of  
5 the house. Make sure she has ramps so she can get in and out of the  
6 house. That's where the occupation therapist comes in. The occupation  
7 therapist does a home valuation. They look at the house, look at the  
8 architecture, and then they make recommendations regarding, you  
9 know, what can be done to help her.

10 Q So currently you say she requires four to six hours attendant  
11 assistance currently?

12 A Yes.

13 Q And then you state increase to six to eight hours per day, five  
14 to ten years?

15 A Yes.

16 Q And then increase to eight to twelve hours per day, in ten to  
17 fifteen years?

18 A Yes.

19 Q And also increase to twelve to twenty-four hours per day in  
20 fifteen to twenty years?

21 A Yes.

22 Q And you have a category home maintenance two to four  
23 hours per month. Is that what you just referred to?

24 A Yes.

25 Q Okay. And then case management. What is that?

1           A     Case management is an individual that helps coordinate  
2 medical care. When somebody has complex medical issues, it's always  
3 good for a case manager. Oftentimes it's a nurse that knows what  
4 appointments you have to go to, what kind of equipment you need, what  
5 kind of therapies you need, what kind of interventions you need. So they  
6 help coordinate the care.

7           I put about four to eight hours per year case manager that  
8 overlooks her case, makes sure that she's getting what she needs,

9           Q     And did you make a determination of physical restrictions  
10 she has? In other words, things she shouldn't do or can't do?

11          A     Yes.

12          Q     Could you explain that?

13          A     So basically anything that involves higher balance activities,  
14 because she's at increased risk for falling. She really can't lift anything  
15 because she uses a walker to walk, so I put lifting less than three pounds.  
16 She shouldn't be lifting anything, carrying anything, squatting, kneeling.  
17 She basically would have a lot of difficulty getting up from the ground, if  
18 she were to kneel down.

19                So it's basically bending, twisting, pushing, pulling, squatting,  
20 kneeling, not lifting anything heavy. No prolonged walking, without  
21 somebody being there, without use of a walker; and no prolonged  
22 standing, because that will increase her chance of falling. And being  
23 able to change positions frequently.

24          Q     I think you already mentioned home modifications, the  
25 wheelchair accessible home in five to ten years?

1           A     Yes.

2           Q     Why is that necessary?

3           A     Because she's going to be more and more wheelchair  
4 dependent as she gets older; and it's going to be more and more difficult  
5 to access certain things. One of the biggest problems that I see in my  
6 profession is lots of stairs to get inside the house; master bedroom on  
7 the second floor, for example, and not being able to access a bathroom.  
8 Bathrooms are typically built fairly narrow, so it's hard to get a  
9 wheelchair in there, and oftentimes you can't access the sink, you can't  
10 access the shower.

11                 So in her situation, wheelchair accessible home is basically  
12 preventative. It's to prevent her from falling. It's to prevent her from  
13 injuring herself. And it's to allow her to live in the safest possible  
14 environment.

15           Q     Now, in your assessments as a lifecare planner and physical  
16 medicine and rehabilitation physician, do you deal with the concept of  
17 life expectancy?

18           A     Yes.

19           Q     Okay. Are there certain government tables that put out life  
20 expectancies for people?

21           A     Yes.

22           Q     Okay. How does that work? Can you explain that?

23           A     The government puts out national vital statistics on a yearly  
24 basis. And it looks at life expectancies of males, females. It looks at  
25 what state you're living in. So it breaks down gender, race, and where



1 you're living as far as life expectancy. So usually you'll go to these  
2 tables to estimate somebody's life expectancy.

3 Q And did you make an assessment of her life expectancy  
4 whether it's shorter, longer, the same?

5 A So I looked specifically from the foot drop perspective and I  
6 said that if she gets appropriate medical care, like I've outlined in my  
7 lifecare plan, she should basically live a normal life expectancy.

8 What I did also say that she does have a history of diabetes,  
9 hypertension, hyperlipidemia, and that's something that an internal  
10 medicine doctor really needs to address with regard to life expectancy. I  
11 just looked specifically at the nerve damage in her legs.

12 Q So in order to -- you've heard -- you've used the term critical  
13 illness polyneuropathy; is that correct?

14 A Yes.

15 Q In terms of diabetic neuropathy, how is that diagnosed? Is  
16 there testing that's done? Can you explain that?

17 A So typically what I'm asked, either by primary care  
18 physicians or neurologists, if somebody's having, let's say, burning in  
19 the feet, they'll send them to me, and I do an EMG test. Because burning  
20 in the feet can be caused from a lot of different causes.

21 So they'll send them to me, I'll take a history. I do the test, and  
22 then I try to figure out exactly where the burning is coming from. Is it  
23 coming from the back? Is it coming from behind the knee? On the side  
24 of the knee? Is it coming from the ankle are? Or is it actually coming  
25 from the feet?

1 Q So what is the difference between diabetic neuropathy and  
2 critical illness polyneuropathy?

3 A Well, diabetic neuropathy, the biggest complaint is  
4 numbness, burning and tingling in the feet and also the tips of the  
5 fingers. So that's why it's called peripheral neuropathy, it has to do with  
6 the outermost part of the nerve. And your toes are basically enervated  
7 by your sciatic nerve. Sciatic nerve starts from your back and goes all  
8 the way down your legs into the toes.

9 So what happens in diabetic peripheral neuropathy, those nerves  
10 start to degenerate. And you start feeling some numbness and tingling  
11 and some burning in the feet.

12 Q Does that affect muscle function?

13 A No, typically it's a sensory neuropathy. So in her situation, it  
14 was -- it's basically a sensory neuropathy.

15 Q Do you have patients, elderly patients who have diabetic  
16 neuropathy?

17 A Yes.

18 Q Are some of those patients you have mobile, fully  
19 ambulatory?

20 A Yes.

21 Q And how old are they?

22 A Oh, I see people in their eighties, sometimes nineties.

23 Q So in terms of your lifecare plan have we discussed  
24 everything you believe that Mrs. Farris requires going on into the future?

25 A Yes. The only thing, I didn't put neurology in here. But I

1 would defer to a neurologist as far as follow-up.

2 MR. HAND: Thank you. Pass the witness.

3 THE COURT: Cross-examination, Counsel?

4 MR. DOYLE: Thank you.

5 CROSS-EXAMINATION

6 BY MR. DOYLE:

7 Q Good morning, Doctor.

8 A Morning.

9 Q You practice in Marin County, California?

10 A Yes.

11 Q Now, Mr. Hand asked you some questions about the  
12 medical-legal work that you do, and I think you told us that that takes up  
13 about thirty percent of your professional time?

14 A Yes.

15 Q And of the medical-legal work that you do is about eighty to  
16 ninety percent on behalf of plaintiffs in personal injury cases?

17 A Yes.

18 Q And in terms of your forensic work, you typically are getting  
19 one to two new cases a week?

20 A Yes.

21 Q Now, you were -- you provided us, do you recall, with a case  
22 list, going back to 2014, that lists the different cases and whether you  
23 gave a deposition or testified at trial or at arbitration.

24 A I believe so, yes.

25 Q If you'll -- and by the way, in terms of giving depositions,

1 you've given hundreds of depositions in your capacity as an expert  
2 witness.

3 A Yes.

4 Q Now, there should be a binder behind you on that ledge that  
5 has a tab triple G, GGG.

6 A I don't see a triple G.

7 MR. DOYLE: May I approach, Your Honor?

8 THE COURT: Yes, you may. You're talking about inside the  
9 binder; you're not talking on the outside of the binder.

10 MR. DOYLE: Correct.

11 BY MR. DOYLE:

12 Q Doctor, the ones that are labeled Defendant Bind 2, do you  
13 have that one? Could you hand that to me?

14 Do you have that exhibit, Defendant's triple G in front of you?

15 A Yes.

16 Q And this is --

17 THE COURT: And that's proposed exhibit, correct?

18 MR. DOYLE: Correct. It's a proposed exhibit. Or marked for  
19 identification exhibit.

20 THE COURT: Sure.

21 BY MR. DOYLE:

22 Q This is the case list that you provided to us as part of the  
23 discovery in this case?

24 A Yes.

25 Q All right. And if -- the top page is the list for 2018?

1           A     Yes.

2           Q     And if we were to count, we have 14 depositions and 3 trials  
3 that you testified at in 2018?

4           A     Yes.

5           Q     2017, if you turn the page or two, 20 depositions, and 7 trials  
6 or arbitrations?

7           A     Yes.

8           Q     If you flip to 2016, 28 depositions and 7 trials, if we count  
9 them?

10          A     Yes.

11          Q     If you go to 2015, 16 depositions and 9 trials?

12          A     Yes.

13          Q     And if you go to 2014, we have 30 depositions, and 15 trials  
14 or arbitrations.

15          A     Yes.

16          Q     How long have you been doing this sort of work, as a  
17 medical-legal expert witness?

18          A     Over twenty years.

19          Q     Now, in terms of your fee for reviewing materials, seeing  
20 someone such as Mrs. Farris, preparing reports, talking to attorneys,  
21 your hourly fee is \$750 an hour?

22          A     Yes.

23          Q     And if you give a deposition in a case your hourly fee for  
24 deposition is \$1,000 an hour?

25          A     Yes.

1 Q And if you appear at trial, I think you mentioned that this  
2 being a full day, that's \$8,000, correct?

3 A Yes.

4 Q And then you also charge for your travel time, correct?

5 A I probably won't.

6 Q You have a fee schedule that indicates that you charge \$600  
7 an hour for travel time.

8 A Yeah, but I'm being paid for the day today.

9 Q And you do this work with such frequency or regularity that  
10 you have a contract that you have attorneys sign before you agree to  
11 take on a case?

12 A Yes.

13 Q And that contract requires a \$6,000 non-refundable retainer.

14 A Yes.

15 Q And in terms of the work that you've done in this case, as of  
16 the time of your deposition, which was July 25th, 2019, I think you told  
17 us you had spent about 20 hours on this case.

18 A Yes.

19 Q About \$15,000.

20 A Yes.

21 Q And then between your deposition on July 25, 2019 and  
22 coming here today, how many more hours have you spent on this case?

23 A Probably about five hours.

24 Q And you saw Mrs. Farris, I think you told us on March 20,  
25 2018.

1 A Yes.

2 Q And that was just once.

3 A Yes.

4 Q And was her husband present as well?

5 A I believe so, yes.

6 Q As part of that visit, did you or some assistant take videos?

7 A I did.

8 Q Dawn Cook, does that name ring any bells?

9 A Yes.

10 Q Is it your understanding that Dawn Cook then priced your  
11 lifecare plan that you prepared?

12 A Yes.

13 Q And have you worked with Dawn Cook before?

14 A I believe so.

15 Q When you saw Mrs. Farris on March 20, 2018, you had her fill  
16 out a patient questionnaire before you did your evaluation, true?

17 A Yes.

18 Q And you used her patient questionnaire to assist you in  
19 dictating your report, true?

20 A Yes.

21 Q Do you have that questionnaire handy?

22 A No.

23 Q In that questionnaire was Mrs. Farris asked a number of  
24 different questions?

25 A Yes.

1 Q As a result of the questionnaire that she filled out, did you  
2 come to learn that she lives in a one-story house?

3 A Yes.

4 Q An none of the questions asks, please list specific complaints  
5 and symptoms, correct? That's on page 4 of the questionnaire?

6 A Yes.

7 Q And you incorporate what the person writes down in your  
8 report, correct?

9 A Yes.

10 Q And when Mrs. Farris filled out the form and the information  
11 that you incorporated in your report, she indicated pain in legs,  
12 consistent; feet ache; mobility is poor; lower back pain; correct?

13 A Yes.

14 Q You mentioned something about Mrs. Farris not being able  
15 to drive, do you recall that?

16 A Yes.

17 Q Do you know, has she ever had a driver's license?

18 A I don't know.

19 Q Has she ever driven?

20 A I don't know.

21 Q When she filled out the questionnaire, and again, you  
22 incorporated the information into the report that you prepared, you  
23 learned that she had last had physical therapy in 2016, correct?

24 A Yes.

25 Q And she had tried some acupuncture and the last session of



1 acupuncture was back in February 2016, correct?

2 A Yes.

3 Q When she filled out the questionnaire, and again, the  
4 information that you incorporated in your report in terms of upper  
5 extremity dressing, she indicated she did not have any problems with  
6 upper extremity dressing, true?

7 A That's what she wrote down, yes.

8 Q And then she also indicated in this questionnaire, and you  
9 incorporate it in your report, that she did not have any problems feeding  
10 herself.

11 A Correct.

12 Q She indicated she needs some help with showering, true?

13 A Yes.

14 Q She needs some help in putting on clothes and shoes, true?

15 A Yes.

16 Q She needs some help taking care of her feet, correct?

17 A Yes.

18 Q She indicated that, in terms of transfers, prior to her injury  
19 she had no problems, correct?

20 A Correct.

21 Q Transfers currently, she indicated she needs help getting into  
22 a vehicle, correct?

23 A Yes.

24 Q Then, on page 16 of this questionnaire, and again,  
25 information that you incorporated into your report, there's a question:

1 please list all medical issues that you have had prior to this injury,  
2 correct?

3 A Yes.

4 Q And she indicated just two: diabetes and high blood  
5 pressure, correct?

6 A Yes.

7 Q Those were the only two medical issues that she shared with  
8 you that she had prior to July of 2015?

9 A Yes.

10 Q And then, on page 18 of this questionnaire, and again,  
11 something you incorporated into your report, she was asked to list her  
12 current doctors, and the only doctor she listed was Dr. Chaney, correct?

13 A Yes.

14 Q And she indicated that she sees Dr. Chaney once a month.

15 A Yes.

16 Q And she also indicated that the frequency of visits since this  
17 injury with Dr. Chaney has increased, correct?

18 A Yes.

19 A Yes.

20 Q Some or all of those records?

21 A I've seen records since 2014.

22 Q Have you seen any records from Dr. Chaney for 2013, '12, or  
23 going back farther in time?

24 A No.

25 Q In the records that were provided to you, was it your

1 impression that before July of 2013, Mrs. Farris, in fact, was already  
2 seeing Dr. Chaney about once a month?

3 MR. HAND: Objection. Could we approach, Judge?

4 THE COURT: Of course, you may.

5 Madam Court Recorder, could you turn on some lovely white  
6 noise?

7 [Sidebar at 10:17 a.m., ending at 10:18 a.m., not transcribed]

8 THE COURT: We're just going to pause and not talk for a  
9 second while we have two people in the restroom.

10 [Pause]

11 THE COURT: Counsel, would you both like to -- counsel, if I  
12 could ask you both to approach again for a second?

13 [Sidebar at 10:19 a.m., ending at 10:20 a.m., not transcribed]

14 THE COURT: Thank you. Counsel?

15 MR. DOYLE: I'll withdraw the question. Thank you.

16 THE COURT: Since Counsel's withdrawing the question, the  
17 Court need not rule. Thank you very much. Please go forward with your  
18 next question. Appreciate it.

19 BY MR. DOYLE:

20 Q Doctor, in the records from Dr. Chaney that were provided to  
21 you in 2014 and 2015, prior to July of 2015, when you looked at those  
22 records did you form the impression that Mrs. Farris was seeing Dr.  
23 Chaney about once a month for her various medical problems?

24 A I think so, yes.

25 Q And you used the term hyperlipidemia, that's the medical

1 term for increased cholesterol?

2 A Yes.

3 Q And Mrs. Farris was taking medications to treat her increased  
4 cholesterol?

5 A Yes.

6 Q She also had problems with increased triglycerides?

7 A Yes.

8 Q Medications as well to treat that problem?

9 A Yes.

10 Q Dr. Chaney had diagnosed anxiety and depression?

11 A Yes.

12 Q Was Dr. Chaney prescribing any medications for the anxiety  
13 and depression?

14 A I didn't see medication for depression. She was taking a  
15 medicine called Cymbalta, which is actually an antidepressant, but it was  
16 used more for pain.

17 Q And the Cymbalta was being used prior to July of 2015 for  
18 pain associated, in Dr. Chaney's mind, with the peripheral neuropathy,  
19 correct?

20 A Correct.

21 Q And Dr. Chaney was also prescribing Gabapentin because of  
22 her diagnosis of peripheral neuropathy prior to July of 2015, correct?

23 A Yes.

24 Q And are Cymbalta and Gabapentin often used in combination  
25 with one another when treating a diabetic neuropathy?

1           A     They can be, yes.

2           Q     Does the Cymbalta and the Gabapentin treat different  
3 presentations of the pain?

4           A     No, their indication is for nerve pain, but it's a different  
5 mechanism of action. One's an antidepressant, one's an antiseizure  
6 medicine.

7           Q     You also so in the records that were provided to you from Dr.  
8 Chaney, prior to July of 2015, that Mrs. Farris was being prescribed  
9 various pain medications.

10          A     Yes.

11          Q     Those pain medications include, or included, Lortab?

12          A     Yes.

13          Q     Norco?

14          A     Yes.

15          Q     Do you know what she was --

16                MR. DOYLE: -- strike that.

17 BY MR. DOYLE:

18          Q     Do you know why Dr. Chaney was prescribing Lortab for  
19 Mrs. Farris?

20          A     I believe it was for foot pain.

21          Q     Was Dr. Chaney also prescribing both 5 and 7.5 mg Norco for  
22 Mrs. Farris, prior to July 2015?

23          A     Yes.

24          Q     Do you have an understanding why Dr. Chaney was  
25 prescribing the Norco?

1           A     For her feet.

2           Q     Was Dr. Chaney, based upon the records that were provided  
3 to you, prescribing any pain medications for low back pain?

4           A     Well, a lot of these pain medications, they treat generalized  
5 pain, so I believe there was overlap with back pain.

6           Q     You saw in multiple places in the records provided to you  
7 from Dr. Chaney, prior to July 2015, where Dr. Chaney listed a  
8 neuropathy as a -- as part of the past medical history, correct?

9           A     Yes.

10          Q     And you saw Dr. Chaney listing a diabetic neuropathy or  
11 peripheral neuropathy as one of her assessments?

12          A     Yes.

13          Q     An assessment is a medical term commonly used as a  
14 synonym for diagnosis, true?

15          A     Yes.

16          Q     Do you recall seeing Percocet as a pain medication  
17 prescribed to Mrs. Farris prior to July 2015?

18          A     Yes.

19          Q     What is Percocet?

20          A     It's also -- it's a narcotic. It's like Lortab or Vicodin.

21          Q     Do you know what Dr. Chaney was prescribing that particular  
22 medication for?

23          A     I believe it was for her feet.

24          Q     Did Mrs. Farris have a history of chronic back pain prior to  
25 July of 2015?

1           A     I would say intermittent chronic low back pain, yes.

2           Q     Did you notice in the records provided to you by Dr. Chaney  
3 that the diabetes, prior to July of 2015, was often uncontrolled?

4           A     Yes.

5           Q     You were also provided with Dr. Chaney's deposition in this  
6 case?

7           A     Yes.

8           Q     And Dr. Chaney in her deposition confirmed what you  
9 learned in the records that, while she was taking care of Mrs. Farris, prior  
10 to July of 2015, the diabetes was typically uncontrolled?

11          A     Correct.

12          Q     Her blood sugars were very high?

13          A     Yes.

14          Q     Her A1Cs were very high?

15          A     Yes.

16          Q     And in fact, you looked at some of those lab values prior to  
17 July of 2015.

18          A     Yes.

19          Q     Now, you were provided with Dr. Chaney's deposition the  
20 day before your deposition on July 25, 2019, correct?

21          A     Yes.

22          Q     But you had already done all your work and prepared your  
23 report in this case?

24          A     Yes.

25          Q     You were also provided with the depositions of Titina Farris

1 and Patrick Farris on the day before your own deposition.

2 A Yes.

3 Q And you reviewed those as well?

4 A Yes.

5 Q And again, after you had done all your work in this case and  
6 had prepared your report.

7 A Correct.

8 Q In the laboratory values that you looked at that were in Dr.  
9 Chaney's records prior to July of 2015, you found one of the A1C levels  
10 was increased to 12, correct?

11 A Yes.

12 Q With an A1C of 12, you would expect corresponding  
13 elevation of blood sugars, correct?

14 A Yes.

15 Q And with an A1C of 12 you would also expect the  
16 complications of diabetes, correct?

17 A You can, yes.

18 Q Well, if someone has uncontrolled diabetes, as demonstrated  
19 by an A1C of 12, the complications of diabetes can affect all parts or your  
20 entire body, that's what you told us at the deposition.

21 A It can, yes.

22 Q So when someone has uncontrolled diabetes and, say, an  
23 A1C of 12, what parts of the bodies, then, are affected then by that  
24 uncontrolled diabetes?

25 A It could pretty much affect your whole body. Your circulatory



1 system, it could affect your nervous system, your musculoskeletal  
2 system. So diabetes is something that can affect your whole body.

3 Q How does diabetes, uncontrolled diabetes affect your  
4 circulatory system?

5 A Well, after a period of time you're at higher risk for  
6 developing atherosclerotic disease. So narrowing of the arteries.

7 Q And then how does uncontrolled diabetes affect the nervous  
8 system?

9 A You could develop peripheral neuropathy, like we talked  
10 about. That's the usual major complication.

11 Q Would you agree or disagree that if a peripheral neuropathy  
12 becomes serious enough, I can affect motor function?

13 A I would say at end stage. End stage, yes.

14 Q And if -- would you agree or disagree with me that if  
15 uncontrolled diabetes goes on for long enough that it is affected  
16 adversely the sensation in a person's foot, that that change in sensation  
17 or loss of sensation can affect how that person perceives their position in  
18 space?

19 A It can, yes.

20 Q What's that medical term? I forgot. A person's ability to tell  
21 whether they're standing, or leaning, or whatnot, it's --

22 A Proprioception.

23 Q Proprioception?

24 A Proprioception.

25 Q So if someone has uncontrolled diabetes for long enough

1 causing enough sensory problems, that can affect their proprioception,  
2 correct?

3 A It can, yes.

4 Q And if a person is having problems with their proprioception,  
5 that can affect their balance.

6 A It can, yes.

7 Q It can make them unsteady.

8 A It can.

9 Q It can place them at risk for falls.

10 A It can.

11 Q It can place them at high risk for falls?

12 A It can.

13 Q You were asked about your CV and publications on your CV.  
14 Are there any publications on your CV that are pertinent to any issues in  
15 our case?

16 A Pending publication. I submitted a paper where -- with the  
17 respiratory function. Oftentimes I diagnose critical illness neuropathy.  
18 So for the critical illness neuropathy.

19 Q Now, the clinical aspect of the work that you do, the part of  
20 your work taking care of patients, what percentage of those patients  
21 have spinal cord injuries?

22 A I would say probably about 20, 30 percent.

23 Q The patients that you take care of, what percentage of those  
24 have serious traumatic brain injuries?

25 A I'd say probably another 20, 30 percent.

1           Q     So 40 to 60 percent of the patients that you see have spinal  
2 cord injuries or traumatic brain injuries?

3           A     I would say so.

4           Q     And the spinal cord injuries that you see typically are people  
5 with paraplegia or quadriplegia?

6           A     Yes.

7           Q     We would not classify Mrs. Farris as paraplegic, would we?  
8 She is able to get around with a walker.

9           A     Well there's different grades of paraplegia. So there's  
10 complete paraplegia, where you can't move your legs at all, and then  
11 there's incomplete. So she would be incomplete.

12          Q     Would we call her paraparetic rather than paraplegic?

13          A     I think paraparetic would probably be a better term.

14          Q     You were also provided with some records by a podiatrist  
15 that pre-dated July of 2015.

16          A     I remember reading about those records. Some of the  
17 experts, I think neurologist, Dr. Adornato, he talked about podiatry  
18 records from back to 2012. But I looked in preparation for this and I  
19 couldn't find it.

20          Q     Okay. Do you recall in the materials that were provided to  
21 you that Mrs. Farris had seen a podiatrist on some number of occasions  
22 prior to July 2015 who had diagnosed her with a diabetic neuropathy?

23          A     Yes.

24          Q     So we can agree that prior to July of 2015, Mrs. Farris did  
25 have numbness and tingling in her feet, correct?

1 A Yes.

2 Q She had sensory deficits in her feet prior to July of 2015.

3 A According to the medical records, yes.

4 Q And she had complaints o foot burning?

5 A Yes.

6 Q And based upon your training and experience, and the  
7 materials provided to you, it appeared to you that those signs or  
8 symptoms appeared to be the result of the diabetic neuropathy, true?

9 A They could be consistent with a diabetic neuropathy, yes.

10 Q Now, do you recall at your deposition telling us that the --  
11 when we use the term lower extremity, that means the legs, correct?

12 A Yes.

13 Q Do you recall telling us at your deposition that you thought  
14 the lower extremity denervation, in other words, injury to nerves, was  
15 acute and due to the sepsis, below the knees?

16 A Yes.

17 Q But you also found that there was some denervation or nerve  
18 injury above the knees that you characterized as chronic, correct?

19 A No.

20 MR. DOYLE: Could we open Dr. Barchuk's deposition to see  
21 if I could refresh his recollection?

22 THE COURT: You wish to publish Dr. Barchuk's deposition?

23 MR. DOYLE: Yes, I'm sorry.

24 THE COURT: Madam Clerk, thank you. Please [indiscernible]  
25 deposition of Dr. Barchuk. Appreciate it.

1 THE WITNESS: I have my deposition.

2 THE COURT: The official deposition has been published.

3 Thank you so much. Appreciate it.

4 While that's happening, Counsel, can you both approach,  
5 please. And Madam Court Recorder, can I have that nice white noise.

6 Thank you so much.

7 [Sidebar at 10:37 a.m., ending at 10:37 a.m., not transcribed]

8 THE COURT: Ladies and gentlemen, we're just trying to  
9 figure out a good time for a break and this seemed like a good time since  
10 we were pausing anyway, and it's been about 90 minutes.

11 So ladies and gentlemen, we're going to do a nice break,  
12 we're going to come back at 10 minutes of 11:00.

13 So ladies and gentlemen, during this recess you are, of  
14 course, admonished not to talk or converse among yourselves or with  
15 anyone else on any subject connected with the trial. You may not read,  
16 watch, or listen to any report or commentary of the trial or any person  
17 connected with the trial, by any medium of information, including,  
18 without limitation, social media, texts, tweets, newspapers, television,  
19 internet, radio, everything I have not stated specifically is, of course, also  
20 included.

21 Do not visit the scene of the events or mentioned during the  
22 trial or undertake any independent research, experimentation, or  
23 investigation. Do not do any posting or communications on any social  
24 network, websites or anywhere else. Do not do any independent  
25 research including, but not limited to internet searches,.

1           Of course do not form or express any opinion on any subject  
2 connected with the trial until the case is fully and finally submitted to you  
3 at the time of jury deliberations.

4           With that we wish you all a very nice break. See you back at  
5 ten minutes to eleven.

6           THE MARSHAL: All rise for the jury.

7                               [Jury out at 10:38 a.m.]

8                               [Outside the presence of the jury]

9           THE COURT: Okay. Everyone have a nice break. We'll see  
10 you back after the break. Thank you so much.

11           Madam Court Recorder, off the record.

12                               [Recess taken from 10:37 a.m. to 10:59 a.m.]

13           THE COURT: I asked if you're ready.

14           MR. JONES: Your Honor, we are not going --

15           THE COURT: Hold on. Hold on. We just asked if you were  
16 ready, we're waiting for an answer.

17           MR. DOYLE: We are all.

18           THE COURT: Madam Court Recorder, we are back on. Just  
19 give us that.

20           COURT RECORDER: On the record.

21           THE COURT: Okay. On the record, outside the presence of  
22 the jury.

23           Counsel, what may the Court do for you all?

24           MR. JONES: Your Honor, we have an on-going issue of  
25 attorney misconduct that I think needs to be admonished in front of the

1 jury. Mr. Doyle today, he did it again on Friday, where he said to our  
2 expert, who was on the stand, in front of the jury , said, oh, but you  
3 didn't get those records from Dr. Chaney in 2012 and 2013, did you?

4 Now, it happened today, and it also happened with our  
5 expert on Friday. And we've gone through, of course, there are no  
6 records for Dr. Chaney in 2012 or '13 in this case at all, and by making  
7 that suggestion to the expert, testifying essentially to the jury that there  
8 are records in 2012 and 2013, it misrepresents to the jury that indeed  
9 there are such records and that our experts didn't have those records to  
10 make an appropriate decision and assessment of the case.

11 And so, Your Honor, the only way I think that that can be  
12 fixed is for a statement to be made in front of the jury that Defense  
13 Counsel has been admonished by falsely indicating to witnesses, twice  
14 that there were records from Dr. Chaney in 2012 and 2013, when, in fact,  
15 no such records exist in this case.

16 THE COURT: Well, as you were not at Bench, Mr. Hand was  
17 at Bench and the Court asked and that's for you for both sides to provide  
18 whether it was or was not. Because remember, Mr. Hand said the word  
19 objection when he came to Bench. I reminded, as that was Mr. Hand's  
20 first witness, you each get the one oops rule right, which is you got to  
21 state your nature of your objection, right, in open court, no speaking  
22 objections. Right? Follow the rules of evidence.

23 So you know, didn't know what the nature of objection was  
24 till the People approached, so it was in the State's prior testimony so this  
25 Court, obviously, whether there was or was not records 2012, 2013

1 produced or not produced, because it was stated by Defense Counsel  
2 that those were produced by you all, by Plaintiffs' counsel. Right? So  
3 this Court said that I need to see something to know one way or another  
4 because you can appreciate all you have provided this Court, volumes  
5 and volumes of documents, the Court doesn't know whether or not there  
6 was or was not Dr. Chaney records.

7           So I asked you all both to provide whether there was or was  
8 not, and so I can appreciate you haven't brought all the documents that  
9 you produced to trial with you. So I gave you each a chance, which is --  
10 since we had two jurors in the restroom anyway -- to see if you did or did  
11 not, and it was represented to this Court that there was records back  
12 from a prior seeing of Dr. Chaney back to 2011, I believe it was. I have to  
13 doublecheck my notes, but so and then the question was withdrawn so  
14 the Court did not need to rule on that specific objection. Because,  
15 remember, the question was withdrawn.

16           So let me let Defense Counsel speak because that's what  
17 happened at Bench, so I don't know whether there was or was not  
18 records from Dr. Chaney in visiting the Plaintiff -- seeing the Plaintiff or  
19 not from 2012 and 2013, since the question was withdrawn. That means  
20 the Court need not rule on objection when a question is withdrawn,  
21 which is standard trial protocol.

22           So Counsel for Defense, is there records going back 2012,  
23 2013 of the Plaintiff seeing Dr. Chaney?

24           MR. DOYLE: What I indicated at sidebar is the Dr. Chaney  
25 records produced by Plaintiff in this case begin on June 19, 2014, but it's



1 obvious from reading the beginning of that note that it characterizes an  
2 interval follow-up note. So that Dr. Chaney had already been seeing  
3 Mrs. Farris for some period of time.

4 And as I indicated, at sidebar, we can clarify that with Mrs.  
5 Farris if she appears and testifies or with Dr. Chaney who will be here  
6 tomorrow. But there are no --

7 THE COURT: Counsel, you didn't say Ms. Farris, you only  
8 said you'll clarify with Dr. -- you withdrew the question.

9 MR. DOYLE: Yes.

10 THE COURT: You said you'd address it with Dr. Chaney. You  
11 said there was -- okay. So if a question is stated, then a question is  
12 withdrawn, the Court doesn't need to rule on the objection. And the  
13 other challenges, of course, since you didn't state the nature of the  
14 objection in front of the jury, remember it doesn't allow a Court to  
15 address the nature of an objection when we don't state the basis in open  
16 Court.

17 So Counsel for Plaintiff, I'm hearing what you're saying, but  
18 the challenge is what is not presented in front of the jury with the  
19 question being withdrawn. So what are you requesting this Court to do  
20 in light of those particular circumstances in this situation?

21 MR. JONES: Your Honor, on Friday we did not realize  
22 specifically that that he had misstated the record to Dr. Hurwitz when he  
23 asked the same question. He said, well, you didn't see the records from  
24 2012, 2013, did you? Right?

25 And so the jury is led to believe in that setting that there are

1 records from 2012 or 2013 that were hidden from the expert so that we  
2 wouldn't know -- there is a clear impression that gives to the jury.

3 THE COURT: Has Dr. Chaney's deposition been taken? Yes  
4 or no? Right? Yes or no? Right?

5 MR. JONES: Yes, Your Honor.

6 THE COURT: Okay. So was Dr. Chaney asked at the  
7 deposition did Dr. Chaney see the plaintiff prior to the note from 2014?  
8 This really should have been handled during discovery, right? This  
9 should be a known fact. It's either in the deposition or not.

10 MR. DOYLE: I don't recall.

11 MR. JONES: Your Honor, I don't recall either, but regardless  
12 we know for sure that there are no records going back that far. And so  
13 the Defense didn't produce any. Their first date of treatment was June of  
14 2014 in the Defense exhibit. And what they're asking is not just when  
15 she saw him or when she saw the Plaintiff, they're asking if the expert  
16 has received these records, giving the illusion that certain records exist  
17 that actually don't exist.

18 And so that is the problem. There are no such records, and  
19 the Defense knows this.

20 THE COURT: But you know at this juncture, the problem for  
21 this Court is, is this Court doesn't know, A, whether said records do or do  
22 not exist, because no one has presented anything to this Court whether  
23 said records did or do not exist. Right?

24 That's really the question, the heard of it, that's why I asked  
25 you did somebody take Dr. Chaney's deposition and did anybody ask?

1 Right? This Court is trying to get the information. I would love to be a  
2 fly on the wall. I would love to have a crystal ball. I would love to be  
3 omniscient and know everything. I don't to any of those. I am not a fly  
4 on the wall. I don't have a crystal ball. And I'm not omniscient which is  
5 why I try and ask practical base questions. Right?

6 I figured if Dr. Chaney's deposition was taken, somebody  
7 would ask the question. Right?

8 MR. JONES: Your Honor -- and I have it now in front of me.  
9 She was specifically asked when treatment started --

10 THE COURT: And when did --

11 MR. JONES: -- she didn't know with certainty, but she said  
12 that she --

13 THE COURT: Page what of the depo?

14 MR. JONES: Page 12 of Dr. Chaney's deposition. And she  
15 says that she thinks it was probably -- so at the top it says I would say  
16 2013.

17 Question: Okay, very good.

18 Answer: And she explains that she just started with an  
19 insurance product in 2012 that this client is under.

20 Question: And the insurance product is the MGM?

21 Answer: Direct care.

22 Question: Got it. Okay. So it had to be after 2012 or 2012 or  
23 later, but you believe it was probably 2013.

24 Answer: Yes.

25 Now, so that's based on her recollection that her first time

1 seeing the patient is 2013. The records we have are June 19, 2014 is  
2 when the records begin.

3 THE COURT: So it's in the records or something, right? I  
4 presume. Were they subpoenaed records or provided from the office  
5 pursuant to a COR?

6 MR. JONES: Your Honor, so we didn't even produce any for  
7 the purpose of trial from Dr. Chaney. We didn't intend to produce those.  
8 But the Defense has -- and they're saying that they're the records that we  
9 produced in the case, which begin in June 19, 2014. I don't know if they  
10 ever went and got their own records.

11 THE COURT: Okay. Did anybody subpoena the records of  
12 Dr. Chaney and get some type of COR or how do the records of Dr.  
13 Chaney come into this case? Is it only provided through a HIPAA  
14 release? I'm just trying to get some basics here.

15 MR. JONES: Your Honor, there's no COR or subpoena for  
16 these records.

17 THE COURT: Okay. So was it just pursuant to a HIPAA  
18 release?

19 MR. JONES: Presumably, Your Honor.

20 THE COURT: Okay. So the only documents -- is this correct,  
21 Defense Counsel, do you agree with what they're saying? Did you  
22 individually subpoena Dr. Caney's records?

23 MR. DOYLE: I don't think so, but I would have to -- again,  
24 there's a lot of information in this case. I'm reluctant to make a  
25 statement that might prove to be mistaken.

1 THE COURT: By the time of trial you all should know the  
2 source of your documents, shouldn't you?

3 MR. DOYLE: The documents --

4 THE COURT: We're going to ask if -- in order to ask that  
5 question -- Right? you had to have a reasonable basis that the witness  
6 should have gotten documents, right, from 2012 and 2013, that there's a  
7 reasonable basis that this witness should have gotten documents and  
8 did not get those documents, right? And you took this witness'  
9 deposition. Did you ask the question at the time of deposition about  
10 documents that he did not have for purposes of a report?

11 MR. DOYLE: He was asked a number of questions about  
12 what documents he did have. I don't know that there was a corollary to  
13 what he didn't have.

14 THE COURT: As you know, you can't ask the first time at the  
15 time of trial and make any -- I'm not saying you did or didn't. The  
16 Court's just trying to get a basis here. Right? I'm trying to get an  
17 understanding about whether or not this is a surprise that is stated for  
18 the first time in trial in front of the jury, or whether this is something that  
19 everyone was aware that's in issue. Because this is coming to this Court  
20 at the first time.

21 This is the kind of things that you all are supposed to bring to  
22 the Court way before trial. Right? Because you know about it. It gets  
23 asked in a depo, doesn't get asked, right? Supposed to get asked in a  
24 depo because documents are supposed to be either subpoenaed, nice  
25 little CORs you either have them or you don't -- Right? -- You deposed

1 Dr. Chaney. You know what time, you got COR there. If you have  
2 something COR that's inconsistent with what you've been provided --  
3 boom -- you bring that to the Court's attention early on. The Court can  
4 include discovery commissioner, it's supposed to be during discovery,  
5 right? Or worst case scenario, somebody produces something late to the  
6 trial judge. This is supposed to be way back, it's a 2016 case, so these  
7 are records that are way back when, and particularly for 2012 records or  
8 2013 or 2014. So this is not something that's supposed to come up in  
9 the second week of trial, but it has.

10 So this Court's trying to get general information. As far as  
11 your request, Plaintiffs' Counsel, at this juncture, I think the better thing  
12 is that you both need to go look at your documents. You need to have  
13 well-reasoned arguments to this court because you're both asking me --  
14 Okay? -- to rule on something without the basis of knowledge to rule on  
15 it. I'm asking you all, articulating questions. Was there depositions?  
16 Were these questions asked in depositions? What were the responses to  
17 these answers [sic] in depositions? Do you have CORs? Do you have  
18 HIPAA releases? All the very questions that I need to know in order to  
19 make a well-reasoned determination, because I need to know what's the  
20 source of the documents, right? Do I need to do a voir dire of Dr. Chaney  
21 outside the presence to find out if Dr. Chaney provided all the  
22 documents? Right?

23 These are the kind of things in order for myself, as the trial  
24 judge, to make a well-reasoned determination so that this Court, before I  
25 say something, and before I make a ruling, has some scope of reference,

1 i.e., my normal well-reasoned cope of reference -- and I do appreciate  
2 that you're looking at different things as I'm asking questions, but these  
3 are the kind of things you're supposed to know before you -- at the time  
4 of trial so you should be able to answer these questions so I shouldn't be  
5 asking them. You're supposed to be informing me and I'm just  
6 supposed to be listening.

7 MR. LEAVITT: Your Honor, and I can answer the bulk of  
8 those. In terms of how they were received we don't know. We do know  
9 there is no there is no COR, we do know that. And that basically takes  
10 away the underpinning of any basis for them to be questioning from the  
11 records themselves. They have no foundation for that, and -- but with  
12 the questions they asked, they specifically know that those records don't  
13 exist, they know that and knowing that they're interjecting actual false  
14 information into this trial, that there are some records that potentially do  
15 exist.

16 But we know they're not here. We know that no one here  
17 has ever seen them or has any reason to believe they do exist, and so  
18 the jury right now is almost certainly under the impression that Dr.  
19 Barchuk and Dr. Hurwitz were not given two years of medical records for  
20 someone treating the plaintiff for diabetes.

21 THE COURT: When is Dr. Chaney supposed to testify?

22 MR. DOYLE: She'll be here tomorrow at 1:30.

23 THE COURT: By the way, I'm moving almost everything  
24 from my morning calendar so you all can start earlier tomorrow because  
25 you are far behind in this case because of all these issues, last minute

1 issues, and you're not being fair to this jury. Remember they have plans  
2 and different things going on, so trying to have you keep the jury for  
3 your clients' sake -- Right? so you don't lose your jurors.

4 So for right now the Court cannot do what you are asking  
5 because you appreciate that you haven't provided me the support. And  
6 Defense Counsel, you haven't provided me the answers that saying you  
7 haven't done what they've said you've done, and you haven't provided  
8 this Court that he has done what you have done. Okay?

9 So you both need to show me what you're saying being  
10 done or show me it's not being said, because you haven't even shown  
11 me that this witness' expert report even says the documents that he was  
12 provided for preparation of his expert report, right? And whether or not  
13 that even shows records from X date to Y date. I don't even have that.  
14 Okay?

15 So you can appreciate well-reasoned decisions based on  
16 accurate information and an opportunity to respond from both sides so  
17 this Court can continue making it's well-reasoned decisions based on full  
18 and accurate information. Okay?

19 MR. JONES: Thank you, Your Honor.

20 THE COURT: And with that, it's what I do, I appreciate you  
21 provide it to me so that I can do what I need to do.

22 The jury's about to come in, we did get the OST -- Okay? --  
23 that's the first thing I said, got the OST, I didn't get an answer, that's why  
24 no worries. So by the way, look in your upper right-hand corner, it looks  
25 like it wasn't even sent out until 8:40, but --



1 MR. LEAVITT: Your Honor, I am --

2 THE COURT: -- the Court's not going -- I'm just --

3 MR. LEAVITT: No. Well, I will say that --

4 THE COURT: Notes.

5 MR. LEAVITT: -- re-going through the notes, we had it  
6 written down at 9:00 and it's our mis -- I mean --

7 THE COURT: You have a couple of different OSTs bouncing  
8 around, so this OST originally thought you said was you all's this  
9 morning and Defense Counsel tomorrow morning. Right? Or is that the  
10 other OST. You had two OSTs one was going Saturday to counsel and  
11 they were getting to this Court. So since you all have gone back and  
12 forth on a lot of different things, what date and time had you all wanted  
13 this OST regarding the motion to strike Defendant's answer and Rule 37  
14 violations, including -- for a variety of different things.

15 Basically your renewed motion that you mentioned on  
16 Friday.

17 MR. LEAVITT: Yes.

18 THE COURT: What was the agreement among counsel so  
19 that I can put it on for the appropriate thing -- time.

20 MR. LEAVITT: If you recall, Your Honor, we were at Bench  
21 when my first OST --

22 THE COURT: Just say what date and time --

23 MR. LEAVITT: Okay.

24 THE COURT: -- without the whole thing. You got --

25 MR. LEAVITT: Sure.

1 THE COURT: -- a jury waiting out there --

2 MR. LEAVITT: Very good.

3 THE COURT: -- if you don't give me a date and time, I can't  
4 write it in and how long would you like the jury to stay out there?

5 MR. LEAVITT: Okay. Real quick. We were in here Friday, we  
6 agreed that we'd get them that Saturday, we got it to them, and Saturday  
7 night they were supposed to have their opposition this morning at 9:00.  
8 That was --

9 MR. DOYLE: No.

10 MR. LEAVITT: -- the confusion.

11 MR. DOYLE: No, no. Tuesday morning.

12 THE COURT: Okay. Okay. Excuse me, Counsel. If you guys  
13 are going to -- if counsel had a disagreement we're going to have the  
14 jury in, you're going to finish this witness -- Right? -- and we'll discuss  
15 this at a later time. So whichever date and time it is, obviously, this is  
16 the kind of thing that --

17 MR. LEAVITT: Very good.

18 THE COURT: -- doesn't have to be heard this particular  
19 moment, but remember you are presenting challenges to your respective  
20 clients.

21 Marshal, are you ready for your -- Mr. Hand, are you ready to  
22 continue with the examination?

23 MR. HAND: Yes, Your Honor.

24 THE COURT: Okay.

25 The Court, over objections, whatever rulings need to be had,

1 just I'm free to do them, but I need to have some information so I can get  
2 this taken care of for you. Okay. Thank you. Appreciate it.

3 Marshal.

4 THE MARSHAL: All rise for the jury.

5 [Jury in at 11:16 a.m.]

6 [Within the presence of the jury]

7 THE MARSHAL: All jurors are accounted for. Please be  
8 seated.

9 THE COURT: Appreciate it. Thank you.

10 Welcome back, ladies and gentlemen. And at this juncture,  
11 Counsel, feel free to continue with your examination.

12 MR. DOYLE: I have asked, just before the break to open and  
13 publish the deposition --

14 THE COURT: Right. And those have been published. And  
15 you can --

16 MR. DOYLE: May I approach?

17 THE COURT: Of course you may.

18 CROSS-EXAMINATION CONTINUED

19 BY MR. DOYLE:

20 Q Doctor, if you could take a look at page 26, line 16 through  
21 27, line 5.

22 Did you have a chance to look at that?

23 A Yes.

24 Q Doctor, at the time of your deposition on, July 25, 2019, was  
25 it your impression that the denervation below the knees was due to

1 some acute event?

2 A Yes.

3 Q And at the time of your deposition, on July 25, 2019,  
4 concerning the denervation in the legs above the knees, you said that  
5 she had some chronic denervation above the knees; is that correct?

6 A I mis-spoke. There was no chronic denervation above the  
7 knee.

8 Q All right. So at the time of your deposition did you indicate  
9 she had some chronic denervation above the knee, I don't know whether  
10 that was new or old, but the acute denervation is certainly related, I  
11 think, to the events surrounding her sepsis.

12 That was your testimony at the time.

13 A Yes.

14 Q And your testimony today is different?

15 A Yes, because I looked at the EMG test and there was no  
16 chronic denervation above the knee.

17 Q You had prepared for the deposition.

18 A Yes.

19 Q And given hundreds of depositions you understood the  
20 importance of being prepared?

21 A Yes.

22 Q And providing accurate opinions at the time of your  
23 deposition?

24 A Yes.

25 Q You also understand from having given hundreds of

1 depositions, that if you want to, you have the opportunity to review the  
2 transcript and make any changes or corrections that you deem  
3 necessary.

4 A Yes.

5 Q Did you review this transcript?

6 A I did before trial, yes.

7 Q How far in advance of trial?

8 A Oh, probably last week.

9 Q Did you notify anyone that the testimony and opinions you  
10 expressed at the top of page 27 were mistaken or inaccurate?

11 A No, I missed that.

12 Q Now, the pain that Mrs. Farris currently has in her legs, can  
13 you and I agree that, to some extent, it's a combination of both the  
14 critical illness neuropathy and the diabetic neuropathy?

15 A If you're just talking about the feet, it could be a combination,  
16 but not the legs.

17 Q So we can agree that the pain that she has in her feet  
18 currently is a combination of the diabetic neuropathy and the CIP? Some  
19 combination?

20 A Well, the question is this diabetic neuropathy. To diagnose  
21 that you really need an EMG, nerve conduction studies, which were not  
22 done prior to the event of 2015.

23 So you really have to have had the nerve conduction studies and  
24 the EMG done before so I could comment on that.

25 Q Take a look at your deposition, page 27, line 22 over to page

1 28, line 4.

2 A Yes?

3 Q At the time of your deposition were you asked the pain  
4 complaints following the care at issue are associated with critical illness  
5 neuropathy or her diabetic neuropathy, or a combination of both? Do  
6 you see that question?

7 A Yes.

8 Q And you indicated to some extent a combination of both?

9 A Yes.

10 Q And then you went on to explain.

11 A Yes.

12 Q Okay. Now, you were asked some questions about life  
13 expectancy, and I just want to make sure I understood you correctly. In  
14 terms of whether Mrs. Farris, not some statistic on a table, but in terms  
15 of Mrs. Farris, and her life expectancy, from a functional or mobility point  
16 of view you would not expect her life expectancy to be decreased,  
17 correct?

18 A Particularly if she receives the appropriate medical care, yes.

19 Q But whether her other comorbidities or other problems, such  
20 as the diabetes, hypertension, whether those would have an adverse  
21 effect on her life expectancy, you would defer to others?

22 A To the internal medicine, yes

23 MR. DOYLE: That's all I have then. Thank you very much,  
24 Dr. Barchuk.

25 THE COURT: Counsel, redirect? Go ahead.

1 MR. HAND: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. HAND:

4 Q Dr. Barchuk, is there a book back there, Defendant's exhibits,  
5 behind you?

6 THE COURT: Defendant's or Plaintiffs'?

7 MR. HAND: Defendant's.

8 THE COURT: Okay.

9 THE WITNESS: Here it is.

10 BY MR. HAND:

11 Q Could you go to tab C. Let me know when you get to that.

12 A I have it.

13 Q Okay. Does that appear to be records of Internal Medicine of  
14 Spring Valle?

15 A Yes.

16 Q Okay. I'll represent to you that that's Dr. Chaney's group.

17 And you reviewed records from Dr. Chaney, correct?

18 A Yes.

19 Q Okay. When you were asked a little while ago did you review  
20 records of Dr. Chaney from 2012 and 2013 by Mr. Doyle, were you asked  
21 that question?

22 A Yes.

23 Q I'm going to ask you to look at that Defendant's Exhibit C,  
24 please look at the first page. What is the date of the first visit in Dr.  
25 Chaney's records in Defendant's Exhibit C.

1 A June 19th, 2014.

2 Q And look at the -- go down to page, I'll say C108 at the  
3 bottom right corner.

4 A I have C00008?

5 Q 108. And what is the date? Is it March 27, 2018?

6 A I'm not sure --

7 Q Look in the upper right, it says signed by Dr. Chaney. It's  
8 small writing at the upper right corner, say March 27th, '18.

9 A March 27th, 2018.

10 Q Okay. At any time have you seen records of Dr. Chaney from  
11 2012?

12 A No.

13 Q At any time have you seen records from Dr. Chaney from  
14 2013?

15 A No.

16 Q Now, I want to clarify something with you. You were asked  
17 about the diabetic condition, and the high cholesterol, high blood  
18 pressure, these were pre-existing conditions before the July 15th  
19 surgery, correct?

20 A Yes.

21 Q Does your lifecare plan ask for the Defendants to pay for any  
22 of that due to what happened in July of '15?

23 A No.

24 Q You specifically take measures and review things to exclude  
25 the pre-existing conditions?



1 A Yes.

2 Q And you did that in this case?

3 A Yes.

4 Q Now, did you -- the records of Dr. Chaney that you reviewed  
5 from '14 up until '18, was there any note by Dr. Chaney that Titina Farris  
6 had any issues with or problems with walking prior to July '15?

7 A No.

8 Q Were any notes in her records that she had any issues with  
9 balance prior to July of 2015?

10 A No.

11 Q In fact, did you review Dr. Chaney's deposition?

12 A Yes.

13 Q Was she asked in that deposition whether Titina Farris had  
14 foot drop prior to July '15? Was she asked that question?

15 A Yes.

16 Q Do you recall what her response was?

17 A She did not.

18 Q Now, with regard to this EMG of Dr. Chang that you  
19 reviewed, you state that it depicts -- can you explain what you mean  
20 acute -- what does acute mean? We'll start with that.

21 A So for EMG acute event is usually something that's  
22 happening within several weeks to several months. When you do the  
23 EMG you're looking for help signals. And the nerves, as they're dying  
24 off, they send these help signals. And that's what you're looking for.

25 And specifically they're called positive sharp waves and

1     fibrillation potentials. They're basically the help signals from the nerves.

2           Q     So how could you make a determination from the EMG as to  
3     the nerve damage being recent or old?

4           A     These are acute findings, they're not old findings.

5           Q     That's recent?

6           A     Right.

7           MR. HAND: Thank you. I have nothing else.

8           THE COURT: Okay, re-cross, Counsel?

9           MR. DOYLE: Yes.

10                           RECROSS-EXAMINATION

11     BY MR. DOYLE:

12           Q     Doctor, at your deposition --

13           THE COURT: Counsel, can you come to the Bench, please?

14           Madam Court Recorder, turn on some white noise, please.

15           [Sidebar at 11:29 a.m., ending at 11:29 a.m., not transcribed]

16           THE COURT: Counsel are you withdrawing and asking a new  
17     question?

18     BY MR. DOYLE:

19           Q     Doctor, was it your opinion in July of 2019, that when  
20     preparing a lifecare plan for Mrs. Farris, that you could not completely  
21     parcel out premorbid issues as well?

22           A     Well, you have to look at the whole person.

23           Q     So when you prepared Mrs. Farris' lifecare plan, it was not  
24     possible to completely parse out her pre-existing medical problems,  
25     true?

1           A     I was specifically addressing her critical illness neuropathy in  
2 this lifecare plan.

3           Q     Okay. But in terms of -- well, take a look at your deposition,  
4 pages -- or page 18, line 14 through 19.

5           A     Yes.

6           Q     Do you see that?

7           A     Yes.

8           Q     Could you please explain what is meant by however you  
9 can't completely parcel out premorbid issues as well?

10          A     Because there's always -- whenever you do some  
11 recommendations like medical follow-up, and this is a primary care  
12 physician, sometimes two things or three things are addressed in one  
13 sitting. So let's say Mrs. Farris needs pain management, but also needs,  
14 you know, blood pressure medications and things like that. So usually  
15 the primary care physician, it takes them more time the more things that  
16 they have to evaluate. But a lot of times they'll ask the questions, you  
17 know: How is your blood pressure doing? How's your diabetes doing?  
18 How's your pain in the legs? What's your mobility doing? Things like  
19 that.

20                So whenever you have medical follow-up, there tends to be an  
21 overlap of all of the issues. However, the specific issues in the lifecare  
22 plan that I put in would be specifically addressing the critical illness  
23 neuropathy.

24                But in reality there is some overlap.

25                MR. DOYLE: Okay. Thanks, that's all I have.

1 THE COURT: Okay. Any re-redirect, Counsel?

2 MR. HAND: No, Your Honor.

3 THE COURT: Okay. Would you approach, please, we have a  
4 couple of jury questions.

5 Marshal, we have another one, can you please get all  
6 [indiscernible]. Thank you so much. Thank you.

7 [Sidebar at 11:32 a.m., ending at 11:34 a.m., not transcribed]

8 THE COURT: Okay. So what the Court does, is I read these  
9 questions as is -- Okay? -- and ask you to answer them. And then  
10 afterwards, each of the counsel have an opportunity to ask follow-up  
11 questions related to these questions. Okay?

12 With uncontrolled diabetes can nerve damage to the point of  
13 Ms. Farris' case on her feet and legs happen overnight, or does it take a  
14 long time to get to the level she is at?

15 THE WITNESS: Something like that would take years. It's  
16 not overnight, no.

17 THE COURT: Okay, next.

18 In your medical opinion, was Mrs. Farris' foot drop and lack  
19 of nerve response below the knee caused by her uncontrolled diabetes,  
20 question mark, this is a two-pronger; and then: Is it likely that her  
21 uncontrolled diabetes would have caused foot drop and lack of nerve  
22 response below the knee within ten years, question mark?

23 THE WITNESS: I would say no to both.

24 THE COURT: Okay. Next one.

25 If Mrs. Farris' condition was caused from diabetes, would it

1 have been able to happen so quickly as it did from when Dr. Chaney  
2 stated she didn't have foot drop to when it did occur?

3 THE WITNESS: No.

4 THE COURT: Okay. Questions answered to the satisfaction  
5 of the jurors that asked them? Okay. Thank you so very much.

6 So same process we did the other witness. Since it was  
7 Plaintiffs' witness, Plaintiff do you have any questions with regard to the  
8 questions asked by the jurors?

9 FURTHER REDIRECT EXAMINATION

10 BY MR. HAND:

11 Q Dr. Barchuk, can you explain why the foot drop wouldn't  
12 happen so quickly due to diabetes?

13 A Because with diabetes it's a chronic condition and there is  
14 slow, as you get older, there's slow deterioration. Usually it involves  
15 mostly, you know, the toes and the feet. It could also involve the fingers.  
16 But it's a slow progression as you get older.

17 In Mrs. Farris' situation this was -- you know, she was functioning  
18 here, and all of a sudden, boop, she's functioning down there. It was an  
19 acute event and the EMG shows that. The EMG shows that there was a  
20 lot of nerve damage going on. The nerves are going help, help, help.  
21 And it's not a chronic type of thing that you see on the EMG.

22 Usually the EMG part, when I do it on a diabetic, the EMG part is  
23 totally normal. You could have a decrease in conduction, particularly in  
24 the feet, but usually the muscles are completely fine. In this event, this  
25 really hit the muscles. And it hit the muscles even above the knee. So

1 that's where the critical illness neuropathy comes in, and not the diabetic  
2 neuropathy.

3 THE COURT: Okay. Any further questions by Plaintiffs'  
4 Counsel?

5 MR. HAND: No, Your Honor.

6 THE COURT: Okay. Then, Defense Counsel, do you have any  
7 follow-up questions to the juror questions?

8 MR. DOYLE: I don't. Thank you.

9 THE COURT: Okay. There not being any follow-up questions  
10 by Defense Counsel, Plaintiffs' Counsel asking their questions, there  
11 being no further juror questions, is this witness excused for all purposes  
12 throughout the trial, or is this witness reserved for some other point in  
13 the trial?

14 MR. HAND: No, he's excused. He's excused for all purposes.

15 THE COURT: Counsel for Defense, is that consistent? Yes  
16 or --

17 MR. DOYLE: Yes.

18 THE COURT: Okay. So this witness being excused for all  
19 purposes, thank you so very much for your time, this witness is excused.  
20 Whatever you brought with you, feel free to take with you. And just  
21 watch your step and we'll take care of the deposition. Thank you so very  
22 much for your time. Okay.

23 Thank you so much. Okay.

24 Counsel, can you just approach real briefly.

25 [Sidebar at 11:32 a.m., ending at 11:38 a.m., not transcribed]

1 THE COURT: Okay.

2 MR. HAND: Can we approach, Judge?

3 THE COURT: Okay.

4 [Sidebar at 11:39 a.m., ending at 11:39 a.m., not transcribed]

5 THE COURT: Okay. Ladies and gentlemen, rather than  
6 starting witnesses for a few moments, it can make a lot more sense let's  
7 get you out for lunch now.

8 So ladies and gentlemen, it's 11:00 -- well, give or take it's  
9 five of 11:38 -- 39. So we're just going to call it 11:40. We're going to  
10 come at 12:50, so 12:50.

11 Ladies and gentlemen, during this lunch recess, while you're  
12 enjoying outdoors, indoors, wherever you choose to go, as long as  
13 you're not thinking about this this case because, of course, during this  
14 lunch recess you are admonished not to talk or converse among  
15 yourselves or with anyone else on any subject connected with this trial.

16 You may not read, watch or listen to any report or  
17 commentary of the trial or any person connected with the trial by any  
18 mean of information, including without limitation, social media, texts,  
19 tweets, newspapers, television, internet, radio, anything that I'm not  
20 stating specifically is, of course, also included.

21 Do not visit the scene or any of the events mentioned during  
22 the trial. Do not undertake any research, experimentation or  
23 investigation. Do not do any posting or communications on any social  
24 network, websites or anywhere else. Do not do any independent  
25 research, including, but not limited to internet searches.

1 Do not form or express any opinions on any matters  
2 connected with the trial until the case is fully and finally submitted to  
3 you.

4 I do ask, though, during the lunch break, the one thing is to  
5 consider is I'm trying to move a lot -- I've moved a lot of things from  
6 tomorrow morning's calendar to try to give you extra time tomorrow  
7 morning because we got a little bit behind on Friday, to try and keep us  
8 on step. Okay? We originally said tomorrow at 1:00, I'm trying to see if  
9 we could start earlier, closer to around 10:30. So I'm going to re-ask you  
10 that when we get back from the lunch break. I got to talk with attorneys  
11 and see if they can do it and with you all. So do at least take that into  
12 mind.

13 Okay? So we're going to try and do that to give you back  
14 some more time. Okay? So at least consider it. That's the only thing  
15 potentially consider it, I just wanted to give you a heads up. Okay?  
16 Thank you so much.

17 THE MARSHAL: All rise for the jury.

18 [Jury out at 11:41 a.m.]

19 [Outside the presence of the jury]

20 THE COURT: Okay. One second until the door clicks shut.

21 Counsel, also while you're enjoying your nice, relaxing lunch  
22 break, also consider that, like I said, I moved almost everything I can  
23 possibly move to try and see if we can start at 10:30 tomorrow because I  
24 figured we've got -- we also got Dr. Rives, to try and get you another  
25 hour and a half, so starting at 1:00 to try and get out of that.



1           Once again, that's assuming -- I moved so many different  
2 things now, that assumes the people that I haven't moved are decently  
3 on time. Okay? But I'm doing almost everything to try and get you  
4 started. Might even be a few minutes earlier, but even if some of our  
5 jurors can't, I still can at least address possibly some of your -- or at least  
6 one of your issues. So --

7           MR. JONES: We are eliminating two witnesses, Your Honor.

8           THE COURT: Okay. I'm not asking you all to, but remember  
9 just try --

10          MR. JONES: Understood.

11          THE COURT: -- and make it you all some extra time as much  
12 as some of your other colleagues trying to be very accommodating,  
13 trying to get you extra time.

14          So think it through, so we can get you time. Okay?

15          MR. LEAVITT: Thank you, Your Honor.

16          THE COURT: Even if we can't get with the jury, I can at least  
17 get it for a witness up. So have a great lunch and I'll talk -- actually,  
18 when you're back from lunch because, of course, my team needs their  
19 break.

20          So have a great one, we'll see you back at 12 -- well, you all  
21 at 12:35, so you can have the jury in at 12:50. Okay? Thank you so  
22 much.

23                       [Recess taken from 11:42 a.m. to 12:50 p.m.]

24          THE COURT RECORDER: On the record.

25          THE COURT: Okay. We're on the record, outside the

1 presence of the jury.

2 Counsel, we just -- so, with regards to the OST regarding the  
3 renewed motion to strike. Plaintiff included an extra copy, so the Court's  
4 presumably gets to keep the extra copy as a courtesy copy, correct?

5 MR. JONES: Yes, Your Honor, absolutely.

6 THE COURT: Perfect, beautiful. Because Defense Counsel,  
7 you received yours on Saturday; is that correct?

8 MR. DOYLE: Yes. Saturday night, yes.

9 THE COURT: You've got yours, perfect. Okay.

10 Is Defense getting Court it's opposition Tuesday by 9:00; is  
11 that right?

12 MR. DOYLE: That's what we had discussed on Friday and  
13 that's what we're working toward.

14 THE COURT: So the Court's getting --

15 MR. DOYLE: It will be a yes.

16 THE COURT: Okay. The Court's getting its Tuesday 9:00  
17 a.m.; is that correct?

18 MR. DOYLE: So we will have filed and courtesy copy to you  
19 by 9:00 a.m. tomorrow.

20 THE COURT: Okay. So the Court's putting this per -- we'll  
21 put it on the OST per agreement of the parties that you had already  
22 e-certified on Saturday, the Court's getting its courtesy copy tomorrow;  
23 and then, in light of that, the Court is going to put Wednesday at 1:00  
24 p.m., I'm putting that as a placeholder time because right now you all are  
25 working out your schedules with regards to witnesses; is that correct?

1 MR. JONES: That is correct, Your Honor.

2 THE COURT: Does that meet your needs the best if I do it  
3 that way? Or do you prefer something different?

4 MR. JONES: That works great for us, Your Honor.

5 THE COURT: Does that work for you?

6 MR. DOYLE: Yes, Your Honor.

7 THE COURT: So that's kind of an earliest time, and then that  
8 gives you all to be prepared at that time, but then it may be a little bit  
9 later depending on where you're scheduling the witnesses is. Does that  
10 work for everyone?

11 MR. JONES: That does, Your Honor.

12 MR. DOYLE: Yes.

13 THE COURT: Okay. Then that's what the Court is going to  
14 do.

15 MR. DOYLE: And we're trying to juggle witnesses.

16 THE COURT: Seems to me that at least if I put it on some  
17 date, because Wednesday is what you all had said on Friday, is it you  
18 were thinking initially. And the Court couldn't multi-task being here and  
19 reading, and I sure hope that you all put specific cites and didn't just  
20 attach a whole bunch of transcripts and ask the Court to go fish because I  
21 know you would not do that to the Court.

22 So the Court was going to sign this OST and Counsel for  
23 Defense, are you requesting another copy, or since you already received  
24 it on Saturday, you're not requesting another copy?

25 MR. DOYLE: Another copy so I have a paper copy would be

1 nice, if that's possible.

2 THE COURT: Counsel, do you have a paper copy then?

3 MR. JONES: We didn't bring one with us. So typically we  
4 would e-serve it. But I mean I can get one printed off or something.

5 THE COURT: No worries. The Court just needs to know, for  
6 purposes of what on the order shortening time usually we put, you  
7 know, service less than ten days. Right?

8 MR. JONES: Absolutely.

9 THE COURT: And it includes a personal service type  
10 component, but since you all have already agreed to the e-service  
11 Saturday electronically, I would usually note something like that. But if  
12 you're agreeing to an additional paper copy, if you want to see my  
13 chickens, my handwriting doing an additional thing like that, we'll do it.  
14 So we just put by end of day, since you're here anyway or when do you  
15 want your paper copy?

16 MR. DOYLE: That's fine.

17 MR. JONES: Just let us know where to deliver it and we'll  
18 just have a paralegal --

19 MR. LEAVITT: I'll call Eric right now.

20 MR. DOYLE: To the hotel.

21 MR. LEAVITT: Which hotel?

22 THE COURT: Well, can they bring it here to court since  
23 you're since you're here at court?

24 MR. LEAVITT: I'll have him bring it to court.

25 MR. DOYLE: Yeah, that'd be --

1 THE COURT: Okay.

2 MR. JONES: Excellent.

3 THE COURT: Okay. So court, end of day. So I'm just going  
4 to have my JEA write that. Okay.

5 So we'll get that taken care of , and then we'll hand it back to  
6 you so you can get it filed. Give me a minute to write it all down.

7 MR. DOYLE: Oh, absolutely, of course.

8 THE COURT: I can't talk and write all of it and it's got to be  
9 stamped by my JEA. Okay.

10 So in that regard, I think juror -- do we have all -- or we're  
11 missing one? So we need a moment to get that taken care of.

12 Okay. And then we had on them motion to strike the 727  
13 briefs. I'll tell you what the Court's inclination -- are you arguing that,  
14 Mr. Hand or Mr. Jones? Or is Mr. Leavitt arguing that?

15 MR. JONES: I think Mr. Leavitt intended to argue it, Your  
16 Honor.

17 THE COURT: But he's the one that's gone, so how can I deal  
18 with that right now while he's gone? I will wait a moment then --

19 MR. HAND: Thank you, Your Honor.

20 THE COURT: -- so that we can have it taken care of.

21 Okay. Give me a second to write this. Okay.

22 Now, to let you all know. So tomorrow does it work if we  
23 start at 10:30?

24 MR. JONES: Yes.

25 MR. DOYLE: Yes.

1 THE COURT: Okay. And that's 10:30-ish. I mean that's, like I  
2 said, we're moving things galore, and I'm thinking that should work.  
3 Just remind me then a little bit earlier. With my caveat that as soon as  
4 the attorneys get here on time, and they're supposed to on the hearings.  
5 Okay?

6 MR. DOYLE: And then, Your Honor, are we still looking at  
7 9:30 to 10:00 on Wednesday? Again, we're trying to work together.

8 THE COURT: 9:30 is our best -- we have moved it down. We  
9 have gotten things moved. We are down to two hearings on Wednesday  
10 the 23rd. You have got a wonderful number of colleagues that are  
11 moving things, and we are moving things and advanced some things  
12 and got some things taken care of.

13 We're down to two hearings. 9:30 is more realistic --

14 MR. DOYLE: Okay.

15 THE COURT: -- on Wednesday. Ish. Now, remember, that  
16 CD starts getting my attorneys in and out of here, we're down to two  
17 matters on Wednesday, so then 9:30.

18 MR. DOYLE: And then what does Thursday look like, if I may  
19 inquire?

20 THE COURT: I've not had a chance to move things on --  
21 remember --

22 MR. DOYLE: No, no, I --

23 THE COURT: -- Thursday at 10:15 is probably where it's  
24 staying at.

25 MR. DOYLE: Okay.

1           THE COURT: I've got 13, 15 matters and that's unlikely to  
2 move some of those because -- remember I'm trying to do your trial,  
3 trying to handle all your motions, trying to move things all at the same  
4 time, plus read all the things you're bringing and all the new issues  
5 you're doing, plus being prepared for all my other hearings and those  
6 Thursday ones don't have some of the flexibility that some of the other  
7 cases that we could have taken care of.

8           So at this juncture we have all of our jurors, so would you  
9 like to bring them in and -- or are we missing the very witness that's  
10 supposed to be called that I do not see?

11          MR. DOYLE: He's on his way up. So --

12          THE COURT: We're missing the very witness that's  
13 supposed to be on the stand and was supposed to be here at ten till,  
14 correct?

15          MR. DOYLE: Yes.

16          THE COURT: So we can't start because we don't have a  
17 witness that's supposed to be here at ten till to be on the stand, right?

18          MR. DOYLE: Correct.

19          THE COURT: That's what I was asking. Because is Dr. Rives  
20 supposed to be on the stand, correct?

21          MR. JONES: Yes, Your Honor.

22          THE COURT: But he's not here, so we can't start. So when  
23 you say he's up, where is he?

24          MR. DOYLE: I can call him again, but he was walking into the  
25 building when I talked to him a couple of minutes ago.

1 THE COURT: Right But he knew he was supposed to be here  
2 at --

3 MR. DOYLE: Yes.

4 THE COURT: -- I asked counsel and clients to be here at a  
5 quarter till. Jury was supposed to be here at ten till, so we could get  
6 started right away. He knew he was going to be the witness, correct?

7 MR. DOYLE: Yes.

8 THE COURT: Please do remind your client, right, he is  
9 definitely the witness. One thing if he's late when he's not the witness,  
10 but when he's supposed to be on the stand and the jury's all here, and  
11 it's four minutes till, right, that's precluding the jury -- the trial from  
12 starting on time due to him not being here, right?

13 Please call him and find out his estimated time, so we don't  
14 have the jury waiting.

15 [Pause]

16 THE COURT: Okay. Now that the witness is here, Marshal,  
17 can you please go get our jury.

18 Do you want the witness on the stand? Or do you want to  
19 call him.

20 MR. JONES: No preference, Your Honor.

21 THE COURT: Okay. If there's no preference. It's your  
22 witness, so please let what you'd like to now do or Defense Counsel, do  
23 you have a preference?

24 MR. JONES: You're definitely going to be up there, so if  
25 you'd rather sit up there now, that's fine with me.



1 THE WITNESS: Sure.

2 THE COURT: Now, since it's been a few days and a few  
3 witnesses, generally the Court's practice is it's been a few days is to re-  
4 swear in the witness, unless both counsel request that that not be done.

5 What is you all's preference?

6 MR. JONES: Re-swear him in. That's fine.

7 MR. DOYLE: I don't think it's necessary.

8 THE COURT: Well, since I have one re-swear in and one not  
9 necessary, and since it's Plaintiffs' calling it, then generally the Court  
10 would do the re-swearing in because that's the person who's called it  
11 and I just really would explain to the jury, if you all wish me to do so,  
12 that just say because it's been a few days, just re-swearing a witness.  
13 Okay?

14 MR. JONES: That's fine.

15 THE COURT: Would you prefer it that way, so it's explained  
16 that way? Does that meet your needs, Counsel for Defense?

17 MR. DOYLE: Yes.

18 THE COURT: Okay. Does that work for you, Plaintiffs'  
19 Counsel as well?

20 MR. JONES: It does.

21 THE COURT: Okay.

22 THE MARSHAL: All rise for the jury.

23 [Jury in at 12:59 p.m.]

24 [Within the presence of the jury]

25 THE COURT: As the jury comes in, you get your same

1 admonition, that today's flavor choices do include nuts. And candy is  
2 not diabetic, not dietetic, and definitely was made with nuts because  
3 there includes M&M with peanuts and Snickers bars. So --

4 THE MARSHAL: All jurors are accounted for.

5 THE COURT: -- enjoy. Okay, the same caveats and express  
6 waivers.

7 Ladies and gentlemen of the jury, I hope you had a very nice  
8 lunch. If you'll notice I'm going to ask counsel, first Plaintiff, will you  
9 recall a witness?

10 MR. JONES: Yes, Your Honor, Dr. Rives.

11 THE COURT: Okay. So if you recall, Dr. Rives, we  
12 interrupted his testimony due to convenience of a couple of other  
13 witnesses. Now, it's just a standard course, because there's been A, an  
14 intervening weekend, a couple of different witnesses in the intervening  
15 time, Court's standard practice is just to have the clerk re-swear him in  
16 just because the pure passage of time. Okay.

17 Madam Clerk, would you mind, please?

18 DR. BARRY RIVES, PLAINTIFFS' WITNESS, SWORN

19 THE CLERK: Thank you. Please be seated. And could you  
20 please state and spell your name for the record?

21 THE WITNESS: Barry, with an A, middle initial J, last name  
22 Rives, R-I-V-E-S.

23 THE CLERK: Thank you.

24 THE COURT: So if you recall, at the time that we -- they  
25 switched to a different witness it was still in the direct examination of

1 this witness, so that would be Plaintiffs' counsel continuing the direct  
2 examination of Dr. Rives.

3 So Counsel for Plaintiff, feel free to continue your direct  
4 examination of the witness.

5 MR. JONES: Thank you, Your Honor.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. JONES:

8 Q All right, Dr. Rives. So the goal today is to get your  
9 testimony over with, finally. I know you've been up there a couple of  
10 times.

11 Doctor, do you recall, when we left off last, we were discussing  
12 your use of the harmonic scalpel and your testimony about your use of  
13 the harmonic scalpel? Do you recall that?

14 A Vaguely, yes.

15 Q Okay. Now, at the time of your deposition in this case, that  
16 was in October 2018, correct?

17 A Correct.

18 Q And at that time, when that deposition began, we can agree  
19 that you had not provided the Plaintiffs with any information about the  
20 Center case, correct?

21 A Correct.

22 Q Okay. During your deposition in the Farris case, you testified  
23 that at the time of the Farris surgery, that's my understanding, you had  
24 not used the harmonic scalpel in five to seven years prior to that.

25 A No, that's not correct.

1           Q     Okay. Let's go ahead, and let's go to your deposition in the  
2 Farris case.

3           THE COURT: Counsel, you publishing the deposition?

4           MR. JONES: Yes, Your Honor. Your Honor, I would request  
5 to be able to publish Dr. Rives' deposition.

6           THE COURT: Okay. Just one second. If Madam Clerk could  
7 get that out, I do appreciate. Thank you so very much.

8           Q     And Dr. Rives, for your ease of use, there is a transcript.  
9 Let's see.

10          MR. JONES: Your Honor, I don't recall exactly how to turn  
11 this on, but I'd like to use this as the overhead, go through his deposition  
12 with Dr. Rives.

13          THE COURT: Just one moment. Is the monitors on? Okay.  
14 Screen's on.

15          MR. JONES: Do I just hit this button?

16          THE COURT: You hit the big blue button. Okay. And there's  
17 the deposition just set to be published for you. And publish is just our  
18 term taking it out of its original casing so it can be utilized.. That's why  
19 you see it being cut out of its original casing that gets provided from the  
20 court reporter.

21          MR. JONES: All right. Yes, Your Honor, I request the  
22 opportunity to be able to show Defendant his deposition.

23          THE COURT: Sure.

24          MR. DOYLE: Is that the original?

25          THE COURT: It came in a box.

1 MR. JONES: It is, it came in a box.

2 MR. DOYLE: Okay.

3 THE COURT: Counsel, do you wish to approach and see if it  
4 is the stamped original and came -- Madam Clerk, that's the original as  
5 you pulled out of the box, correct?

6 THE CLERK: Yes.

7 MR. DOYLE: No, that's fine.

8 MR. JONES: Okay.

9 THE COURT: That's why it's got the clerk's stamp on it, in  
10 the upper right-hand corner.

11 BY MR. JONES:

12 Q Okay. So Dr Rives, I'm going to turn to page 30 of your  
13 deposition. I'll put it here on the overhead so that it can be seen.

14 MR. DOYLE: Your Honor, if he does that I don't have a  
15 chance to look and see if there's --

16 THE COURT: Counsel, if it's a conversation would you like to  
17 approach?

18 MR. DOYLE: Please.

19 THE COURT: Madam Court Recorder, would you like to turn  
20 some lovely white noise.

21 COURT RECORDER: Sure.

22 THE COURT: Thank you so very much.

23 [Sidebar at 1:05 p.m., ending at 1:11 p.m., not transcribed]

24 THE COURT: Thank you very much. Appreciate it. Okay.

25 BY MR. JONES:

1           Q     All right, Doctor, we were just talking about I mentioned that  
2 from your deposition it sounded to me as though you had stated on  
3 page 30, lines 2 through 15, that at the time of the Farris surgery, you  
4 had not used the harmonic scalpel in five to seven years. And you said  
5 that wasn't accurate, correct?

6           A     Correct.

7           Q     All right. Okay. So we're just going to go ahead and --

8           THE COURT: Pardon?

9           MR. JONES: Is there --

10          THE COURT: Just one moment, Counsel. No objection  
11 pending to the use of a party opponent's deposition; is that correct,  
12 Defense Counsel, over all?

13          MR. DOYLE: I have no objection to anything on page 30.

14          THE COURT: Okay.

15          MR. JONES: All right.

16 BY MR. JONES:

17          Q     So beginning of line 2 there, let's see, there we are.

18          Beginning at line 2, Doctor, it says: Did you consider using  
19 scissors or a non-thermal device to free the bowel or the colon from the  
20 mesh?

21          And then your answer follows: When I assessed what instruments  
22 to use it all depends on what the tissue looks like and what the mesh  
23 looks like. In some cases if adhesions are a little less dense, and that I  
24 can get away from using scissors, I'll do that . But if the tissue is fairly  
25 ingrained, I want to make sure that the tissues coagulate so you don't

1 end up with a lot of bleeding. You just cut native tissue. I hadn't used  
2 the harmonic scalpel in at least five or seven years because of the heat  
3 distribution from that particular instrument.

4 As I read that it says I hadn't used the harmonic scalpel. Is that not  
5 indicating that you're referring to the time of the surgery in this case?

6 A It should have been haven't.

7 Q Okay. So you'd agree with me that the reading of that  
8 appears to state that you had not used it since five to seven years before  
9 the Titina Farris surgery, correct?

10 A It could be interpreted that way, sure.

11 Q Okay. Now, but you're saying now that what you think you  
12 meant was it was five to seven years from the time of the deposition?

13 A That's what I recall, yes.

14 Q Okay. And again, at that time, at the time of this deposition,  
15 no information had been provided to us about the Center case at all,  
16 correct?

17 A That is correct.

18 Q All right. Now, Doctor, in either case, you agree that that  
19 answer is not true, correct? You had used it within five to seven years of  
20 both your deposition and certainly of the Farris surgery?

21 A That would be true.

22 Q Okay. Doctor, you'd agree that in the Vickie Center case,  
23 where your patient ended up with multiple, unexplained injuries to her  
24 stomach --

25 MR. DOYLE: Objection. Relevance --

1 MR. JONES: -- following your hernia repair surgery --

2 THE COURT: Okay.

3 MR. JONES: -- you used the harmonic scalpel, correct?

4 MR. DOYLE: Objection. Relevance and 48.035.

5 THE COURT: The Court is going to sustain it on relevance.

6 MR. JONES: Okay.

7 BY MR. JONES:

8 Q Doctor, you agree that the Vickie Center surgery occurred  
9 five months before the surgery in the Farris case, correct?

10 A That is correct.

11 Q And the Vickie Center surgery, in that surgery you used the  
12 harmonic scalpel, correct?

13 A I believe so.

14 Q Would you like -- are you sure or are you unsure about that?

15 A Well, it's a little difficult to say, because in my operative note  
16 there's one device indicated, and in the nursing notes there's a different  
17 device indicated.

18 Q All right. So if you go to Plaintiffs' demonstrative exhibit  
19 binder, Doctor.

20 THE COURT: Counsel, the demonstrative binder is -- because  
21 I like the Court to have it, we don't keep that on the witness stand.

22 BY MR. JONES:

23 Q And this is Exhibit 4.

24 THE COURT: Counsel, you can get that from the clerk.

25 MR. JONES: Oh.



1 THE COURT: Thank you so much.

2 MR. JONES: Oh, I apologize. I thought there was one up  
3 there.

4 THE COURT: We don't keep it on the witness stand because  
5 it's demonstrative to share.

6 BY MR. JONES:

7 Q And Doctor, your deposition in the Vickie Center case is  
8 Exhibit 4 of that binder.

9 Please go to page 49 of Exhibit 4 --

10 THE COURT: Counsel, you're referencing, again, Plaintiffs'  
11 demonstrative Exhibit 4, just for clarity purposes?

12 MR. JONES: Yes, and thank you, Your Honor. Yes, this is  
13 Plaintiffs' demonstrative Exhibit 4, not the actual Exhibit 4.

14 THE COURT: Proposed. Not actual, proposed Exhibit 4.  
15 Thank you.

16 MR. JONES: Thank you.

17 BY MR. JONES:

18 Q Tell me when you're there.

19 A Do you mean the little page 49 of the deposition?

20 Q Yes, yes. Thank you.

21 A Okay.

22 Q The deposition you're looking at is sectioned so that there  
23 are four pages per page, essentially, right?

24 A Correct.

25 Q Okay. So on page 49 of your deposition there, let's go ahead

1 and start with lines 18 going through 23. Okay? The question is:  
2 Modern science, all right. So a coagulation device. What is that? Is  
3 that a heated device?

4 Answer: In this case I was using a harmonic scalpel which works  
5 on an ultrasonic vibratory wave to control bleeding. Right?

6 A Correct.

7 Q So you were using the harmonic scalpel, correct?

8 A I'm not sure what I was using.

9 Q Okay. When you were testifying under oath in the Vickie  
10 Center case, you testified under oath that you were using the harmonic  
11 scalpel, correct?

12 A That is correct.

13 Q Okay. But right now you're saying you're not sure that was  
14 true?

15 A Correct.

16 Q Okay. Doctor, further in the Vickie Center case your  
17 testimony I that case was in April of 2018, correct?

18 A Correct.

19 Q Which was six months --

20 A I'm sorry. What year -- you say this year?

21 Q Of '18. April of 2018 was your deposition testimony in the  
22 Vickie Center case.

23 A Deposition, yes.

24 Q And then six months later, in October 2018, was your  
25 deposition in this case?

1 A Correct.

2 Q Okay. Now, Doctor, in 2018, at that deposition, you testified  
3 that the harmonic scalpel, along with scissors and a blunt instrument  
4 were your go-to surgical instruments, isn't that true?

5 A I'm not sure I used the term go-to.

6 Q Doctor, I think you're probably right. Would you like to  
7 review your testimony on this point?

8 A Unless you have something to recollect me better.

9 Q Yeah, absolutely. Let's turn to page 58. So go-to is certainly  
10 my words, and we're going to read, beginning at line 22 through 24.  
11 Okay?

12 It says: Okay. So you would normally use the harmonic scalpel, a  
13 blunt instrument and scissors.

14 Answer: Yes.

15 Does that sound right?

16 A Yes.

17 Q Okay. And so this is as of April 2018?

18 A This is regarding this case?

19 Q So you're saying it referred back to 2015?

20 A Well, it's asking me about the Vickie Center case. So yes.

21 Q Okay. So you're saying that at that time what you normally  
22 would use would be the harmonic scalpel, blunt instrument and  
23 scissors?

24 A Correct.

25 Q Okay. Doctor, do you recall that on Friday there was some

1 back and forth between your attorney and Dr. Michael Hurwitz, who was  
2 testifying, regarding the dissimilarities or the similarities of this case to  
3 the Center case?

4 A Yes.

5 Q Doctor, given that the Vickie Center surgery was a few  
6 months before this surgery, any lessons that you would have learned  
7 from the Vickie Center case should have been in your mind in this  
8 surgery, correct?

9 A Not necessarily.

10 Q Any consequences of bad decisions that you may have made  
11 in that case would have been foreseeable to you when treating Titina  
12 Farris, is that fair?

13 A Not at all.

14 Q Doctor, regarding depositions you gave -- well, here, let's --  
15 Doctor, both cases involved a hernia repair surgery, correct? Though the  
16 surgeries were different types.

17 A That's a pretty vague overstatement, but yes.

18 Q They were both hernia repair surgeries of different types?

19 A A diaphragmatic hernia is very different than an abdominal  
20 wall hernia.

21 Q Okay. Doctor, in your operative note for Vickie Center, you  
22 noted her surgery was without complications and you sent her to  
23 recovery, correct?

24 MR. DOYLE: Objection. Relevance.

25 THE COURT: Sustained.

1 BY MR. JONES:

2 Q Doctor, in the Farris case, when you completed your  
3 operative report, you stated, quote, she tolerated the procedure well  
4 without complication. Is that right?

5 A That is correct.

6 Q Those were your exact words, correct?

7 A Correct.

8 Q Doctor, now you cut two holes in Titina's previously healthy  
9 colon, true, during that surgery?

10 A Yes.

11 Q And Doctor, cutting two holes in a previously healthy colon,  
12 isn't that a complication?

13 A Not necessarily.

14 Q Okay. Doctor, how bad does it have to get before you  
15 acknowledge a procedure has had serious complications and did not go  
16 well?

17 A It's not the serious nature of the complication, it's whether  
18 the complication is expected or not.

19 Q You expected to cut two holes in her colon, Doctor?

20 A When taking down colon from mesh, it's very possible, yes.

21 Q Okay. So you expected that?

22 A Yes.

23 Q Okay.

24 A It was a possibility, yes.

25 Q Doctor, you agree it is extremely unusual for a hernia repair

1 patient to become septic at all, correct?

2 A It's not common, yes..

3 Q Okay. Doctor, you agree it is even more unusual for a hernia  
4 repair patient to become septic the day after surgery, right?

5 A Same answer, yes.

6 Q Doctor, in your Center deposition when you were asked  
7 about your history of having hernia patients become septic the day after  
8 surgery, you were not completely truthful, were you?

9 A I don't know what you're referring to.

10 Q Okay. Let's go ahead and turn to your Center deposition,  
11 page 71. This is line -- beginning at line 23, going to page 72, line 3.  
12 Okay?

13 MR. DOYLE: I'm sorry. Could I have those numbers again?

14 MR. JONES: Yes. Page 71, beginning at line 23, going to  
15 page 72, ending at line 3.

16 MR. DOYLE: There's an objection. Objection.

17 MR. JONES: Okay. I guess we can --

18 THE COURT: Counsel, the two of you like to approach?

19 MR. JONES: Yes.

20 THE COURT: Madam Court Recorder.

21 Bring that page with you, please, couple of pages Thank you  
22 so much. And would the witness close that folder at Bench? I do  
23 appreciate. Thank you so much.

24 [Sidebar at 1:23 p.m., ending at 1:26 p.m., not transcribed]

25 THE COURT: The Court is, because it's preserved, it has to

1 treat it as sustained, and Counsel's going to re-ask the question.

2 Thank you so much.

3 BY MR. JONES:

4 Q Doctor, in the -- when your deposition was taken in the  
5 Center case, did you ever inform Vickie Center's attorney that you had  
6 another client who had also become septic postop day one? The day  
7 after surgery, after one of your hernia repairs?

8 A I believe that was disclosed, yes.

9 Q You told the other attorney that you had a patient who had  
10 become septic postop day one, following a hernia repair?

11 A Oh, whether they were septic postop day one? I thought you  
12 meant disclose the case. I'm sorry, I misunderstood.

13 Q No, I was asking -- right.

14 A Are you talking like in the interrogatories where we have to  
15 disclose cases?

16 Q At any time did you ever tell -- during your deposition is what  
17 I'm talking about, did you ever disclose to the other attorney that Titina  
18 Farris had become septic postop day one?

19 A No.

20 MR. DOYLE: Objection. Lack of foundation.

21 THE COURT: Did you ever discuss? Overruled. Whether he  
22 discussed or not.

23 THE WITNESS: No.

24 BY MR. JONES:

25 Q Okay. Now, you acknowledge that Vickie Center became

1 postop day one, as did Titina Farris, correct?

2 A What was the beginning of that question, sir?

3 Q You've acknowledged that Vickie Center and Titina Farris  
4 both became septic postop day one, the day after surgery?

5 MR. DOYLE: Objection. Relevance.

6 THE COURT: Could you both please approach and Madam  
7 Court Recorder, please turn on the white noise.

8 [Sidebar at 1:27 p.m., ending at 1:37 p.m., not transcribed]

9 THE COURT: Appreciate it. Thank you so very much.  
10 Appreciate sometimes a few moments at Bench being a euphemistic  
11 term, really does save time in sending you out and taking a lot longer to  
12 do it. Do appreciate your patience. Thank you so very much. I'm sorry  
13 for the interruption.

14 So Counsel, feel free to go on with your next question so at  
15 that juncture that was a point of clarification. There was not -- the Court  
16 had, with regards to the last question the Court understood that question  
17 was with regards relevance and more prejudicial than probative.

18 The Court overruled on more prejudicial than probative after  
19 a discussion at Bench the Court overruled on relevance as well pending  
20 last question if you need to repeat that question, because there was a  
21 little bit of an intervening time, feel free to do so.

22 Thank you so much.

23 MR. JONES: Absolutely.

24 BY MR. JONES:

25 Q So the question was just that both Vickie Center and Titina



1 Farris became septic one day after hernia surgery with you, correct?

2 A At some point, yes.

3 Q At some point the day after the surgery, correct?

4 A When I saw both patients early in the morning, they were not  
5 septic. I became aware that they were septic at some point later that  
6 day, yes.

7 Q Got it, yes. Thank you.

8 And both had to be rushed to the ICU at some point during the day  
9 after the surgery, correct?

10 A Yes.

11 Q And both had to be intubated, correct?

12 A Correct.

13 Q Both of them experienced organ failure of various types,  
14 correct?

15 A Correct.

16 Q Now, Doctor, in the Center case, even though you had just  
17 been operating inside of her belly, your differential diagnosis was that  
18 the cause of her sepsis was pneumonia or pneumonitis, right?

19 MR. DOYLE: Objection. Relevance.

20 THE COURT: The Court's going to sustain.

21 BY MR. JONES:

22 Q Doctor, isn't it true that -- let's see.

23 Doctor, as a general practice in cases where you have inadvertently  
24 put holes in a patient's organ or bowel, do you always place the blame  
25 for sepsis on the lungs?

1           A     No.

2           Q     Okay. Doctor, you took Vickie Center back to surgery eleven  
3 days after she became septic?

4           A     Sometime around there, yes.

5           Q     Okay. To refresh your recollection, the original surgery was  
6 on the 6th, and you took her back to surgery on the 17th?

7           A     Sounds about right.

8           Q     Okay. And when you took her back, you took her back for a  
9 laparoscopic surgery where you went in to look, right?

10          A     That is correct.

11          Q     Okay. Doctor, in this case you did not recommend taking  
12 Titina Farris back to surgery until twelve days after she had become  
13 septic, correct?

14          A     I recommended it on the 15th, so that would be around  
15 postop day twelve, yes.

16          Q     Okay. Doctor, in your treatment of Vickie Center in those  
17 eleven days, did you notice that her legs and arms began to become  
18 swollen and discolored?

19               MR. DOYLE: Objection. Relevance.

20               THE COURT: Sustained.

21 BY MR. JONES:

22          Q     Doctor, did you notice that Titina Farris', in the treatment of  
23 Titina Farris, my client, did you notice in those twelve days that she lay  
24 there septic, that her arms and legs began to become swollen and  
25 discolored?

1 A Swollen, yes.

2 Q Okay. Not discolored?

3 A I didn't notice that, no.

4 Q Okay. And you're aware, of course, that she ultimately  
5 developed bi-lateral drop foot, correct?

6 A Yes.

7 Q Doctor, can you tell the jury what happened to Vickie  
8 Center's feet?

9 MR. DOYLE: Objection. Relevance.

10 THE COURT: Overrule that as phrased.

11 THE WITNESS: Can you repeat that?

12 BY MR. JONES:

13 Q Doctor, can you tell the jury what happened to Vickie  
14 Center's feet?

15 A Vickie Center, postoperatively, developed sepsis. She went  
16 into something called disseminated intravascular coagulopathy where  
17 her body formed lots of little microthrombi, and it's a consumptive  
18 coagulopathy. So while you're making lots of clots, you're using up all  
19 the proteins to make those clots, so you're likely to bleed at the same  
20 time. A lot of those little clots will go to the fingers and go to your toes  
21 and to your feet and cause you to lose blood supply to those areas.

22 Q What happened to her feet, Doctor?

23 A Eventually she required to have bi-lateral amputations about,  
24 I think about a year, year and a half later.

25 Q Doctor, you agree that in deposition Vickie Center's attorney

1 asked you questions that required you to tell him about this case, the  
2 Farris case, correct?

3 A I don't recall specifically, no.

4 Q You don't recall if he asked you questions about the Farris  
5 case?

6 A Directly, I don't know. I don't remember.

7 Q Doctor, do you remember testifying under oath recently,  
8 when you were asked essentially the same question by me?

9 A No.

10 Q Okay. I'm going to move on to the next question, we'll come  
11 back to it momentarily.

12 Doctor, legally you have to get informed consent before operating  
13 on a patient, correct?

14 A Correct.

15 Q Okay. It looks like we found what I was looking for there.  
16 Okay. A moment ago I was asking you about questions by Vickie  
17 Center's attorney --

18 A Okay.

19 Q -- during that deposition, where he was asking you  
20 questions about your medical malpractice history, do you recall that?

21 A I know he did, I don't recall it exactly.

22 Q Okay. So this is the Court Exhibit 19, I believe is how we  
23 described it.

24 THE COURT: I believe you're talking about either Court  
25 Exhibit 6 or 7.

1 Madam Clerk, can you please -- Counsel.

2 MR. JONES: Yes.

3 THE COURT: I believe you're talking about 16 or 7. 6 goes  
4 through verification; and 7 is a -- 7's what I think you're referencing.

5 Counsel, would you like to look at Court's Exhibit 7, which is  
6 the second of the two documents?

7 MR. JONES: It's the transcript? Yes, Your Honor.

8 THE COURT: The verification was the first of the two --

9 MR. JONES: Yes.

10 THE COURT: -- and the other document was the second of  
11 the two.

12 MR. JONES: So this is Court Exhibit 7.

13 THE COURT: Would you like that binder that has the two  
14 Court exhibits in it? Is that what you need, Counsel?

15 MR. JONES: Yes, Your Honor, please.

16 THE COURT: Madam Clerk, has those two.

17 Okay. First tab is Court's Exhibit 6, it's just not been  
18 renumbered; and the second tab is Court's Exhibit 7. It just hasn't been  
19 renumbered. It's the statements, yes.

20 MR. JONES: So it's the second tab?

21 THE COURT: Yes.

22 MR. JONES: Yes, it's the second tab.

23 THE COURT: I'm just making that as an affirmative  
24 statement. The tabs just have tabs on, but the numbers are not  
25 consistent. Court's Exhibit 6 is the first tab; Court's Exhibit 7 is the

1 second tab.

2 BY MR. JONES:

3 Q And so it's on page 62.

4 MR. DOYLE: I'm sorry. I guess I've -- what are we looking  
5 at?

6 MR. JONES: We're looking at his testimony when I asked  
7 him, I just asked him questions about his Center questioning.

8 MR. DOYLE: All right. I understand. Thank you.

9 BY MR. JONES:

10 Q Okay. So this begins at line 8 on page 62, and we're going to  
11 go ahead and read down to line 20. Okay?

12 It says,

13 "Q Okay. In the Center case do you recall being asked about  
14 prior medical malpractice cases in which you had been involved?

15 "A I believe so, yes."

16 So at that time, the last time you did have a recollection of that  
17 conversation, correct?

18 A Correct.

19 Q Okay. And then, beginning at line 11:

20 "Q And you'd agree that when you were under oath in the  
21 Center case you also had taken an oath to tell the truth and, as you  
22 stated, the whole truth and nothing but the truth.

23 "A That is correct.

24 "Q And then, and that was true for today at the deposition of the  
25 Farris case and the deposition of the Center case, correct?

1 And your answer

2 "A That covers all aspects of my life, yes."

3 And then I gave you the deposition there in the Center case -- okay.

4 And then going on to page 63, beginning at line 8:

5 "Q Yes, Doctor, you'd agree that you failed to name the Farris  
6 case when you were asked about medical malpractice cases in which  
7 you had been involved during your Center deposition.

8 "A When I reviewed my deposition, I realized that I had left off  
9 both pending cases, Brown and Farris.

10 "Q So you failed to disclose that you had the Farris case, and  
11 you failed to disclose that you had the Brown case during your Center  
12 deposition.

13 "A No, I misunderstood the question. I thought it was related to  
14 matters that had been settled, so I talked about those cases."

15 And I'll just skip ahead. The next question on line 20:

16 "Q Okay. But you would agree in retrospect, having reviewed  
17 this in the last two weeks, that the question required you to be candid,  
18 even about the Farris and Brown case, correct?

19 "A In retrospect, yes.

20 "Q Okay. So you're just saying at the time you misunderstood  
21 it, correct?

22 "A That is correct."

23 We're now on page 64,

24 "Q And because of that you gave incomplete testimony, correct?

25 "A That is correct.

1 All right. So does that refresh your recollection, Doctor?

2 A Yes.

3 Q Okay. And so during the Center case, you were asked about  
4 the Farris case, correct? Or you were asked about medical malpractice  
5 lawsuits in which you had been involved, correct?

6 A During my deposition, you're asking?

7 Q Yes.

8 A Yes.

9 Q And during that deposition you failed to mention the Farris  
10 case, even when the question called for it, correct?

11 A I didn't mention the Farris and the Brown case, correct.

12 Q Correct. You left both cases off, correct?

13 A Correct.

14 Q Okay. And that was a deposition under oath, correct?

15 A Correct.

16 Q Okay. And Doctor, later on in the deposition, it became  
17 evident that Vickie Center's attorney already knew about the Farris case  
18 because he asked you specific questions about the Farris case, correct?

19 MR. DOYLE: Objection. Speculation.

20 THE COURT: Sustained as phrased.

21 MR. JONES: Okay.

22 BY MR. JONES:

23 Q Doctor, did Vickie Center's attorney, even after he had not  
24 been provided with information by you about the Farris case, ask you  
25 questions about the Farris case?



1 A After I mentioned that I left them off?

2 Q Yes.

3 A Yes.

4 Q Okay. And Vickie Center's attorney asked for a brief  
5 explanation of the Farris case, correct?

6 A Correct.

7 Q And your complete response to his answer (sic) was -- and  
8 I'm going to quote it -- the patient had a laparoscopic hernia repair and  
9 resulted in an colocutaneous fistula postoperatively that required  
10 subsequent surgery, correct? That was your answer?

11 MR. DOYLE: Objection. Asked and answered.

12 THE COURT: Overruled.

13 A It's probably colocutaneous, but --

14 Q Oh, colocutaneous? Yeah, that actually sounds right.

15 A Oculo would be very --

16 Q So colocutaneous fistula postoperatively required  
17 subsequent surgery, correct?

18 A Correct.

19 Q That's what you said? Now, first, Doctor, you agree that you  
20 never diagnosed Titina with a colocutaneous fistula, correct?

21 MR. DOYLE: Objection. Asked and answered.

22 MR. JONES: Your Honor, I have not asked this question  
23 here.

24 THE COURT: Overruled in light of the intervening questions  
25 and answers.

1 BY MR. JONES:

2 Q Doctor, you agree that you never diagnosed Titina Farris with  
3 a colocutaneous fistula, did you?

4 A Correct.

5 Q In fact, no one that you're aware of in the course of her  
6 treatment diagnosed Titina with a colocutaneous fistula, did they?

7 A Correct.

8 Q But you testified under oath that that's what she developed,  
9 correct?

10 A Correct.

11 Q On the other hand, did you tell Vickie Center's attorney that  
12 you had cut holes in her colon when using a thermal cutting device?

13 A I mentioned the two colotomies, I don't know if I mentioned  
14 it with the thermal device or not.

15 Q Did you tell Vickie Center's attorney that you had caused two  
16 colotomies?

17 A I don't know.

18 Q Okay. Did you tell Vickie Center's attorney that Titina  
19 became septic postop day one?

20 A No.

21 MR. DOYLE: Objection. Lack of foundation.

22 THE COURT: Overruled. Like her testimony.

23 BY MR. JONES:

24 Q Did you tell Vickie Center's attorney that you did not  
25 recommend surgery until she had been septic for twelve days?

1           A     I do not believe so.

2           Q     Did you tell Vickie Center's attorney that Titina required a  
3 colostomy?

4                   MR. DOYLE: Objection. Lacks foundation.

5                   THE COURT: Overruled on the [indiscernible] testimony.

6                   THE WITNESS: I didn't hear.

7 BY MR. JONES:

8           Q     Did you tell Vickie Center's attorney Titina required a  
9 colostomy?

10          A     No.

11          Q     All right, Doctor. I asked this question a moment ago, I didn't  
12 hear it because I was kind of fumbling between two things. Legally you  
13 have to get informed consent before operating on a person, right?

14          A     Correct.

15          Q     Okay. And if you didn't have informed consent you'd be  
16 operating on another human's body without them giving you permission  
17 to do so, isn't that right?

18          A     Correct.

19          Q     Okay. Doctor, you're not claiming in this case, to this jury,  
20 that the consent you obtained from Titina in any way prevents a patient  
21 from being able to sue you if you are negligent, correct?

22          A     No.

23          Q     And Doctor, regarding Titina's treatment, you'd agree that  
24 many surgeons order bowel prep before performing surgery in areas  
25 that might involve the bowel, correct?

1           A     There's no way for me to know what a surgeon would or  
2 would not order.

3           Q     Okay. At the very least we can say that some surgeons  
4 would, and so some surgeons may not, correct?

5                     MR. DOYLE: Objection. Irrelevance.

6                     THE COURT: Overruled.

7                     THE WITNESS: Most surgeries these days for a ventral  
8 hernia repair would not.

9           Q     Do you have any studies to back that up, Doctor?

10          A     Well, I was chief of surgery for eight years and reviewed  
11 hundreds and hundreds of cases.

12          Q     Okay. And in that you're saying most surgeons did not do  
13 that?

14          A     I don't recall anybody doing that.

15          Q     Okay. You don't recall anyone at St. Rose ordering a bowel  
16 prep prior to a surgery in proximation of the colon or bowel?

17          A     For eventual hernia repair, I do not recall that, no.

18          Q     Okay. Doctor, what is a bowel prep?

19          A     Well, a bowel prep, there's a couple of types. You can do a  
20 light bowel prep where you make the patient NPO for solid food, give  
21 them only clears for about 48 hours, and sort of let the bowel empty  
22 most of it on its own.

23                     Then there's a mechanical bowel prep where you either do the  
24 GoLYTELY like a couple of gallons and you have to do it over 12 hours,  
25 and it gives you lots of diarrhea and causes inflammation of the colon,

1 possibly, and then you can or can't add or may add I should say,  
2 antibiotics on top of that.

3 Some people, instead of doing the mechanical, some surgeons,  
4 instead of doing the mechanical part, will do just the antibiotic part, and  
5 some will do both, will do the antibiotic and the mechanical part.

6 Q Thank you, Doctor. Now, Doctor, a CT scan was taken of the  
7 surgical area prior to the surgery on July 3rd, 2015, correct?

8 A Correct.

9 Q And that CT scan showed that there was at least some  
10 portion of the bowel -- didn't show a lot -- but some portion of the bowel  
11 in the hernia area, correct?

12 A Correct.

13 Q In the hernia sac. And it also showed that within the colon,  
14 within the bowel, there was feces there, correct?

15 A Of course.

16 Q And so you'd know, you'd know that there would be likely  
17 feces when you're operating in that area, correct?

18 A Yes.

19 Q And a bowel prep certainly would cause that feces to not be  
20 there or at least in a smaller degree, fair?

21 A Sure.

22 Q Okay. But you didn't choose to do a bowel prep, correct?

23 A No.

24 Q Okay. Now, Doctor, because you knew that the feces would  
25 be there, you knew that if you injured the colon during the surgery that

1 the colon would have feces in it at that time, correct?

2 A Correct.

3 Q Doctor, please confirm if this is an accurate rundown of the  
4 surgery. You attempted to remove the mesh from the colon with the  
5 LigaSure, and after use of the LigaSure you see two colotomies, or holes  
6 in the colon. Is that true?

7 A It's more like you'd remove the colon from the mesh, from  
8 the adhesions, the colon reduces, and there's two holes in the colon, yes.

9 Q Okay. And at that point you actually see hardened stool or  
10 poop in the colon, correct?

11 A Correct.

12 Q And then you closed the holes using staples, correct?

13 A Correct.

14 Q Then you reduced the hernia using a new synthetic mesh,  
15 right?

16 A Repair the hernia, yes.

17 Q Okay. And then you sewed Titina up and you end the  
18 surgery, correct?

19 A In general terms, yes.

20 Q Okay. Now, Doctor, you agree that your medical records in  
21 this case failed to list important details correct?

22 A Depends what you're referring to.

23 Q Okay. Do you think your operative report fails to list  
24 important details, Doctor?

25 A I don't think so, no.

1 Q You think it lists all the important details?

2 A Yes.

3 Q Okay. Doctor, you did not note in your operative report  
4 whether the 2014 mesh was left in Titina or taken out of Titina following  
5 the surgery, did you?

6 A I did not dictate that it was removed, so one would have to  
7 assume it was left in.

8 Q Well, Doctor, you don't 'remember one way or the other, or  
9 at least at your deposition you didn't, did you, if you had left it in or  
10 taken it out?

11 A I think the question asked of me was whether there was any  
12 pieces that I took out, not the entire mesh.

13 Q Okay. Let's go ahead and take a look. This is page 28 of your  
14 deposition in this case. And we are going to be looking at lines 15  
15 through 19.

16 THE COURT: Push it again, give it a second.

17 MR. JONES: There we go.

18 BY MR. JONES:

19 Q Okay. All right. So, Doctor, we are beginning at line 15,  
20 going through 19. It says:

21 "Q So was mesh removed during the surgery of July 3rd, 2015?

22 "A I don't know if any mesh was removed in relation to the  
23 removal from the colon itself. It might have been yes.

24 Okay. So you're saying what? You're saying that -- go ahead  
25 explain what you meant there.

1           A     So sometimes when any piece of bowel is up against mesh,  
2 you have to decide whether you're going to take out this entire piece of  
3 mesh or not. You have to decide in taking down the bowel from the  
4 mesh, it might be necessary to cut little --

5           Q     Doctor, we're actually not looking for a big explanation of the  
6 whole process --

7                     MR. DOYLE: Your Honor, I object to the interruption.

8                     THE COURT: Overruled. You'll get an opportunity in cross-  
9 examination.

10          BY MR. JONES:

11           Q     Doctor, I'm asking you specifically do you remember if you  
12 took out mesh or not?

13           A     I remember I did not take out the entire mesh, yes.

14           Q     Okay. So you remember that you did not take out the entire  
15 mesh?

16           A     That is correct.

17           Q     There may have been a couple of pieces and you just don't  
18 know one way or the other?

19           A     That is correct.

20           Q     Okay. All right. Doctor, you did not state in your operative  
21 report whether the mesh was stuck to the bowel all over, or if it was  
22 stuck to the bowel just in a couple of places, correct?

23           A     I don't recall.

24           Q     And Doctor, you don't -- at your deposition you also didn't  
25 recall how many places it was stuck to the bowel, you knew that it was



1 stuck to at least two places, correct?

2 A That is correct.

3 Q Okay. Doctor, your operative report does not state how big  
4 the holes were, does it?

5 A No.

6 Q But your memory at deposition, more than three years later,  
7 is that the holes were both just one centimeter, correct?

8 A I think I said approximately, yes.

9 Q Okay. Doctor, your operative report does not say how far  
10 apart the holes are, does it?

11 A I don't believe so, no.

12 Q And Doctor, at your deposition you didn't recall how far apart  
13 the holes were, did you?

14 A I don't believe so, no.

15 Q Doctor, your operative report does not say how many staples  
16 you used for the first hole, does it?

17 A I don't believe so, no.

18 Q And it also doesn't state how many staples you used for the  
19 second hole, correct?

20 A Correct.

21 Q At your deposition you didn't recall how many staples you  
22 used, right?

23 A Sounds familiar.

24 Q Doctor, your operative report makes absolutely no mention  
25 of irrigating the surgical area, cleaning the surgical area, or draining the

1 surgical area, does it?

2 A No.

3 Q Now, I imagine you have a plan to tell this jury that you did  
4 clean up the surgical area.

5 A It's what I typically do in all my cases, yes. It's my customary  
6 habits.

7 Q I thought you'd say that.

8 MR. DOYLE: Your Honor --

9 MR. JONES: I withdraw it.

10 MR. DOYLE: Your Honor.

11 THE COURT: The jury will disregard the last comment by  
12 Plaintiffs' counsel.

13 Sorry, what was -- Defense Counsel, what was your --

14 MR. DOYLE: Argumentative.

15 THE COURT: The last statement that the Court just asked the  
16 jury to disregard or something else.

17 MR. DOYLE: No, we're good. Thank you.

18 THE COURT: Okay. Thank you.

19 BY MR. JONES:

20 Q Now, Doctor, when you did that, when you did the cleanup  
21 afterwards, did you do that did you do that with gloves on your hands or  
22 did you just wash your hands?

23 MR. DOYLE: I beg your pardon? Clean up what?

24 MR. JONES: When he did the cleanup after the operation.

25 BY MR. JONES:

1           Q     Did you do it with gloves on your hands or did you just wash  
2 your hands?

3           A     I don't know what you're referring to.

4           Q     We were just talked about how your operative note doesn't  
5 indicate any irrigation of the inside of her belly at all, correct? Or any  
6 cleanup of the inside of her belly, correct?

7           A     The irrigation inside the abdomen isn't done by my hands.

8           Q     Right.

9           A     It's a laparoscopic case. It's done by a suction irrigation  
10 device.

11          Q     My question is were you wearing gloves at that time when  
12 you were doing this or --

13          A     Yes.

14          Q     -- did you just wash your hands?

15          A     It's still a sterile case at that point, yes.

16          Q     Okay. Now, Doctor, you claim that after you sewed Titina up  
17 that she was in good condition, correct?

18          A     Correct.

19          Q     Now, when Titina became septic the next day, you, of course,  
20 knew, I guess you didn't call them complications, but you knew at least  
21 that she had two holes in her colon that she hadn't have previously,  
22 correct?

23          A     That I repaired, yes.

24          Q     Now you'd agree that it seemed pretty likely that your  
25 surgical error was the cause of the problem at that point, right?

1 MR. DOYLE: Objection. Argumentative.

2 THE COURT: Overruled.

3 THE WITNESS: It was one of my considerations, yes.

4 BY MR. JONES:

5 Q Okay. And you said you waited because you wanted to see  
6 what the CAT scan showed, right? You waited to go back in for surgery.

7 A Yes.

8 Q Now, but in the Vickie Center case, when Center became  
9 septic, the ICU doctor ordered a CAT scan, and you cancelled it, didn't  
10 you?

11 MR. DOYLE: Objection. Relevance.

12 THE COURT: Court's going to allow a little leeway to see and  
13 then the Court will make a determination.

14 THE WITNESS: I may answer it? That's incorrect.

15 BY MR. JONES:

16 Q You didn't cancel the CAT scan?

17 A By the ICU doctor, no.

18 Q Okay. Whose CAT scan did you cancel?

19 A Dr. Siddiqui in the morning had ordered a CT scan without  
20 seeing the patient. Once she became septic, went to the ICU, the ICU  
21 doctor wanted to get a CT scan, but she was too unstable to go to the CT  
22 scanner, so she had it the next day.

23 Q Okay. Okay You cancelled it, though, right?

24 A The one that I referred earlier, that Dr. Siddiqui ordered,  
25 when she wasn't septic? Yes.

1           Q     Okay. All right. Now, at the time of your deposition, didn't  
2 you say that you cancelled it actually because it wasn't likely to show  
3 anything? You didn't say that it was because she was too unstable to be  
4 scanned, did you?

5           A     You're misunderstanding me completely.

6           Q     Okay. So I'll ask you again, then, so that I can make sure that  
7 I fully understand. Another doctor in the Center case ordered a CAT scan  
8 shortly after Center became septic, right?

9           A     That's incorrect.

10          Q     Okay. Did you cancel the order of a CT scan in the Center  
11 case?

12          A     I did.

13          Q     Okay. And the reason you cancelled it is because you didn't  
14 think it was likely to show anything, particularly bleeding, right?

15          A     The reason was that Dr. Siddiqui ordered the CT scan  
16 without seeing the patient, ordered it for possible bleeding and  
17 abdominal pain. When I evaluated her that morning, I did not see an  
18 indication for it at all.

19          Q     And Doctor, in the Vickie Center case, you didn't order any  
20 CT scans, and one of the reasons you didn't feel it was necessary with or  
21 without contrast, is because you stated that you could not rule out a leak  
22 either way, correct?

23                   MR. DOYLE: Objection. Relevance.

24                   THE COURT: I'm going to overrule that specific question.

25                   Okay.

1 THE WITNESS: I don't know which CT scan you're referring  
2 to or what time frame you're referring to. She had a, you know,  
3 prolonged postoperative course there.

4 BY MR. JONES:

5 Q All right. Let's go ahead to your Center deposition --

6 THE COURT: And Counsel, before you do that, your batteries  
7 might be dead. We might need to doublecheck your pocket mic, it might  
8 be fading on us.

9 MR. JONES: Goodness, Your Honor, I think I turned it off at  
10 some point.

11 THE COURT: Oh, no worries. That might be -- okay.

12 MR. JONES: Up and down. So it's working,

13 THE COURT: Okay. No worries.

14 BY MR. JONES:

15 Q All right. Let's go ahead, this is on -- let's see. This is your  
16 deposition, page 112, in the Center deposition. And it's from line 25 to  
17 113, line 6.

18 So I'll go ahead, and I'll read it for you. You can follow along, if  
19 you'd like, or I can just read it and you can listen, whatever you prefer.

20 MR. DOYLE: Your Honor, I object to relevance in our case.

21 THE COURT: Counsel, can you both approach and Madam  
22 Court Recorder, turn white noise, keeping that with you, Counsel. Thank  
23 you so much.

24 And it looks like, Marshal, can you assist a couple of our  
25 jurors, please.

1 [Sidebar at 2:08 p.m., ending at 2:13 p.m., not transcribed]

2 THE COURT: Counsel, we just have a couple of jurors  
3 missing.

4 [Pause]

5 THE COURT: Okay. So the ruling is the Court overrules the  
6 objection in light of the sworn testimony.

7 So Counsel, you may proceed with the question.

8 MR. JONES: Thank you, Your Honor.

9 THE COURT: Thank you.

10 BY MR. JONES:

11 Q So we're on page 112 of your deposition in Vickie Center's  
12 case.

13 A Which tab is that?

14 Q This is 4.

15 A Page again?

16 Q 112.

17 A Correct.

18 Q All right. So now beginning at line 25 and it will continue on  
19 to page 13, line 6.

20 "Q Would a CT scan, I think we had this, so just to go over it, a  
21 CT scan of the abdomen with IV contract would indicate, would give you  
22 potentially a finding any leak or injury in the surgical area. Fair  
23 statement?

24 "A It's possible, yes; but it doesn't rule it out."

25 A That's correct.

1 Q Okay. Now, in the Farris case you wanted to wait for the CT  
2 scans though before acting, correct?

3 A It was one of the considerations, yes.

4 Q Okay. Doctor, I want to discuss a couple of your defenses,  
5 but first I'd like to talk about briefly is what was mentioned about this  
6 being a team event, it's not just you, right? Are you familiar with that  
7 concept?

8 A More or less.

9 Q All right. Now, Doctor, at one point the family of Titina  
10 Farris, her husband and her family, they asked for a second opinion,  
11 correct?

12 A Correct.

13 Q And that request happened on the 8th, and the second  
14 opinion of Dr. Ripplinger happened on the 9th; is that right?

15 A Sounds familiar.

16 Q Okay. And Doctor, you didn't even talk to Dr. Ripplinger  
17 about his opinions, did you?

18 A I do not recall that, no.

19 Q Okay. And now Dr. Ripplinger, he said -- let's see. Dr.  
20 Ripplinger said a couple of things, for one, in his record of his second  
21 opinion, he says, quote, her very first white blood count, which was done  
22 on July 4th, 2015, was 21.7. It has remained fairly consistent in the  
23 greater than 20,000 and was as high as 26,000 on a couple of occasions.

24 Now, you agree that that's a fair description?

25 A Sounds about right. Yes.



1           Q     All right. And Dr. Ripplinger also said, quote, I think there is  
2 a reason to be concerned for possible leak from one of the two colon  
3 repairs or an earlier aggressive infection of the mesh causing some of  
4 the patient's problems.

5                     And you agree with that also, right?

6           A     Yes.

7           Q     Okay. But you never called Dr. Ripplinger to seek his advice  
8 or to consult with him to see if there was something that he thought  
9 should be done that maybe you had overlooked?

10          A     Usually when we give second opinions, it's the job of the  
11 person giving the second opinion to reach out to the surgeon, the  
12 medicine team or the patient and their family.

13          Q     Okay. Now, Doctor, you agree that the second opinion  
14 surgeon doesn't have the right to just go recommend the surgery or go  
15 do the surgery himself, does he?

16          A     Of course, they do.

17          Q     So he could just take over care right there and do the surgery  
18 himself?

19          A     If that's what the family requests, yes.

20          Q     Okay. But given that the family hadn't requested that, they  
21 just asked for a second opinion, did he have the right to go say, hey, let's  
22 go move this patient into surgery?

23          A     Without talking to the patient or family? Without informed  
24 consent? Of course no.

25          Q     Okay. The family would have to actually move you off the

1 case first, correct, and replace you with him?

2 A Sure.

3 Q Okay. And so since this was not that sort of an action, it was  
4 just one where they thought, we'd like to have somebody else come give  
5 their opinion on this, it wasn't a situation where Dr. Ripplinger could  
6 have said, hey, let's get this patient to the OR and meet with the family  
7 and set that up, right?

8 A Yes, of course, he could have.

9 Q Okay. Now, Doctor, I want to discuss this other defense that  
10 you have that -- the lung cascade defense. You used that defense a lot,  
11 right, Doctor?

12 A A) I don't know what you mean by lung cascade, and I would  
13 not say I use that a lot at all.

14 Q Okay. Doctor, in this case one of your experts is claiming  
15 that the sepsis from some -- was from some lung cascade and not from  
16 the holes that you put in the colon, right?

17 A I don't think I've read their deposition, so I don't know.

18 Q Okay. You haven't read the reports of the doctors that have  
19 been paid thousands of dollars to defend you in this case?

20 A No.

21 MR. DOYLE: Objection, Your Honor. It's argumentative.

22 THE COURT: Sustained as phrased.

23 BY MR. JONES:

24 Q Okay. Doctor, are you aware that there have been doctors  
25 that have been paid thousands of dollars to defend you in this case?

1           A     Yes.

2           Q     Doctor, are you aware -- are you telling this jury that you  
3 have not read their reports or depositions?

4           A     I don't believe I read any of their expert opinions, no.

5           Q     Okay. Doctor, you agree that you never diagnosed Titina  
6 with pneumonitis or pneumonia, correct?

7           A     I think it was one of my differentials.

8           Q     Doctor, did you ever diagnose Titina with pneumonia or  
9 pneumonitis?

10          A     Again, I'm saying it may have been one of my differentials, I  
11 don't recall.

12          Q     Do you know that it was one of your differentials?

13          A     I don't recall.

14          Q     Okay. Could you tell this jury where it is that you listed it as  
15 a differential?

16          A     Again, I said I don't recall.

17          Q     Okay. So you don't know if you did or not even as a  
18 differential?

19          A     I'm not sure.

20          Q     Okay. But you can definitely say that it certainly wasn't your  
21 primary concern ever, right?

22          A     No, it was when I came in postop day one, she was NPO and  
23 drinking a bunch of Sobe drinks. She was bloated, distended, we had to  
24 drop an NG tube to decompress her and the natural sequelae of that  
25 would be for people to aspirate.

1                   So that would be why I figured out she may have aspiration  
2 at some point.

3           Q     Doctor, it's interesting, I -- so --

4                   MR. JONES: First of all, your Honor, I move to strike the  
5 unresponsive response.

6                   THE COURT: Which part counsel?

7                   MR. JONES: The entirety of his answer.

8                   THE COURT: Your question, the Court will grant your motion  
9 to charge the jury to disregard the answer.

10                   Counsel, feel free to state your next question.

11 BY MR. JONES:

12           Q     Doctor, at no time did you diagnose or state that there was  
13 aspiration, did you, in any of your medical records?

14           A     I don't recall.

15           Q     Okay. You don't recall if you did or not?

16           A     I don't.

17           Q     When was the last time you reviewed your medical records,  
18 Doctor?

19           A     About a week ago.

20           Q     Okay. And after reviewing those medical records you have  
21 no recollection if you did or not?

22           A     No.

23           Q     Okay. Doctor, was there a suspicion of sepsis before you  
24 saw her the day after her surgery?

25           A     By me or anybody else?

1 Q By anyone.

2 A I only can go by what I saw when I examined her and at the  
3 time, no.

4 Q Okay. So at the time of your examination no one was  
5 concerned about sepsis?

6 A I don't know. That I'd have to know what somebody else was  
7 thinking. There's no way for me to know that.

8 Q Okay. Doctor, the --

9 MR. JONES: Your Honor, could we take a short recess? Is  
10 this an appropriate time?

11 THE COURT: Yes, we could do that. Actually, it's probably a  
12 good time. It's about an hour and a half actually after lunch break, so it's  
13 probably is a perfect time.

14 MR. JONES: Thank you.

15 THE COURT: Okay. Ladies and gentlemen, this is a good  
16 stopping place a great time for your afternoon break. So we're going to  
17 come back at 2:45.

18 Ladies and gentlemen, during this break you're admonished  
19 that -- 2:45 -- not to speak with anyone or yourselves on any subject  
20 related to the trial. You may not read, watch, listen to any recorded  
21 commentary of the trial or any person connected with the trial by any  
22 medium of information, including without limitation social media, texts,  
23 tweets, newspapers, television, internet, radio, anything I have not stated  
24 specifically is, of course, also included. Do not visit the scene or any of  
25 the events mentioned during the trial.

1 Do not undertake any research, experimentation, or  
2 investigation. Do not undertake any postings or communications on any  
3 social networking sites or anyplace else.

4 Do not do any independent research, including, but not  
5 limited to internet searches. Do not form or express any opinion on any  
6 subject connected with the trial until the case is fully and finally  
7 submitted to you at the time of jury deliberations.

8 With that we'll see you back nice and relaxed at 2:45. Thank  
9 you so much.

10 THE MARSHAL: All rise for the jury.

11 [Jury out at 2:23 p.m.]

12 [Outside the presence of the jury]

13 THE COURT: Okay. With that, Counsel, nice afternoon break  
14 for yourselves and for the team.

15 MR. JONES: We'd like to bring something; this is something  
16 that I -- is very important.

17 THE COURT: Right. But here's what we're going to do,  
18 Counsel.

19 MR. JONES: Yes?

20 THE COURT: I told the jury 2:45 anticipating that you  
21 probably were going to tell me something like that. My team, of course,  
22 does need their breaks, so --

23 MR. JONES: Absolutely.

24 THE COURT: -- why don't we let them have their break first  
25 and why don't we ask you to come back at 2:40 and we'll take care of it

1 then. Gives everyone a few moments just to relax and think about what  
2 they need taken care of. Okay?

3 MR. JONES: Thank you, Your Honor.

4 THE COURT: Do appreciate it.

5 Madam Court Recorder, would you like to go off the record.

6 [Recess taken from 2:24 p.m. to 2:43 p.m.]

7 THE COURT: Madame Court Recorder, could we go back on  
8 the record? We have an issue outside the presence of the jury please.

9 [Pause]

10 THE COURT: Okay. We're on the record outside the  
11 presence of the jury. Plaintiffs' counsel, you stated that there was an  
12 issue wanted outside the presence; is that correct?

13 MR. JONES: Yes, Your Honor.

14 THE COURT: And are both parties okay since the only  
15 individual who's a witness in the case is also the Defendant and just --  
16 everyone okay that he's sitting on the witness stand and that he's  
17 present in the court since he's also, obviously, the Defendant, so as --

18 MR. JONES: Yes, Your Honor. No objection.

19 MR. DOYLE: Yes.

20 THE COURT: Okay. Everyone's okay with that. Okay. Go  
21 ahead, Counsel.

22 MR. JONES: Your Honor, just a moment ago the witness, the  
23 Defendant, made a statement about the Plaintiff drinking Sobes and all  
24 the rest of this. It was something that I was concerned might be  
25 something that would get thrown out there. It's an issue because it's a

1 medical causation opinion issue that the Defense never, at any time, has  
2 brought in this case. And it was something that I, kind of, perceived as  
3 being maybe a problem that could come up, but ultimately I -- I  
4 suspected the Defense of course they wouldn't do that because they  
5 know they know they have to disclose medical causation opinions with  
6 plenty of time so that Plaintiffs aren't ambushed by that.

7 Now what they have done is they're trying to tie in this Sobe  
8 concept into their aspiration idea. Now they have an expert who talks  
9 about aspiration who doesn't mention the Sobe event. It's not in his  
10 report; it's not part of his analysis; it's not part of anything. And the  
11 Defense is now --

12 THE COURT: Are Sobes in any medical notes or anywhere  
13 in --

14 MR. JONES: It is. It's in one of Dr. Rives' reports -- one of  
15 Dr. Rives' progress notes.

16 THE COURT: The day after?

17 MR. JONES: It's Sobe; the day after.

18 THE COURT: Okay.

19 MR. JONES: That's right.

20 THE COURT: Go ahead.

21 MR. JONES: And so that's the situation, but the Defense did  
22 not use that; does not have that as part of their analysis; it's not part of  
23 anything to do with their causation theory in the case and, yet, now we  
24 have that issue in front of us. And so I'm trying to figure out the best  
25 way to handle it. I don't think they should be able to, in any way, make



1 that argument given that they did not do so through their experts.

2 THE COURT: Okay. But you asked the Court to strike it as  
3 non-responsive, and the Court did.

4 MR. JONES: I did. Yes, Your Honor.

5 THE COURT: So the jury had been previously instructed  
6 when the Court strikes something to disregard it and if they've written  
7 down the notes to take it out of their notebook. Does that meet your  
8 needs as to curative because the Court did grant your motion to strike  
9 and the jury has previously been instructed what to do when Court  
10 grants such.

11 MR. JONES: Absolutely. Your Honor, the only -- the thing  
12 that I think is additionally needed is for each one of Defendant's experts,  
13 that are going to be testifying in this case, for them to be specifically  
14 prohibited from including this within any sort of causation analysis at  
15 any time.

16 THE COURT: Okay. This -- I need a little bit more  
17 clarification for the this. Is Sobe or this note already included in -- now,  
18 once again, remember you've not provided -- the Court doesn't have the  
19 benefit of the various expert reports and the depositions, et cetera, so I have  
20 to ask the question. Is it already included in any expert reports, any  
21 expert depositions, et cetera or not from Plaintiffs' position?

22 MR. JONES: It is not, but --

23 THE COURT: Okay.

24 MR. JONES: -- it is included within medical records of the  
25 hospital and it's a progress note by Dr. Rives.

1 THE COURT: But it's not otherwise already mentioned in any  
2 deposition or in any expert report; is that Plaintiffs' position?

3 MR. JONES: That is my understanding, Your Honor. I  
4 looked for it and that's right.

5 THE COURT: Okay. So let me hear Defense's position.  
6 Defense. First let's ask the specific question first. Do you contend that  
7 it's already in any expert report or any deposition?

8 MR. DOYLE: Have no idea. This case is -- not possible to  
9 memorize each and every detail. I don't --

10 THE COURT: Well something like Sobe is -- it's a type of  
11 drink. It's, kind of, a thing that usually sticks out in people's minds.  
12 Okay.

13 MR. DOYLE: I can't say yea or nay without going back and  
14 looking at the reports and depositions.

15 THE COURT: Okay. So --

16 MR. DOYLE: So if we can take --

17 THE COURT: -- if you don't have a recollection that it then  
18 you have no intention of eliciting anything about Sobe drinks from any  
19 of your experts because unless you can point to where it is you would  
20 know you can't elicit that information, correct?

21 MR. DOYLE: Well I'm not willing to commit to anything until  
22 I have an opportunity to see if it -- to see the reports and depositions.

23 THE COURT: If it's not -- that's why the Court's question was  
24 -- if it's not you wouldn't try and elicit that, correct?

25 MR. DOYLE: I don't know. I have to see -- I have to see what

1 the reports and depositions say.

2 THE COURT: If the reports and depositions do not mention  
3 Sobe drinks were you intending to inquire of any of your experts about  
4 Sobe drinks?

5 MR. DOYLE: I don't have a thought on that at this moment in  
6 time, and my experts aren't here testifying. So I'll figure that out before  
7 they testify.

8 THE COURT: On what basis, if Sobe drinks are not -- I mean,  
9 if the hypothetical condition precedent is Sobe drinks are not otherwise  
10 already mentioned in either expert reports or depositions would there be  
11 any legal basis that you could tell the Court, since Plaintiffs requesting  
12 that that not come up in any of your expert testimonies or any basis  
13 which you tell me that it could come up?

14 MR. DOYLE: I can't address the issue. I haven't read the  
15 information in a long time. I'm not able to answer and take a position.

16 THE COURT: Okay. So here's what the Court's going to do  
17 because I can't be told that it is or is not a new opinion we're going to  
18 play it safe, right? If anyone is intending to address the issue, right, with  
19 any expert prior to doing so OUTSIDE THE PRESENCE OF THE JURY, in  
20 all caps, and prior to that witness being on the stand it must be directly  
21 brought to this Court's attention if either side is wishing to inquire into  
22 that area. Does both -- Plaintiff, do you understand?

23 MR. JONES: Yes, Your Honor.

24 THE COURT: Defense counsel, do you understand?

25 MR. DOYLE: I understand as to experts, but I believe I

1 certainly can inquire of my client about what thoughts he had at the time  
2 concerning the Sobe beverage because it's part of his note and his  
3 record.

4 THE COURT: The Court is going to clarify. I said it first with  
5 experts. Does everybody understand as to experts?

6 MR. DOYLE: I understand what the Court is saying.

7 THE COURT: Okay. Everybody understands that is a Court  
8 order?

9 MR. JONES: Yes, Your Honor.

10 THE COURT: Defense counsel, you understand that is a  
11 Court order?

12 MR. DOYLE: Yes.

13 THE COURT: Okay. So now we're going to go outside of  
14 experts. We're now going to go for any witness. I'm now going to  
15 expand it to any witness because we are going to make sure that this is  
16 taken care of because the point is it is much easier to address it upfront  
17 than it is not to that proverbial -- what is it -- horse out of barns whatever  
18 that cliché is; bells rung and things like that. Now it is very clear -- are  
19 we getting to cross-examination of Dr. Rives today or not?

20 MR. DOYLE: I'm not going to be -- I may have a question or  
21 two for him, but I had no plans to bring up aspiration or Sobe or  
22 anything along those lines.

23 THE COURT: So then you'd have an opportunity before you  
24 would go to that area with your own client. I want to make sure you  
25 have an opportunity to look up things so that you have an opportunity to

1 respond so that the Court can make a well-reasoned ruling, okay?

2           So with your client as well since you -- now say to the Court  
3 it's not your intention to do it today anyway so you have an opportunity  
4 to look it up and let the Court know what your position is before you  
5 were to bring it to any other witness in addition so that the Court can  
6 make a well-reasoned ruling because the Court's not going to preclude  
7 something that it shouldn't preclude and the Court's not going to include  
8 something that is not going to include and I want to ensure that  
9 everybody has a full opportunity to present their position in a manner in  
10 which they can look up things and not be doing things on the quick,  
11 okay?

12           Taking into account that you're in the midst of trial things  
13 have to be done a little quicker pace than, obviously, when you're not in  
14 trial, but want to have everyone have an opportunity to look up issues  
15 and not be caught on the fly as well so -- and I mean by caught in the fly  
16 meaning right in the middle of an issue -- so give everyone a full  
17 opportunity.

18           If you're planning on inquiring that really I don't have to  
19 worry about it if you were because you're not. So that way you have an  
20 opportunity to look it up and look at the different things and then bring it  
21 to the Court if you're planning on going to that area. Does that meet  
22 your needs, Defense counsel?

23           MR. DOYLE: It does.

24           THE COURT: Okay. Does that meet your needs, Plaintiffs'  
25 counsel?

1 MR. JONES: I believe so. So no one is going to bring it up  
2 unless they seek Court intervention first; is that correct, Your Honor?

3 THE COURT: You've already brought it. It's already come  
4 out today --

5 MR. JONES: Right.

6 THE COURT: -- so, obviously, things that have already come  
7 out today is today, right?

8 MR. JONES: Right.

9 THE COURT: Okay. So what the Court's trying to make clear  
10 is in the context that you stated it is that it would be coming up as an  
11 opinion, okay? So now let's go to the third prong of it, okay? I've dealt  
12 with the first two prongs, new issues, right? New types of concepts; new  
13 witnesses and in a new type topic area. Now are you intending now I  
14 have to go to the third prong, right? The third prong is you currently  
15 have a witness on the stand who's listening to everything that's going on  
16 here so I'm fully hearing everything that's said.

17 This Court does not know what the rest of your questions are  
18 going to be and whether or not this potential topic could come up in the  
19 rest of your questioning. So I need to have an understanding -- I'm not --  
20 I don't want anyone to say that I'm cutting you off from the rest of your  
21 questioning either, okay? Or any cross-examination it may come across  
22 today from Defense counsel.

23 Defense counsel's already said he's not heading into that  
24 area. So that is an issue the Court doesn't need to address, but I do need  
25 to address you because I'm not precluding you if you're area -- you're

1 bringing up the issue so one could make potentially the assumption that  
2 you're not planning on going to the very area that you're asking to be  
3 precluded, but once again I being a very well-reasoned person who likes  
4 to ensure things. I want to ensure that there's not something -- there's  
5 an area that you need to get into that you think that this could be --  
6 needs to still be taken care of. Is there some area that's left some rock,  
7 proverbial, unturned; is there some area that you still need to be covered  
8 in this?

9 MR. JONES: Your Honor, at this time, no. We're just going  
10 to move past it. I mean, it's --

11 THE COURT: So it's not moving past because I'm precluding  
12 -- I'm just trying to see is there any other area, in this regard, that you  
13 need to be taken care of?

14 MR. JONES: He misstated the record, and so it's a troubling  
15 situation for me, Your Honor, because he said something that was  
16 verifiably false in the record, but I don't want to draw more attention to  
17 the record because I think that it's problematic, particularly given the fact  
18 that it goes to, kind of, these expert opinions.

19 Now, Dr. Rives can't give expert opinions on this issue  
20 because his counsel, during deposition, objected about 74 times to the  
21 idea of him providing any expert opinions.

22 MR. DOYLE: Well that's not accurate, but that's a whole  
23 separate topic.

24 THE COURT: And, remember, you got to wait until Plaintiffs'  
25 counsel is finished so that you don't interrupt so that we have a nice

1 clean clear record and also professional courtesy aspect. So I just need  
2 to know is in the trying to address your issue and concern and not have  
3 some unintended consequences, this Court's asking you is what you've  
4 requested has it taken care of your issue or is it now giving you some  
5 unintended consequences that you don't really want?

6 MR. JONES: No.

7 THE COURT: Because if it is then I need to know because  
8 that's not the goal here. The goal is to be fair and equal to both sides; to  
9 allow all of your clients, right, the clients on both sides a fair impartial  
10 trial fully on the merits; fully get heard on everything and resolving all  
11 issues. So, if in some way it's not meeting that goal, I need to know  
12 because I can't guess.

13 MR. JONES: Absolutely. Your Honor, we're not going to  
14 bring it up. We're not going to -- we're just going to move on with other  
15 questions.

16 THE COURT: Okay. Then you still have -- this witness gets  
17 recalled you still have cross-examination if it gets recalled and Defense  
18 not saying because it doesn't even cover the case, right? So you've got  
19 other avenues. The Court's not precluding it. I'm just -- it's your request,  
20 a request of Plaintiffs', I'm saying because Defense wants some time to  
21 look into things. Seems the fairest things is that -- give Defense some  
22 time to look into things and ask you all to bring it to the Court's attention  
23 on what remedy, if any, is needed. And maybe there's none; maybe you  
24 look into things; maybe there's a non-issue; maybe Plaintiff, you look  
25 further into it, it's a non-issue; or maybe there's some issue that you



1 need the Court to resolve, but it's -- you two are tasked with telling the  
2 Court what you need, when you need it, but not when we have a -- right?  
3 But in a manner that the Court can look, evaluate it, with some  
4 information, okay?

5 MR. JONES: Okay.

6 THE COURT: Does that work for both sides?

7 MR. DOYLE: Yes.

8 MR. JONES: Yes, Your Honor.

9 THE COURT: Okay. Anything else the Court can do; would  
10 you like the jury brought in.

11 MR. JONES: The jury, Your Honor.

12 THE COURT: That work for you as well, Defense counsel?

13 MR. DOYLE: Yes.

14 THE COURT: Marshal, can we please bring in the jury?

15 THE MARSHAL: All rise for the jury.

16 [Jury in at 2:58 p.m.]

17 [Within the presence of the jury]

18 THE MARSHAL: All jurors are accounted for. Please be  
19 seated.

20 THE COURT: Okay. Do appreciate -- welcome back, ladies  
21 and gentlemen. As you know we're still in the midst of the examination  
22 of the current witness and so, Counsel, feel free to proceed with your  
23 questioning on this witness who is on the stand. Thank you so very  
24 much.

25 MR. JONES: Thank you, Your Honor.

1                                    DIRECT EXAMINATION CONTINUED

2       BY MR. JONES:

3           Q     Doctor, you -- I asked you this question before and I don't  
4       think I got a direct response. Doctor, did you ever diagnose Titina with  
5       pneumonitis or pneumonia?

6           A     It depends what you mean by diagnosed. I had a suspicion --

7           Q     Did you --

8           A     -- of, yes, but --

9           Q     Doctor, do you know what diagnosis means?

10          A     Yes.

11          Q     Okay. Did you diagnose Titina with pneumonitis or  
12       pneumonia, Doctor?

13          A     I can't answer that as a yes or no question.

14          Q     Okay. So do you not know whether or not you did?

15          A     Can't answer that as a yes or no question.

16          Q     Okay. You're agreeing you never put in your records a  
17       diagnosis of pneumonia or pneumonitis with respect to Titina Farris,  
18       correct?

19          A     I don't know.

20          Q     Okay. Doctor, you'd agree that the pulmonologist never put,  
21       in his records, a diagnosis of pneumonitis or pneumonia with respect to  
22       Titina Farris; did he?

23          A     I don't recall.

24          Q     Doctor, you agree that in the 10,000 pages of her medical  
25       chart no one diagnosed Titina with pneumonitis or pneumonia; did they?

1           A     I didn't review all 10,000 records.

2           Q     Okay. In fact, Doctor, the first diagnosis written down of  
3 pneumonitis or pneumonia in this case was from your expert, Dr. Juell,  
4 correct?

5           A     I have no way of knowing that.

6           Q     Okay. But you don't know of any prior diagnosis of  
7 pneumonia or pneumonitis with respect to Titina Farris; do you; in  
8 writing?

9           A     Again I didn't review the entire records; I have no idea.

10          Q     Okay. Doctor, at your deposition you were asked if there  
11 were any signs or symptoms of a leak prior to July 15th, 2015; do you  
12 recall your response to that question?

13          A     No.

14          Q     Well I'll ask the question then now. Doctor, were there any  
15 signs or symptoms of a leak prior to July 15th, 2015?

16          A     Possible, yes.

17          Q     Okay. Doctor, fecal peritonitis is a sign or symptom of a  
18 bowel leak, right?

19          A     It could be.

20          Q     Okay. And feces or bacteria in the abdominal cavity is a sign  
21 or symptom of a bowel leak, correct?

22          A     Could be, yes.

23          Q     Sepsis is a sign or symptom of a bowel leak, right?

24          A     Possibly, yes.

25          Q     Doctor, do you agree that as a surgeon you must be careful

1 and skillful when performing surgery?

2 A Absolutely.

3 Q Doctor, do you agree that as a surgeon you must be careful  
4 and skillful when diagnosing a patient?

5 A True.

6 Q Okay. Doctor, I'm going to go over some of the days of your  
7 treatment of Titina, okay? I want to write up on this -- I'd like to do some  
8 writing up here so I want to angle this so that you can see it and the jury  
9 can also see it. Can you see this okay?

10 A Yes.

11 MR. JONES: Is this okay, Your Honor?

12 THE COURT: Of course.

13 MR. JONES: Okay.

14 THE COURT: Do you need a handheld mike or -- your  
15 pocket --

16 MR. JONES: I have the pocket mike and I think it --

17 THE COURT: You're not going to have the witness go off the  
18 stand, right?

19 MR. JONES: No.

20 THE COURT: Okay. No worries then.

21 MR. JONES: I'm not, Your Honor.

22 BY MR. JONES:

23 Q Okay. So on July 4th, the day after surgery we agree that  
24 Titina became septic and was ultimately transferred to the ICU, correct?

25 A Yes.

1 Q Okay. Do you recall what her white blood cell count was?

2 A I believe it was over 20,000.

3 Q Okay. Would it -- well based on the record I have here not  
4 quite so high, but would you agree to 18.9?

5 A Sure.

6 Q Does that sound reasonable? Okay.

7 MR. JONES: Thank you.

8 THE COURT: We have other markers; we usually have some  
9 other markers up there do we not, Katherine(phonetic)?

10 MR. JONES: We have a couple, Your Honor.

11 THE COURT: I know --

12 MR. JONES: One appears to be dead and I have a new black  
13 one so I'm in good shape.

14 THE COURT: Okay. No worries. Sometimes things walk out  
15 of here.

16 BY MR. JONES:

17 Q Okay. All right. Now, Doctor, on that day you've been -- as  
18 you said you've been through the records recently, correct?

19 A Through my progress notes, yes.

20 Q Okay. Now are you aware that Dr. Akbar(phonetic) referred  
21 Titina, on that day, to Dr. Shaikh for a consultation regarding fecal  
22 peritonitis?

23 A Sounds familiar, yes.

24 Q Okay. And let's see -- and Dr. Shaikh indicated that he  
25 agreed the condition could represent fecal peritonitis, correct?

1 A I believe so, yes.

2 Q Okay. Now on July 5th -- this is now two days post-op --  
3 Titina's course is worsening, correct?

4 A I'd have to review her vital signs to -- to make that  
5 determination.

6 Q Okay.

7 A She's doing worse than she was immediately post-op. How  
8 she was doing from the night of the 4th into the morning of the 5th I  
9 couldn't say for sure.

10 Q Okay. So I'm going to give you a quote and it's, quote, if  
11 improved significantly than no surgical intervention. If patient worsens  
12 clinically, or even does not improve, will consider surgical intervention.  
13 Do you know what that quote is from?

14 A Sounds correct.

15 Q It's from one of your notes, correct?

16 A Correct.

17 Q Okay. And that's your note as of the 5th, correct?

18 A Correct.

19 Q You'd agree with me that the other doctors, right, some of  
20 the same that we've just talked about also identified that she had sepsis  
21 on that day, correct?

22 A On the 5th? Correct.

23 Q Yes. And, Doctor, on the 5th do you remember what her  
24 white blood cell count was?

25 A No.

1 Q 23.3, does that sound right?

2 A Sure.

3 Q Okay. Doctor, the normal white blood cell count is below  
4 12,000; is that correct?

5 A Correct.

6 Q Above indicates that you have some infection your body's  
7 trying to fight off, right; that's of significance?

8 A It says that your body's now in a white blood cell response;  
9 doesn't necessarily have to be an infection.

10 Q Got it. Okay. Thank you, Doctor. In any event we can agree  
11 she was still septic on the 5th, correct?

12 A Correct.

13 Q On the 5th and the 6th Dr. Shaikh's records state, quote, this  
14 could represent fecal peritonitis, again, as they had the day before,  
15 correct?

16 A I believe so.

17 Q Okay. Now on the 6th Dr. McPherson(phonetic) notes that  
18 there's a known infection; does that sound right?

19 A I'd have to review his notes.

20 Q Okay. Does that sound right to you based on a recollection?

21 A Possibly.

22 Q Okay. And on the 6th you didn't operate on the 6th, correct?

23 A No, I did not

24 Q And, Doctor, do you know what her white blood cell count  
25 went to on the 6th?

1 A No, I do not.

2 Q All right. Is 25.8; does that sound about right?

3 A Sure.

4 Q Okay. Doctor, that's an indication that at least in that regard  
5 she appears to be worsening, right?

6 A No.

7 Q In this regard she does not appear to be worsening?

8 A No, I disagree.

9 Q Okay. So the white blood cell count going higher is not an  
10 indication that she's doing worse in any way?

11 A Not necessarily.

12 Q Okay. So possibly, but not necessarily?

13 A Not necessarily.

14 Q Okay. And what about her, let's say for example, her sodium  
15 level, right? Sodium was a big problem in this case too, right; her  
16 sodium got really high?

17 A I didn't review those -- those numbers. So I don't know.

18 Q Oh, okay. All right. But those -- sodium can cause organ  
19 failure, right?

20 A Very high or very low can cause neurological disorders, yes.

21 Q Okay. All right. So in any event you don't believe this  
22 indicates course was worsening, correct?

23 A Not necessarily, no.

24 Q And, Doctor, even though the day before when her white  
25 blood cell count was lower and you said that if she gets worse, or even if



1 she doesn't improve tomorrow, then we're looking at surgery?

2 A No, I said would consider.

3 Q Oh, okay. So did you consider surgery on the 6th?

4 A Yes.

5 Q Okay. But you decided not to?

6 A Correct.

7 Q Okay. And even though in some respect it appeared her  
8 course had worsened at that point?

9 A Depending on what parameter you looked at that's possible,  
10 yes.

11 Q Okay. Now on the 7th you also did not recommend surgery,  
12 correct?

13 A Correct.

14 Q Now her condition was listed as critical still at this point,  
15 correct?

16 A Sure.

17 Q Okay. And you'd agree that Dr. Shaikh again noted that she  
18 has abdominal pain, distention of the abdomen, sepsis, leukocytosis,  
19 fecal peritonitis; these are all listed within his record on the 7th, too,  
20 right?

21 A I'd have to review his notes, but I'll take your word for it.

22 Q Okay. I have them if you'd like to review them, but yes, that's  
23 what he says?

24 A They're his notes, sure.

25 Q Okay. All right. You don't dispute that that's what his notes

1 say, do you?

2 A No reason to.

3 Q Okay. But on your notes on the 7th it says patient continues  
4 to improve, right?

5 A If you let me see the note I could clarify for you, sure.

6 Q Well is that what you say in your note, patient continues to  
7 improve on the 7th?

8 A If you read off my note then that's what I said.

9 Q Okay. Well I am reading off of your note. Do you have any  
10 reason to doubt that?

11 A No.

12 Q Okay. For the sake of time I'm not going to pull up every  
13 note and go through it it's a big record, but if you would like to see it I'm  
14 happy to show it to you, okay?

15 A Thank you.

16 Q And you also state on the 7th, patient with resolution of  
17 sepsis?

18 A Okay.

19 Q Okay. Does that surprise you, Doctor?

20 A No.

21 Q Okay. And now you state that at 1:10 p.m. and then about an  
22 hour and 20 minutes later Dr. Shaikh notes that she has abdominal pain,  
23 distention, sepsis. About an hour and 20 minutes after you say she's had  
24 a resolution of sepsis he says she has ongoing sepsis; that's what his  
25 note indicates?

1 A Okay.

2 Q So you had a difference of opinion with Dr. Shaikh?

3 A Clearly.

4 Q Okay. Did you go and talk to him about this?

5 A No.

6 Q You know, as a member of your team to, kind of, figure out,  
7 hey, who's wrong?

8 A No.

9 Q You didn't do that?

10 A No.

11 Q Okay. Do you know what her white blood cell count was on  
12 the day that she apparently recovered from sepsis?

13 A No.

14 Q Does it sound right if I said it's 26.7?

15 A Sure.

16 Q 26,700 white blood cell count now?

17 A Sure.

18 Q Okay. And this is the day that she recovered from sepsis?

19 A Correct.

20 Q Okay. On the 8th, you again state, "course improving."  
21 And -- does that sound right, doctor?

22 A Sure.

23 Q And you point out now that the white blood cell count has  
24 gone down to 22,600. Okay?

25 A Okay.

1           Q     Now in your prior reports, when you're doing a progress  
2 note, as you're saying that she's getting better, you don't point out that it  
3 has gone up. Is there a reason that you point out that it went down  
4 when it went down but not up when it went up?

5           A     Not particularly.

6           Q     Okay. Doctor, a white blood cell count of 22.6 is consistent  
7 with sepsis, correct?

8           A     It could be.

9           Q     Consistent with fecal peritonitis, correct?

10          A     Not necessarily.

11          Q     Okay. Not necessarily, but it is consistent with it, right?

12          A     Possibly.

13          Q     Doctor, when I say it's consistent with it, it's something that  
14 falls into that line of things that happen with it. 22.6 is consistent with  
15 fecal peritonitis; isn't it?

16          A     If you say that it's possible, yes. But not everybody with  
17 fecal peritonitis has an elevated white count either.

18          Q     Okay. Now again on the 8th, you'd agree that the other  
19 doctors didn't say that her sepsis had resolved. They again say, for  
20 example Dr. McPherson (phonetic) says, "remains tachypneic"?

21          A     Tachypneic.

22          Q     Thank you. "On vent secondary to fluid excess, sepsis,  
23 abdominal distension." Does that surprise you?

24          A     No.

25          Q     Okay. Did you reach out to Dr. McPherson and say, doctor, I

1 think that she's over the sepsis, why do you keep putting sepsis in the  
2 notes?

3 A I don't ever discuss with them what they specifically put in  
4 their notes.

5 Q Okay.

6 A We have discussions about the general course and how the  
7 patient is doing.

8 Q Okay.

9 A What they define as sepsis, everybody has certain  
10 parameters they look at.

11 Q Okay. Thank you, doctor. But in any event, you didn't reach  
12 out to him to figure out why it appeared that there were kind of  
13 conflicting views of what was going on here? You didn't reach out to  
14 him to clarify; did you?

15 A I think the only conflicting view is the word sepsis.

16 Q Well, they don't say course improving; do they? None of  
17 them say that?

18 A I don't know.

19 Q You're the only one that's saying that, right?

20 A I would have to review them all to tell you that.

21 Q Right. Would you be able to point out where other people  
22 are saying that the course is improving at sometime around the 6th, 7th,  
23 8th?

24 A I'd have to review all their records to do so.

25 Q But off the top your head, you have no recollection of seeing

1 a note of that type, right?

2 MR. DOYLE: Objection. Speculation.

3 THE COURT: Overruled.

4 THE WITNESS: I have no way to answer that question.

5 BY MR. JONES:

6 Q All right. And Dr. Shaikh once again he also notes that the  
7 patient is with abdominal pain, distension, sepsis, leukocytosis, fecal  
8 peritonitis, right? That doesn't surprise you?

9 A Sounds like his general note, yes.

10 Q Okay. Now, on July 8th, Patrick, Titina's husband, as we  
11 discussed before, he goes and he asks for a second opinion, correct?

12 A Correct.

13 Q And you were informed that he asked for a second opinion,  
14 correct?

15 A At some point, yes.

16 Q When were you informed? Was it on the 8th or the 9th that  
17 you were informed about it?

18 A I don't recall which.

19 Q Okay. Did that make you upset when you heard about that,  
20 doctor?

21 A No.

22 Q No? Okay. Did it make you take any actions kind of to cover  
23 your own backside to make sure that you didn't get in trouble since the  
24 patient is asking for a second opinion?

25 A There's no actions to take to cover your backside. You're not

1 going to get in trouble. We get second opinions all the time.

2 Q Excellent. All right. Thank you, doctor. Now, the reason I  
3 ask because the opinion, the second opinion, was requested around 1:00  
4 p.m., okay. And would you like to see that document?

5 A On the 8th or 9th?

6 Q On the 8th.

7 A Okay.

8 Q Does that sound about right?

9 A Sure.

10 Q Okay. And I notice because at 1:53 p.m., you put in a couple  
11 of notes. Fifty-three minutes later after it was documented that he  
12 wanted a second opinion, you put in a couple of notes, okay?

13 A My usual progress note?

14 Q Yes.

15 A Okay.

16 Q Yes. Perhaps. Well, and your usual progress notes, as I was  
17 going through the record with I think one exception, you pretty much  
18 were always between like 10 a.m. and 2 p.m. that you were putting in  
19 your progress notes. Does that sound --

20 A Yeah. That -- there's a lot of variance in when I round  
21 depending upon patients and how they're doing, et cetera. But  
22 generally, I try to do that, yes.

23 Q Okay. Fair enough. Now, in your progress note, you have a  
24 note at 1:56 p.m., so 56 minutes after the family -- or after Patrick has  
25 asked for a second opinion, where it's the first note that I can recall

1 seeing from you where you indicate that you have a conversation with  
2 Patrick and that you explain prognosis and goals, the possibility of an  
3 exploratory surgery and about Titina's condition. That's the first time I  
4 saw a note from you on that point. And so my question is, was that  
5 progress note from you a response to the fact that you found out Patrick  
6 had requested a second opinion?

7 MR. DOYLE: I move to strike the argumentative portion of  
8 the question.

9 THE COURT: Overruled.

10 THE WITNESS: Can you repeat that?

11 BY MR. JONES:

12 Q Yeah. You understand the basic framework of what I'm  
13 asking, correct?

14 A Yes, I do.

15 Q Is your note a response to Patrick requesting a second  
16 opinion or is it just random coincidence that 56 minutes later you happen  
17 to put in a note talking about a conversation with Patrick?

18 A It's not in response to the second opinion being asked for  
19 and it's not a random coincidence either.

20 Q Okay. So it's somewhere in between?

21 A I spoke to the family everyday they were there. I think in that  
22 document I actually said spoke to family again. I might have used that  
23 word in there to document that I had been talking to the patient the  
24 entire time.

25 Q Right. And so -- and I agree. I think you did say again. And



1 you mentioned -- or you mentioned something along the lines that I've  
2 had a few conversations with them or something along those lines. In  
3 any event, this was the first time you documented talking to the family,  
4 correct?

5 A I believe so, yeah.

6 Q Okay. And -- but it had nothing to do with the fact that he  
7 had just asked for a second opinion 56 minutes earlier?

8 A Correct.

9 Q Okay. Because you'd agree that it's important to discuss and  
10 to keep the patient or if the patient is unconscious, the decision maker  
11 for their healthcare directly involved in the decision-making process  
12 about that patient's care, right?

13 A Of course.

14 Q Okay. Doctor, on the 9th, we have that second opinion from  
15 Dr. Ripplinger that we talked about a minute ago. Now, and again, you  
16 didn't reach out to Dr. Ripplinger, correct?

17 A Correct.

18 Q Again on the 9th, you claim that there's no signs or  
19 symptoms of sepsis. That doesn't surprise you?

20 A No.

21 Q And it doesn't surprise you that Dr. McPherson stated that  
22 she remains septic with the abdominal distended? Doesn't surprise you?

23 A Could be, yes.

24 Q Okay. It doesn't surprise you that Dr. Shaikh again says  
25 abdominal pain, distension, sepsis?

1           A     I think a lot of their notes are copied and pasted day to day  
2 and they change only the assessment and plan. So no, it doesn't  
3 surprise me.

4           Q     Does it surprise you that Dr. Shaikh's note has very  
5 specific -- a very specific portion that he puts in caps? Did you ever  
6 notice that about Dr. Shaikh's note?

7           A     Not when I reviewed them, no.

8           Q     Okay. Would it surprise you if the part in caps said  
9 something about the possibility of surgical intervention and everything  
10 else was in lower case?

11          A     Could be, yeah.

12          Q     Would that be a way for Dr. Shaikh to be sending a message  
13 saying surgeon, surgical intervention, I'm putting it in caps?

14               MR. DOYLE: Objection. Speculation.

15               THE COURT: Sustained.

16 BY MR. JONES:

17          Q     Doctor, have you seen someone put something in caps to try  
18 to get another practitioner's attention?

19          A     That would not be the right way to get another practitioner's  
20 attention.

21          Q     Okay. Have you seen, doctor, someone put something in  
22 caps to try to get another practitioner's attention?

23          A     Not that I can recall.

24          Q     Okay. All right. And so the fact that Dr. Shaikh the only part  
25 in caps is where he's indicating the possibility of an additional surgery

1 and that's the only part he puts in caps, that doesn't mean anything to  
2 you?

3 A No. I know Dr. Shaikh. He has my cell phone. He can reach  
4 out to me at any time he likes.

5 Q Okay. All right. Okay. So and, doctor, on the 29th -- or on  
6 the 9th, do you remember what the white blood cell count is?

7 A No.

8 Q Okay. Would it surprise you if it is 22.9? So it just went up  
9 just a tick.

10 A Okay.

11 Q All right. Okay. Then on the 10th, you again say that her  
12 course is improving, correct?

13 A I believe so, yes.

14 Q Okay. And you also note that you had a long discussion with  
15 her husband and her brother regarding the findings that you had; is that  
16 right?

17 A I believe you, yes.

18 Q Okay. Now, doctor, is it actually true that you had kind of a  
19 negative conversation and you kind of chewed Patrick out kind of related  
20 to second opinion at that time?

21 A No.

22 Q No? That didn't happen?

23 A No.

24 Q Okay. All right. Did you tell Patrick something along the  
25 lines of I'm a surgeon, I've done this for ten years, have you gone to ten

1 years of school --

2 A No.

3 Q -- to know what you're supposed to do?

4 A I would never say that.

5 Q Okay. You never said anything like that?

6 A I've never said anything like that.

7 Q Okay. All right. And again, doctor, it doesn't surprise you  
8 that the other practitioners, the same that I have mentioned, they also  
9 indicated that she was maybe not doing so well, right?

10 A It's possible, yes.

11 Q On the 10th. Okay. And the white blood cell count on the  
12 10th, do you recall if it went up or down at that point?

13 A Do not recall.

14 Q Okay. So at that point it -- on the 10th, it went up to 25,400.  
15 Okay. On the 11th, again Dr. Shaikh and McPherson indicate the patient  
16 is -- they indicate course worsening in their notes. Does that surprise  
17 you, doctor?

18 A No.

19 Q Okay. And doctor, on the 11th, you'd agree that Titina  
20 developed a fever, correct?

21 A Yes.

22 Q Fever of 102.8, right?

23 A Yes.

24 Q That's a pretty high fever, right?

25 A Significant, yes.

1           Q     Okay. All right. And what was your impression on the 11th  
2 of whether she was getting better or worse?

3           A     I think I was concerned that with all the rectal contrast, the  
4 contrast wasn't moving through, she was getting impacted. So I ordered  
5 an x-ray to see if she had an --

6           Q     Doctor, I asked you a simple question, and I don't need like  
7 the whole prognosis for --

8           A     Sorry.

9           MR. DOYLE: Your Honor, I object to the arguing.

10          THE COURT: If there's a -- so what's your objection, counsel?

11          MR. DOYLE: Argumentative and it's not a question -- there's  
12 no question.

13          MR. JONES: I asked him if it was getting better or  
14 worsening.

15          THE COURT: So counsel, are you requesting something  
16 from the Court or from the witness?

17          MR. JONES: Not at all, Your Honor.

18          THE COURT: Okay. Just first, can you move that up just a  
19 little bit?

20          MR. JONES: Absolutely.

21          THE COURT: You seem to be out of camera range a little bit,  
22 if you don't mind. Your little flip chart up just a little bit closer if the  
23 witness can still see it and the jury can --

24          MR. JONES: Can you --

25          THE COURT: -- still see it. Yeah. If you just bring it a little bit

1 up a few feet. Are we now in -- better in camera range?

2 MR. JONES: Still okay?

3 THE COURT: Okay. Okay. No worries.

4 Okay. So with regards to the pending objection, the jury will  
5 disregard the colloquy between counsel. If there is a request, then the  
6 Court needs to hear the request rather than for the witness if there's a  
7 request regarding the witness. And so, counsel, feel free to move on  
8 with your next question. The Court overrules the argumentative because  
9 it wasn't a question pending. Go ahead.

10 BY MR. JONES:

11 Q All right. So doctor, on the 11th, was she improving or  
12 worsening, or you just can't say?

13 A I can't say without reading my note.

14 Q All right. And doctor, do you recall what her white blood cell  
15 count was?

16 A No.

17 Q 24.2. Okay. Now, on the 12th, your note states, quote,  
18 "course" colon, "progressing as expected," period. Does that sound  
19 right on the 12th?

20 A Colon progressing?

21 Q I apologize. I meant colon in terms of grammar. Course,  
22 then a colon, progressing as expected. That was unintentional. Does  
23 that sound right to you, doctor?

24 A That sounds right, yes.

25 Q Okay. So on the 12th, she was progressing as expected?

1           A     Correct.

2           Q     Okay. And her -- now, Dr. McPherson on the same day is  
3 saying that her condition is critical. Does that surprise you?

4           A     No.

5           Q     Okay. So on the 12th, her white blood cell count is 23,200.  
6 Now, doctor, you'd agree with me when I say that the white blood cell  
7 count whether it's 23,000, 26,000, 18,000, all of those are bad numbers,  
8 right? Those are all just high white blood cell count numbers, right?

9           A     They're a high white cell count number. That's correct.

10          Q     Okay. And so generally speaking, if you have a patient who  
11 goes from 23,000 to 25,000 or 25,000 to 23,000, it doesn't really change  
12 your analysis much, right?

13          A     No.

14          Q     It looks essentially the same? As -- if it's above 12,000,  
15 you're in a situation that's probably -- well, you just know that you have  
16 a white -- a high white blood cell count at least, right?

17          A     Correct.

18          Q     Okay. Obviously, higher is worse, right?

19          A     Could be.

20          Q     Okay. On the 13th, you again claim that the -- or state in your  
21 note that the course is progressing as expected. Does that surprise you,  
22 doctor?

23          A     No.

24          Q     Now, does she continue to have a fever during this time,  
25 doctor?

1           A     I believe she does.

2           Q     Okay. And on the 13th, her white blood cell count does come  
3 down to 17,900, correct?

4           A     I believe you.

5           Q     All right. Do you remember that from reviewing the record  
6 in the last week or so?

7           A     Sounds familiar.

8           Q     Okay. On July 14th, you indicate that you think that she  
9 might have a problem, right? And that you want to see the CT scan  
10 that's going to come out the next day, correct?

11          A     Correct. She's getting her tracheostomy on the 14th so the  
12 CT is going to be on the 15th.

13          Q     Okay. And it doesn't surprise you that Dr. Moony (phonetic),  
14 Dr. McPherson, Dr. Shaikh all of them are saying big problem, she's  
15 critical, she's septic? It doesn't surprise you that they all are saying that  
16 on the 14th, correct?

17          A     Correct.

18               MR. DOYLE: Objection. Compound.

19               THE COURT: Sustained. Compound.

20 BY MR. JONES:

21          Q     Doctor, it doesn't surprise you that each one of the other  
22 medical practitioners that are treating Titina Farris also indicate that she  
23 is in bad shape on the 14th?

24          A     Correct.

25          Q     Okay. And doctor, do you know what her white blood cell



1 count was on the 14th?

2 A No.

3 Q 21,100. All right. Okay. Doctor, on the 15th, the CT comes  
4 back at around 4:00 in the afternoon, correct?

5 A I assume so, yes.

6 Q And the CT we've seen it. It shows free air, correct?

7 A Correct.

8 Q And prior to that, prior to that CT, the family had already  
9 asked the administration to remove you from the case as a surgeon,  
10 correct?

11 A I don't know that.

12 Q Okay. You found out about their request, though, on the  
13 15th; didn't you?

14 A I'm not sure of that. I don't think so.

15 Q You're not sure of that? You don't think so?

16 A No. I talked to Patrick that night, and he didn't indicate that  
17 to me.

18 Q But you had already talked to the administration and they  
19 had already told you that there was a meeting set up for the next  
20 morning at 9:00 to remove you from the case; didn't they?

21 A I don't recall that, no.

22 Q Okay. Are you saying that that didn't happen? That the  
23 administration did not inform you on the 15th that there had been a  
24 meeting set up on the 16th?

25 A They did have a meeting. I don't know when I became aware

1 of it is what I'm saying.

2 Q Right. Okay. So are -- what I want to get, and I want it to be  
3 very clear, are you denying that you had been informed by the hospital  
4 administration about the meeting set up at 9:00 a.m. on the 16th on the  
5 day of the 15th?

6 A What I'm saying is I don't recall doing that on the 15th.

7 Q Okay. So you're saying that --

8 A Or having that on the 15th. Excuse me.

9 Q Okay. So you're saying you may have been informed of that  
10 or you may not have been informed of that? You just don't remember  
11 now?

12 A I don't know what time and I don't know when and if.

13 Q You have no recollection at all as to when it was that the  
14 administration told you you had a 9 a.m. meeting the next day and you  
15 were going to be removed from the case?

16 A I remember having that meeting on the 16th.

17 Q You remember having a meeting on the 16th. Presumably,  
18 doctor, you were informed of the meeting prior to arriving in the  
19 meeting, correct?

20 A Correct.

21 Q Someone would have told the former chief of surgery that  
22 you had a meeting the next day, right?

23 A I believe it was Dr. Mono [phonetic].

24 Q Okay. And so Dr. Mono would have told you. And when did  
25 Dr. Mono tell you that you had a meeting at 9 a.m.?

1           A     I don't know if he told me late on the 15th or early on the  
2 16th.

3           Q     Okay. You have no recollection?

4           A     I do not recollect which timeframe, no.

5           Q     Okay. And do you remember if that came by a phone call?

6           A     I think it came by a phone call from Dr. Mono, yes.

7           Q     Okay. All right. And you don't remember when that was?

8           A     No.

9           Q     Okay. What did Dr. Mono tell you?

10          A     He told me that the family had some concerns about going  
11 back to surgery and that they wanted a different surgeon.

12          Q     Now, doctor, you approached Patrick asking to perform the  
13 surgery in the evening at 10:20 or so, correct --

14          A     Sounds right.

15          Q     -- on the 15th? Okay. And that was as he was leaving to go  
16 home and shower, correct?

17          A     I don't recall if he was leaving to go home or not.

18          Q     Okay. Do you recall that he was leaving as you came in?

19          A     I don't.

20          Q     Okay. And one of the interesting things about it, doctor, was  
21 that just randomly the time that you happened to be going in and  
22 making your rounds or were you on a special visit because you had  
23 found out about the meeting to take place the next morning?

24               MR. DOYLE: Objection. Compound.

25               THE COURT: Overruled the way that was phrased.

1 THE WITNESS: No. I had done my progress note earlier in  
2 the day. I was waiting on the results of the CAT scan. I was aware of the  
3 results of the CAT scan and the significance, so I was going back to talk  
4 to the family about those significant findings.

5 BY MR. JONES:

6 Q Okay. Doctor, you believe that you did nothing wrong in this  
7 case, correct?

8 A I believe everything I did was within the standard of care.

9 Q Doctor, if a patient came into your office tomorrow with the  
10 same characteristics as Titina Farris that she had prior to the June 3rd  
11 surgery, would you treat that patient the same way you treated Titina  
12 Farris?

13 A That's a fairly vague question. It calls for too much  
14 speculation from my standpoint. What do you mean by -- I mean like a  
15 mirror image of her?

16 Q Sure. Would you do everything the same?

17 MR. DOYLE: Objection. It's over broad and argumentative.

18 THE COURT: Overruled.

19 THE WITNESS: In terms of diagnosis, recommending  
20 surgery and taking her to surgery, yes.

21 BY MR. JONES:

22 Q Okay. You'd choose to not order the bowel prep?

23 A Correct.

24 Q You'd use LigaSure again?

25 A Yes.

1 Q You'd use staples as you did the last time?

2 A If everything was exactly the same, yes.

3 Q You'd -- your clean up whatever that happened to be that  
4 would be the same?

5 A Yes.

6 Q Your records would be in the same completeness?

7 A Correct.

8 Q You would not take her back for a laparoscopy or a  
9 laparotomy on the 4th of July or the day after, one day post-op?

10 A If the -- if a different person was in the same situation and the  
11 exact same parameters were going on, I wouldn't do anything  
12 differently.

13 Q Okay. So that would include you wouldn't have taken her  
14 back on the 4th or the 5th or from the 6th through the 14th, fair?

15 A Correct.

16 Q Okay. But, doctor, you'd hope for a different result?

17 A We don't use hindsight to decide how we're going to go  
18 forward or we don't take one case and say well, this case looks exactly  
19 the same so therefore it's going to have exactly the same outcome.

20 Q Okay. So you'd do everything exactly the same --

21 MR. DOYLE: Objection. Asked --

22 MR. JONES: -- correct?

23 MR. DOYLE: -- and answered.

24 THE COURT: The Court needs to allow counsel to finish the  
25 question before the Court can rule.

1 Counsel, did you finish -- it didn't appear you finished your  
2 question.

3 MR. JONES: Yeah.

4 THE COURT: Did you finish your question?

5 MR. JONES: I did. Just --

6 THE COURT: I'm sorry. So --

7 BY MR. JONES:

8 Q -- you would do everything exactly the same, doctor?

9 THE COURT: Okay.

10 MR. DOYLE: Objection. Asked and answered.

11 THE COURT: Overruled.

12 THE WITNESS: Yes.

13 BY MR. JONES:

14 Q All right. But you would hope for a different result?

15 MR. DOYLE: Objection. Asked and answered.

16 THE COURT: Overruled.

17 THE WITNESS: Yes.

18 BY MR. JONES:

19 Q Okay. Doctor, have you heard of Hippocrates?

20 A Yes.

21 Q Who's Hippocrates?

22 A Hippocrates is where we get a Hippocratic oath to do no  
23 harm.

24 Q Okay. He's a famous Greek doctor, right?

25 A Correct.

1 Q One of the great figures in medical history, right?

2 A Sure.

3 Q Okay. And you mentioned that you get a quote, "First, do no  
4 harm," right? That's the beginning of the Hippocratic oath, right?

5 A Correct.

6 Q And all doctors know that, correct?

7 A Yes.

8 Q Are you familiar with any of Hippocrates' other quotes that  
9 he's well known for regarding the practice of medicine?

10 A May or may not.

11 Q Have you heard about his quote regarding the treatment of  
12 disease?

13 A Not off the top of my head.

14 Q So he said quote, "Treat the disease and not the symptoms."  
15 Have you heard that before?

16 A Sure.

17 Q Okay. Do you recall Hippocrates' quote regarding surgery?

18 MR. DOYLE: Objection. Relevance.

19 THE COURT: I'm really not [indiscernible]. May I ask to see  
20 where you're going here?

21 THE WITNESS: No.

22 BY MR. JONES:

23 Q He said quote, "Never perform surgery just for monetary  
24 gain," end quote. Have you ever heard that before?

25 MR. DOYLE: Objection. Hearsay and relevance.

1 THE COURT: Sustained on hearsay.

2 BY MR. JONES:

3 Q Doctor, how much was your bill for services in this case from  
4 July 3rd through July 15th --

5 A I don't know.

6 Q -- of 2015?

7 A I don't know.

8 Q You have no idea?

9 A No.

10 Q What do you typically charge for a laparoscopic procedure as  
11 you had in this case?

12 A A laparoscopic ventral hernia repair with two colon repairs  
13 charges would probably be around 3800 to 5,000 maybe.

14 Q Thirty-eight hundred to 5,000. Now, did that bill go up  
15 because you punched a couple of holes in the colon?

16 MR. DOYLE: Objection. Argumentative, Your Honor.

17 THE COURT: Sustained.

18 BY MR. JONES:

19 Q Doctor, did that bill increase because two holes were cut in  
20 the colon during the surgery?

21 A We would charge for repairing those holes or I would charge  
22 for repairing those holes, yes.

23 Q Any charge for cutting the holes?

24 A No.

25 Q Okay. Doctor, did you give the money back in this case or



1 did you choose to keep that?

2 MR. DOYLE: Objection, Your Honor. Relevance.

3 THE COURT: Overruled.

4 THE WITNESS: I don't think legally we can give the money  
5 back.

6 BY MR. JONES:

7 Q Did you try?

8 A Well, the insurance company is the one who pays me so --

9 THE COURT: Counsel, can you both please approach.  
10 Madam Court Reporter, I need the white noise on, please. Thank you so  
11 very much. Thank you, Madam Court --

12 THE MONITOR: Just one second.

13 THE COURT: Oh, just one second. My court reporter  
14 sometimes she needs a quick second and --

15 THE MONITOR: I'm sorry.

16 THE COURT: -- time is not always perfect. No worries.  
17 You're entitled just like everybody.

18 [Sidebar at 3:36 p.m., ending at 3:37 p.m., not transcribed]

19 THE COURT: You know what I think we will do. I think we'll  
20 fill up that candy bowl and let the jury have a quick break because I think  
21 it's about 3:35, and I might take an extra few moments or so, right?

22 We're having a little bit of JAVS issues. So rather than  
23 having you stay here, while we're listening to some white noise -- we're  
24 having a little bit of JAVS issues. I think you'd rather be stretching your  
25 legs out in the hallway.

1 I'm seeing some affirmative nods. Yes, I am.

2 So Marshall, do you have a candy bowl we can fill up and  
3 head it on its merry way to the hallway with our jury?

4 THE MARSHAL: Sure. I'll bring it out.

5 THE COURT: Okay. He'll bring it out to you. So let me give  
6 you the recess admonition. He'll bring you out the candy bowl.

7 I do appreciate it.

8 Ladies and gentlemen. We're going to take -- let's see. It's  
9 3:35. Oh, gosh. Oh, golly. It's what -- I tend to change -- I'm going to  
10 say five minutes of 4:00. Okay? And we're going to -- during this recess,  
11 you are admonished not to talk or converse among yourselves or with  
12 anyone else on any subject connected with this trial.

13 You may not read, watch or listen to any reported  
14 commentary of the trial, any person connected with the trial, by any  
15 medium of information including, without limitation, social media, text,  
16 tweets, newspapers, television, radio.

17 You understand everything I've now specifically stated is, of  
18 course, also included.

19 I've seen your affirmative nods each and every day and I'm  
20 seeing your affirmative nods today, except for -- I'm missing one  
21 affirmative nod. Uh-huh. You know who. Thank you. I see my  
22 affirmative nod. Thank you so very much.

23 Do not visit the scene or the events mentioned during the  
24 trial. Do not undertake any research, experimentation or investigation.  
25 Do not do any posting or communications on any social networking site.

1 Do not do any independent research, including but not limited to internet  
2 searches.

3 Do not form or express any opinion on any subject  
4 connected with the trial, in any manner whatsoever, until the case is fully  
5 and finally submitted to you at the time of jury deliberations.

6 With that, have a nice leg stretch --

7 THE MARSHAL: All rise for the jury.

8 THE COURT: -- and we'll see you in a bit. Thank you so very  
9 much.

10 And if you need to grab some tissues with you as well, if  
11 anyone is coughing, feel free to do so. Thank you.

12 [Jury out at 3:39 p.m.]

13 [Outside the presence of the jury]

14 THE COURT: Okay. We are now outside the presence of the  
15 jury, and we are staying on the record.

16 And you can appreciate that the Court is going to hear what  
17 counsel, as you can appreciate you both approached at the Court's  
18 request, as soon as you came to bench.

19 Plaintiff, you just started to say something, and the Court  
20 said that we were going to go outside the presence of the jury and let  
21 you all argue what you wish to argue.

22 So counsel for Plaintiff, feel free to set forth what you'd like  
23 to set forth. Go ahead.

24 MR. JONES: Thank you, Your Honor.

25 Defendant just now on the record, in front of the jury, told

1 the jury the payment was through insurance. Insurance is prohibited.  
2 It's not to be discussed in this case. The only insurance used in this case  
3 is an ERISA plan with federal subrogation rights. And in any event, the  
4 mention of insurance is extraordinarily prejudicial to the Plaintiffs  
5 because they have a right to put the full amount of the charge up, and  
6 there is no discounting for insurance. And now that the insurance issue  
7 has gotten out there in front of the jury and they are fully familiar with  
8 that, it is extraordinarily prejudicial for the Plaintiffs.

9 Your Honor, this is an experienced litigant. To me, I cannot  
10 think of a motive for him doing what he's doing, given the number of  
11 times he has testified under oath, other than to cause a mistrial or a just  
12 complete lack of respect for the process that he is engaged in. And Your  
13 Honor, a mistrial would be unfair to the Plaintiffs. The Plaintiffs have  
14 worked very hard, worked tirelessly to bring their case.

15 The only appropriate solution, in my opinion Your Honor, is  
16 to strike Defendant's answer. And on top of that, make it so the past  
17 medical specials are deemed as being reasonable, necessary, customary,  
18 and accepted. And for the jury to make a determination as to future  
19 medical.

20 THE COURT: Counsel for Defense, would you like to be  
21 heard?

22 MR. DOYLE: Sure.

23 I mean, I'm sure the Court is aware of NRS 42.021 which  
24 abrogates the collateral source rule in a medical malpractice action. We  
25 had this discussion at our 2.67 conference about the health insurance

1 that both Mr. and Mrs. Farris have through his employment with MGM  
2 Resorts.

3 Plaintiffs' counsel has indicated to me, several times, that  
4 they believe this is an ERISA plan that has federal subrogation rights.  
5 My response each time has been all employer sponsored health plans,  
6 as I understand it, are ERISA health plans and that if there is a right of  
7 subrogation under federal law, it has to be a self-funded ERISA plan, not  
8 just an ERISA plan.

9 And so there's been no motion in this case for a Court ruling  
10 that the health insurance that is available to the Farris' is a self-funded  
11 ERISA plan. There's been no motion -- there's been no ruling that there  
12 is not -- that there is, in fact, a federal right of subrogation. There's no  
13 motion. There's no ruling in this court that NRS 42.021 should not apply  
14 to the facts in this case. And based upon --

15 THE COURT: Wait, wait, wait. Are you saying that MGM is  
16 not self-insured? Or are you saying you don't know?

17 MR. DOYLE: I don't know. And I have asked Plaintiffs to give  
18 me some competent evidence --

19 UNIDENTIFIED SPEAKER: We do know.

20 MR. DOYLE: Okay. Well, I don't know. And my client  
21 certainly doesn't know.

22 And frankly, if we want to keep going back to the Center  
23 Case. In the Center Case, Mrs. Center did have private health insurance  
24 that would have been an admissible collateral source. And as a result of  
25 that, there were certain adjustments made to her claim for medical

1 expenses. But --

2 THE COURT: But whose burden are you saying -- excuse me.  
3 If you're asking for collateral source, are you saying it's not Defendant's  
4 burden to say that they get to introduce collateral source or are you  
5 saying it's Plaintiffs' burden to establish collateral source? Did you ever -  
6 -

7 MR. DOYLE: It's Plaintiffs --

8 THE COURT: -- seek --

9 MR. DOYLE: Oh, I'm sorry.

10 THE COURT: Did anyone ever seek this information --

11 MR. DOYLE: It's --

12 THE COURT: -- one way or another?

13 MR. JONES: Your Honor, we have affirmatively told them  
14 about 50 times. We have given them the --

15 THE COURT: Didn't somebody give --

16 MR. JONES: -- actual policy.

17 THE COURT: -- the actual policy?

18 MR. JONES: Yes, we gave them --

19 THE COURT: MGM has a policy.

20 MR. JONES: -- the policy.

21 MR. LEAVITT: Yes.

22 THE COURT: MGM has a policy. MGM --

23 MR. JONES: It was disclosed --

24 THE COURT: -- has a policy.

25 THE REPORTER: I need one at a time, please.

1 THE COURT: Excuse me. This is really a simple question,  
2 folks. Okay. It's really as simple as NRCP 16, right?

3 MR. JONES: Right.

4 THE COURT: Folks, its disclosure time, right?

5 Was the -- and I will use the informal term "MGM," although  
6 that is not their correct corporate identifier. But you all know what I  
7 mean when I use MGM, or would you like me to use their correct  
8 corporate identifier?

9 MR. DOYLE: You can say MGM. That's fine.

10 MR. JONES: MGM is fine.

11 THE COURT: Okay. Does that work for both of you all?  
12 Okay. So I'll informally call it MGM.

13 Has anyone provided the MGM plan to the parties? Has it  
14 been disclosed pursuant to NRCP 16 or has it otherwise been sought  
15 pursuant to subpoena demand for prior discovery. Whatever ways.  
16 Meaning, has it come out in this case sometime during discovery with  
17 discovery closing July 24, 2019, on this 2016 case? A simple yes or no.  
18 And if so, I'm going to ask approximately when.

19 Yes or no, Plaintiff? Did you all provide in any way the 16.1  
20 disclosures?

21 MR. JONES: We did, Your Honor.

22 THE COURT: Any ballpark when? Mr. Hand, it sounds like  
23 you --

24 MR. HAND: At least six or eight months ago it was disclosed.

25 THE COURT: Okay. So was it before July 24 --

1 MR. HAND: Yes.

2 THE COURT: -- 2019, at the close of discovery?

3 MR. HAND: Yes.

4 THE COURT: Is really the key question this Court is asking.  
5 Okay.

6 Defense counsel, do you disagree that the MGM plan, which  
7 would cover health insurance for the Farris', was disclosed to Defense  
8 prior to July 24th, 2019 -- oh, let me back it up. Do you agree that the  
9 close of discovery was July 24th, 2019, pursuant to your stipulated  
10 discovery extension, the last one that was granted?

11 MR. DOYLE: Yes.

12 THE COURT: Okay. Was it disclosed prior to July 24th,  
13 2019?

14 MR. DOYLE: We did receive a document concerning the  
15 health insurance benefits. What we did not receive and what I asked for  
16 at the 2.67 conferences was -- I don't remember the specific -- I'd have to  
17 -- again, do a little research. I don't remember the name of the specific  
18 document.

19 It's not enough -- there has to be -- there is some federally  
20 required document that goes with the plan to -- then that document is  
21 what tells you whether it is a self-funded ERISA plan or not. I don't  
22 remember the name of the document. I know it has a specific name  
23 from prior experience. And I asked for that document, and I have not  
24 seen that document, nor has it been provided.

25 So under the current state of things -- and I believe it is



1 Plaintiffs' burden of proof. They bear the burden of proof if they -- I get  
2 the benefit of 42.021. If Plaintiff wants to argue that it's medical -- you  
3 know, Plaintiff wants to say it's Medicare, it's Medi-Cal --

4 THE COURT: I really was going back to the very --  
5 remember, my question was a yes and no.

6 Were you provided, during the discovery period, the MGM  
7 plan? So I think you're telling me it's a yes and no? You were provided  
8 some document, but you felt it was sufficient; is that correct?

9 MR. DOYLE: Correct.

10 THE COURT: When were you provided it?

11 MR. DOYLE: I have no reason to dispute what Mr. --

12 THE COURT: Did you do --

13 MR. DOYLE: -- Hand recalls.

14 THE COURT: Did you ever do a timely and proper motion to  
15 compel during the discovery period in any way stating that what you  
16 received was insufficient in any manner? Or did you first bring it -- you  
17 mentioned the 2.67. The 2.67, if my recollection is correct, I'm doing this  
18 by memory and I've probably had several hundred, right? And I do have  
19 other cases. I believe you all told me September 11th, 2019 was your  
20 2.67. Other than the 2.67, on or about September 11; is that correct? Is  
21 that when you had this 2.67?

22 MR. DOYLE: I believe so.

23 THE COURT: Okay.

24 MR. JONES: Yes.

25 THE COURT: Once again, it's you all's case. So tell me if I'm

1 wrong, but I thought you told me 2.67 was on September 11th?

2 MR. JONES: It was, Your Honor.

3 THE COURT: Okay. So other than September 11th, your  
4 2.67, right, which is a couple months after July 24th. Other than  
5 mentioning it or bringing it up on September 11th, was the fact that you  
6 had any concerns about the plan that was provided to you, timely at  
7 some point during the discovery period, was it ever brought forward to  
8 Plaintiffs in any other written communication, formal motion, at any  
9 point at all during the discovery period?

10 MR. DOYLE: I have a vague recollection that it was, but I  
11 would need to go back and look at the file and talk to my office.

12 THE COURT: This Court did not ever see any motion practice  
13 ever before the Discovery Commission. I know it didn't come before me,  
14 because I'd remember that. And so normally when it came before a  
15 Discovery Commissioner, right, it usually comes before the Discovery  
16 Commissioner and then any report and recommendation comes before  
17 the judge because I have to sign off -- District Court judges have to sign  
18 off on reports and recommendations, right? Confirm them in whole or in  
19 part, or return them, and send them back to Discovery Commissioner.

20 Once again, probably since July, I've probably done  
21 thousands of hearings, literally, right, and sign different orders and  
22 things like that. So what? Generally in preparation for trial, I would  
23 remember these type of things, and particularly in this type of case in  
24 prepping for it, I don't recall seeing something like that because those  
25 types of issues usually stick in mind, because those are the kind of issues

1 that sometimes come up in trial. But once again, I can't guarantee it, but  
2 normally would. I can check real quickly. But I doubt either of you are  
3 going to tell me that it came before the Discovery Commissioner and  
4 came before me and I signed off on something relating to whether or not  
5 there was something under self-funded claim under MGM, because like I  
6 said.

7 But that being said, if it didn't happen that presents a  
8 challenge for it being raised as an issue when a witness is on the stand,  
9 and still doesn't excuse the witness saying the words "Insurance" in front  
10 of the jury, which we're about to get to. Okay.

11 MR. DOYLE: But Your Honor, that motion has always been  
12 filed by Plaintiffs. I have never had -- I've never had to file a motion to  
13 say --

14 THE COURT: No.

15 MR. DOYLE: -- 42.021 does not apply for this reason and that  
16 reason. It is always the Plaintiff who files that motion.

17 THE COURT: Counsel --

18 MR. DOYLE: So the Court --

19 THE COURT: Counsel --

20 MR. DOYLE: -- is putting a burden --

21 THE COURT: No, no, no. Counsel --

22 MR. DOYLE: -- that --

23 THE COURT: Counsel, don't misquote me. My statement  
24 was that does not excuse the witness for using the word "Insurance" in  
25 front of the jury. Those were my exact words. I did not put any burden

1 on you filing any motion. I asked you whether you filed a motion to  
2 compel or did any communications during the discovery period with  
3 regards to if you felt something was insufficient. Two different things.  
4 That's not saying you had to file a motion under the statutory basis. Two  
5 very different things.

6 I'm trying to get an understanding of what each party's  
7 position is because that's the way you can make a well-informed  
8 decision. Ask each side what their position is. Get the background  
9 information. Okay?

10 So --

11 MR. DOYLE: And so --

12 THE COURT: -- now let's walk through this.

13 MR. DOYLE: -- I have another thought.

14 THE COURT: Okay. So the next step is -- okay. So we have  
15 a plan. Now from a practical standpoint, the question I'm going to ask  
16 you, which you can choose not to answer or not is, do you have any  
17 independent understanding from your other cases whether or not MGM  
18 was self-funded or not, because generally, people don't hide their -- if  
19 you've done other MGM cases, it's generally commonly known what  
20 their status is. This is usually not a surprise.

21 I'm in no way holding you accountable or even asking that  
22 you have to necessarily answer the question. But if people have  
23 independent knowledge, sometimes if they've done a lot of cases with  
24 some of the particular properties, they would have independent  
25 knowledge one way or another, or if their attorneys have worked with

1 the companies. And the smaller community often times people have  
2 independent knowledge because their people do their work for  
3 companies. Have done work on one side of the fence or not. I'm not  
4 saying you have to even answer my question. But I'm just trying to get  
5 an understanding if this is a surprise or if this is something that's not a  
6 surprise.

7 MR. DOYLE: I've never had -- well, I've never represented  
8 MGM. And I've never been involved in a case where MGM is involved.  
9 And I don't have a memory and don't believe I've ever had -- I only do  
10 malpractice cases. I don't recall having a malpractice case with MGM  
11 health insurance.

12 THE COURT: Okay. So --

13 MR. DOYLE: But I do have additional thoughts directed to  
14 my client's specific answer.

15 THE COURT: Okay. Because as you know, there's a  
16 distinction between what may be allowed behind the scenes. The  
17 Court's term, "Behind the scenes."

18 For example, I give a different example. Let's take caps.  
19 Juries don't know about the caps. No one can ever talk about the caps,  
20 right? However, when I say behind the scenes, depending on if -- in any  
21 hypothetical case, if there is an award and if that award happens to  
22 exceed the caps, then when I use the term "Behind the scenes," meaning,  
23 after juries are gone, et cetera. And if an award, in a hypothetical case --  
24 in that hypothetical case, if an award had happened, happened. And if  
25 that hypothetical case, and that hypothetical award happened to have

1 exceeded the caps, those get reduced, right? So that's a kind of example  
2 of something that while as a matter of law, statutory law rights, you have  
3 only certain amounts can happen, but juries don't know that. So that  
4 gets taken care of whether you want to call it behind the scenes, or it  
5 gets taken care of by the court outside the presence of the jury, or  
6 however you'd like to phrase that statement. That doesn't allow  
7 somebody to say, on a witness stand, on those medical malpractice caps  
8 you can't get more than X anyway.

9           Similar with insurance. Insurance is not to be -- the concept  
10 of insurance in this type of contexts -- there is, of course, different  
11 examples on worker's comp and some other things, but the general  
12 insurance coverage aspect, subject to specific examples that don't apply  
13 here, is not supposed to be disclosed by a witness without some ruling  
14 by a Court that it could come out in a particular case, even if there is a  
15 statutory provision that may or may not apply. Even if there may be an  
16 argument as to whether or not there may be a reduction. Two distinct  
17 issues. We need to get to those issues.

18           So I need to hear the answer to the witness. Let's go to the  
19 heart of what the question is. The question is, this witness, separate and  
20 apart from the statutory issue that may or may not apply through a legal  
21 basis, that may or may not apply as to MGM, what may or may not allow  
22 an offset. It's a distinct issue from a witness saying insurance in front of  
23 a jury. Particularly in this case where there has been -- I'm not going to  
24 restate the whole litany of sanctions, hearings, admonitions in front of  
25 the jury, outside the presence of the jury, in writing, hearings, multiple

1 day hearings. I don't even know -- I'm not even going -- every single  
2 day, I'm not even going to remember every single day because -- but I'll  
3 at least say September 18th order, September 19th order, September  
4 26th hearing, October 7th hearing, October 10th hearing, October 14th  
5 admonitions. I mean, even last Friday's admonition, et cetera.

6 After all of those, to have this blurted out to a jury when, if  
7 you recall, the party ending on Friday evening about blurting out to a  
8 jury that the Court's specific admonition, and the Court specifically  
9 stating how close the Court was to, at that juncture, stating in this trial  
10 because of conduct why the Defense table, I will phrase it as, is very  
11 concerning that the very next day, despite what I called my rosy, rosy --  
12 literally, keep the rosy-colored glasses.

13 Rosy, rosy, rosy -- I don't remember how many rosy's I said  
14 on Friday, but it was a lot of them. Okay? -- glasses is very concerning  
15 that now we have insurance in front of the jury. That is the concern  
16 working out whether or not and whose burden on the statutory issue.  
17 It's a different issue.

18 We have a witness saying insurance in front of the jury in a  
19 situation where insurance should not have been said in front of the jury.  
20 That is the issue.

21 Defense counsel, would you like to be heard about your  
22 client saying insurance in front of the jury?

23 MR. DOYLE: Yes, Your Honor.

24 THE COURT: Sure. Go ahead.

25 MR. DOYLE: This happened because of Plaintiffs' questions.

1 And they walked my client into it.

2 THE COURT: Was your client --

3 MR. DOYLE: They have --

4 THE COURT: -- advised by you not to use the word  
5 insurance?

6 MR. DOYLE: No. Because there's no ruling in this case that  
7 insurance is inadmissible. And no, we did not -- and I'm not --

8 THE COURT: The only --

9 MR. DOYLE: Well, no, I'm not supposed to have a  
10 conversation with him while his testimony is pending --

11 THE COURT: No. But counsel --

12 MR. DOYLE: -- about his testimony. The --

13 THE COURT: Let me be clear. I'm sorry. I am going to  
14 interrupt you for one quick second. And my apologies. Because maybe I  
15 wasn't clear enough in my question. And I'm not asking you to waive in  
16 any way the attorney-client privilege.

17 There is a presumption that all attorneys advise their clients  
18 on some of the big no-no's never to say in trial. Okay? Things like you  
19 don't use profanity on the stand unless a case specifically involves  
20 maybe a word of profanity. Okay? There's things like you don't blatantly  
21 tell things that are inaccurate on the stand. There are things such as you  
22 don't use the word insurance on the stand. There's some of those things  
23 that are huge. General things -- some people call it Law School 101 type  
24 things.

25 Okay. Some people use a lot of different other phrases. And



1 I don't mean any of those in any manner whatsoever. It's the kind of  
2 general things that regardless of what jurisdiction, people say -- things  
3 aren't talked about in a general witness practice. Not in the middle of  
4 somebody's testimony. It's the general thing to not do. It's the kind of  
5 like you stand up when the juries come in and out, you know. It's the,  
6 you don't talk to the jurors even though the Court reminds people not to  
7 talk to the jurors. Those are the kinds of things that we presume that  
8 people don't do, but we still sometime remind them. It's that kind of  
9 thing. That's why this Court was asking that question. It's the practical  
10 common sense. I don't mean in any way to minimize it.

11 But I'm trying to get an understanding if this is a client issue  
12 or if this is potentially a counsel issue. But that's really where this Court  
13 is going because I so hard am trying to give everyone the benefit of the  
14 doubt here.

15 MR. DOYLE: Your Honor, frankly, based upon your  
16 interpretation of Coyote Springs, which I disagree with, I don't believe  
17 Coyote Springs applies to trial. I believe Coyote Springs only applies to  
18 the deposition process. You --

19 THE COURT: The Court's not given any definition of Coyote  
20 Springs. The Court has not made a ruling because no one has brought a  
21 motion on Coyote Springs to me.

22 MR. DOYLE: You have -- you're interrupting me. May I --

23 THE COURT: Counsel --

24 MR. DOYLE: -- finish, please?

25 THE COURT: Counsel, but you're misquoting me again.

1 MR. DOYLE: No, I'm not.

2 THE COURT: Yes, you are. Because I've not ruled on Coyote  
3 Springs so I can't say I have an interpretation.

4 MR. DOYLE: You, over my objection to the attorney-client  
5 privilege, you allowed my client to answer questions about our witness  
6 preparation and whether there was such preparation. The basis for the  
7 Court allowing that to occur is the Court's interpretation of Coyote  
8 Springs that prohibits counsel from talking to their client while their  
9 testimony is pending. And you have admonished every witness,  
10 including my client, not to discuss their testimony with anyone at a break  
11 or at any other time until their testimony is completed.

12 And so no, you know what, I have not had a chance to have a  
13 witness preparation with my client because of the Court's interpretation  
14 of Coyote Springs. So no, I have not had a conversation with my client  
15 about his testimony and aspects of his testimony, and what he should  
16 and shouldn't do. I had planned to do that last week, but based upon  
17 what the Court has said in terms of attorney not being able to talk to  
18 their client about their testimony while their testimony is pending, to  
19 avoid problems, I did not have that --

20 MR. JONES: Your Honor, can we ask that the Defendant not  
21 be here for this? He's --

22 MR. DOYLE: He's entitled to be here for this.

23 MR. JONES: It's --

24 MR. DOYLE: So there has been no preparation. And Your  
25 Honor, I would agree with you that in a regular personal injury case, yes,

1 there's never mention of insurance. However, malpractice cases are  
2 different. And more often than not in my experience, the health  
3 insurance comes in. You will note from the jury instructions that were  
4 submitted, I did not submit a jury instruction asking that the jury not be  
5 advised about my client's insurance or Plaintiffs' insurance.

6 And then back to the issue at hand, the question to my client  
7 that started all of this, Your Honor, was did he return the money? I  
8 objected to that. That's a completely inappropriate question. All it is  
9 designed to do is to make my client look greedy and bad in front of the  
10 jury when he says no, I didn't return my client. What other relevance  
11 would that question have?

12 Then my client says, no. Then he's asked, well, why not?  
13 And then my client says, well, legally, I can. And then he's asked, well,  
14 why not? And now he mentions the insurance.

15 Plaintiff walked him right into that answer. There's nothing I  
16 see inappropriate about him responding to that question beginning with  
17 the inappropriate question about whether he had to return -- whether he  
18 had returned the money.

19 MR. DOYLE: Whether he had returned the money.

20 MR. JONES: Your Honor --

21 THE COURT: Excuse me Counsel, before you start, I just --  
22 Court just needs a point of clarification. No worries. The Court does not  
23 agree with the analysis and statements attributed to the Court and in  
24 specifically, and the reason why the Court thinks this is very, very  
25 important is because this Court has asked counsel for defense multiple

1 times, including last week -- has specifically asked counsel, has he  
2 discussed with his client State Farm versus Hansen, which is a specific  
3 requirement under the rules for professional conduct.

4           So to anyway imply that this Court has said that counsel's  
5 not supposed to be talking to his client is just the opposite because Mr.  
6 Jones at bench specifically, I stopped the testimony and asked you all to  
7 come to bench. And once again, asked at approximately -- let's see what  
8 time I did, just one moment, please -- 10:07 a.m. And again, asked  
9 counsel for defense had discussed State Farm versus Hansen obligations  
10 thereon.

11           So this Court has specifically required and been assured by  
12 defense counsel that he has spoken with his clients in that regard. And  
13 this Court has reminded everyone just for the general sense with regards  
14 to some people's interpretations on Coyote Springs, but no way told  
15 anyone not to speak with their clients. And I think the testimony of this  
16 particular witness and when he spoke to his client and the amount of  
17 time he spoke with his counsel and how he did not want to waive  
18 attorney-client privilege. And the Court even admonished at the very  
19 beginning about not to disclose any communications between he and his  
20 counsel.

21           So this Court completely tells everyone to make sure -- and I  
22 even asked you all at the beginning to make sure you all had spoken with  
23 all of your clients to ensure that all of your clients knew about things  
24 they could and could not say on the stand. And I reminded you all,  
25 pretty much, with each and every witness to make sure that you all had

1 not only talked to your clients but had talked to your witnesses what they  
2 could and could not do.

3           So this Court makes sure all of that does happen and  
4 definitely encourages that people know all the rules just to avoid these  
5 very issues about these kinds of statements what can and cannot be said  
6 to the juries. And even reminded you all and the Court unfortunately  
7 had to admonish counsel about the improprieties previously. And said  
8 to make sure that everyone knew what the rules were and what could  
9 and could not be said in front of jury's on multiple occasions. And so I'm  
10 hearing what's being said but I do know that the transcripts with bear out  
11 what was and was not said.

12           And the same thing specifically, this Court at least three  
13 times, I know discussed *State Farm v Hansen*, like I said, including the  
14 most reason one was about 10:07 a.m. at bench with Mr. Jones and Mr.  
15 Doyle. So Court definitely was saying that the clients have to be fully  
16 aware rather than what was being stated. But go ahead, counsel for the  
17 plaintiff, the issue really here is witness -- you mentioned insurance and  
18 that's what the Court has to address. Go ahead, Counsel.

19           MR. JONES: Your Honor, I -- absolutely, Your Honor and if I  
20 may, on the Coyote Springs thing, the record will bear it out what was  
21 actually said because it was very, very clear. It was a very, very narrow  
22 decision on a single improper objection. One question was asked and  
23 answered. And that's going to be born out when the record is reviewed.

24           Something that is a huge issue, at calendar call, the Court  
25 specifically, addressing everyone, all of the attorneys that were here.

1 Said, you better make sure your stuff is right and it doesn't have  
2 insurance stuff in there. You talked about that specifically at the calendar  
3 call. We stated -- I stated, that we were not okay with all defendant's  
4 exhibits --

5 THE COURT: Went to the anteroom.

6 MR. JONES: For one reason, because added insurance  
7 information.

8 THE COURT: That's why you all went to the anteroom.

9 MR. JONES: That is right. And they agreed to remove the  
10 insurance documents and they got them out of their exhibits and then  
11 we came back out here. They knew that this was an issue. Moreover,  
12 what we had that we disclosed to them -- what was disclosed to them is  
13 the complete plan. It says ERISA probably 30 times in this document. It  
14 says it over and over and over again. For them to claim ignorance that  
15 this was not the sort of thing that was protected under McCrosky is  
16 absolutely unreasonable.

17 Your Honor, I have right here the documents that the defense  
18 agreed to remove from their exhibits. These are them right here.  
19 They're all insurance documents. And so if the Court would like to have  
20 them and attach them as an exhibit to this motion --

21 THE COURT: If you're requesting, it will be next in order --  
22 courts exhibits. So as by agreement of the parties to calendar call. What  
23 were these removed from? They were removed from Defendant's  
24 exhibits.

25 MR. JONES: Defendant's proposed exhibits.

1 THE COURT: Proposed exhibits. Counsel for defense, do  
2 you agree that the groupings that was provided that these were removed  
3 from Defendant's exhibits when you all went back to the anteroom  
4 during the calendar call?

5 MR. DOYLE: Yes, we did remove those at their request  
6 because of their concerns and also, they didn't appear relevant. But that  
7 doesn't have anything to do with with the issue of 42.021.

8 THE COURT: These will be next in order -- courts exhibits.  
9 Thanks.

10 Okay. Go ahead. Sorry, Plaintiffs' counsel, since you  
11 mentioned that. So go ahead.

12 MR. JONES: Absolutely, Your Honor. And in this case, we  
13 do believe that there is --

14 THE COURT: Whatever next in order -- courts exhibit.

15 MR. JONES: Your Honor, I know that the Court is very  
16 familiar with the law in this but the exception of ERISA 42.0211, is what  
17 we believe we have fully complied with to let the defense know by giving  
18 them our client's ERISA plan which says ERISA in it. And this was in our  
19 7th supplement, Your Honor.

20 THE COURT: Dated what? Please.

21 MR. JONES: It was dated 7-5-19.

22 Your Honor, my questions to the defendant were absolutely  
23 questions that are appropriate. I think that it's important that the jury  
24 understand that the amount of money that he billed my client is money  
25 that he has not paid back. This is money owing to my client for his

1 negligent conduct. And so I absolutely was going through that and  
2 identifying that he had not paid any of that back. I had follow-up  
3 questions that were actually going to request of him that he identify  
4 whether or not his billing is usual and customary. And I was going to go  
5 through a process of that which is absolutely my right to do and I have to  
6 do it for authenticity sake because his own attorney will not permit me  
7 to overcome hearsay. So I have to get it through defendant, the only  
8 member of his corporation.

9           And so, Your Honor, there was no way for me to get to  
10 defendant's billing without asking him about billing and the fact that I  
11 talked to him about the fact that he did not reimburse it goes to that  
12 point directly and so it was absolutely appropriate. Now, was I surprised  
13 that he mentioned that there were extra charges for fixing the  
14 colotomies? I was. And did I point that out? Yes, I did. And I think that  
15 that is something that was genuinely surprising to me and probably to  
16 the jury, but I pointed that out and that was absolutely appropriate.

17           I never asked about insurance. I only asked about billing.  
18 And frankly, I have never had a defendant, or a party opposed to me in a  
19 case that has so much experience, and then after all of the warnings that  
20 the Court has given us, specifically, on insurance, but also about just  
21 topics that aren't allowed, it is absolutely shocking that this was blurted  
22 out.

23           Your Honor, McCrosky case -- McCrosky v. Carson case is the  
24 case -- this is 408 P.3d 149 and it's directly on point with the issue of the  
25 billing and -- yeah, for the ERISA plans, Your Honor.



1                   Your Honor, that's all I have.

2                   THE COURT: I will tell you what the Court's inclination is  
3 because that it makes more practical sense. That there's already --  
4 there's an Inclination Order. I'll give you each a moment to respond.  
5 Seems to me you already have a pending motion before this Court,  
6 right? That the Court's appearing approximately 1 p.m. on Wednesday.  
7 Okay? That already have the opposition due tomorrow morning which  
8 already gives defendant an opportunity to just include this as an  
9 opposition. It's like I'm giving you reply time, right? Going to have to  
10 figure out how we're going to -- give you reply time 'til end of day  
11 tomorrow or maybe I give you 'til 8 a.m. on Wednesday.

12                  And I'm just going to be reading this during lunch et cetera  
13 to add in just this last issue that you can reply to this issue, right? That  
14 way I can just add this to your motion because you already have the  
15 other items teed up. Seems to me, I'm giving everyone the time to get  
16 this taken care of. And since this was created by Defendant -- it's  
17 Defendant's issue that they created this. That if I instead, by giving extra  
18 times, instead of ruling on it right now, it's only fair to Defendant  
19 because they had an opposition doing all the other issues that they could  
20 just add this to their list. They're already planning on doing an  
21 opposition. But general case law have already been addressed, they're  
22 just adding to this topic to it.

23                  I give Plaintiff an opportunity to reply. And I hear this on  
24 Wednesday or the other agreed upon time depending on the witnesses.  
25 It gives everyone an opportunity to be fully heard. It gives everyone an

1 opportunity to add it to their writings and give an opportunity to be  
2 heard in oral arguments. And I don't see really where there's a prejudice  
3 to the parties. I think I can do a curative right now to the jury to  
4 immediately tell them that they will disregard the statement by the  
5 witness regarding insurance and then I can address all the specific issues  
6 at the time of the hearing.

7 I'm going to ask you both if that meets your needs  
8 immediately or if you wish me to rule right now. So I'm going to ask  
9 counsel for plaintiff since you brought it to the Court's attention and ask  
10 you first.

11 MR. JONES: Your Honor, I -- yes, it does. Generally  
12 speaking, the curative instruction I do not think is necessarily helpful at  
13 all to the plaintiffs. I think that it may just emphasize the issue, and I  
14 think maybe if we could just not even have that and then what the  
15 Court's inclined to do. Based on the harm that's been done, I -- this is  
16 the sort of thing that I don't think the curative instruction can fix.

17 THE COURT: If that's your request, I'm trying to offer multi  
18 levels --

19 MR. JONES: Absolutely, Your Honor.

20 THE COURT: -- that don't request wanting. You just request  
21 the Court to address this on Wednesday with the rest of your motion,  
22 then that will be fine. Like I said --

23 MR. JONES: Yes, Your Honor.

24 THE COURT: -- I'm trying to do a multi-level so if you only  
25 want one of the two then that's your choice. Okay? So counsel for

1 defense, does that meet your needs?

2 MR. DOYLE: No. I'd like a ruling now. This is a complicated  
3 issue, and I'm not going to be able to pop this into an opposition and  
4 have the opposition filed by 9 a.m.

5 THE COURT: But the very thing that you're saying because it  
6 is a complicated issue is why exactly why I want to give you the time  
7 through tomorrow and then give you the opportunity to argue it on  
8 Wednesday. That's exactly why I want to give you the time. Instead of  
9 ruling right now because it gives you the time through tomorrow to put  
10 it into writing, and then to argue it on Wednesday, which gives you all  
11 that additional time instead of having you have to just of argued it today.  
12 Gives you time to look into it this evening. Gives you time also to argue  
13 it on Wednesday. Which gives you the opportunity to look at their brief,  
14 look at their response and then to argue it. Which gives you more time  
15 rather than less time.

16 MR. DOYLE: I'd like a ruling now. I need to get ready for trial  
17 tomorrow. There's not enough time for me to have someone in my  
18 office spend all night popping this issue into an opposition that I believe  
19 is already done. I need to get ready for trial tomorrow and not focus on  
20 this issue, so I'd like a ruling now.

21 THE COURT: Well, here's what the Court's going to do. The  
22 Court in no way sees it's prejudicial to defense by giving additional time  
23 to contemplate the issue and giving you additional time to engage in oral  
24 argument, particularly, when you're already going to be engaging in oral  
25 argument on the other sanctioned type components about the additional

1 agreed just conduct that's been asserted by plaintiff in their  
2 supplemental. Court takes no position. It's what it's what been asserted  
3 by Plaintiffs' in their motion, so since that hearing's already going to be  
4 taking place on Wednesday, the Court thinks it's -- to both parties benefit  
5 to have the additional time to think about it. If defense doesn't wish to  
6 add this as additional argument, that's defense's choice. The Court's not  
7 requiring it. I'm just giving you the opportunity. By giving each side the  
8 opportunity to add information if they choose to do so.

9           The Court always finds that that is giving people additional  
10 time, can't be harmful to the person if you choose not to utilize it. You  
11 choose to use your time and resources elsewhere, that's really each  
12 side's choice to do so. The Court's not requiring that you add it. It's just  
13 giving you the opportunity to add it. The fact that you already have a  
14 hearing set, based on you all's specific agreement at the time that you all  
15 specifically wanted it with the modification that if you needed to be  
16 moved a little bit to accommodate your witnesses, the Court will be glad  
17 to do so.

18           Once again, it is a date and time you've already picked on a  
19 topic that you already both knew about it and you both had the  
20 opportunity to prepare for and so adding this to that which also gives  
21 both parties the additional time to prepare their arguments, get their  
22 thoughts together. And if you don't wish additional argument on this  
23 topic, then once again, the Court by adding it to that ruling in no way  
24 disadvantages anyone. It gives both parties the opportunity to get their  
25 thoughts in order. It gives you an opportunity to look at the very

1 document that both parties are saying has some relevance to that rather  
2 than trying to do it right now and having the Court guess who's right and  
3 who's wrong on a document that neither of you have provided me.

4           So that, once again, also allows the Court to make a well-  
5 reasoned decision and also gives you all a chance to look at some of the  
6 case law if you choose to do so. If you wish to shoot from the hip, then  
7 that's really your choice, but that gives everyone that opportunity to  
8 utilize it if you wish. So here's what the Court's will do. Defense already  
9 has their opposition due, if you wish to add this in, you're more than  
10 welcome to do so, if you don't, it's not required.

11           Counsel for the Plaintiffs, you can add in to reply by 4 o'clock  
12 tomorrow. I appreciate that that's in the middle of a trial due, but I also  
13 realize you also got three attorneys. So if you wish to utilize it, you're  
14 not required to. Once again, if you don't --

15           MR. DOYLE: Your Honor --

16           THE COURT: -- if you're focusing your efforts on the trial,  
17 you're focusing your efforts on the trial you don't wish to, that's fine.  
18 You still got the same time, the same hearing time, it's not adding  
19 anything to anyone's standard. If nobody wishes to argue and you just  
20 wish me to rule on Wednesday, that's fine. The Court will be glad to do  
21 so. If you both wish to engage in oral argument, fine. It's the date and  
22 time you all selected. If you wish to only limit it to the original ones and  
23 not add this in, you both can do so. If one wishes to add argument to  
24 this and the other one doesn't, I have offered you both the opportunity.  
25 One wants to take me up on it, the other doesn't, that's really you all's

1 choice.

2 So I'm offering everyone the same opportunity who wishes  
3 to take me up on it or not is really you all's choice. So you both have  
4 been added the extra time so you can look up information if you to do  
5 so. If you don't wish to do so, I've given you both the opportunity to do  
6 so. I don't see any harm by not doing it since the request was not to say  
7 anything to the jury, that's Plaintiffs' because they're the ones that's  
8 harmed and so it was blurred out by defendant's by not saying  
9 something to the jury, there's not a harm.

10 Defense counsel, are you, for any reason, asking me to give  
11 an instruction to the jury to say that your client said something  
12 impermissibly in front of them?

13 MR. DOYLE: Well, I disagree that my client said something  
14 impermissible in response to the question. So no, I would object to such  
15 an instruction.

16 THE COURT: Okay. So you're both in agreement that you  
17 don't want me to say something to the jury, so that parts handled for  
18 today. Okay. Would you like to bring the jury back in then?

19 MR. JONES: Yes, Your Honor.

20 MR. DOYLE: So Your Honor, just so I'm clear. My plan is to  
21 argue this issue orally. I'm not going to have time or opportunity to  
22 supplement the opposition that's due in the morning.

23 THE COURT: You both --

24 MR. DOYLE: So I'm assuming I won't be precluded on  
25 Wednesday morning for making arguments not contained in the written

1 opposition which will be addressing other issues.

2 THE COURT: If you're bringing up any case law, I'm sure you  
3 will give the Court the courtesy to have provided me at least a copy of  
4 that case tomorrow, right? Because you wouldn't be bringing up new  
5 cases without giving the Court a copy or something that can be  
6 prepared. You may choose not to bring in the argument of writing it in  
7 your paper, but I'm sure you're at least going to attach, like, a case,  
8 right? So that the Court needs to have an opportunity to read it.

9 MR. DOYLE: I guess I don't understand now what the Court's  
10 position is. I don't have time or the resources to deal with this issue in  
11 an opposition that is due at 9 a.m. in the morning. What I am asking is --  
12 or my client is, to argue it orally on Wednesday, citing whatever  
13 pertinent case law and statute's that would be applicable. And I would  
14 be happy to provide sometime tomorrow afternoon before the end of the  
15 day what those statutes or cases would be. But again, I -- I --

16 THE COURT: So then, I'll give you the same 4 o'clock  
17 deadline as plaintiffs. Okay?

18 MR. DOYLE: Okay.

19 THE COURT: Only -- let me be clear. 9 o'clock for everything  
20 else. Only anything related to insurance is the 4 o'clock deadline. Are  
21 we clear on that? Counsel for defense?

22 MR. DOYLE: Yes.

23 THE COURT: Okay. So -- if I don't have it by 4 p.m., it  
24 doesn't get argued. Fair to both sides, right?

25 MR. JONES: Yes, Your Honor.

1 THE COURT: On the insurance concept?

2 MR. JONES: Absolutely. Do we need a hard copy or is --

3 THE COURT: Two promises for Plaintiff. Plaintiff, you get 'til  
4 4 p.m. on the reply to anything raised in defendant's opposition on the  
5 original motion. That's fair and the way it should be. With regards to  
6 the insurance concept, because that came up today, right? You each  
7 have 'til 4 o'clock tomorrow.

8 MR. JONES: Absolutely, Your Honor.

9 THE COURT: Any cases or citations that's not provided in  
10 hand, you know where I'll be 4 o'clock tomorrow -- I'll be with you all,  
11 right? So I'm right here.

12 MR. JONES: Yeah.

13 THE COURT: So if it's not handed to me, no pun intended  
14 with someone's last name, but physically here, right? To me. Okay?

15 MR. DOYLE: And I assume --

16 THE COURT: Before --

17 MR. DOYLE: -- the Court wants copies of the cases and  
18 statutes, not just citations?

19 THE COURT: Right.

20 MR. DOYLE: Okay. Because you had said citations.

21 THE COURT: Anything that you're providing. I'm trying to  
22 do the full gamut. Okay? And that doesn't mean giving me a whole  
23 transcript and say, Judge, go fish. That means if you're doing a case, I  
24 get the case, right? Highlight it.

25 MR. JONES: For the record, I'm just getting defense counsel



1 a copy of our motion.

2 THE COURT: Highlight the case, right? In good case law.  
3 I'm not going to have the time to go and I shouldn't be asked to go cite  
4 check it, right? Has to be good case law, right? With the highlights.  
5 Okay? If there's something you're relying on, you can highlight it. Okay?  
6 If there's a statute, highlight it. Give it to me physically in hand, 4 p.m.  
7 tomorrow, not 4:01 -- by 4 p.m. Everyone understands that, right?

8 MR. JONES: Yes, Your Honor.

9 THE COURT: If you don't do it, you can't cite it, right? Is that  
10 fair? Everyone agree to that? Everyone understands that?

11 MR. DOYLE: I'll agree to it. I don't know that it's fair, but I'll  
12 agree to it.

13 THE COURT: How is it not fair? It's the exact same deadline  
14 to both parties. You wanted a ruling right now with no chance of any  
15 citations or any case law. I'm giving you 'til tomorrow, so you have a full  
16 chance to do whatever citations and case law you want. That's way --  
17 that gives you -- would you rather argue with no citations and no case  
18 law?

19 MR. DOYLE: I asked for a ruling today, but I'll have  
20 something to you by 4 p.m.

21 THE COURT: I'm giving you a chance to provide some  
22 support rather than you just saying because of my years of experience.  
23 I'm trying to give both sides an opportunity so that you have some  
24 support for each one to argue. I presume, most people like to have some  
25 support with what they're arguing. Okay? I presume your both going to

1 hopefully provide me the relevant portion -- a plan that shows what it is  
2 or isn't, right? So whether it's complete or not complete. If you don't  
3 give me anything, then you get what you get. The Courts statement will  
4 be one side provided me something, one side didn't. Okay? It's really as  
5 easy as that.

6           Because if you don't provide the Court something, remember  
7 EDCR 2.20 specifically requires points of authority with regards to  
8 anything that you want something on, right? In the absence, it appoints  
9 an authority, the Court's supposed to presume that you have no merit to  
10 your argument. I'm trying to give both sides an opportunity to say that  
11 there's some merit to your argument. If you don't want to have a view  
12 that there's merit to your argument, then don't provide me anything. It's  
13 really up to you. Both sides have a full, fair opportunity with the same  
14 deadline. Okay? If you don't want to take advantage of it, it's really up  
15 to each of you all, then I'll just listen to your argument and make a ruling  
16 on what I have. Okay? So --

17           MR. JONES: Thank you, Your Honor.

18           THE COURT: With that being said, would you like to bring  
19 the jury back in or is there anything else the Court can address for you all  
20 outside the presence of the jury?

21           MR. JONES: No, Your Honor. That's all.

22           THE COURT: Okay.

23           MR. DOYLE: And Your Honor, but to be clear, the Defendant  
24 is alerted that he can't discuss insurance obviously going forward.

25           THE COURT: You all seem to have a difference of opinion.

1 MR. DOYLE: Yes.

2 THE COURT: So he does what he does at his own risk,  
3 doesn't he?

4 MR. DOYLE: Uh-huh.

5 THE COURT: Marshall, would you like to bring the jury back  
6 in?

7 THE COURT: State Farm versus Hansen is live and well so is  
8 the rest of the case.

9 THE MARSHAL: All rise for the jury.

10 [Jury in at 4:26 p.m.]

11 [Within the presence of the jury]

12 THE MARSHAL: All jurors are accounted for, please be  
13 seated.

14 THE COURT: Please be seated. Welcome back, ladies and  
15 gentlemen.

16 Counsel, would you like to continue with your questioning?

17 MR. JONES: Yes, Your Honor. Thank you.

18 THE COURT: Do appreciate it. Thank you so much.

19 BY MR. JONES:

20 Q Doctor, I was incomplete here and I hate to be incomplete, so  
21 I want to finish this off really quick. Do you recall what the white blood  
22 cell count was on the 15th?

23 A I do not.

24 Q Does 20,800 sound about right?

25 A Sure.

1 Q And on the 16th, Doctor, do you have any recollection?

2 A No.

3 Q Okay. 20,800 again. Same exact score. Does that surprise  
4 you?

5 A No.

6 Q All right. Now, Doctor, a little less than a month later, once  
7 Dr. Hamilton had gone in and cleaned things up, does it surprise you that  
8 her white blood cell count on the 11th of August dropped down to 9.3?

9 A On what date?

10 Q On August 11th.

11 A I wasn't following her at that time, so I don't know.

12 Q Okay. But fair to say, that from the time of your surgery for  
13 the next 13 days, her white blood cell count at all times remained high  
14 with a low of 17,000 and a high of 26 something thousand. Is that fair?

15 A Yes.

16 Q Okay. And then once the source was controlled, the leak, by  
17 the 11th of August, we now have a 9.3 white blood cell count, correct?

18 A I'll take your word for that.

19 Q All right. Doctor, if at any time you had caused injury to the  
20 abdomen or any other structure that you're working in, it would be your  
21 responsibility to repair those structures. Is that a fair statement?

22 A Can you state the first part of that again please?

23 Q Doctor, if at any time you caused an injury to the abdomen or  
24 any other structure that you're working in, it is your responsibility to  
25 repair those structures?

1           A     That is correct.

2           MR. JONES: Pass the witness, Your Honor.

3           THE COURT: Okay. Cross-examination by defense counsel  
4 to the extent you wish to do cross-examination, if you're reserving for  
5 your case in chief, please let the Court know.

6           MR. DOYLE: I just have a few questions, Your Honor.

7           THE COURT: Okay. Are you also reserving for case-in-chief  
8 or what's the agreement between the parties?

9           MR. DOYLE: I will be reserving the remainder of my  
10 examination for case-in-chief.

11          THE COURT: Counsel, would you like to approach? Madam  
12 Court reporter, can you turn on some white noise?

13          [Sidebar at 4:28 p.m., ending at 4:33 p.m., not transcribed]

14          THE COURT: Okay. So ladies and gentlemen, by agreement  
15 of the parties, Defense is going to do a limited cross-examination of the  
16 witness and reserve right for recalling the witness in your case in chief if  
17 you choose to do so. Is that correct?

18          MR. DOYLE: Yes. And thank you.

19          THE COURT: Is that correct?

20          MR. JONES: Yes, Your Honor.

21          THE COURT: Okay. Thank you so very much. The marshal's  
22 going to grab another question over there. So counsel for Defense, feel  
23 free to --

24          MR. DOYLE: Do we need to turn something on to put an  
25 exhibit up?

1 THE COURT: Yes. Screens are on for you. So are you set  
2 with your tech back there? You're all good? Okay. If you need anything,  
3 just let us know.

4 MR. DOYLE: So if we could pull up Exhibit 1-0010.

5 THE COURT: Is this -- excuse me, counsel, are you putting  
6 something on the screen that is an admitted exhibit?

7 MR. DOYLE: Yes.

8 THE COURT: So it's --

9 MR. DOYLE: It's Exhibit 1.

10 THE COURT: Okay. Exhibit 1. What was the page number,  
11 please?

12 MR. DOYLE: I'm going to start with 0010.

13 THE COURT: Okay. An admitted page, counsel?

14 MR. JONES: Yes, Your Honor. I think he's referring to  
15 Joint --

16 THE COURT: Joint Exhibit 1?

17 MR. JONES: -- Joint Exhibit 1 is what I think he means.

18 THE COURT: Page 10? Okay. Thank you so much.

19 MR. DOYLE: Yes.

20 THE COURT: And just -- we can just get page number  
21 references, and I can just get a confirmation from Plaintiffs' counsel  
22 before your page gets actually physically put up. We do appreciate it.  
23 Thank you so much.

24 MR. JONES: Thank you, Your Honor.

25 MR. DOYLE: Okay. Got it. Thank you.

1 THE COURT: As always, thank you so much.

2 MR. DOYLE: Are we ready?

3 THE COURT: We're good to go. Thank you.

4 CROSS-EXAMINATION

5 BY MR. DOYLE:

6 Q Doctor, looking at Exhibit 1-0010, what are we looking at first  
7 of all generally?

8 A General surgery second opinion by Dr. Greg Ripplinger.

9 Q Who is Dr. Ripplinger?

10 A He's a general surgeon.

11 Q Do you know him?

12 A Yes.

13 Q How long have you known him?

14 A As of today, or as of the time of the --

15 Q Today, Doctor. How long have you known Dr. Ripplinger?

16 A 16 years.

17 Q Do you recall being asked questions earlier about Dr.  
18 Ripplinger and his consultation?

19 A Yes.

20 Q Did he -- tell us whether he prepared this document. And if  
21 we go to --

22 MR. JONES: Objection, Your Honor. Foundation.

23 MR. DOYLE: Well, it's in evidence.

24 THE COURT: I --

25 MR. JONES: Preparation of the document that he would not,

1 Your Honor.

2 THE COURT: The Court is going to sustain the objection  
3 because the way the objection was asked. If he prepared that document  
4 that's in evidence was the way that question was phrased. Thank you so  
5 much.

6 BY MR. DOYLE:

7 Q All right. Let's go to page 0012. Doctor, can you tell from  
8 looking down who prepared this consultation?

9 A Dr. Ripplinger.

10 Q Are you able to tell when he dictated it down a little?

11 A It's hole punched. But usually it has the dictation and  
12 transcription where it says 07/09/2015, 15:39, followed by 07/09/2015,  
13 transcribe 21335.

14 Q All right. And let's go to the second page of this document,  
15 which is Exhibit 1-0011. And we'll give counsel a moment to look at it.  
16 Okay. We can put that up. And let's go to the -- let's go down to the  
17 impression and plan section, if we could make that a little bigger.  
18 Doctor, you see on the third line of impression and plan where it says I  
19 think there is a reason to be concerned for possible leak from one of the  
20 two colon repairs or an early aggressive infection of the mesh causing  
21 some of the patient's problems?

22 A Correct.

23 Q Were you asked about that statement earlier today?

24 A Yes.

25 Q Read for us what it says after that.



1           A     I would recommend a repeat CT scan of the abdomen and  
2     pelvis done with IV -- excuse me, intravenous oral and rectal contrast,  
3     and to help rule out leak from the colon. I think there should be a fairly  
4     low threshold for at least a diagnostic laparoscopy or even laparotomy if  
5     there are any significant abnormalities noted on the CT scan, especially if  
6     there is an increase in free fluid in the abdomen.

7           Q     While you were caring for Mrs. Farris, did you read Dr.  
8     Ripplinger's consultation?

9           A     Yes.

10          Q     What did you understand this to mean?

11          A     That Dr. Ripplinger would consider surgery if there was  
12     increased free air or increased free fluid, or other things indicating a  
13     change from the prior CT scan that there was an active leak going on.

14          Q     Was a CT scan performed?

15          A     Yes.

16          Q     What did it show?

17          A     It showed decreased free fluid, decreased free air, decreased  
18     inflammatory changes of the bowel, no signs of a leak.

19          Q     Those changes that you described, could you elaborate what  
20     they meant to you?

21          A     It indicated that from the prior CT scan things were actually  
22     looking improved from on CT scan to the other.

23          Q     Now, let's go to the very bottom of page 1-0011, where does  
24     it -- tell us what it says in the very last line on this page, and then over to  
25     the top of the next page?

1           A     He says he discussed the findings with Dr. McPherson over  
2 the phone, and Dr. McPherson would order the CT scan of the abdomen  
3 and pelvis with IV and rectal contrast.

4           Q     How many contrasts?

5           A     Three.

6           Q     What is IV contrast?

7           A     Intravenous contrast is exactly what it sounds like. They take  
8 contrast dye and they inject it into your vein.

9           Q     Remember when you were asked earlier this afternoon about  
10 an answer you gave in the Center deposition at page 112, line 25 over to  
11 113, line 6. Was that question about a CT scan with IV contrast only?

12          A     Yes.

13          Q     So what is Dr. Ripplinger recommending in addition to the IV  
14 contrast?

15          A     In addition he wants the patient in this case to have contrast  
16 put down through a tube that goes through her nose and into her  
17 stomach so that it opacifies the stomach and small bowel. And in case  
18 there's not enough time for it to transition into the colon where we're  
19 concerned a perforation, he wants contrast to go up through the rectum  
20 into the colon to make sure that that part of the colon is opacified so you  
21 can see it on the CT scan.

22          Q     What is opacification or opacified mean?

23          A     Oh sorry, it means that you can delineate it, or you can see it  
24 and separate from the solid organs in the abdomen.

25          Q     And if you have oral -- I'm sorry, if you have oral contrast and

1 rectal contrast with a hole the size of a quarter, what would you expect a  
2 hole in the bowel?

3 A That contrast would flow out of it.

4 Q And how is it that this contrast shows up on a CT scan?  
5 What is it made of?

6 A It's usually made of barium. And so on a CT scan it looks  
7 bright white. It stands out very distinctly from everything else.

8 Q While you were caring for Mrs. Farris did you review the  
9 images yourself for the CT scan done on July 9th per Dr. Ripplinger?

10 A I think I pulled it up on the PAC system. Yes.

11 Q While you were caring for Mrs. Ripplinger -- I'm sorry, while  
12 you were caring for Mrs. Farris, did you look at the radiologist report?

13 A Yes.

14 Q Did the radiologist say anything in the report to suggest  
15 there was a hole in the colon at that point?

16 A No.

17 MR. DOYLE: Okay. Thanks. That's all I have for now then.

18 THE COURT: Okay. Redirect, counsel?

19 MR. JONES: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. JONES:

22 Q Doctor, did you verify to see if barium was actually used?

23 A I verified it when I looked at the PAC system, yes.

24 Q You verified the barium was used?

25 A Well, that a rectal contrast was used. Yes.

1 Q Okay. And that they used barium?

2 A I don't know what they used specifically. No.

3 Q Okay. So you don't know if they used barium or not; is that  
4 right?

5 A It looks like it based upon the CT scan.

6 Q Okay. Doctor, the first thing I wanted to talk about is a few of  
7 these records and then some of your experts talked about this. They  
8 start off by saying obese female. Is Vicky Center -- or is Titina Farris at  
9 the time she came into you on July 3rd, was she an obese female?

10 MR. DOYLE: Objection. Scope.

11 THE COURT: Overruled.

12 A I did not calculate her BMI.

13 BY MR. JONES:

14 Q Okay.

15 A So I don't know.

16 Q Do you know if her BMI was calculated at some point?

17 A By my office?

18 Q Sure.

19 A I don't think so.

20 Q How about by someone else that saw her previously, Dr.  
21 Chaney who referred her to you?

22 A I didn't see any notes from Dr. Chaney that said that.

23 Q Okay. Would it surprise you to know that her BMI when she  
24 went to you was 29.5?

25 A Okay.

1 Q Okay. What is obese, Doctor?

2 A Obese has many different definitions based upon BMI. Some  
3 people use numbers as low as 25. Some people go to 30. And then they  
4 go up into the 40s and they start using terms like super obese, and other  
5 terminology based upon BMI criteria.

6 Q Okay. So Titina Farris -- would you agree that the common  
7 BMI indicator is about 30 percent BMI is usually indicated as the -- as a  
8 threshold for obese versus overweight?

9 A I believe so. Yes.

10 Q Okay. And she was 29.5. That doesn't surprise you?

11 A No.

12 Q Okay. You'd agree that when she was laying there septic for  
13 several days, somebody that might have seen her would have certainly  
14 assumed that she was probably severely overweight, morbidly obese,  
15 right?

16 MR. DOYLE: Objection. Scope.

17 THE COURT: Overruled.

18 A Can you start that over again, please?

19 BY MR. JONES:

20 Q Yes, Doctor. You agree that Titina, when she had been  
21 laying there septic for five, or six, or seven days, that her body was  
22 expanded, her stomach was pushed out, distended, she looked much --  
23 her legs had swollen, she looked much larger than what she had looked  
24 when she walked into the hospital on July 3rd?

25 A She had anasarca of her abdomen and edema in her legs

1 that would cause her to swell. Yes.

2 Q Okay. All right. Now, Doctor, you -- at any time did you ask  
3 Dr. Ripplinger for clarity?

4 A In regards to what?

5 Q In regards to his impressions and what he thought should be  
6 done with Titina Farris?

7 A No. His consult note was fairly clear.

8 Q Excellent.

9 [Pause]

10 Q Doctor, what does it mean when he says fairly low threshold  
11 for at least a diagnostic laparoscopy?

12 A It means that if there were significant abnormalities on the  
13 CT, especially increase of free fluids, he would have a low threshold to  
14 reoperate.

15 Q Okay. All right. And Doctor, let's -- you said that across the  
16 board that there were -- there was a decrease in free fluids -- there was a  
17 decrease in free fluids and in free air, correct?

18 A Correct.

19 Q Now, Doctor, we've pulled it up before, and I'll just see if we  
20 remember from memory. On your CT scans that we've been using in  
21 this case, we've been looking at, wouldn't you agree with me that the  
22 hernia sac on the 9th had filled up with fluid where it previously had  
23 been about half air and half fluid?

24 A Correct.

25 Q Okay. That's additional fluid, right?

1 A In that one particular area, yes.

2 Q Okay. All right. Doctor, why did you speak with Dr.  
3 McPherson? Were you too busy?

4 A Why did I speak with Dr. McPherson?

5 Q Why did he, Dr. Ripplinger?

6 A I believe because Dr. McPherson asked him for the second  
7 opinion.

8 Q Okay. And in any event, you didn't speak with Dr.  
9 McPherson or Dr. Ripplinger about their opinions about what should be  
10 done in this case, correct?

11 A At that time, no.

12 Q Now, in his note did he say in the event that there aren't any  
13 dramatic findings in the CT, just have a wait and see approach and see  
14 what comes of it? Did he say anything like that?

15 A No.

16 Q He didn't, right?

17 MR. JONES: No further questions.

18 THE COURT: All right.

19 MR. JONES: Oh, sorry, Your Honor. Hold on a second.

20 [Pause]

21 BY MR. JONES:

22 Q Doctor, a couple of points from Dr. Ripplinger. He said --  
23 well, from the CTs you reached the conclusion that there was no leak.  
24 That was your opinion after reviewing the CT on the 9th, is that what  
25 you're saying?

1           A     No, I'm not saying that.

2           Q     Okay. So that wasn't your opinion on the 9th after reviewing  
3 the CT?

4           A     Comparing the CT on the 4th or 5th, whichever one, looking  
5 at the CT on the 9th, looking at all the data, a leak was less likely.

6           Q     Okay. So there was -- there was more fluid in the -- in the  
7 hernia sac, less air in the hernia sac, the white blood cell count was --  
8 was 22,900, and you felt that a leak was less likely. But you continued to  
9 include it as a possibility?

10          A     Yes.

11          Q     You didn't feel in any way that the CT scan on the 9th ruled  
12 out a leak? That was still a possibility in your differential diagnosis?

13          A     Still a possibility, yes.

14          Q     Okay. What did you do to rule out that you had an infected  
15 mesh causing problems?

16               MR. DOYLE: Objection. Scope.

17               THE COURT: Overruled.

18          A     I don't think there's a direct way to rule out an infected mesh  
19 other than to remove it.

20 BY MR. JONES:

21          Q     Okay. And you previously agreed that that statement was  
22 very possibly true, that it might be a leak or an infected mesh, correct?

23          A     Correct.

24          Q     And the only way to fix an infected mesh would be to  
25 remove the infected mesh, right?



1           A     No.

2           Q     Didn't you just say that?

3           A     No. I said the only way to prove it to rule it out would be to  
4 do that.

5           Q     Understood. Understood. And so you didn't -- you never did  
6 anything to rule out that you might have an infected mesh, correct?

7           A     Again, the only way to do that would be to get the mesh out  
8 and send it to the laboratory for cultures.

9           Q     Okay. And you could've done that laparoscopically, right?  
10 You could've put in --

11          A     No.

12          Q     -- correct? You would've had to open her up, a laparotomy  
13 to remove the mesh?

14          A     Yes.

15          Q     Okay. All right. Thank you, Doctor.

16                MR. JONES: I have no further questions.

17                THE COURT: Okay. Recross, counsel?

18                MR. DOYLE: No thank you, Your Honor.

19                THE COURT: Okay. We've got some juror questions. Would  
20 you like to approach? It looks like we're going to have time to address  
21 one or two.

22                       [Sidebar at 4:50 p.m., ending at 4:55 p.m., not transcribed]

23                THE COURT: You know, ladies and gentlemen, we didn't  
24 realize it was five minutes to 5. So it's a beautiful time to just say good  
25 evening rather than just start a couple questions and having to finish it.

1           So ladies and gentlemen, I think you're going to have a  
2 wonderful Monday evening. But before you have that wonderful  
3 evening, you're going to get of course a reminder that you're going to  
4 relax and enjoy yourself and not -- during this overnight recess you are  
5 of course admonished not to talk or converse among yourselves or with  
6 anyone else on any subject connected with this trial.

7           You may not read, watch, or listen to any report or  
8 commentary of the trial, any person connected with the trial, by any  
9 medium of information, including without limitation social media, text,  
10 tweets, newspapers, television, internet, radio. Anything I'm not stating  
11 specifically is of course also included.

12           Do not visit the scene of any of the events mentioned during  
13 the trial. Do not undertake any research, experimentation, or  
14 investigation. Do not do any posting or communications on any social  
15 networking sites. Do not do any independent research including but not  
16 limited to internet searches. Do not form or express any opinion on any  
17 subject connected to the trial until the case is fully and finally submitted  
18 to you at the time of jury deliberations.

19           With that, we wish you a very nice, relaxing evening, and  
20 we'll see you tomorrow. And remember we're going to start tomorrow  
21 at 10:30, because we said -- remember we told you before lunch we were  
22 going to start at 10:30. We moved everything to try and get you some  
23 more trial time. So that will be -- thank you so much. I appreciate your  
24 consideration and flexibility. I appreciate it. Thank you so much.

25                           [Jury out at 4:56 p.m.]

1 [Outside the presence of the jury]

2 THE COURT: Okay. Court is -- witness can get off the stand.  
3 Thank you so very much.

4 THE WITNESS: Yeah.

5 THE COURT: Do appreciate it. The Court is going to wish  
6 everyone a very nice and relaxing evening. And hopefully during that  
7 evening you all will take care of things. And then we will see you  
8 tomorrow. Remember the Court's got a motion calendar, and then we'll  
9 take care of this. So please do take things -- we need our depo back  
10 though.

11 Marshal, can you get the depo back? It's -- Plaintiffs' counsel  
12 is supposed to return that right afterwards.

13 UNIDENTIFIED SPEAKER: No, no. Those are mine.

14 THE CLERK: That's not it.

15 THE COURT: Is that the copy or the original? You have the  
16 original back?

17 MR. JONES: This is the original right here.

18 THE COURT: Okay.

19 MR. JONES: This --

20 THE COURT: Right.

21 MR. JONES: -- big gigantic thing.

22 THE COURT: Right. So we need the original of that. Okay.  
23 The original deposition back. We do need that. Thank you so much.  
24 That's the original of Plaintiffs' deposition. Thank you so much.

25 Is that the only deposition that was --

1 THE CLERK: Yes.

2 THE COURT: You -- there were two depositions, right?

3 THE CLERK: I've already got the --

4 THE COURT: You got the --

5 THE CLERK: -- earlier --

6 THE COURT: -- earlier deposition. Okay. I just wanted to  
7 make sure both depositions were gotten back. Remember that the Court  
8 will need tomorrow as far as the opposition from Defense, and then both  
9 parties' documents tomorrow. So opposition by Defense no later than 9  
10 a.m. tomorrow. And then to the extent with regards solely to the  
11 insurance issue by 4 p.m., no later, both parties, anything you wish the  
12 Court to consider. So two prongs for Defense, one prong for Plaintiff  
13 because Plaintiff already gave me the first one.

14 And we will see you tomorrow. Please do clean up all your  
15 things. Do not leave any trash, please. Thank you so very much.

16 MR. DOYLE: Can we submit those through your JEA rather  
17 than --

18 THE COURT: No. I want 4:00 physically in my hand. I don't  
19 want there to be any issues that it's -- I will be here in court with you.

20 MR. DOYLE: Right.

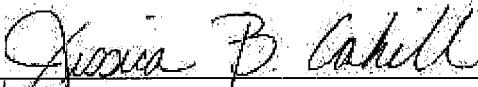
21 THE COURT: So that's why I want to make sure I have it by  
22 4:00 in my hand. Okay. At 9 a.m. I will already be here in court. I will be  
23 on the bench by 8:45. So it's really easy for people to walk in here and  
24 hand it to my marshal because we will all be here in court. So we can  
25 physically see that we get them on time, and then we don't have any

1 issues about people not bringing it in on time, and any oopsies, or  
2 anything like that. I will physically be here and be glad to take them. So  
3 I do appreciate it. Thank you so very much.

4 Okay. I wish everyone a very nice and a relaxing evening.  
5 Madam Court Reporter, feel free to go off the record and relax. Thank  
6 you.

7 [Proceedings adjourned at 4:59 p.m.]  
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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  
best of my ability.

23   
24 \_\_\_\_\_  
Maukele Transcribers, LLC  
25 Jessica B. Cahill, Transcriber, CER/CET-708